

**PeopleFluent OrgPublisher – Perpetual
Terms of License and Services
Rev. 2019.1**

By signing an Order Form and by using the Software, Customer agrees to be bound by the terms of the Order Form and these Terms of License.

1. Definitions.

“**Customer**” means the company signing the Order Form.

“**Customer Data**” means all permitted electronic data stored by Customer in the Software. Customer Data does not include Prohibited Information.

“**Documentation**” means PeopleFluent’s standard installation materials, training materials, specifications and online help documents normally made available by PeopleFluent in connection with the Software, as modified from time to time by PeopleFluent.

“**Prohibited Information**” means credit or debit card numbers, passwords, protected health information as defined in HIPAA (45 C.F.R. § 160.103), and information relating to a customer or consumer of a financial institution under GLBA (15 U.S.C. §§ 6801–6809).

“**Software**” means PeopleFluent’s OrgPublisher software application, which allows Customer to generate organization charts from its organizational data, which can be viewed through the Plugin or as HTML and the OrgPublisher Plugin provided by PeopleFluent for viewing organization charts.

“**Unique Records**” means the unique position records (people, open positions, contractors, etc.) that are imported into the Software.

2. License Grant. Subject to the Order Form and these Terms of License, PeopleFluent grants Customer a perpetual, non-exclusive, non-transferable and non-assignable (except as provided in this Agreement), non-sublicensable, worldwide license to install and use: (i) OrgPublisher on not more than one (1) computer for production use and two (2) computers for development or test use, and (ii) an unlimited number of copies of OrgPublisher Plugin on the computers of its employees and contractors in conjunction with OrgPublisher. Customer may make and maintain a back-up copy of the Software, solely for re-installation of the Software as permitted in these Terms of License. The Software may be used by up to the number of administrative users stated in the Order Form to update and publish organization charts. PeopleFluent retains all rights in the Software (subject to the license granted to Customer).

3. Limitations on Use.

a. **Excess Usage of Software.** Customer will not use the Software for more than the number of Unique Records specified in the Order Form. The Software has usage limitations based on the number of Unique Records and/or Administrative Users used on it. Customer may increase its Unique Records and/or Administrative User level at any time by notifying PeopleFluent and paying additional applicable fees. When Customer's actual use exceeds its authorized use, Customer shall, upon receipt of PeopleFluent's invoice, pay additional license and (as applicable) Hosting and Software Support fees on a proportionate basis in accordance with its current pricing or such pricing as may be agreed with Customer for the excess use in minimum blocks of 10% of total authorized Unique Records and/or Administrative Users, for prior use and for use for the remainder of the then-current term and all renewal terms.

Upon request from PeopleFluent, but not more than twice in each year, Customer will certify the actual number of Unique Records in the Software. In addition, PeopleFluent may at any time, at its own expense (unless the last sentence of this Clause applies), audit the Customer’s usage of the Software and compliance with this Agreement (including with regard to the number of Unique Records and/or Administrative Users accessing the Software and/or registered on the Software), and such audit shall be exercised in a manner so as to not substantially interfere with Customer’s normal conduct of business. If an audit reveals that the number of Unique Records and/or Administrative Users exceeds the number specified in the Order Form, allowed under this Agreement or otherwise agreed with PeopleFluent (and paid for), Customer shall be responsible for and pay for PeopleFluent’s (reasonable) audit costs and PeopleFluent shall be entitled to immediately invoice Customer for these audit costs and the additional minimum blocks of Unique Records and/or Administrative Users (regardless of the active or non-active status).

b. Customer will use the Software for its internal business purposes and to process information about or for the use of its own employees and contractors, and will not, directly or indirectly, use the Software to process information about or for any other person. In using the Software, Customer will not permit unauthorized use of the Software or infringe or violate the intellectual property rights, privacy, or any other rights of any third party or any applicable law and will not reverse engineer or otherwise seek to discover the source code to the Software. Customer may not use the Software to process information or records of any third party, or allow resale, timesharing, rental or use of the Software in a service bureau or as a provider of outsourced services, or allow a competitor of PeopleFluent to use or have access to the Software.

4. Software Support. Customer’s helpdesk will provide first line support to its internal users, and all initial support requests will be first received and addressed by Customer’s helpdesk. PeopleFluent will provide second line support to a reasonable number of designated Customer representatives. Support requests should be submitted to PeopleFluent’s Customer Support Center by telephone or web, as provided below. Customer is responsible for ensuring that its hardware and software used to access the Software meet the minimum requirements required by PeopleFluent in the applicable documentation and that it has installed all Updates and Upgrades provided by PeopleFluent. Support includes:

Access to the PeopleFluent Customer Support Center website for receipt of product information and submission of support requests (24/7).

Helpdesk telephone support during normal business hours (8am-5pm Central U.S. Time), Monday through Friday, excluding PeopleFluent holidays.

From time to time, PeopleFluent will make available to Customer copies of any standard changes or additions to the Software (**Updates**) that aim to correct bugs or errors therein at no additional charge.

Standard changes or additions that add significant new functions to, or substantially improve the performance of the Software, including all new releases and versions of the Software that are released by PeopleFluent on a general basis (**Upgrades**) are available at additional charge.

Customer is responsible for the installation of updates and upgrades to the Software. Installation and consulting services can be purchased from PeopleFluent at the then current consulting rates.

5. Security and Hosting Services, if applicable. If Customer purchases Hosting Services, PeopleFluent will host the Software in its third party data center for Customer's use. The Hosting Services include the hardware and hosting management services described in the Documentation relating to the management, operation and maintenance of the Software. PeopleFluent will maintain and enforce commercially reasonable physical and logical security methods and procedures to protect Customer Data and to secure and defend the Software against "hackers" and others who may seek to access the Hosting Services without authorization when the Software is running on Hosting Services. PeopleFluent will test its Hosting Services for potential security vulnerabilities at least annually and will use commercially reasonable efforts to remedy any breach of security or unauthorized access to the Hosting Services. PeopleFluent reserves the right to suspend access to the Hosting Services in the event of a suspected or actual security breach. Customer will maintain and enforce commercially reasonable security methods and procedures to prevent misuse of the log-in information of its employees and other users. PeopleFluent shall not be liable for any damages incurred by Customer or any third party in connection with any unauthorized access resulting from the actions of Customer or its representatives.

6. Fees and Payment Terms. Upon execution of the Order Form, PeopleFluent will invoice Customer for the fees specified in the Order Form. All payments are due as provided in the Order Form and are non-cancellable and non-refundable except as provided in this Agreement. Unless otherwise specified in the Order Form, all amounts are in US Dollars (USD). Upon renewal of Hosting Services and Software Support, PeopleFluent may increase applicable fees at a rate of not more than 10% per year, provided it has given Customer written notice of the fee increase at least 60 days before the expiration of the then-current Services Term. If Customer does not pay any amount (not disputed in good faith) when due, (i) PeopleFluent may charge interest on the unpaid amount at the rate of 1.5% per month (or if less, the maximum rate allowed by law), (ii) PeopleFluent may suspend the applicable service until such payment is received in full, and (iii) Customer agrees to pay PeopleFluent's reasonable expenses, including attorney and collection fees, incurred in collecting unpaid amounts. All fees are exclusive of all taxes, including federal, state and local use, sales, property, value-added, ad valorem and similar taxes related to this transaction, however designated (except taxes based on PeopleFluent's net income). Customer will pay PeopleFluent's invoices for such taxes whenever PeopleFluent is required to collect such taxes from Customer.

7. Limited Warranty and Disclaimer. PeopleFluent warrants and represents that the Software will, for a period of ninety (90) days from the effective date of the Order Form, materially conform to PeopleFluent's standard installation materials, training materials, specifications and online help documents normally made available by PeopleFluent in connection with the Software, as modified from time to time by PeopleFluent. At no additional cost to Customer, and as Customer's sole and exclusive remedy for nonconformity of the Software with this limited warranty, PeopleFluent will use commercially reasonable efforts to correct any such nonconformity. This limited warranty shall be void if the failure of the Software to conform is caused by (i) the use or operation of the Software with an application or in an environment other than as set forth in the Documentation, or (ii) modifications to the Software that were not made by PeopleFluent or PeopleFluent's authorized representatives. PeopleFluent will not introduce any time bomb, virus or other harmful or malicious code designed to disrupt the use of the Software. Each party warrants and represents that it has all requisite legal authority to enter into this Agreement and that it shall comply with all applicable laws, including U.S. export laws. EXCEPT AS EXPRESSLY SET FORTH HEREIN, PEOPLEFLUENT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. PEOPLEFLUENT DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SOFTWARE WILL BE SECURE, UNINTERRUPTED OR ERROR FREE. NO STATEMENT OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM PEOPLEFLUENT IN ANY MEANS OR FASHION SHALL CREATE ANY WARRANTY NOT EXPRESSLY AND EXPLICITLY SET FORTH IN THIS AGREEMENT.

8. LIMITATION OF LIABILITIES. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF A PARTY, ITS SERVICE PROVIDERS, LICENSORS OR SUPPLIERS ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO PEOPLEFLUENT WITHIN THE PRECEDING TWELVE (12) MONTHS. IN NO EVENT SHALL EITHER PARTY OR THEIR SERVICE PROVIDERS, LICENSORS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DAMAGES FOR COVER OR LOSS OF USE, DATA, REVENUE OR PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.**9. Term and Renewal.** This Agreement is effective as of the Order Form Date. Perpetual licenses do not expire due to the passage of time. Hosting Services and Software Support expire as stated in the Order Form. Unless otherwise expressly set forth in the Order Form, at the Term End Date and at the end of each renewal term, Software Support and, if applicable, Hosting Services shall automatically renew for the length of the original term stated above, unless either party gives the other party at least forty-five (45) days written notice of non-renewal prior to the end of the then-current term.

9. Termination. PeopleFluent may terminate all licenses and services for any material breach of Customer's obligations not cured within thirty (30) days following notice to Customer of such breach, and immediately upon written notice if Customer files for bankruptcy, becomes the subject of any bankruptcy proceeding or becomes insolvent. No termination by PeopleFluent shall relieve Customer of any payment obligations or commitments under the Order Form.

10. Independent Contractors. The parties are independent contractors and not agents or partners of, nor joint venturers with, the other party for any purpose. Neither party shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

11. Notices. All notices required under this Agreement shall be in writing (including email) addressed to PeopleFluent at [434 Fayetteville Street, Raleigh, NC 27601](#) and to Customer at the billing address in PeopleFluent's records.

12. Amendment; Entire Agreement. No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and executed by authorized representatives of PeopleFluent and Customer. The Order Form and these Terms of License and any documents attached hereto or incorporated herein by reference, constitute the complete and exclusive statement of the parties' agreement and supersede all proposals or prior agreements, oral or written, between the parties relating to the subject matter hereof. PeopleFluent objects to and rejects any additional or different terms proposed by Customer, including those contained in Customer's purchase order, acceptance or website. Neither PeopleFluent's acceptance of Customer's purchase order nor its failure to object elsewhere to any provisions of any subsequent document, communication, or act of Customer shall be deemed acceptance thereof or a waiver of any of the terms hereof. The party's obligations hereunder are neither contingent on the delivery of any future functionality or features of the Software nor dependent on any oral or written public comments made by PeopleFluent regarding future functionality or features of the Software. No waiver or modification of the provisions of this Agreement shall be effective unless in writing and signed by the party against whom it is to be enforced.

13. Assignment. Customer may not assign the Order Form, in whole or in part, without the prior written consent of PeopleFluent, which shall not be unreasonably withheld. However, Customer may assign the Order Form to a person or entity into which it has merged or which has otherwise succeeded to all or substantially all of its business or assets to which the Order Form pertains, by purchase of stock, assets, merger, reorganization or otherwise, and which has assumed in writing or by operation of law its obligations under this Agreement. Any assignment or attempted assignment in breach of this Section shall be void.

14. Governing Law and Venue. This Agreement will be governed by the laws of the State of Delaware without regard to its conflicts of laws principles. However, if Customer is a State Agency or Entity, this Agreement will be governed by the laws of your state without regard to its conflicts of laws principles.

15. Survival. The Provisions of this Agreement that are intended to survive termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement shall so survive.

16. Federal Government End Use Provisions. PeopleFluent provides the Software, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

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