

PeopleFluent OrgPublisher – SaaS
Terms of License and Services
Rev. 2019.1

By signing an Order Form and by using the Subscription Service, 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 Subscription Services. 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 Subscription Services, 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).

“**Subscription Services**” means the PeopleFluent application(s), including any updates and upgrades thereto, which are licensed to Customer on a Software-as-a-Service (SaaS) basis.

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

2. License Grant. Subject to the terms of this Agreement and any limitations set forth in an applicable Order Form, PeopleFluent grants to Customer a worldwide, non-exclusive non-transferable right and license to access and use the Subscription Services identified in such Order Form via a web browser solely to process information or records of Customer and its Affiliates. Unless otherwise set forth in the applicable Order Form, PeopleFluent hosts such applications on a SaaS basis and retains physical control over the Subscription Services.

3. Limitations on Use.

a) Customer will use the Subscription Service 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 Subscription Service to process information about or for any other person. In using the Subscription Service, Customer will not permit unauthorized use of the Subscription Service 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 Subscription Service. Customer may not use the Subscription Service to process information or records of any third party, or allow resale, timesharing, rental or use of the Subscription Service in a service bureau or as a provider of outsourced services, or allow a competitor of PeopleFluent to use or have access to the Subscription Service.

b) **Excess Usage of Subscription Service.** The Subscription Service has usage limitations based on the number of Unique Records used on it and Customer will not use the Subscription Service for more than the number of Unique Records specified in the Order Form. Customer may increase its Unique Record level at any time by notifying PeopleFluent and paying additional applicable fees. Upon request from PeopleFluent, but not more than twice in each year, Customer will certify the actual number of Unique Records in the Subscription Service. When Customer's actual use exceeds its authorized use, Customer shall, upon receipt of PeopleFluent's invoice, pay additional Subscription Service fees on a proportionate basis for the excess use in minimum blocks of 10% of total authorized Unique Records, for prior use and for use for the remainder of the then-current term and all renewal terms.

4. Subscription Service 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 Subscription Service meet the minimum requirements required by PeopleFluent in the applicable documentation and that it agrees to accept 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 standard changes or additions to the Subscription Service (**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 Subscription Service, including all new releases and versions of the Subscription Service that are released by PeopleFluent on a general basis (**Upgrades**) are available at additional charge.

5. Hosting Services. PeopleFluent will host the Subscription Service in its third party data center for Customer’s use. The Hosting Services include the hardware and hosting management services described in PeopleFluent’s standard documentation relating to the management, operation and maintenance of the Subscription Service. Each party will use diligence in the protection of Customer Data and in the prevention of any unauthorized person or entity from gaining access thereto. PeopleFluent may utilize consultants, independent contractors and third party service providers to handle and process Customer Data for PeopleFluent on Customer’s behalf as set forth herein, provided such representatives are under obligations of confidentiality no less stringent than those contained herein.

6. Security. PeopleFluent will maintain and enforce commercially reasonable physical and logical security methods and procedures to protect Customer Data on the Subscription Services and to secure and defend the Subscription Services against “hackers” and others who may seek to access the Subscription Services without authorization. PeopleFluent will test its systems for potential security vulnerabilities at least annually. PeopleFluent will use commercially reasonable efforts to remedy any breach of security or unauthorized access. PeopleFluent reserves the right to suspend access

to the Subscription 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.

7. Confidentiality. “Confidential Information” means all information and materials obtained by a party (the “**Recipient**”) from the other party (the “**Disclosing Party**”), whether in tangible form, written or oral, that is identified as confidential or would reasonably be understood to be confidential given the nature of the information and circumstances of disclosure. Confidential Information includes, without limitation Customer Data, the Subscription Services, the Software, and the terms and pricing set out in this Agreement, Order Forms and SOWs, if any. Confidential Information does not include information that (a) is already known to the Recipient prior to its disclosure by the Disclosing Party; (b) is or becomes generally known through no wrongful act of the Recipient; (c) is independently developed by the Recipient without use of or reference to the Disclosing Party’s Confidential Information; (d) is received from a third party without restriction and without a breach of an obligation of confidentiality, or (e) is Prohibited Information. The Recipient shall not use or disclose any Confidential Information without the Disclosing Party’s prior written permission except as necessary for the provision of the Services or use of the Software, or as otherwise allowed herein. The Recipient shall protect the confidentiality of the Disclosing Party’s Confidential Information in the same manner that it protects the confidentiality of its own confidential information of a similar nature, but using not less than a reasonable degree of care. The Recipient may disclose Confidential Information to the extent that it is required to be disclosed pursuant to a statutory or regulatory provision or court order, provided that the Recipient provides prior notice of such disclosure to the Disclosing Party, unless such notice is prohibited by law, rule, regulation or court order. As long as an Order Form or SOW is active under this Agreement, and for two (2) years thereafter, and at all times while Customer Data is in PeopleFluent’s possession, the confidentiality provisions of this section shall remain in effect.

8. Aggregation. Notwithstanding anything contained herein, PeopleFluent shall have the right to aggregate Customer Data with other customer’s data to compile aggregate statistical analysis data and compile reports from the aggregated data for internal use only. PeopleFluent agrees that any reporting that contains aggregated data shall preserve Customer’s anonymity and the confidentiality of Customer Data.

9. 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 Subscription Service, 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.

10. Limited Warranty and Disclaimer. PeopleFluent warrants and represents that the Subscription Service will materially conform to PeopleFluent’s standard installation materials, training materials, specifications and online help documents normally made available by PeopleFluent in connection with the Subscription Service, 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 Subscription Service 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 Subscription Service to conform is caused by (i) the use or operation of the Subscription Service with an application or in an environment other than as set forth in the Documentation, or (ii) modifications to the Subscription Service 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 Subscription Service. 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 SUBSCRIPTION SERVICE 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.

11. 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.

12. Term and Renewal. This Agreement is effective as of the Order Form Date and shall expire as stated in the Order Form. Unless otherwise expressly set forth in the Order Form, the Subscription Service shall automatically renew for subsequent twelve (12) month periods, unless either party provides the other party prior written notice of its intention not to renew at least forty-five (45) days prior to the expiration of the Order Form.

13. 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.

14. 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.

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

16. 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. This Order Form constitutes the complete and exclusive statement of the parties' agreement as to the subject matter hereof and supersedes all proposals, requirements documents, discussions, presentations, responses to questions, or prior agreements, commitments or promises, oral, electronic or written, between the parties or provided by one party to another, 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 Subscription Service nor dependent on any oral or written public comments made by PeopleFluent regarding future functionality or features of the Subscription Service. 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.

17. 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.

18. Governing Law. 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.

19. Survival. 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.

20. Federal Government End Use Provisions. PeopleFluent provides the Subscription Service, 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 Subscription Service 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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