

APPLICATION LICENSE AGREEMENT (EXCLUDING SUPPORT)

(FOR NETDIMENSIONS TALENT SUITE)

Standard Terms and Conditions Schedule

This Application License Agreement is entered into between NetDimensions Limited in Hong Kong (d/b/a PeopleFluent) (contact details of which can be found at www.PeopleFluent.com) (“**PeopleFluent**”) and the company or other legal entity that wishes to purchase a license or request a trial license of the Application (as defined in this Agreement) (“**Client**”) for use by Users, from a Reseller (defined below), and describes the terms and conditions pursuant to which PeopleFluent will license the Application to the Client. By installing, copying or using the Application or the Related Documentation (as defined below), the Client agrees to be bound by the terms and conditions of this Agreement. If the Client does not agree to the terms of this Agreement, the Client should immediately return the Application (license key) and the Related Documentation to either PeopleFluent or the Reseller. Where an Application license is purchased from PeopleFluent or a PeopleFluent group company, these terms and conditions do not apply, and the applicable Standard Terms and Conditions Schedule can be viewed at <http://www.netdimensions.com/terms-policies/terms-and-conditions.php> (“NTS License terms and conditions with support and maintenance (Version 20xx.x)”). For the avoidance of doubt, effective October 2018, the NetDimensions group of companies has become part of the PeopleFluent group of companies, and all current and former NetDimensions entities are now doing business under the name PeopleFluent, provided that the products NetDimensions Talent Suite shall continue to be used by PeopleFluent under its current name.

1 Definitions and Interpretation

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

“Agreement” means this Application License Agreement for the Application entered into by and between PeopleFluent and the Client, comprising this Standard Terms and Conditions Schedule;

“Application” means PeopleFluent’s proprietary software application NetDimensions Talent Suite in machine readable form (as (may be) further described on PeopleFluent’s online client pages, as updated from time to time) licensed pursuant to Client’s agreement with Reseller and this Agreement, including any error corrections, updates, upgrades, modifications and enhancements to it;

“Client” as defined above;

“Commencement Date” means the date of receipt by the Client of the license key enabling it to use the Application;

“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: the Related

Documentation, specifications, formulae, samples, prototypes, devices, techniques, processes, methods, discoveries, inventions, ideas and improvements (whether or not patentable), data, compilations, algorithms, studies, computer programs, code, research, reports, patterns, designs, sketches, plans, drawings, photographs, know-how, trade secrets, marketing plans, business plans, financial information, commercial information, technical information, pricing information, market information, information relating to relationships with third parties, information relating to business models and/or business methods, customer, supplier and distributor lists, and any other subject matter which by its nature would be reasonably known to be confidential or proprietary, and all copies of such materials and information;

“Designated Server IP Address”	means the Client’s server IP address pursuant to the Client’s agreement with the Reseller;
“Initial Term”	means a period of one (1) year from the Commencement Date or such other period as agreed with the Reseller and PeopleFluent;
“Intellectual Property Rights”	means 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;
“Related Documentation”	means the installation instructions, user guides, administrator guides and other related documentation supplied by (or on behalf of) PeopleFluent (whether physically or by electronic means, including through its online client pages, which may be updated by PeopleFluent in its sole discretion from time to time) in conjunction with or related to the Application, including any part or copy of such instructions;
“Renewal Term”	means any renewal of an annual licence following the end of the Initial Term or any other Renewal Term, and each Renewal Term shall be for 12 months or such longer period as agreed with the Reseller and PeopleFluent;
“Reseller”	means an authorized reseller of PeopleFluent, through whom the Client has purchased a licence to use the Application;
“User”	unless otherwise agreed between Client and the Reseller, means any employee, agent or contractor of the Client or where applicable, of a customer of the Client, authorised by the Client in accordance with this Agreement to access and use the Application under this Agreement in the ordinary course of the Client’s

business, for the sole purpose of accessing such training and assessment material or related functionality provided through or by the Application. A User can have an active (identified in the Application as 'Active' or 'Suspended') or non-active (all user status categories in NTS other than 'Active' or 'Suspended') status in the Application.

1.2 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.

2 License

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

2.2 The Client shall not, and warrants that its Users shall not:

2.2.1 (attempt to) copy, duplicate, modify, create derivative works from or distribute all or any portion of the Application or Related Documentation or merge or include the Application or Related Documentation with any other software or documentation; or

2.2.2 (attempt to) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application; or

2.2.3 access all or any part of the Application in order to build a product or service which competes with the Application; or

2.2.4 save as expressly provided in Clause 2.1, use the Application or Related Documentation to provide services to third parties or attempt to obtain, or assist third parties in obtaining, access to the Application or Related Documentation.

2.3 This Agreement will commence on the Commencement Date and will continue for the Initial Term or such term as may be agreed with Reseller and PeopleFluent. Where no Renewal Term is entered into at the end of the Initial Term or then current Renewal Term, this Agreement and the licence granted hereunder shall automatically terminate.

2.4 Unless otherwise specified in the agreement between the Client and the Reseller, the Application is licensed only for single instance use on a single server on the

Designated Server IP Address. PeopleFluent may, at its discretion, require that the Client uses an alternative Designated Server IP Address from time to time. The Client will also ensure that no one other than the Users, and no more than the permitted number of Users agreed with Reseller, accesses the Application. If the Client wishes to increase the number of Users, it shall request prior written consent from the Reseller.

- 2.5 Users are named users authorized in the system. Subject to compliance with the provisions of this Clause, the Client is permitted to archive up to 50% of active Users during each year of this Agreement (by changing the status of (former) active Users to non-active Users and adding an equivalent number of new active Users) provided that the total number of named Users in the Application (the sum of all active and non-active Users) shall not be higher than three times the permitted number of active Users agreed with the Reseller. 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 Reseller 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.
- 2.6 The Client shall at all times maintain a written, up-to-date list of Users (active and non-active), and provide this in fully anonymized form to PeopleFluent within 5 Business Days of PeopleFluent's request at any time.
- 2.7 The Client may not resell or sub-license the Application without PeopleFluent's express prior written consent or use it except as a platform from which to provide training, assessment and other functionality provided by the Application for the Users in accordance with this Agreement.

3 Client's Undertakings

- 3.1 The Client will not remove the copyright notice, trade marks or service marks of NetDimensions or PeopleFluent from any copies, in any form, including partial copies or modifications of the Application or Related Documentation, made in accordance with this Agreement.
- 3.2 The Client will:
 - 3.2.1 not provide or otherwise make available the Application or Related Documentation in whole or in part, in any form to any person other than the Users without PeopleFluent's prior written consent;
 - 3.2.2 notify PeopleFluent promptly if the Client becomes aware of any unauthorised use of the whole or any part of the Application or Related Documentation by any person;
 - 3.2.3 use the Application and Related Documentation only in accordance with PeopleFluent's or the Reseller's reasonable operating instructions and the terms of this Agreement;

- 3.2.4 use commercially reasonable efforts to keep the Application free from viruses;
 - 3.2.5 ensure that the Application is only used on the Designated Server IP Address on a single server, unless otherwise specified in the Commercial Terms;
 - 3.2.6 ensure that no one other than Users, and no more than the permitted number of Users as agreed with the Reseller access the licensed Application.
- 3.3 The Client is responsible for maintaining the confidentiality of its Application passwords and will use commercially reasonable endeavours to ensure that all Users keep their own Application passwords confidential.
- 3.4 PeopleFluent may at any time, at its own expense (unless the last sentence of this Clause applies), audit the Client's usage of the Application and compliance with this Agreement (including with regard to the number of Users accessing the Application and/or registered on the Application), and such audit shall be exercised in a manner so as to not substantially interfere with Client's normal conduct of business. If an audit reveals that the number of Users exceeds the licensed number of Users and allowed under this Agreement, Client shall be responsible for and pay for PeopleFluent (reasonable) audit costs and PeopleFluent shall be entitled to immediately and directly invoice Client for these audit costs and the additional Users (regardless of the active or non-active status) for the remainder of the Initial Term or applicable Renewal Term in accordance with its current per User list price.
- 3.5 The Client is solely responsible for ensuring compliance with all applicable import and export laws and regulations of the country of destination and any applicable foreign jurisdiction and will indemnify, defend and hold PeopleFluent and the Reseller harmless from any claims brought against PeopleFluent or Reseller arising from the Client's export, import or handling of the Application and Related Documentation.

4 Intellectual Property Rights

- 4.1 The Intellectual Property Rights in the Application and the Related Documentation are and as between PeopleFluent and the Client will be owned by PeopleFluent.
- 4.2 PeopleFluent reserves the right to use, or require the use of, any of its and its group companies' (including NetDimensions') trade marks or any other relevant marks or promotional slogans used by it on the Application, the Related Documentation and any other software provided to the Client by PeopleFluent and on any Web pages or browser title bar provided by the Client to the Users.

5 Warranty

- 5.1 PeopleFluent warrants that:
- 5.1.1 it has full title to and ownership of the Application and has full power and authority to enter into this Agreement; and

- 5.1.2 the Application licensed and delivered pursuant to this Agreement will perform substantially in accordance with the Related Documentation for such version for a period of 90 days from the Commencement Date.
- 5.2 Except as set out above and to the extent permitted by law, PeopleFluent disclaims and excludes all other representations and warranties pursuant to Clause 6.4.
- 5.3 If the Client discovers any breach of the warranty at Clause 5.1.2 which substantially affects the Client's use of the Application and notifies (either by itself or through Reseller) PeopleFluent of the error within 90 days from the Commencement Date, PeopleFluent will use reasonable endeavours to correct by free update or upgrade that part of the Application which does not comply, provided that the non-compliance has not been caused by any modification, variation or addition to the Application not performed by PeopleFluent, or caused by the Client's incorrect use, abuse or corruption of the Application, or by use of the Application with other software or on equipment other than PeopleFluent supported hardware and software configurations or on a server IP address other than the Designated Server IP Address. This Clause states PeopleFluent's whole liability to the Client and the Client's sole remedy in the event of a breach of the warranty at Clause 5.1.2.
- 5.4 Without prejudice to the generality of Clause 5.2, the Client acknowledges that software in general is not error-free and that PeopleFluent gives no warranty that the Application or Related Documentation will be uninterrupted or error-free. The Client further acknowledges that the Application has not been developed to meet the individual requirements of the Client.

6 Limitation of Liability

- 6.1 Nothing in this Agreement will exclude or limit liability for death or personal injury resulting from the negligence of either of the parties or its employees while acting in the course of their employment.
- 6.2 Subject to Clause 6.1, PeopleFluent's entire aggregate liability to the Client for any loss or damage arising from any act or omission relating to this Agreement or the use of the Application, regardless of the form of action, whether in contract or tort (including in each case negligence), strict liability or otherwise, is limited in any one period of 12 months after the Commencement Date to proven direct damages in an amount not to exceed the amount paid by the Client to Reseller for the license granted pursuant to this Agreement in respect of that 12 months provided that this shall not apply to PeopleFluent's liability under Clause 7, in respect of which PeopleFluent's total aggregate liability to the Client shall be limited to £100,000. The Reseller shall set its own limitations of liability applicable to the contract between the Reseller and the Client.
- 6.3 PeopleFluent will not, under any circumstances, be liable to the Client for any loss of revenue, business, contracts, anticipated savings, profits, data or information, or any incidental, special, indirect or consequential loss or damages, whether arising from negligence, breach of contract or howsoever, even if it has been advised of the possibility of the same.
- 6.4 Except as expressly set out in this Agreement, PeopleFluent disclaims and excludes all representations, conditions and warranties whatsoever (whether express or implied) in respect of the Application and the Related Documentation to the maximum

extent permitted by law, including (without limitation) warranties, representations or conditions relating to satisfactory quality, non-infringement, merchantability or fitness for any particular purpose.

7 Indemnity

7.1 The Client will indemnify and defend PeopleFluent and its affiliates and its and their directors, officers, employees, agents and sub-contractors against any claims made against PeopleFluent by a third party arising in connection with:

- 7.1.1 any claimed violation of laws, rules, policies and procedures by the Client's or its Users' use of the Application;
- 7.1.2 liability resulting directly or indirectly from any content incorporated in the Application by the Client, Users or at the Client's or any User's request;
- 7.1.3 information or data of the Client or Users that violates or allegedly violates any law or regulation, or is defamatory;
- 7.1.4 any damage to or destruction of the Application or Related Documentation supplied by PeopleFluent to the Client under this Agreement to the extent that such damage or destruction is caused by the actions of the Client, its Users, its employees, sub-contractors or agents,

provided that PeopleFluent:

- notifies Client in writing as soon as is reasonably possible and in any event within 30 days of becoming aware of any such claim;
- makes no admission of liability, agreement or compromise in relation to the claim referred to in Clause 7.1 without Client's prior written consent; and
- provides all reasonable assistance in conducting all negotiations and litigation, if required to do so by Client.

7.2 PeopleFluent agrees to indemnify and defend the Client and its and their directors, officers and employees against any claims made against the Client by a third party to the extent that such claims relate to the Application or Related Documentation infringing any third party copyright, trademark or confidential information, and provided that the Client:

- 7.2.1 notifies (itself or through Reseller) PeopleFluent in writing as soon as is reasonably possible and in any event within 30 days of becoming aware of any such alleged infringement;
- 7.2.2 makes no admission of liability, agreement or compromise in relation to the claim referred to in Clause 7.2 without PeopleFluent's prior written consent; and
- 7.2.3 provides all reasonable assistance in conducting all negotiations and litigation, if required to do so by PeopleFluent.

- 7.3 In no event shall PeopleFluent, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- 7.3.1 a modification of the Application or Related Documentation by anyone other than PeopleFluent; and/or
 - 7.3.2 the Client's use of the Application in a manner contrary to the instructions given to the Client by PeopleFluent; and/or
 - 7.3.3 the Client's use of the Application or Related Documentation after notice of the alleged or actual infringement from PeopleFluent or any appropriate authority.
- 7.4 PeopleFluent is authorised, at its own expense, to defend or, at its option, to settle the claims referred to in Clause 7.2 (as qualified by Clause 7.3). In addition, if any third party Intellectual Property Rights infringement claim is made, or in PeopleFluent's reasonable opinion is likely to be made, against the Client, in relation to the Application, PeopleFluent may, at its own cost and in its sole option, either obtain the right for the Client to continue using the Application, or replace or modify the Application so that it is no longer infringing, or terminate this Agreement and reimburse the Client for the amount paid to Reseller in relation to the Application (less a pro-rated sum in respect of the Client's use of the Application prior to the date of termination).

8 Confidentiality

- 8.1 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.
- 8.2 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.
- 8.3 The provisions of Clauses 8.1 and 8.2 will not apply to any information which:
- 8.3.1 is in or enters the public domain other than by breach of Clauses 8.1 and 8.2; or
 - 8.3.2 is obtained from a third party who is lawfully authorised to disclose such information; or
 - 8.3.3 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

- 8.3.4 is authorised for release by written consent of the Disclosing Party; or
- 8.3.5 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.

9 Termination

- 9.1 This Agreement will continue in effect unless terminated in accordance with the provisions of this Clause 9 or Clause 2. Either party may (without prejudice to its other rights) terminate this Agreement by notice in writing to the other if the other party:
 - 9.1.1 defaults in due performance or observance of any material obligation under this Agreement and, in the case of a remediable default, fails to remedy such default within 10 days of having been notified of such default, and such termination will take effect either immediately or at a date specified in the notice; or
 - 9.1.2 becomes bankrupt or insolvent, or if the other party's business is placed in the hands of a receiver or trustee, whether voluntarily or otherwise, and such termination will take effect either immediately or at a date specified in the notice.
- 9.2 The termination of this Agreement for whatever cause will not prejudice or affect the rights of either party against the other in respect of any breach of this Agreement or in respect of any monies payable by either party to the other in respect of any period prior to termination nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 9.3 Upon termination of this Agreement for any reason:
 - 9.3.1 all license rights granted hereunder will immediately and automatically cease; and
 - 9.3.2 each party shall return and make no further use of any equipment, property, materials, Confidential Information and other items (including all copies of them) belonging to the other.

10 Force Majeure

- 10.1 Neither party will be liable to the other under this Agreement for any failure to perform its obligations hereunder other than payment obligations or for any loss or damage which may be suffered by the other party due to any circumstances beyond its reasonable control including without limitation any Act of God, failure or shortage of power supplies, flood, lightning or fire, strike or other industrial action the act or omission of Government or other competent regulatory authority, war, military operations, or riot.

- 10.2 If either party wishes to rely upon this Clause it should promptly send written notice to the other party (through Reseller where appropriate) explaining the relevant force majeure circumstances.

11 General

- 11.1 This Agreement is personal to the Client and may not be assigned to any third party in whole or in part without the prior written consent of PeopleFluent. PeopleFluent has the right to assign this Agreement to a group company of PeopleFluent at any time.
- 11.2 The terms of this Agreement will not be varied or amended unless such variation or amendment is agreed by separate agreement specifically drafted for that purpose and executed by duly authorised representatives from the Client and PeopleFluent.
- 11.3 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions hereof will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the parties will immediately commence good faith negotiations to remedy such invalidity.
- 11.4 No failure or delay on the part of either party to exercise any right or remedy under this Agreement will be construed or operate as a waiver of such right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 11.5 The parties agree that this Agreement constitutes the entire understanding between the parties relating to the subject matter hereof unless any representation or warranty made about this Agreement was made fraudulently and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect to this Agreement.

12 Governing Law and Jurisdiction

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