Peopleware Limited Peopleware WFM for GCloud 15: General Terms and Conditions

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peopleware

General Terms and Conditions for the Peopleware online service

Version 2.1

from

Peopleware Ltd.
4th Floor, 95 Gresham Street
London EC2V 7AB

(referred to in this document as “we”)

1. The Service

Peopleware is an online service (referred to in this document as the “Service”) for workforce management which we offer in different pricing plans (referred to in this document as the “Plan” or “Plans”). We constantly work on improvements and we make changes to the Service on a regular basis. What we deliver is always the most recent version. The Service is provided to you by Peopleware Ltd., 4th Floor, 95 Gresham Street, London EC2V 7AB, United Kingdom.

By using the Service, you agree to the following terms and conditions.

2. Start and end of term

2.1 The contract begins when your order is placed and our Service is delivered. When placing the order, you indicate your chosen Plan and the date on which you would like the Service to start. In any case, billing will not begin until the Service is provided.

2.2 The contract continues until it is terminated by either one of us. Contracts without an agreed minimum term can be terminated at any time by either of us with at least a one month notice to the end of a calendar month. Contracts with an agreed minimum term can be terminated by either of us with a notice period of one month to the end of the term.

3. Availability

We work very hard to keep the Service live 24/7 and we aim to deliver availability of at least 99.5% based on the full calendar year.

Availability is calculated as follows:

VF = [(VZ-AZ-NV) / (VZ-NV) * 100] ≥ 99.50%

whereby:

VF = availability in %

VZ = defined availability time in minutes (total time)

AZ = total downtimes within the defined availability time

NV = total planned or non-attributable non-availability, which includes:

> All downtimes of less than 15 minutes
> Scheduled maintenance work (we will notify you in advance)
> Non-availability based on force majeure (see section 10 below). This includes natural catastrophes, floods, fires, earthquakes, terrorist attacks, social unrest, strikes, sovereign actions, internet disruptions and illegal third-party attacks against the infrastructure on which the Service is based.

If the provision of the Service begins or ends in the current calendar year, then the availability for the periods of time in the calendar year outside the contract term will be assessed at 100%.

4. Rights of use

4.1 During the term of the contract, you will have the non-exclusive right to use the Service for your own business purposes. If software components of the Service must be installed on your premises in order to use the Service, then your right of use will include these components.

4.2 The disclosure of login credentials to third parties or the use of the same credentials by two or more persons is not permitted.

4.3 The contract does not provide you with any ownership rights or rights of use that are permanent or extend beyond the term of the contract. We retain any and all rights to the Service, to the underlying software applications or to any of the software components of the Service that you have installed, whether in original or modified form.

5. New versions

We are continuously upgrading the Service and are constantly making changes. New functionality may be added and existing functionality may be removed.

6. Your responsibilities

6.1 Access to the Service by users in your organisation is your responsibility. E.g., you will provide the hardware and software for the clients necessary to access the Service and provide suitable Internet access. The handover point for the Service and all application data is the connection point of the Service to the public Internet.

6.2 If software components must be installed on your premises in order to use the Service, then you will be responsible for making the required system environment ready for operation and for installing and configuring these software components.

6.3 You are directly responsible for complying with any statutory duties of retention with regard to the data processed while using the Service.

7. Support

7.1 By using our online knowledgebase, you can find answers to your questions on a self-service basis.

7.2 For reporting Service failures, a ticketing system is included in the Service. If this system is not available, then you can report faults via our general support lines.

7.3 The scope of support may vary according to the selected Plan, as described on the Peopleware website.

8. Billing and Payment

8.1 Fees for the Service are as shown on the price list valid at the time of order or in a separate commercial proposal as the case may be.

8.2 We invoice you for the base fee of your chosen Plan, plus a fee for any active users that you create in excess of those included within the Plan.

8.2.1 We calculate the number of users based on the highest number of active users within the current calendar month. Every day, the Service counts the total number of active users in your account including all users that can be scheduled (such as agents) plus all users who are not scheduled but have login credentials (such as planners).

8.2.2 The base fee and the excess user will be billed at the end of the month, unless otherwise agreed in writing.

8.3 Current and historical user counts can be tracked online in the Billing section of the Service.

8.4 All prices are net prices free of charges, to which the current statutory value added tax, applicable at the time of provision of our services, and any other taxes and duties which are levied on our services must be added.

8.5 We will send our invoices exclusively via email to the email address that you provided. You can change this at any time via finance@peopleware.com.

8.6 Your payments must be remitted to the account shown on the invoice and made in a manner such that you cover any bank charges.

8.7 Service fees are immediately due for payment when the invoice is issued. If the invoice is not paid within 30 days, then you will automatically be in default, whether we send you a payment reminder or not.

8.8 If you are in default on any invoice, then we reserve the right to block your access to the Service until the outstanding amounts are fully paid. This suspension of the

Service does not constitute a termination of the contract and we will provide notice by email before taking this step.

9. Limitation of Liability

9.1 For death, bodily injury or health impairment, as well as for malicious intent and gross negligence, we are liable in accordance with the law.

9.2 For all other claims we are liable up to an amount of EUR 250,000.00.

However, we accept no liability unless we have failed to carry out our essential contractual duties, i.e. those duties that enable us to properly deliver the Service and which you would generally be entitled to depend on us to carry out. We accept no liability for indirect and consequential damages.

10. Force Majeure

Force majeure events (which are circumstances and events that cannot be prevented by exercising the standard of care that can reasonably be expected of business management, such as labour disputes and natural catastrophes) will suspend the contracting parties' contractual obligations for the duration of the disruptions and to the extent of their effect.

11. Confidentiality

11.1 Both contracting parties agree to treat as strictly confidential any private information, e.g. secret know-how or internal operating procedures of the other party, of which they become aware either before or after the start of the contract. This relates especially to any non-public information regarding the Service, as well as your data that is processed by the Service.

11.2 Employees of both contracting parties, who are involved in either using or delivering the Service, shall comply with the duty of confidentiality set out here. This also applies to employees working part-time, interns and subcontractors, etc.. Each party shall provide the other party with the respective non-disclosure agreements upon request. The duty of confidentiality continues to apply even after the contract ends.

11.3 We are entitled to mention this contract for marketing purposes.

12. Data Protection

The contracting parties agree to comply with all applicable legislation on data protection and privacy. In connection with the provision of the Service, we will act as a data processor operating under your instruction. In this capacity, we will handle personal data. Our Data Processing Agreement (provided separately) sets out the rights and responsibilities of the contracting parties.

13. Notices

We are entitled to send Service-related messages to you and/or your users via the Service or as emails. The messages could involve, for example, maintenance notifications, messages about improving the Service or tips for using the Service.

14. General

14.1 We reserve the right to delete any transaction data that are older than 36 months, even if the contractual relationship continues. Moreover, we will delete all data within 32 days of the end of the contract.

14.2 The Service is provided exclusively on the basis of these terms and conditions. Your own terms and conditions that deviate from or add to these terms and conditions do not apply.

14.3 We shall notify you in writing (e.g. email) of any modifications of, or supplements to, these terms and conditions. You may reject the modifications within six weeks. If you do not lodge an objection, then the modifications will be deemed approved by you and will become binding two months after the notification.

14.4 The laws of England and Wales govern exclusively. The provisions of “UN Sales Law” (Convention on Contracts for the International Sale of Goods – CISG) and any references to foreign laws and jurisdictions will not apply.

14.5 The exclusive judicial forum and place of performance for all obligations under this contract is London, United Kingdom.

General Terms and Conditions for the provision of services and work performance

Version 2.1

by

Peopleware Ltd
4th Floor 95 Gresham Street
London EC2V 7AB
United Kingdom

(hereinafter referred to as ”Peopleware“ or ”we”)

1. Scope

1.1 These general terms and conditions apply for all orders for services and/or work performance between Peopleware Ltd (hereinafter referred to as “we”) and its client (hereinafter referred to as “you”).

1.2 The offer and order or order and confirmation of order are referred to hereinafter as the “Order Document”. The Order Document may also include any annexes to the offer or confirmation of order, which also become an integral part of the Agreement by corresponding reference thereto in the Order Document.

1.3 Our services are provided exclusively on the basis of the present GTCs and the Order Document.

1.4 Your deviating or supplementary terms of business shall only apply if they are expressly accepted in writing by us. The provision of services/work without reservation by us does not constitute an agreement with your terms of business.

2. Conclusion of the Agreement

This agreement becomes effective with the fully signed Order Document, at the latest however on the time of us starting the provision of services/work and your claiming of the benefits.

3. Subject of delivery and performance

3.1 The content of the services to be provided is stated in the specification of services in the Order Document. Where this merely specifies functions or tasks, the actual implementation shall be at our discretion in accordance with the current state of the art.

3.2 All amendments or supplements to the services requested subsequently by you may only be accommodated by us if you confirm your acceptance of the additional or already incurred costs and any resultant changes to the service provision period or other contractual provisions. We shall not be responsible for any delays arising in the

provision of services pending a corresponding decision by you regarding the required changes.

3.3 We provide our services remotely unless otherwise agreed in writing.

4. Delivery and performance period

4.1 Unless otherwise expressly agreed in writing, all dates specified shall be non-binding and only constitute an approximate service provision period.

4.2 If we fails to provide the services by an agreed date, you shall grant a suitable subsequent period of not less than 14 days. If the initial subsequent period expires without completion, you shall be entitled to claim damages. Rescission of the Agreement shall only be permitted once a second subsequent period has expired.

5. Ownership and rights of use

5.1 Ownership and rights of use in respect of the results of work produced by us in the provision of its services (e.g. documents, process descriptions, scripts and software programs) shall be retained by us. This shall also apply if you have cooperated in the creation of the results of work.

5.2 If a Contract for the provision of standard software or the use of online services has been concluded between us and you, your rights of use of the results of work shall be governed exclusively by the provisions of said contract. If no such contract exists, we shall grant you the non-exclusive, enduring, irrevocable and non-assignable right to use the services provided and results of work produced under the Agreement to the extent and in the manner apparent from the purpose of the service and the area of use of the results of work.

5.3 The right of use shall be granted on payment in full of the consideration.

6. Use of personnel

6.1 Each party shall be responsible for the selection and use as well as the supervision, control, monitoring and payment of its own employees.

6.2 In our performance of the order we shall be entitled to instruct expert subcontractors to provide the agreed service or parts thereof.

7. Confidentiality

7.1 Both parties undertake to treat any information regarding secret knowhow or internal operating information of the other party acquired in the course of their cooperation as strictly confidential. This applies in particular to all our information regarding the software, documentation or the data model.

7.2 Both parties shall place their employees (including temporarily employed staff, trainees, etc.) and, where applicable, any subcontractors engaged in the course of implementation of the Agreement, under written obligation to safeguard confidentiality to the aforementioned extent.

7.3 You undertake to refrain from using the know-how acquired in the course of the cooperation for the development of products which may be used as products in competition with those of us.

7.4 We are entitled to mention the project for marketing purposes.

8. Your responsibilities

8.1 You shall without need for request make available to us all information and instructions necessary for the provision of the services in good time, i.e. not less than 3 working days prior to the scheduled implementation date. You shall ensure that the required system environment is available.

8.2 You shall appoint a contact person for reciprocal agreement and clarification of all issues arising in the course of the provision of the services. Such contact person shall be authorized to issue all declarations required as interim decisions in the continued performance of the order.

8.3 In order to ensure the performance of the agreed services, you shall at all times allow us the requisite access to your premises, IT systems and work equipment and shall make the data required for functional tests available.

8.4 Further duties of cooperation shall apply if the service in question can by its nature only be provided by you.

8.5 If you fail to comply with your duties of cooperation in good time and this results in additional expenditure and/or delays, we shall be entitled - notwithstanding any further rights - to demand reasonable changes to the time schedule and the agreed prices and fees. The period for provision of the services shall be extended at least by the period in which you fail to comply with its duties of cooperation as required for performance of the services by us.

8.6 If you fail to comply with your duties of cooperation or delay acceptance of the services offered by us, we may set you a reasonable subsequent period for compliance with its duties of cooperation, on expiry of which we shall be entitled to terminate the Agreement. However, automatic cancellation of the Agreement does not occur on expiry of the period of grace. In addition to partial payment for the work carried out, we may demand damages in this case.

9. Remuneration, ancillary costs, due dates

9.1 You shall pay for the services provided by us according to the actual expenditure on the basis of the Order Document.

9.2 Summaries of expenditure in the Order Document or other service specifications represent only non-binding estimated values for your budget planning purposes and do not constitute confirmation that the services can be provided in full based on the specified expenditure. The sums actually invoiced may therefore be higher or lower. If the estimated expenditure is exceeded, we shall notify you accordingly.

9.3 Per diem rates are based on a day of eight working hours. Invoicing shall be on a pro rata temporis basis for each started hour.

9.4 Travelling time shall be treated as working time. Unless otherwise agreed, travel costs and other expenses will be invoiced according to the actual expenditure.

9.5 In the event of a postponement of agreed services by you within 10 working days prior to the agreed date, we shall charge 50% of the estimated remuneration for the cancelled date, and 100% within 5 working days.

9.6 All prices are net cash prices free of charges, to which must be added the current statutory value added tax applicable at the time of provision of the services/work and any other taxes and duties which are levied on the contractual services.

9.7 The services provided shall be invoiced at the end of each calendar month.

9.8 All invoices are due without deduction on the invoice date. You shall be deemed to be automatically in default on expiry of 30 days from the invoice date without need for any further reminder by us.

9.9 Payments shall be made to the bank account specified on the invoice in such a way that any bank charges being paid by you.

9.10 Only undisputed claims or claims confirmed by final court judgment shall entitle you to retain or offset payments. A right of retention may, furthermore, only be asserted by you where this is also based on the Agreement.

9.11 In the event of a default in payment and subject to our rights to further damages, we are entitled to charge a default interest of 8% above the applicable interest rate of the European Central Bank for main refinancing operations.

10. Acceptance

10.1 On performance of the services, we shall make the agreed results of work available to you (readiness for acceptance).

10.2 Unless a test of the results of work has been expressly agreed, acceptance of the results of work shall be confirmed by receipt of the results of work without complaint by you. If a separate test has been agreed, this shall be carried out by you within 7 days of readiness for acceptance. Acceptance of the results of work shall then be confirmed by text (e-mail) declaration by you on conclusion of the test.

10.3 If you refuse to accept the results of work for any reason other than a considerable defect, the results of work shall be deemed to have been accepted 7 days after readiness for acceptance.

10.4 Any defects serving to prevent acceptance shall be rectified by us by way of subsequent performance. We shall subsequently make the relevant results of work available for renewed acceptance. You shall only be entitled to rescission if the subsequent performance has proved unsuccessful at least twice and you can no longer reasonably be expected to allow further subsequent performance measures. Any defects not serving to prevent acceptance shall be recorded in the acceptance declaration and rectified under warranty.

11. Warranty

11.1 We warrant that the results of work to be produced have been provided in accordance with the state of the art and do not contain any defects which invalidate or considerably reduce the value or fitness for purpose as defined in the Agreement. The warranty applies to the final version of the results of work as accepted by you.

11.2 Only defects in the results of work which serve to considerably reduce the value or fitness for purpose as defined in the Agreement shall require us to perform under warranty.

11.3 Any justified defects shall be rectified by us within the warranty period following due notice by us by repeated subsequent improvement or replacement. If the subsequent improvement or replacement is unsuccessful on at least two occasions and you can no longer reasonably be expected to accept further attempts of improvement, you may at your own discretion demand a reduction in the remuneration or rescission of the Agreement, although the latter shall only be permitted in the event of serious defects. This shall not affect your right to claim damages.

11.4 The warranties expressly set forth in this Agreement above are exclusive. We make no other warranty, express or implied, including without limitation, any implied warranty of merchantability or fitness for a particular purpose, Software, data, or any other service provided hereunder. We specifically disclaim any warranty or guarantee that any particular data or the data of any particular Provider is available or maintained in the services. We do not warrant that any software is error free, or that they will operate without interruption.

11.5 The warranty period begins on the date of acceptance of the services/work and lasts for a period of 12 months.

12. Liability and compensation

12.1 For death, or personal injury, as well as for malicious intent and gross negligence, we are liable in accordance with the law.

12.2 For all other claims we are liable up to an amount of EUR 250,000.00. However, we accept no liability unless we have failed to carry out our essential contractual duties, i.e. those duties that enable us to properly deliver the Service and which you would generally be entitled to depend on us to carry out. We accept no liability for indirect and consequential damages.

12.3 Claims for compensation lapse, unless they are based on intent, within one year of knowledge of the circumstances giving rise to the claim.

13. Force majeure

13.1 Incidents of force majeure (these include circumstances and events, which cannot be prevented by the due diligence of prudent business management) suspend the contractual obligations of the parties for the duration of the disruption and to the extent of its effect. There shall be no further claims.

13.2 Any consequences of a labour dispute for which we are not to blame shall also be considered to be force majeure where they affect our performance of the deliverables.

14. Miscellaneous

14.1 Any amendments or supplements shall only be valid if made in text form (e-mail is sufficient).

14.2 In the event of any contradictions between documents/parts of the Agreement, the provisions contained in the Order Document shall prevail over the provisions of these General Terms and Conditions. The content of annexes to the Order Document shall be subordinate. This Agreement constitutes the entire agreement concerning the subject matter hereof, and no representations have been made to induce the execution of this Agreement.

14.3 If any of the provisions of these General Terms and Conditions should prove to be invalid, this shall not affect the validity of the remaining provisions. The parties in such a case undertake to replace the ineffective clause by an effective one which is as close as possible to the economic purpose of the ineffective clause.

14.4. The Agreement including the GTCs are exclusively governed by English Law. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) and references in English Law to foreign systems of law shall not apply.

14.5. The place of performance for all obligations under the Agreement shall be London.

14.6. Each party hereby agrees that the courts of the town of London, shall have exclusive jurisdiction over disputes under the Agreement, and the parties agree that jurisdiction and venue in such courts is appropriate and irrevocably attorn to the exclusive jurisdiction of such courts.