

## OrangeHRM On-Demand Agreement

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This Agreement was last updated on January 20, 2008 (\_RV\_v0.8)

### § 1 Object of the Agreement

1. The object of this Agreement is the registration for the use of the OrangeHRM On-Demand service. Buying and registration for the use of the OrangeHRM On-Demand service gives certain rights and obligations to the buyer and to OrangeHRM Inc.
2. The following conditions apply to registration for use of OrangeHRM On-Demand; no subsidiary verbal Agreements shall be recognized.

### § 2 Definitions of the Agreement

1. *Customer*: The customer is the business entity buying the OrangeHRM On-Demand service.
2. *User(s)*: User and users are the employees of the customer (business entity) who have been signed up to use the OrangeHRM On-Demand service.

### § 3 Acceptance of terms

1. In order for you to make use of OrangeHRM On-Demand, it is required that you agree to all of the terms and conditions of this Agreement.
2. This Agreement states the terms and conditions under which OrangeHRM On-Demand is provided. In addition to these terms and conditions, you shall be bound by any additional terms, guidelines or rules that may appear throughout the OrangeHRM website, which are incorporated herein by reference.
3. Any modifications or enhancements to the OrangeHRM On-Demand shall be governed by the terms and conditions of this Agreement. Your use of OrangeHRM On-Demand constitutes your binding acceptance of these Terms, including any modifications that we may make.

### § 4 Registration

1. You agree to provide accurate, current and complete information about yourself or your company as requested on the OrangeHRM On-Demand registration form and to maintain and promptly update the information (including, in particular, your e-mail address) you provide from time to time as necessary to keep the information true, accurate, current and complete.
2. By accepting the terms and conditions of this Agreement, you also represent and warrant that you are 18 years of age or older and that if you have accepted the terms and conditions of this Agreement on behalf of any business (such as a corporation, partnership, limited liability company or other organization) or other entity, you represent and warrant that you have legal authority to do so.
3. If you provide information that is untrue, inaccurate, not current or incomplete, OrangeHRM may suspend or terminate your account, and refuse any and all current or future use of the OrangeHRM On-Demand service.

#### **§ 4 Customer's obligations:**

1. After you register on the OrangeHRM website, you will receive login names and passwords for your use of OrangeHRM On-Demand service.
2. You are responsible for keeping your login names and passwords confidential.
3. You will be responsible for all uses of your password and account. You will immediately notify OrangeHRM of any unauthorized use of your password.
4. Pay the charges with a nominated debit/credit card or bank payment to a nominated bank account.
5. OrangeHRM cannot and will not be liable for any loss or damage arising from your failure to comply with this Section.

#### **§ 6 Users' obligations:**

1. Only use OrangeHRM On-Demand for legitimate personal or business use;
2. Not use OrangeHRM On-Demand to commit or encourage a criminal offence;
3. Not use OrangeHRM On-Demand to send proactively, receive, upload, download, use or re-use any information or material which is offensive, abusive, indecent, defamatory, obscene or menacing, harmful to minors or in breach of confidence, copyright, privacy or any other rights;
4. Not use OrangeHRM On-Demand to do anything which is contrary to the acceptable use policies of any connected networks and Internet standards;
5. Not use OrangeHRM On-Demand to insert or knowingly or recklessly transmit or distribute a virus;
6. Not seek unauthorised entry into OrangeHRM On-Demand;
7. Not hack into any aspect of OrangeHRM On-Demand;
8. Not knowingly corrupt data;
9. Not circumvent, or attempt to seek to circumvent, any of the security safeguards of OrangeHRM On-Demand or any of its service partners;
10. Not use any domain name or mailbox name within OrangeHRM On-Demand so as to infringe upon the rights of any other person whether in statute or common law, in a corresponding trade mark or name;
11. Not use OrangeHRM On-Demand to send or provide any unsolicited advertising or other promotional material, commonly referred to as "spam" by email or by any other electronic means;
12. Not use OrangeHRM On-Demand to send email or any other type of electronic message with the intention or result of affecting the performance or functionality of any computer facilities;
13. Not use OrangeHRM On-Demand in a way that does not comply with the terms of any legislation or any licence applicable to you or that is in any way unlawful;

## **§ 7 Indemnity**

1. You will indemnify and hold harmless OrangeHRM and its service partners from and against any and all losses, liabilities, damages, costs, expenses, actions and claims of whatever nature or kind arising out of or in connection with your access to and use of the Service.

## **§ 8 OrangeHRM's obligations:**

1. Provide you with login details that are specific to your use of OrangeHRM On-Demand;
2. Provide you with access to the OrangeHRM On-Demand via a website address and login details that are specific to your use of the service;
3. Provide a service as defined in the Orange On-Demand Service Offer, which is published separately on the OrangeHRM website;
4. Invoice you for the Charges incurred through the use of OrangeHRM On-Demand by your Users and collect or require payment for the charges within ten days of the invoice date;
5. Regularly update the OrangeHRM On-Demand Service, including, but not limited to, updating the application designs and features;
6. Handle any personal information you might supply to us when you use OrangeHRM On-Demand in accordance with the OrangeHRM Privacy Policy, which can be found on the OrangeHRM website.

## **§ 9 Changes to this Agreement**

1. OrangeHRM has the right to change this Agreement at any time. The customer shall be informed 30 days prior before the change gets into effect.
2. The customer may object to the change within 30 days after being notified. If no objection is received at OrangeHRM before this deadline, the changes shall be deemed to have been accepted by the customer and shall become part of the contract.
3. This shall not affect the customer's right to terminate the contract according to the standard procedure as a result of changes, with a notice period of 1 month to the end of a calendar month.

## **§ 10 Charges**

1. The charges for the OrangeHRM On-Demand service can be found separately on the OrangeHRM website.

## **§ 11 Customer support**

1. Customer support will be provided to the customer by OrangeHRM in accordance to the service Agreement stated on the OrangeHRM website.
2. Customers have full ownership of their data. It is housed on server storage arrays owned by Rackspace San Antonio, TX USA, however the data is legally owned by the customer and retains the full rights and privileges that come along with the ownership of the data. The customer can request, at any time, to transfer, remove, copy, or modify its data and our technical team will do whatever is necessary on our end to honor the request.

3. OrangeHRM on-demand databases are only accessed for regular maintenance and security checks. Access to production databases is restricted to a limited number of support managers and access points.

#### **§ 12 Duration of the contract and termination**

1. The initial term is agreed upon during registration.
2. This Agreement will run from the effective date stated in the registration process and will continue for the selected period unless terminated by either of us as set out in this Clause.
3. We may also terminate this Agreement or suspend the performance of the service to you, at our sole discretion, immediately and without notice if:
  - i) you breach this Agreement; or
  - ii) bankruptcy or other insolvency proceedings are brought against you; or
  - iii) you are no longer able lawfully to receive the Service; or
  - iv) we do not receive payment of the Charges due within 30 days of the due date.
4. The customer may also terminate this Agreement upon material breach of OrangeHRM, if such material breach remains uncured for thirty (30) days following written notice to OrangeHRM. This cure period shall be extended by delay caused by events beyond the control of OrangeHRM including, but not limited to, natural disasters, governmental prohibitions or regulations, viruses that did not result from the acts or omissions of OrangeHRM, or technical faults of OrangeHRM's service providers or vendors. After the initial term, customer may terminate this Agreement upon fourteen (14) days written notice to OrangeHRM.

#### **§ 13 General provision**

1. *Governing Law.* This Agreement will be governed and construed in accordance with the laws of the State of New Jersey, United States of America. Both parties agree to submit to personal jurisdiction in New Jersey and further agree that any cause of action or dispute arising under this Agreement will be litigated or arbitrated in the State of New Jersey, United States of America.
2. *Severability and Waiver.* If any provision of this Agreement is held invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
3. *Relationship of Parties.* No agency, partnership, joint venture, or employment relationship is created by this Agreement and neither party has the power to bind the other party.
4. *Attorneys Fees and Costs.* In the event that any legal action becomes necessary to enforce or interpret the terms of this Agreement, parties agree to bear their respective legal costs, in addition to court costs, to such reasonable attorneys' fees, expert witness fees and legal expenses as may be fixed by a court of competent jurisdiction.