

OrangeHRM, Inc. SaaS Agreement

This OrangeHRM SaaS Agreement is made as of the date of acceptance by OrangeHRM of the Order Form (the "Effective Date") by and between OrangeHRM, Inc. ("OrangeHRM") and Customer (as specified on the invoice) ("Agreement").

Customer desires to license OrangeHRM hosted services as described in this Agreement. Therefore, in consideration of the mutual promises, covenants, and conditions contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows.

BY ACCEPTING THIS AGREEMENT, EITHER BY (i) SIGNING THE ORDER FORM; OR (ii) USING THE SERVICE; OR (iii) PAYING THE RENEWAL FEE; YOU AGREE TO THE TERMS OF THIS AGREEMENT AND THE TERMS OF THE ORANGEHRM SERVICE PRIVACY POLICY (the "PRIVACY POLICY"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY ITS AFFILIATES OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH COMPANY ITS AFFILIATES OR ENTITY TO THE TERMS AND CONDITIONS OF THE AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST PROMPTLY NOTIFY ORANGEHRM AND IMMEDIATELY DISCONTINUE YOUR USAGE OF THE SERVICE.

§ 1 Agreement

1. This Agreement outlines the terms and conditions for the license, use and registration of the OrangeHRM hosted service ("OrangeHRM Service").
2. This Agreement comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may be incorporated in other documents.

§ 2 Definitions

1. *Customer*: Customer and any affiliates listed on the signed Order Form is the business entity licensing the OrangeHRM Service. "Affiliate" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "control" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise and is listed on the Order Form.
2. *Authorized User(s)*: Authorized Users are the employees of the Customer who have registered and paid for the right to use the OrangeHRM Service. The number of active employees must be equal to or less than the number of Authorized Users.
3. *Initial Term*: The successive one year (12 month) period from the Subscription Start Date (as defined in the Statement of Work), unless alternative period is specified on the Order Form.
4. *Renewal Term(s)*: The successive one year (12 month) period following the Initial Term or the previous Renewal Term, unless alternative period is specified on the invoice.
5. *Term*: Initial Term or Renewal Term.

§ 3 Acceptance of Terms of the Agreement

1. Any modifications or enhancements to OrangeHRM Service shall be governed by the terms and conditions of this Agreement. Customer's continued use of OrangeHRM Service constitutes Customer's binding acceptance of these terms and conditions, including any modifications that OrangeHRM may make.
2. OrangeHRM will provide written notification to Customer of any changes that will become effective prior to any renewal. In the event the changes are not acceptable to Customer and Customer provides written notification to OrangeHRM, this Agreement shall immediately terminate at the end of the then current Term.

§ 4 License Grant and Restrictions

1. OrangeHRM hereby grants Customer a license to use OrangeHRM Service by no more than the total number of Authorized Users for which all fees have been paid or will be paid pursuant to any Renewal Term(s). For each paid Authorized User, OrangeHRM hereby grants Customer a non-exclusive, non-transferable, worldwide right to use OrangeHRM Service solely for Customer's

own internal business purposes, subject to the terms and conditions of this Agreement. OrangeHRM and its licensors reserve all rights not expressly granted to Customer.

2. Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the OrangeHRM Service in any way: (ii) reverse engineer nor circumvent, or attempt to seek to circumvent, any of the security safeguards of OrangeHRM Service or any of its service partners; or (iii) use the OrangeHRM Service to do stress testing. Authorized User licenses cannot be shared or used by more than one individual Authorized User, but may be reassigned from time to time to new Authorized Users who are replacing former Authorized Users who have terminated employment or otherwise changed job status or function and who no longer use the OrangeHRM Service.

§ 5 Fees and Payment; Taxes

1. OrangeHRM fees for OrangeHRM Services and Training and any other OrangeHRM Services requested by Customer are set forth on the Order Form. In addition, forty-five (45) days prior to the start of each Renewal Term, OrangeHRM will send Customer written notice of the fee for the Renewal Term. Unless Customer notifies OrangeHRM in writing in accordance with Section § 6.1 that it does not intend to renew, the fees for the Renewal Term will be due and payable as outlined below.
2. Payment of any and all fees are due and payable within thirty (30) days from the Effective Date on the Order Form or, in the case of the Renewal Term, fifteen (15) days prior to the start of the Renewal Term. Customer may pay by wire transfer, credit card or as agreed to by the parties in writing. Payment shall be made without any right of set off or deduction. All payments made pursuant to this Agreement shall be made in the currency designated on the invoice. All payments by Customer are final with no-refunds except as set forth under Section § 6 of this Agreement.
3. All fees are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind. Customer shall be responsible for payment of such taxes and duties of any kind payable with respect to the OrangeHRM Service furnished pursuant to this Agreement; provided however, that OrangeHRM shall be responsible for payment of taxes levied or imposed based on OrangeHRM's pre-tax income. Without limitation, Customer will be responsible for all applicable sales taxes unless it first claims a sales tax exemption by providing OrangeHRM with an exemption certificate acceptable to the applicable authorities.

§ 6 Term and Termination

1. This Agreement shall commence on the Effective Date. For the initial implementation, it shall continue for Initial Term unless terminated earlier as set forth below. Thereafter, the Agreement shall renew for successive Renewal Term(s) unless either party gives at least thirty (30) days written notice of non-renewal prior to the expiration of the applicable Term.
2. OrangeHRM may terminate this Agreement upon written notice to Customer in the event of Customer's (a) unauthorized use of the OrangeHRM Service, (b) failure to make timely payment to OrangeHRM, c) inability to lawfully receive the OrangeHRM Service, or d) subject to its obligations under Section § 11 of this Agreement, should the OrangeHRM Service become, or in OrangeHRM's reasonable opinion likely to become, the subject of a claim of intellectual property infringement or trade secret misappropriation. Otherwise either party may terminate this Agreement immediately in the event the other party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach.
3. Upon termination or expiration of this Agreement, all rights granted under this Agreement to Customer shall cease and terminate and Customer shall have no further rights to receive or use the OrangeHRM Service. Sections 2, 5 - 6, 10 - 13, and 15 - 16 of this Agreement shall survive the termination or expiration of this Agreement for any reason.

§ 7 Responsibility for Registration and Customer Information and Data

- 1 During registration, Customer agrees to provide information that is true, accurate, current and complete
- 2 As part of the implementation process as defined in the Statement of Work as further set forth in § 9 Deployment, Customer will receive login names and passwords for Customer's use of OrangeHRM Service.
- 3 Customer will use commercially reasonable efforts to keep Customer's login names and passwords confidential and will be responsible for all uses of Customer's password and account. Customer is responsible for all activity occurring under Customer's Authorized User accounts and shall abide by all applicable local, state, national and regulations in connection with Customer's use of the OrangeHRM Service, including those related to data privacy, international communications and the transmission of technical or personal data, unless Customer is acting upon instructions from OrangeHRM.

- 4 OrangeHRM will use commercially reasonable efforts to keep any Customer login names and passwords which it receives either by accident or directly from Customer in order to resolve a request from Customer confidential.
- 5 Each party will treat the login names and passwords as confidential information under this Agreement. Each party will immediately notify the other party of any unauthorized use of Customer's login names and passwords or any other known or suspected breach of security related to this Agreement.
- 6 Customer agrees to be responsible for any data, information or material that Customer submits to the OrangeHRM Service in the course of using the OrangeHRM Service ("Customer Data"). Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and OrangeHRM shall not be responsible or liable for the deletion, correction, destruction, damage, loss of any Customer Data only when entered by Customer. OrangeHRM shall be responsible or liable for the deletion, correction, destruction, damage, or loss of Customer Data, when entered by OrangeHRM. In the event this Agreement is terminated or expires, OrangeHRM will make available to Customer a file of the Customer Data within 10 days of termination or expiration if Customer so requests at the time of termination or expiration. OrangeHRM reserves the right to withhold, remove and/or discard Customer Data without notice for any material breach, after Customer has had a reasonable time to cure such material breach, including without limitation, Customer's non-payment of fees under this Agreement.
- 7 OrangeHRM agrees to back-up Customer Data as defined in the Service Level Agreement as further set forth § 8 Customer Support.
- 8 OrangeHRM databases are only accessed for regular maintenance and security checks. Access to any OrangeHRM database is restricted and anyone who performs services for OrangeHRM is bound by a confidentiality agreement. OrangeHRM agrees to handle Customer Data in accordance with the OrangeHRM Privacy Policy which can be found on the OrangeHRM website. Further, if as a result of OrangeHRM's sole negligence Customer's login, passwords or Customer Data is acquired by an unauthorized party, OrangeHRM shall (i) take all reasonably practical actions designed to prevent the further disclosure of such information and (ii) mitigate, to the extent practicable, any harmful effects of such disclosure that is known to OrangeHRM. Mitigation shall include, at a minimum, arranging and bearing the cost of one year of credit monitoring for each affected Authorized User of Customer.

§ 8 Confidentiality

1. OrangeHRM and Customer will retain in confidence all information transmitted by the other party during each term under the Agreement, and for a period of three (3) years beyond the term, that is clearly designated as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought reasonably to be treated as proprietary and/or confidential including Customer login names and passwords, and will make no use of such information except to further the purposes set forth in this Agreement. Upon request from the disclosing party, the recipient agrees to return or destroy at the earliest all the disclosing party confidential information.
2. Notwithstanding § 10-1 above, OrangeHRM and Customer shall not have an obligation to maintain the confidentiality of information that: a) is now or subsequently becomes generally known or available by publication, commercial use or otherwise through no fault of recipient; b) is known by recipient at the time of disclosure and is not subject to restriction; c) is independently developed by or for recipient without use of the discloser's confidential information; d) is not designated as proprietary or confidential or would not reasonably be considered as such; or e) is lawfully obtained from a third party who has the right to make such disclosure. Further, the recipient may disclose confidential information of discloser in accordance with a judicial or government order, provided that recipient gives the disclosing party reasonable prior written notice prior to such disclosure and complies within any protective order or equivalent imposed on such disclosure. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.
3. By disclosing confidential information, the discloser does not transfer ownership of the confidential information, which remains the property of the discloser. With the exception of the license rights contemplated in Section § 4, this Agreement does not grant any rights or licenses to the confidential information, express or implied, under any patent, copyright, trade secret or other proprietary right.

§ 9 Intellectual Property Ownership

OrangeHRM Inc alone (and its licensors, where applicable) owns all right, title and interest, including all related intellectual property rights, in and to, the OrangeHRM Service and related documentation and derivative works. Any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the

OrangeHRM Service or product shall also be owned by OrangeHRM. The OrangeHRM Inc name, the OrangeHRM Inc logo, and the product names associated with the OrangeHRM Service are trademarks of OrangeHRM Inc or third parties, and no right or license is granted to use them without OrangeHRM's express authorization. OrangeHRM and its licensors reserve any and all rights not expressly granted in this Agreement.

Customer shall not bifurcate any OrangeHRM source code into a separately maintained source code repository so that development done on the original code requires manual work to be transferred to the forked software or so that the forked software starts to have features not present in the original software.

§ 10 Indemnification by Customer

Subject to the Limitation of Liability set forth in Section 13, Customer agrees to indemnify OrangeHRM 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 its access to and use of the OrangeHRM Service.

§ 11 Warranty and Disclaimer

Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

OrangeHRM represents and warrants that (a) the OrangeHRM Service, related documentation and/or derivative works will be performed in a professional and workmanlike manner and by qualified personal (b) the OrangeHRM Service, related documentation and/or derivative works do not include malicious or hidden mechanisms or code for the purpose of damaging or corrupting Customer's software, hardware, networks or systems (c) and the OrangeHRM Service, related documentation and/or derivative works does not infringe on any third party intellectual rights. OrangeHRM will indemnify and hold harmless Customer from and in relation to any and all liability, loss, costs, damages or expense, including reasonable attorney's, solicitor's or legal fees and costs, resulting from or arising out of any third party claim alleging that the OrangeHRM Service, related documentation and/or derivative works thereof breach or allegedly breach of intellectual property rights of any third party.

THE ORANGEHRM SERVICE AND ALL CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. ORANGEHRM AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE QUALITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE ORANGEHRM SERVICE OR ANY CONTENT. ORANGEHRM AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE ORANGEHRM SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOTWARE, SYSTEM OR DATA, (B) THE ORANGEHRM SERVICE WILL MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS, (C) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE ORANGEHRM SERVICE WILL MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS. REPRESENTATIONS AND WARRANTIES OR, (D) ERRORS OR DEFECTS WILL BE CORRECTED. REPRESENTATIONS AND WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OF THIRD PARTY RIGHTS ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ORANGEHRM AND ITS LICENSORS.

§ 12 Internet Delays and Force Majeure

1. OrangeHRM's servers may be subject to limitations, delays and other problems inherent in the use of the internet. OrangeHRM is not responsible for any delays, delivery failures, or other damage resulting from such internet problems. Up time of the system is defined within the Service Level Agreement as set forth in § 8 Customer Support.
2. Neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of electronic or other communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or causes beyond the reasonable control of that party.

§ 13 Limitation of Liability

FOR ALL EVENTS AND CIRCUMSTANCES, EITHER PARTY'S AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND

WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS ORANGEHRM SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE ORANGEHRM SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE ORANGEHRM SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

§ 14 Miscellaneous

1. *Governing Law.* This Agreement will be governed and construed in accordance with the laws of the State of Delaware, United States of America. Both parties agree to submit to exclusive venue and jurisdiction in Delaware and further agree that any cause of action or dispute arising under this Agreement will be litigated or arbitrated in the federal courts of the State of Delaware United States of America. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement.
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. *Successors and Assignment.* This Agreement will be binding and will inure to the benefit of the parties and their respective representatives, successors and assigns except as specifically prohibited. Notwithstanding the foregoing, this Agreement and the licenses granted may not be assigned, sublicensed or otherwise transferred by the Customer without the prior written consent of OrangeHRM which may be withheld for any reason.
4. *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. The parties agree that OrangeHRM may, at its option and expense, reference you as a customer in its press releases and marketing materials and, in that context only, may reproduce your name and corporate logo.
5. *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.
6. *U.S. Government Restricted Rights.* If the OrangeHRM Service is being licensed by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense ("DOD") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in the OrangeHRM Service and any documentation, including its rights to use, modify, reproduce, release, perform, display or disclose the OrangeHRM Service or any documentation, will be subject in all respects to the commercial license rights and restrictions provided in this Agreement.
7. *Notices.* Any notice or other communication required or permitted to be made or given by either party pursuant to this Agreement will be in writing, and will be deemed to have been duly given: (i) three (3) Days after the date of mailing if sent by certified mail, postage prepaid, with return receipt requested; (ii) when delivered, if delivered personally or sent by express courier service; (iii) by email, if receipt is confirmed by return of email. All notices will be sent to the other party at its address as set forth on the Order Form or invoice or at such other address as such party will have specified in writing.