

HUMANCONCEPTS, LLC
ORGANIZATIONAL PLANNING SUITE (OnDemand)
TERMS AND CONDITIONS

This HumanConcepts, LLC Organizational Planning Suite Terms and Conditions (“Terms”) govern the use by you (“Customer”) of the HumanConcepts Organizational Planning Suite services offered by HumanConcepts, LLC (“HumanConcepts”). By signing the Order Form during the Ordering Process, you agree to the following Terms. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these Terms, in which case, the terms “you” and “your” shall refer to such entity. If you do not have such authority, or if you do not agree with these terms, you must not sign the Order Form and may not use the Services.

1. Definitions. (a) Customer Data means data relating to Customer’s employees that is submitted by the Customer in the course of using the Service. Customer Data specifically excludes, without limitation, data submitted by Customer in the course of registering for the Service or updating registration, such data is used by HumanConcepts for the purposes of communicating with the administrator and Customer. (b) Intellectual Property Rights means any and all intellectual property and proprietary rights, anywhere in the world, including without limitation patent, trademark, copyright, original works of authorship, trade secret, inventions, mask work rights, know-how, or similar rights, whether or not registered or capable of registration. (c) Order Form means the HumanConcepts’ order form and agreement that is provided to the Customer and is signed and returned by Customer to HumanConcepts, and accepted by HumanConcepts, in connection with Customer’s subscription to use the Service. (d) Service means HumanConcepts’ Organizational Planning Suite service made available to Customer via the Internet for the purpose of charting and manipulating the Customer’s employee data, and all HumanConcepts’ proprietary technology (including software, hardware, products, processes algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information made available to Customer by HumanConcepts (“HumanConcepts’ Technology”).

2. Grant of License. Subject to these Terms, upon HumanConcepts’ acceptance of the Order Form, HumanConcepts grants to Customer a non-exclusive, non-transferable, limited license to access and use the Service via HumanConcepts’ designated webpage on the Internet, solely for Customer’s internal business use and solely for the purpose of charting and manipulating Customer’s employee data. Customer agrees that it may not use the Service in any other manner or in violation of these Terms. Customer may not sublicense its rights under these Terms, rent or lease the Service, or give anyone else access to the Service.

3. Privacy Policy. These Terms are further subject to the terms and conditions of HumanConcepts’ privacy policy located at <http://www.humanconcepts.com/products/privacy.htm>. The terms and conditions of the Privacy Policy are incorporated herein by reference. Customer hereby agrees to such terms. HumanConcepts reserves the right to modify the terms of the Privacy Policy from time to time, and Customer’s continued use of the Service shall indicate its agreement to such changes. Other portions of HumanConcepts’ website may be governed by additional terms of service or privacy policies, as indicated on those web pages.

4. Ownership of Customer Data. Customer shall own all Customer Data and the Intellectual Property Rights to all Customer Data. Customer shall have the sole responsibility for the accuracy and use of all Customer Data.

5. Ownership of the Service and Underlying Technology. Customer acknowledges that HumanConcepts or its licensors own the Intellectual Property Rights relating to the Service, and to all HumanConcepts’ Technology, and that no title to the Service or HumanConcepts Technology is transferred to Customer. Customer will not acquire any rights to the Service except the limited license to use the Service as expressly set forth above, and HumanConcepts and its licensors retain all other rights. Customer agrees not to alter or remove the copyright notice, or any other notices of proprietary rights, that appear on any output generated by the Service or HumanConcepts’ Technology. All data entered by Customer in connection with registration for the Service or any updates thereto shall be deemed the property of HumanConcepts and will be used by HumanConcepts for the purposes of communicating with the administrator and Customer. In the event HumanConcepts provides professional services to Customer, including without limitation support or installation services, or receives suggestions for enhancements or improvements to HumanConcepts’ products, services or technology, HumanConcepts shall exclusively own all Intellectual Property Rights resulting from such services or suggestions and any work product or other materials related thereto, and all improvements, derivative works and modifications thereto, regardless of whether such items are made solely by HumanConcepts or together with others (including without limitation Customer). Such items resulting from any services or suggestions shall not be deemed a work for hire, and in the event such item(s) is deemed to be a work for hire, Customer hereby assigns to HumanConcepts any and all right, title and interest to the Intellectual Property Rights contained therein. Customer shall not use HumanConcepts’ logos, service marks or trademarks in any manner without the prior written consent of HumanConcepts.

6. Restrictions; Reverse Engineering; Modification. Customer may not copy or duplicate any portion of the Service or Underlying Technology. Customer agrees not to reverse engineer, decompile, or disassemble the Service or Underlying Technology in whole or in part, or otherwise reconstruct or attempt to discover any source code related to the Service or Underlying Technology, except and only to the extent that such activity cannot be restricted under applicable law. Customer agrees not to translate or modify the Service or Underlying Technology in any way or create derivative works of the Service or Underlying Technology. Customer agrees not to use the Service or Underlying Technology on a service bureau, application service provider, or time sharing basis. Customer agrees not to mirror the Service or Underlying Technology nor make such items available through distribution in any manner. Customer shall not disrupt the Service nor gain unauthorized access to any portion of the Service. Customer shall not use the Service to violate any law or rights of any third party or commit any tortious act. Customer shall not use the Service to transmit or store any (i) virus or other malicious code, or (ii) obscene or profane materials. Furthermore, Customer agrees not to attempt any of the foregoing or assist any other person or entity to perform the foregoing. Customer shall notify HumanConcepts

in writing immediately in the event Customer becomes aware of any violation of these Terms.

7. **Storage and Other Limitations.** HumanConcepts reserves the right to limit Customer's storage of employee records to one hundred (100) kilobytes per individual employee record, including all information stored about a particular employee.

8. **Compliance with Applicable Law.** Customer agrees to comply with all applicable laws in its use of the Service, including without limitation any laws related to (i) the sending of unsolicited electronic mails messages (SPAM), (ii) the unlawful entering of a computer system or computer network, (iii) the introduction of malicious computer code or unlawful destruction of computer data, (iv) the privacy of data, and the storing, disclosure and distribution of personal data, including but not limited to personally identifiable information as defined in any law, (v) the harassment or defamation of any person or entity, and (vi) any obscenity law.

9. **Assignment of Service.** Customer may not assign or transfer its rights or obligations under these Terms, except that Customer may assign such rights and obligations to a successor to its business that results from a sale of substantially all of Customer's assets, merger, or similar transaction, provided that the assignee agrees in writing to be bound by these Terms and notifies HumanConcepts of such assignment in writing. Any assignment or transfer in violation of these Terms shall be void. HumanConcepts may in its discretion transfer or assign any of its rights or obligations under these Terms at any time.

10. **Reporting.** HumanConcepts may from time to time audit Customer's use of the Service to determine the number of Customer employees being charted. Customer consents to such auditing without notice.

11. **Term of License.** Unless otherwise terminated, Customer's license to use the Service pursuant to these Terms (the "License") shall continue for the period indicated in Customer's Order Form, and shall renew automatically for successive terms, each for the same length as the initial term. In the event of a breach of this Agreement, either party may terminate this Agreement by giving written notice and if the breach is not cured within thirty (30) days from when the notice is received, the Agreement may be terminated. If the License is terminated or expires, the provisions of these Terms that are of a continuing nature shall survive such termination, including but not limited to provisions regarding payment of fees, ownership of Intellectual Property, disclaimers of warranty and limitation of liability. UPON TERMINATION OF THE LICENSE, HUMANCONCEPTS IN ITS DISCRETION MAY PERMANENTLY DELETE ALL CUSTOMER DATA ON ITS SERVERS. IN NO EVENT SHALL HUMANCONCEPTS BE RESPONSIBLE OR LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR LOSS OF ANY CUSTOMER DATA OR OTHER DATA AS A RESULT OF TERMINATION. In the event of any termination of the Service, Customer agrees to immediately cease its use of and access to the Services and promptly certify, by a duly authorized official, its destruction of all HumanConcepts Technology.

12. **Marketing.** HumanConcepts may include Customer's company's name in a list of HumanConcepts' customers and allow HumanConcepts to publicize the execution of this Agreement and Customer's use of the Software. In addition, Customer agrees that HumanConcepts may refer to Customer on HumanConcepts' website and in marketing materials and upon HumanConcepts reasonable request, Customer will speak to members of the press and prospective HumanConcepts' customers to discuss how it is using the Software and provide at least two quotes from Customer's executives (with a title of director or above) regarding the Software.

13. **Fees and Taxes.** Customer shall pay to HumanConcepts the license and other fees applicable to the Service, as indicated on the Order Form. HumanConcepts may in its discretion increase or decrease its license fees and other fees by posting such change on its website or by notifying Customer of such change. Any such change to pricing shall take effect at renewal. All license and other fees are stated in United States dollars, unless otherwise indicated. Fees for customers located outside of the United States may be stated in EUROS. Stated license and other fees are exclusive of any taxes, duties or similar charges imposed by any government or taxing authority, including without limitation sales tax, VAT, GST, and excise taxes, all of which Customer agrees to pay (other than any United States tax based on the net income of HumanConcepts). Any required withholdings shall be paid solely by Customer, so that HumanConcepts receives from Customer the full amount of the applicable stated fees.

14. **Billing.** (a) HumanConcepts will invoice Customer according to the terms indicated on the Customer's Order Form, in advance, for all license and other fees payable by Customer pursuant to these Terms. The first invoice will be issued by HumanConcepts upon acceptance of Customer's Order Form, and will include the applicable Setup Fee and license fees for the first billing period. All invoices will be due and payable by Customer within thirty (30) days. Any amounts not paid by the due date will be subject to a late fee of 1.5% per month (or the maximum permitted by law). Customer must notify HumanConcepts of any disputed charges within sixty (60) days after receipt of the invoice, or Customer will be deemed to have accepted such charges. (b) Customer represents that the information provided by Customer in the Order Form is accurate and complete, including Customer's contact information and information concerning the number of Customer employees to be charted by Customer. Customer agrees to promptly notify HumanConcepts of any changes to such information. (c) The license fees for the Service are based upon the number of Customer employees being charted. In the event the number of employees being charted by Customer exceeds the number of employees to be charted reflected on the Order Form, (a) the license fee for that month may be based upon the higher number of employees charted, and (b) if HumanConcepts has already issued an invoice for such month based upon a lower number of charted employees, HumanConcepts may issue a supplemental invoice for such month. In the event the number of employees being charted by Customer is decreased, the license fee payable by Customer shall remain unchanged for the duration of the then-current term of the License, and may be reduced effective as of the beginning of the next renewal term.

15. **Suspension or Termination for Non-Payment.** In the event Customer fails to pay any amount due and payable, in addition to any other remedy allowed by law, HumanConcepts reserves the right to suspend Customer's access to and use of the Service. HumanConcepts generally does not suspend accounts unless the payment is late by fifteen (15) calendar days; however, such suspension may be made without notice to Customer. In the event Customer fails to pay any amount due and payable within thirty (30) days of such suspension, HumanConcepts reserves the right to terminate Customer's access to and use of the Service, including without limitation the permanent deletion of any and all stored

Customer Data. HumanConcepts reserves the right to charge a fee for reactivating any suspended or terminated account. IN NO EVENT SHALL HUMANCONCEPTS BE RESPONSIBLE TO CUSTOMER OR LIABLE FOR ANY LOSS OF CUSTOMER DATA OR OTHER DATA AS A RESULT OF TERMINATION.

16. Limited Warranties. Each party warrants and represents that it has the legal power to agree to be bound by these Terms and Customer represents that the person signing the Order Form on behalf of Customer is an authorized signatory.

17. DISCLAIMER OF OTHER WARRANTIES. TO THE FULLEST EXTENT ALLOWED BY LAW, EXCEPT AS EXPRESSLY STATED HEREIN, THE SERVICES (INCLUDING WITHOUT LIMITATION THE SERVICE AND ANY PROFESSIONAL SERVICES) AND ALL MATERIALS OR INFORMATION PROVIDED BY HUMANCONCEPTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. HUMANCONCEPTS, AND ITS LICENSORS AND SUPPLIERS, HEREBY DISCLAIM ALL ADDITIONAL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. HUMANCONCEPTS DOES NOT WARRANT THAT THE SERVICE WILL OPERATE WITHOUT ERROR OR INTERRUPTION. HUMANCONCEPTS SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SERVICE OR ITS SERVERS ARE FAILSAFE OR INCAPABLE OF SECURITY BREACH.

18. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL HUMANCONCEPTS (OR ITS SUPPLIERS OR LICENSORS) BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER ALLEGED AS A BREACH OF CONTRACT, TORTIOUS CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION NEGLIGENCE, ARISING OUT OF OR RELATED TO THESE TERMS OR CUSTOMER'S USE OF THE SERVICE, EVEN IF HUMANCONCEPTS (OR ITS SUPPLIERS OR LICENSORS) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL HUMANCONCEPTS (OR ITS LICENSORS OR SUPPLIERS) AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE SERVICE EXCEED THE LICENSE FEES PAID BY CUSTOMER TO HUMANCONCEPTS DURING THE BILLING PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. IN THE EVENT OF LIABILITY ARISING OUT OF ANY PROFESSIONAL SERVICES, INCLUDING WITHOUT LIMITATION SUPPORT, IN NO EVENT WILL HUMANCONCEPTS' AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH SUCH SERVICES EXCEED THE PROFESSIONAL SERVICES FEES PAID BY CUSTOMER TO HUMANCONCEPTS FOR SUCH SERVICES. IN NO EVENT SHALL HUMANCONCEPTS BE LIABLE FOR ANY DAMAGES RESULTING FROM DELAYS OR INTERRUPTIONS IN INTERNET CONNECTIVITY. ANY ACTION OR CLAIM ARISING OUT OF THESE TERMS OR THE SERVICE MUST BE BROUGHT NOT LATER THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION AROSE.

19. Mutual Indemnification. Customer shall indemnify, defend and hold harmless HumanConcepts (including without limitation its parent companies, subsidiaries, employees, officers, investors, partners, and agents) from and against any claim, loss, damage, or expense (including without limitation attorney's fees and costs) arising out of: (a) a claim that possession, use or disclosure of Customer Data (including without limitation by theft or interception) violates the privacy or other rights of any person, including without limitation any employee of Customer, (b) misuse of any password, (c) a breach of these Terms by Customer, or (d) the loss or disclosure of Customer Data caused by the Customer's actions or inactions (including without limitation by theft or interception). HumanConcepts shall indemnify, defend and hold harmless Customer (including without limitation its parent companies, subsidiaries, employees, officers, investors, partners, and agents) from and against any claim by a third party that the Customer's use of the Service violates the Intellectual Property Rights of such third party within the country where the Customer has registered the Service. In the event of any claim for indemnification, the indemnified party shall give prompt written notice to the indemnifying party of any such claim, action or allegation and give the indemnifying party the authority to proceed as contemplated herein. The indemnifying party will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and the indemnified party may not settle or compromise such claim, action or allegation, except with prior written consent of the indemnifying party. The indemnified party shall give such assistance and information as indemnifying party may reasonably require, to defend or settle such claims. If any portion of the Service is held, or in HumanConcepts' opinion is likely to be held, to infringe or misappropriate a third party's rights as set forth herein, HumanConcepts may at its sole option and expense, and as HumanConcepts' sole remedy: (a) procure for Customer the right to continue using the Service; (b) replace the Service with non-infringing functionality; or (c) if neither of the foregoing is reasonably practicable, terminate the License and refund to Customer the amounts paid for the Service for periods, if any, during which Customer was prevented from using the Service.

20. Confidentiality. As used in these Terms, "Confidential Information" means all information disclosed by one party to the other party (i) in written or other tangible form, which is marked or labeled "confidential" or "proprietary," or is otherwise marked in a manner indicating the confidential nature of the information, or (ii) orally, provided the information is described or summarized in a writing delivered to the other party which indicates that such information is confidential or proprietary, or (iii) that should otherwise reasonably be understood to be confidential due to the nature of the information. Each party shall use the other's Confidential Information solely in accordance with the provisions of these Terms and shall not disclose, or permit to be disclosed, either directly or indirectly, the other's Confidential Information without the other's prior written consent. Each party may disclose Confidential Information only to its employees or contractors on a need-to-know basis, provided that such employees or contractors are bound by substantially similar confidentiality terms. Additionally, HumanConcepts may release payment information to third parties as required to process payment. Each party shall use reasonable measures to safeguard the Confidential Information of the other. Notwithstanding the foregoing, neither party bears responsibility for safeguarding information that is: (i) publicly available not as a result of any breach of confidentiality by the receiving party; (ii) lawfully obtained from third parties not under confidentiality restrictions; (iii) proven to be in the possession of the receiving party at the time of disclosure; or (iv) upon notice to the disclosing party by the receiving party, required to be disclosed by law, or order of a court or other governmental entity. If either party breaches, or threatens to breach the confidentiality provisions, the parties agree that the non-breaching party would have no adequate remedy at law and would therefore be entitled to immediate injunctive and other equitable relief, without the necessity of posting a bond. Confidential Information of HumanConcepts shall include without limitation all screen output (excluding Customer Data) or software code related to the Service.

21. General Provisions. (a) Severability. In the event any provision of these Terms is determined to be invalid or unenforceable, that provision shall be enforced to the maximum extent permitted, and the parties agree that the other provisions of these Terms shall not be affected and shall continue to be enforced. The parties agree that these Terms constitute the entire agreement between Customer and HumanConcepts relating to their subject matter, and supersede any prior agreements, representations, or communications, whether written or oral, relating to that subject matter.

(b) Choice of Law and Venue. These Terms shall be governed by the internal laws of the State of California, without respect to its conflicts of law rules. The parties agree that these Terms, and the transactions contemplated hereby, shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. The parties agree that any suit or proceeding arising out of or relating to these Terms or the Service will be brought only in the US District Court for the Northern District of California or the California Superior Court for Marin County, and shall submit to the exclusive personal and subject matter jurisdiction and venue of such courts. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

(c) Export. Customer acknowledges that United States law prohibits the export/re-export of products and technical data of US origin, including the Service. Furthermore, Customer acknowledges that laws in jurisdictions other than the United States may prohibit the export/re-export of products and technical data, including the Service. Customer agrees not to export or re-export the Service or Underlying Technology without the appropriate United States and foreign government license. In no event shall Customer use the Service or Underlying Technology for any activity involving the development, proliferation or use of nuclear or missile technology or weapons, nor for the development, proliferation or use of chemical or biological weapons.

(d) Waiver. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed by both parties. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

(e) Force Majeure. Neither party will be liable for any failure or delay in performance under these Terms (except for failure to pay money) which might be due, in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond the reasonable control of such party, including, without limitation, fire, explosion, earthquake, storm, flood, strike, war, insurrection, riot, act of God, government action, network outage, or acts or failures to act on the part of any third party. In the event of the happening of such a cause, the party whose performance is so affected will give prompt, written notice to the other party, stating the period of time the same is expected to continue.

(f) Notices. HumanConcepts may provide notice to Customer via general posting to HumanConcepts website or via electronic mail or postal mail, including without limitation any change in terms and conditions and pricing. Such notice shall be deemed effective the sooner of the fifth business day after mailing (including without limitation via electronic mail) or thirty (30) days after posting. Either party may provide the other party with notice provided for or permitted under these Terms and such notice shall be deemed given (a) upon receipt, if delivered by personal delivery or recognized international courier, (b) the next business day, if transmitted via facsimile, or (c) the fifth business day, if transmitted via United States mail or electronic mail. Any notice pursuant to an indemnification request shall be sent solely by registered United States mail or recognized international courier. Notices to Customer may be transmitted to Customer using the contact information provided by Customer in the Order Form. In the event such information is incorrect, notice shall be deemed given by HumanConcepts upon mailing, dispatch, or transmission. Notices to HumanConcepts shall be given by Customer solely to the following address or facsimile telephone number:

HumanConcepts, LLC
Three Harbor Drive, Suite 200
Sausalito, California 94965
United States of America
Facsimile: +1 (415) 332-1010

(g) Relationship of Parties. The parties are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf. No other party except HumanConcepts and Customer shall be construed as a third party beneficiary to these Terms or in privity to enforce the provisions of these Terms at law or in equity. Employees of Customer shall not be construed as third party beneficiaries to these Terms or in privity to enforce their provisions.

(h) Amendment and Modification. These Terms may be modified or amended by HumanConcepts in its discretion, at any time, by posting the modified or amended version of these Terms to its website or by notifying Customer via electronic mail. Such changes shall be effective the sooner of the fifth business day after mailing (including without limitation via electronic mail) or thirty (30) days after such posting. Customer's continued use of the Service shall be deemed its consent to the new terms and conditions. No purchase order or other instrument issued by Customer may add to, alter, or modify these Terms.