

Onapsis Professional Services General Terms and Conditions

These General Terms and Conditions (“**Terms**”) outlines the responsibilities and obligations of the customer (“**Customer**” or “**You**” or “**Your**”) and Onapsis, Inc. or Onapsis Europe GmbH, as set forth in the signed Order Form, (“**Onapsis**”). By signing an Order Form, or actually using Onapsis’ professional services, You agree to be bound by these Terms and You understand and agree that Onapsis will treat Your use of the Services as acceptance of these Terms. If You are entering into these Terms on behalf of an entity, such as the company You work for, then You represent to Onapsis that You have the legal authority to bind such entity to these Terms. If You do not have that authority or if You do not agree with these Terms, then You may not use or access Onapsis’ professional services.

Section I – Definitions

For the purposes of these Terms: “**Intellectual Property and/or Intellectual Property Rights**” mean, collectively, all worldwide intellectual property rights in and to any works of authorship, moral rights, trademarks, patents, copyrights, trade secrets and design rights; “**Order Form**” means an order for Products and Professional Services from You to Onapsis which shall include (i) the Products being licensed and the Professional Services being purchased, (ii) the License Term of the subscription for such Products, (iii) the fees related thereto, and (iv) the number of targets related thereto, “**Product(s)**” mean the product(s) owned and made available by Onapsis that are identified in the Order Form; “**Professional Services**” means the professional services to be provided by Onapsis as set forth in the Order Form or a Statement of Work (“**SOW**”) executed by both Parties; “**Work Product**” means any work or materials generated by Onapsis as part of the Professional Services and provided by Onapsis to You under an Order or SOW, and all Intellectual Property Rights therein.

Section II - Provision of Professional Services

1. Onapsis will perform the Professional Services as specified in the Order Form and/or SOW. Once an Order Form is executed by You, it incorporates and becomes part of these Terms. Onapsis agrees to provide, and You agree to take and pay for, the Professional Services set out in the applicable Order Form and SOW. The Professional Services are provided at Your request, and You accept that You are responsible for ensuring that the Professional Services are suitable for Your own needs. Notwithstanding anything to the contrary, Professional Services hours must be used in equal installments during the term of the Professional Services and cannot be credited or used in subsequent years. The Professional Services shall be deemed accepted by You upon completion.

2. **Services Location:** The Professional Services and all activities will be conducted remotely unless otherwise agreed between the parties on the Order Form.

3. **Services Schedule:** The Professional Services will be performed, and deliverables created in accordance with the delivery schedule defined by the parties. Onapsis’ point of contact (“**POC**”) will contact You to set project start dates based on then-current scheduling factors for both parties. Onapsis and You will also review applicable prerequisites and/or responsibilities to ensure Your preparedness upon the mutually agreed-upon project start date.

4. **Project Change Control:** In the event that either party requires changes to the scope originally identified in the Order Form or SOW, shall be made only with the written agreement of both parties (the “**Change Order**”). Onapsis will provide a Change Order for You to review and sign before additional work is performed or additional fees are invoiced to You. Onapsis shall have no obligation to comply with any change until the parties have agreed in writing to the scope of the change and any adjustment in the fee and/or time for performance. The Change Order will specifically address any variance from the original Order Form or SOW and the requirements and associated costs.

Section III – Service Terms

1. Onapsis will provide You appropriately qualified personnel to perform the Services in a timely and professional manner, during normal Business Hours, exercising due skill and care and will use reasonable endeavors to meet any mutually agreed target dates. “**Business Hours**” shall mean Monday through Friday from 8:00 A.M. to 5:00 P.M., local U.S. Eastern Time for any customer located in North or South America, and local Central European Time for customers located in Europe, the Middle East and Africa (“**EMEA**”) and Asia-Pacific (“**APAC**”).

2. To complete the Professional Services project, Onapsis shall (i) perform all Professional Services and deliver all deliverables to Your reasonable satisfaction; (ii) consider all of Your information and documentation as sensitive and confidential and will handle appropriately; (iii) Onapsis shall have responsibility only for consultants employed or subcontracted by Onapsis for performance of these Professional Services; (iv) furnish all equipment, tools and materials necessary and required for the performance of the Professional Services on a timely basis if providing the Professional Services offsite at an Onapsis facility.

Section IV - Your Responsibilities

1. You will provide Onapsis with all information and help as reasonably required by Onapsis, and will make available such of its own POC and appropriately qualified staff, with appropriate roles and responsibilities as may be reasonably required, to assist Onapsis perform the Services, including (i) providing information about Your SAP system in scope, network landscape, Your Onapsis' Product instance and appliances, or other technical business requirements to allow Onapsis to complete the Professional Services set out in the applicable Order Form and SOW; (ii) completing any preparation activities identified within the SOW in the agreed upon timeline; (iii) providing the applicable Onapsis personnel with such computer facilities as may be reasonably be necessary to enable the Onapsis personnel to perform the Professional Services; (iv) authorizing the applicable Onapsis personnel to have access to those computer systems and applications to which it is reasonably necessary to have access for the provision of the Professional Services. Onapsis does not require direct access, as we intend to guide the implementation remotely via screen sharing with Your resources with appropriate roles and authorizations. Onapsis considers this access requirement to be CRITICAL to successfully meet the project timeline. Onapsis will not require access to any other of Your systems or applications.

2. You represent that it has all necessary rights, consents, and permissions for Onapsis to install the Product(s) and perform the Professional Services specified in an Order Form(s) or SOW on the designated Targets and execute Onapsis' Product(s) and Professional Services on Your ERP Systems. You will indemnify, defend, and hold harmless Onapsis for any losses, including reasonable attorneys' fees, resulting from Your failure to comply with this section.

Section V - Project Management

1. Onapsis will conduct status meetings, which may include updates on project status and issues identified and addressed (such as schedule, deliverables, project quality, and team interaction). In addition, Onapsis will provide immediate notification of issues requiring Your attention. Onapsis expects that any issues identified will be resolved promptly to avoid impact to the project timelines.

2. Onapsis Project Coordination Activities. The following list details Onapsis' project coordination activities for this project:

- Facilitation of the project kick-off meeting.
- Project budget reporting and Change Order management (if needed).
- Coordination of Onapsis personnel logistics.
- Onapsis communications and project notifications, including weekly status reports outlining project status, issues noted, and issues addressed as they relate to scheduling, Deliverables, project quality, and team interaction (as applicable).
- Issue reporting and escalation.
- Adherence to the SOW.

Section VI - Intellectual Property Rights

Onapsis and its licensor(s) owns, and shall own, all right, title and interest (including all Intellectual Property Rights in (a) all Professional Services and Work Product, including without limitation all modifications or customizations made by Onapsis whether upon the suggestion of Onapsis, You or otherwise, and (b) all inventions, know how, ideas, techniques, equipment, software, tools or processes used by Onapsis in performing the Professional Services and any related improvements or modifications.

Section VII - Confidential Information

1. During the performance of the Professional Services, the parties shall have access to Confidential Information of the other party. Each party agrees not to (a) disclose the other party's Confidential Information without the other party's express written consent, or (b) use the other party's Confidential Information for any purpose other than in the performance of these Terms. Without limiting the foregoing, each party shall exercise at least the same degree of care that it uses to protect its own Confidential Information (and, in any case, no less than a reasonable degree of care) to protect the Discloser's Confidential Information. Recipient shall return all of the Discloser's Confidential Information to the Discloser upon the earlier of the request of the Discloser and the expiration or termination of these Terms.

2. The Recipient may disclose the Discloser's Confidential Information only to such of its employees, agents, or consultants ("**Recipient's Personnel**") who have a need to know the Discloser's Confidential Information for the purposes of these Terms and the business to be executed by the parties as a consequence hereof, and then only to employees, agents, or consultants who have been advised of the confidential nature of the Discloser's Confidential Information and who are under a confidentiality and non-use obligation no less stringent than the provisions hereof. Recipient shall be responsible for any violation hereof by Recipient's personnel.

3. The obligations herein undertaken shall not apply to any information: (a) which is or becomes generally available to the public through no fault of the Recipient; or (b) rightfully disclosed to the Recipient by a third party; or (c) independently developed by personnel of the Recipient without use of the Confidential Information of the Discloser. Recipient may disclose Discloser's Confidential Information pursuant to a court order or pursuant to governmental action, provided that before such disclosure, the Recipient shall notify the Discloser in writing of the request and give the Discloser an opportunity to prevent such disclosure or to seek a protective order.

Section VIII - Limitations; Disclaimer

1. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOSS OF INCOME, LOST PROFITS, DATA, GOODWILL, USE OR INFORMATION, SECURITY BREACHES OR INTRUSIONS, DOWNTIME OR COSTS OF SUBSTITUTE SOFTWARE OR EQUIPMENT), WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), SERVICES LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

2. ONAPSIS AND ITS LICENSOR(S) AGGREGATE LIABILITY TO THE CUSTOMER FOR LOSSES, DAMAGES, COSTS, EXPENSES AND OTHER AMOUNTS ARISING OUT OF OR RELATING TO THESE TERMS, THE PROFESSIONAL SERVICES, REGARDLESS OF THEORY OF LIABILITY, SHALL BE LIMITED TO THE FEES PAID TO ONAPSIS BY CUSTOMER UNDER THE ORDER FORM FOR THE SERVICES GIVING RISE TO THE CLAIM DURING THE IMMEDIATELY PRECEDING TWELVE MONTHS, BUT IN NO EVENT GREATER THAN FIVE HUNDRED THOUSAND DOLLARS.

3. CUSTOMER AGREES THAT IT SHALL NOT HAVE THE RIGHT TO MAKE ANY CLAIM UNDER THESE TERMS GREATER THAN ONE YEAR FOLLOWING THE EVENT(S) GIVING RISE TO SUCH CLAIM.

4. ANY AND ALL WARRANTIES NOT SPECIFICALLY SET FORTH IN THESE TERMS, WHETHER EXPRESS, IMPLIED OR STATUTORY (INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE PROFESSIONAL SERVICES, AND SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, ARE HEREBY EXPRESSLY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. IN NO EVENT DOES ONAPSIS OR ITS LICENSOR(S) WARRANT THAT THE PROVISION OF ANY SERVICES OR DELIVERABLES SHALL BE UNINTERRUPTED, OR ERROR FREE. CUSTOMER EXPLICITLY UNDERSTANDS AND AGREES THAT THE PROFESSIONAL SERVICES DO NOT GUARANTEE THAT CUSTOMER OR ANY OF ITS SYSTEMS, APPLICATIONS OR THE LIKE WILL BE FREE OF UNAUTHORIZED ACCESS OR BREACH.

Section IX – Termination

1. These Terms shall run from the effective date of the Order Form until completion of the Professional Services, unless earlier terminated by either Party as set forth herein. In the event You terminate an Order Form for any reason other than for Cause, You shall pay to Onapsis any remaining unpaid fees for the Professional Services.

2. Either Party may terminate an Order Form if the other Party fails to cure a material breach, ("**Cause**") of such Order Form within thirty (30) days after receiving written notice from the other Party of such breach. Onapsis may suspend or terminate Your access to our Professional Services at any time for any reason, including, but not limited to, if we reasonably believe: (i) You have violated these Terms; or (ii) our provision of the Professional Services to You is no longer commercially viable.

3. In all such cases, these Terms shall terminate, except that the following sections shall continue to apply: Confidential Information; Intellectual Property Rights; Limitations, Disclaimer; and Miscellaneous.

Section X– Miscellaneous

1. **Entire Agreement.** These Terms (including the Order Form and SOW) constitute the entire agreement between You and Onapsis and supersedes any other communications or advertising with respect to the Professional Services. If any provision of these Terms is held invalid, the remainder of these Terms will continue in full force and effect. No provision of these Terms shall be deemed waived or modified except in a writing signed by an authorized representative of Onapsis. There are no implied licenses hereunder. You may not assign these Terms without the prior written consent of Onapsis. The Parties to these Terms are independent contractors. Neither Party is an agent, representative, joint venturer, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for or on behalf of, or incur any obligation or liability, or to otherwise bind the other Party. Each Party shall bear its own costs and expenses in performing these Terms. In the event of a conflict between these Terms and the terms of an Order Form or SOW, these Terms shall control. Any terms which may be included in any purchase order, confirmation or similar document shall not apply, and will be null, void and of no legal effect, unless otherwise negotiated and confirmed in writing by Onapsis.

2. **Non-Solicitation.** During the term of the Professional Services, and for twelve (12) months after its expiry or termination, You undertake not to, directly or indirectly, solicit for employment or seek to induce to leave the employ of Onapsis any current employee or independent contractor of Onapsis who was or is involved in rendering Professional Services under these Terms. Notwithstanding the above, the following solicitations shall not be prohibited: (a) solicitations by Your independent contractors, so long as they are not specifically directed by You to solicit such individuals; and (b) solicitations initiated through general newspaper advertisements and other general circulation materials not directly targeted at such individuals.

3. **Contracting Parties.** These Terms are entered between You and Onapsis, Inc., a Delaware corporation with primary offices at 101 Federal Street Suite 1800, Boston MA 02110. Notwithstanding, if You reside in the European Union, these Terms is entered between You and Onapsis Europe GmbH, a limited liability company, established under the laws of the Federal Republic of Germany, with primary offices at Salomon-Calvi-Straße 1-3, 69124 Heidelberg, Germany.

4. **Governing Law; Jurisdiction.** Except to the extent expressly provided hereunder, this Agreement will be governed by the law of the State of Delaware, excluding its conflict of law provisions, and any claims arising hereunder shall be subject to the exclusive jurisdiction of courts in the State of Delaware. For customers residing in Germany, the governing law shall be the internal laws of Germany, and claims arising hereunder shall be subject to the exclusive jurisdiction of Heidelberg, Germany. For customers residing in any European Union country, other than Germany, including the United Kingdom, the governing law shall be of England & Wales and claims arising hereunder shall be subject to the exclusive jurisdiction of London, England. The Parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods.

5. **Severability.** If a provision of these Terms is held invalid under any applicable law, such invalidity will not affect any other provision of these Terms that can be given effect without the invalid provision. In addition, the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

6. **Force Majeure.** Neither Party shall be deemed to be in default of any provision of these Terms or for any failure in the performance required of such Party hereunder to the extent such failure is caused by fire, explosion, accidents, civil disorder, a natural calamity or other Act of God, act of government, or other cause beyond the control and without the fault or negligence of such Party.
