SAP Learning Preferred Card Terms and Conditions
SAP New Zealand Limited

1. DEFINITIONS

1.1. "**Affiliate**" means any legal entity in which SAP SE or Customer, directly or indirectly, holds more than 50% of the entity's share or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.

1.2. "**Agreement**" means these SAP Learning Preferred Card Terms and Conditions and the Order Form signed and agreed between the Parties.

1.3. **"Bonus"** means the bonus described in the Section 2.3.

1.4. **"Business Partner"** means a legal entity that requires use of a training service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.

1.5. **"Certification"** means an online exam to ascertain a certain level of knowledge and proficiency in SAP subject areas.

1.6. **"Commitment Value"** is a prepayment value and Customer commitment to a minimum value of expenditure, as detailed in Section 2.2.

1.7. **"Contract Term"** means the fixed term period in which the SAP Learning Preferred Card is valid, as specified in the Order Form.

1.8. "**Confidential Information**" means all information which the disclosing party protects against unrestricted disclosure to others that the disclosing party or its Representatives designates as confidential, internal and / or proprietary at the time of disclosure; or should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure.

1.9. **"Course"** means classroom training delivered live either physically in person or virtually via the internet.

1.10. "**Customer**" means the party other than SAP that has entered into this Agreement.

1.11. "**Customer Data**" means any content, materials, data and information from Users. Customer Data and its derivatives will not include SAP's Confidential Information.

1.12. "**Customer Specific Training**" means a private Course organized on demand specifically for Customer.

1.13. "**Online Training**" means prerecorded training delivered virtually, e.g. SAP e-learning.

1.14. "**Order Form**" means the document provided by SAP entitled "SAP Preferred Card Order Form" agreed and signed by the parties, under which the Customer has ordered the SAP Learning Preferred Card from SAP.

1.15. "**Preferred Card Value**" is the amount specified in the "Preferred Card Value" section of the Order Form and is calculated by adding together the Commitment Value and the Value of Bonus.

1.16. "**Preferred Card Fee**" is the Commitment Value plus applicable taxes.

1.17. "**SAP**" means the SAP entity that has entered into this Agreement, as well its Affiliates.

1.18. "**SAP Learning Preferred Card**" is the prepayment card being procured under the terms of this Agreement.

1.19. "**SAP Training Catalogue**" means the catalogue published by SAP containing details of SAP training courses and services.

1.20. "**SAP SE**" means SAP SE, the parent company of SAP.

1.21. "**Section**" means a specified section of these terms and conditions.

1.22. "**Training Site**" means https://training.sap.com/.

1.23. "**Travel & Expense costs**" are costs incurred by SAP training consultants for travel and miscellaneous costs.

1.24. "**User**" means any individual to whom Customer grants access credentials to use a training service that is an employee, agent, contractor or representative of:

a) Customer;

b) Customer's Affiliates; and/or

c) Customer's and Customer's Affiliates' Business Partners.

1.25. "**Value of Bonus**" means the amount indicated in the Order Form, which is calculated by multiplying the Commitment Value and the Bonus.

2. PREFERRED CARD

2.1. Order Form

Details of the SAP Learning Preferred Card procured from SAP by Customer are contained in the Order Form.

2.2. Commitment Value

Customer must make at least the minimum expenditure on training services from SAP ("**Commitment Value**") during the Contract Term. The Commitment Value is specified in the "Commitment Value" section of the Order Form.

2.3. Bonus

Subject to the Customer paying the Preferred Card Fee in full as detailed in Section 3, Customer will receive the Bonus specified in the "Bonus" section of the Order Form. The Bonus is not counted towards calculation of the required Commitment Value. The Bonus cannot be used to pay for Travel & Expense costs.

2.4. Preferred Card Value

The initial Preferred Card Value is calculated by adding together the Commitment Value and the Value of Bonus. The Preferred Card Value will decrease as Customer's purchases and reservations are made using the SAP Learning Preferred Card.

3. PRICE AND PAYMENT

3.1. Price

The price of the SAP Learning Preferred Card is the Preferred Card Fee specified in the "Preferred Card Fee" section of the Order Form and payment is due in accordance with the Order Form.

3.2. Purchase Order

Customer must submit to SAP a purchase order for the full amount of the Preferred Card Fee at the same time it returns a signed copy of the Order Form to SAP.

3.3. Invoicing

Customer will be invoiced for the full Preferred Card Fee after SAP's receipt of the Order Form signed by the Customer and a valid purchase order.

3.4. Restrictions

3.4.1. No credits

Nothing in this Agreement will affect any previous orders made by Customer with SAP for training services. Customer cannot use the SAP Learning Preferred Card to pay for training services ordered or delivered prior to the start of the Contract Term or after expiration of the Contract Term, regardless of whether the same or similar training services are included in the scope of the SAP Learning Preferred Card procured under this Agreement.

3.4.2. No refunds or carry-over

The Preferred Card Value must be used within the Contract Term. No refunds can be made in relation to Preferred Card Value that is not used by Customer within the Contract Term. The Preferred Card Value cannot

be carried over after the Contract Term has expired. The Preferred Card Value cannot be transferred to another SAP Learning Preferred Card.

3.4.3. No Extension or Top-up

Customer shall be entitled to purchase additional separate SAP Learning Preferred Cards; however, Customer is not allowed to extend or top-up individual SAP Learning Preferred Cards.

3.5. Payment for purchases and reservations using the SAP Learning Preferred Card

Customer must quote its SAP Learning Preferred Card identification number when making purchases or reservations for training services. Provided that the Customer has enough Preferred Card Value to cover the full price, no invoice will be presented by SAP to Customer for payment of such purchases or reservations. The relevant price amount will be deducted from the Preferred Card Value. If there is not enough remaining Preferred Card Value to cover the full price amount of the transaction, SAP will invoice the Customer for the price amount calculated after the remaining Preferred Card Value has been applied to the transaction.

4. DURATION

4.1. Fixed Term

This Agreement is concluded for a fixed term specified in the 'Contract Term' section of the Order Form. Neither Party can terminate this Agreement for convenience, however any rights of termination for cause remain unaffected.

4.2. Expiration

After expiration of the Contract Term the SAP Learning Preferred Card will cease to be valid and any unused Preferred Card Value will be reset to zero (0).

5. PREFERRED CARD SCOPE AND APPLICATION

5.1. Eligible Services

Subject to Section 3.4, the Preferred Card Value can be used to pay for the following items (exhaustive list) provided in New Zealand:

a) Customer Specific Training.

5.2. Excluded Services

Preferred Card Value cannot be used for purchasing the following items (non-exhaustive list):

a) Online Training (e-Learning);
b) Certification;
c) Course (public classroom training);
d) consulting services;
e) software licences;
f) Learning Hub or bundles including Learning Hub; and
g) SAP Learning System Access or bundles including SAP Learning System Access.

5.3. Customer receipt

On receipt of Customer's Preferred Card Fee, SAP shall issue Customer with:

a) written acknowledgement of Customer's purchase of an SAP Learning Preferred Card;
b) a unique Customer SAP Learning Preferred Card identification number;
c) an on-line account; and
d) confirmation of the Bonus.

5.4. SAP Customer ID

The parties agree that purchases and reservations using the SAP Learning Preferred Card shall be applied exclusively to the SAP Customer ID specified in the Order Form and the training services shall be used solely by Users.

5.5. Contract Term

5.5.1. The Customer shall be entitled to the benefits of the SAP Learning Preferred Card for the Contract Term defined in the Order Form, which shall begin on the later of:

a) the date upon which SAP receives a signed Order Form and purchase order from the Customer; or

b) the date upon which SAP receives the SAP Preferred Card Fees.

5.5.2. In the event that the date SAP receives payment of the SAP Preferred Card Fee is any longer than three (3) months after SAP's receipt of the Customer's signed Order Form, SAP reserves the right to reject the Customer order for the SAP Learning Preferred Card in which case no Agreement shall be made.

5.6. Decision making

Customer shall designate, in the "Administration details" section of the Order Form, a contact person with appropriate standing and qualifications to be available to SAP to provide necessary information relating to the Agreement and who is authorized by the Customer to make necessary decisions on behalf of the Customer.

5.7. Reservations

5.7.1. Customer must make express reference in writing to the SAP Learning Preferred Card identification number when making reservation requests for training services to SAP.

5.7.2. Reservations are not effective until confirmed by SAP.

5.7.3. Purchase of the SAP Learning Preferred Card does not guarantee Customer participation in any specific Course or event on any specific date, nor does it provide Customer with priority booking status for any specific course or event on any specific date.

5.7.4. Reservation requests will be handled in the order that they are received by SAP and will be booked according to the availability of the respective subscriber spaces.

5.7.5. The Preferred Card Value can be used for all public courses that have been confirmed by SAP. However, confirmation of some courses is dependent on the number of signed up participants for that course and SAP reserves the right when, and if, to confirm and run a course.

5.8. Cancellations

5.8.1. For avoidance of doubt, for the purposes of calculating the cancellation fee due to SAP, "price" shall be deemed to refer to the full published list price for that course, which the Customer would have paid to SAP for registration on the course had the Customer not registered using the SAP Learning Preferred Card. The cancellation fee shall be charged by SAP even if the Customer later reschedules the individual designated User for an alternative date. Cancellation fees will be deducted from the SAP Preferred Card Value.

5.9. Additional Terms and Conditions

5.9.1. Each of the training services procured using the SAP Learning Preferred Card are subject to their own separate respective terms and conditions, copies of which are available at the SAP website locations listed in the relevant Sections below. By executing this Agreement, Customer agrees to those additional terms and conditions with respect to each training service ordered using the SAP Learning Preferred Card that is governed by this Agreement. Customer acknowledges that the terms and conditions for the training services are available via SAP's website and that the Customer has had the opportunity to review the terms and conditions prior to entering into this current Agreement.

5.9.2. Applicable Terms & Conditions for Customer Specific Training

SAP and Customer agree that for Customer Specific Training an Order Form for SAP Services is a binding agreement governed by the SAP Services General Terms and Conditions ("**SGTC**") made available on https://www.sap.com/about/trust-center/agreements/services/sap-professional-services.html, in effect as of

the execution of this Agreement. Together the Order Form for SAP Services and the SGTC form the Agreement in respect of Customer Specific Training services.

5.9.3. Applicable Terms & Conditions for Certification, Course and Online Training

Terms and Conditions as made available on: https://www.sap.com/about/trust-center/agreements/services/sap-professional-services.html?tag=agreements:general-terms-and-conditions/education-training at the time of execution of this Agreement.

6. CONFIDENTIALITY

6.1. Use of Confidential Information

6.1.1. The receiving party shall:

a) maintain all Confidential Information of the disclosing party in strict confidence, taking steps to protect the disclosing party's Confidential Information substantially similar to those steps that the receiving party takes to protect its own similar Confidential Information, which shall not be less than a reasonable standard of care;

b) not disclose or reveal any Confidential Information of the disclosing party to any person other than its Representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this Section 6;

c) not use or reproduce any Confidential Information of the disclosing party for any purpose outside the scope of the Agreement; and

d) retain any and all confidential, internal or proprietary notices or legends which appear on the original and on any reproductions.

6.1.2. Customer shall not disclose any information about the Agreement, its terms and conditions, the pricing or any other related facts to any third party.

6.1.3. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to this Section 6.

6.2. Compelled Disclosure

The receiving party may disclose the disclosing party's Confidential Information to the extent required by law, regulation, court order or regulatory agency; provided, that the receiving party required to make such a disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of the disclosing party. The receiving party and its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

6.3. Exceptions

6.3.1. The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

a) is independently developed by the receiving party without use or reference to the disclosing party's Confidential Information;

b) has become generally known or available to the public through no act or omission by the receiving party;

c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions;

d) is lawfully acquired free of restriction by the receiving party from a third party having the right to furnish such Confidential Information; or

e) the disclosing party agrees in writing is free of confidentiality restrictions.

6.4. Destruction and Return of Confidential Information

Upon the disclosing party's request, the receiving party shall promptly destroy or return the disclosing party's Confidential Information including copies and reproductions of it. The obligation to destroy or return Confidential Information shall not apply:

a) if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered;

b) to Confidential Information held in archive or back-up systems under general systems archiving or backup policies; or

c) to Confidential Information the receiving party is legally entitled or required to retain;

6.5. Publicity

Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that SAP may use Customer's name in customer listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including reference calls and stories, press testimonials, site visits, SAPPHIRE participation). Customer agrees that SAP may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with SAP.

7. DATA PROTECTION

7.1. Data control

Information as to how SAP is using personal data where its acts as a data controller (e.g. of the Customer's representative who executes the order) can be found in the SAP Learning Privacy Statement at https://learninghub.sap.com/about/legal/privacy

7.2. Data Processing

Where SAP is processing personal data on behalf of the Customer, the terms of SAP's Data Processing Agreement available at https://www.sap.com/about/trust-center/agreements/services.html shall apply and which is made part of this Agreement and executed by the Customer and SAP by entering into the Order Form.

8. LIMITATION OF LIABILITY

8.1. No Cap on Liability

Neither party's liability is capped for damages resulting from:

a) death or bodily injury arising from either party's gross negligence or wilful misconduct, or

b) any failure by Customer to pay any fees due under the Agreement.

8.2. Liability Cap

Except as set forth in Section 8.1, the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) arising in the Contract Term will not exceed the fees paid for Individual Orders during the Contract Term up until the date upon which the incident occurred whereby liability arose.

8.3. Exclusion of Damages

In no case will

a) either party (or its respective Affiliates or SAP's subcontractors) be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages, and

b) SAP be liable for any damages caused by any training service provided for no fee.

8.4. Risk Allocation

This Agreement allocates the risks between SAP and Customer in relation to the SAP Learning Preferred Card. The Preferred Card Fee reflects this allocation of risk and limitations of liability.

9. MISCELLANEOUS

9.1. Severability

If any provision of the Agreement is held to be wholly or in part invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

9.2. No Waiver

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

9.3. Electronic Signature

Electronic signatures that comply with applicable law are deemed original signatures.

9.4. Governing Law

The Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter will be governed by and construed under the laws of New Zealand. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of law principles and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

9.5. Jurisdiction and Mandatory Venue

The parties submit to the exclusive jurisdiction of the courts located in New Zealand. The parties waive any objections to the venue or jurisdictions identified in this provision. The mandatory, sole and exclusive venue, place or forum for any disputes arising from the Agreement (including any dispute regarding the existence, validity or termination of the Agreement) shall be New Zealand.

9.6. Waiver of Right to Jury Trial

Each party waives any right it may have to a jury trial for any claim or cause of action arising out of or in relation to the Agreement.

9.7. Statute of Limitation

Customer must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within 1 year from the date when the Customer knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

9.8. Agreement

The Agreement may be modified solely in writing signed by both parties. The Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if SAP accepts or does not otherwise reject the purchase order. The components of the Agreement are the Order Form, this Terms and Conditions document and any documents referenced therein.