



## IBM Terms of Use – SaaS Specific Offering Terms

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### IBM Kenexa Learn

The Terms of Use (“ToU”) is composed of this IBM Terms of Use - SaaS Specific Offering Terms (“SaaS Specific Offering Terms”) and a document entitled IBM Terms of Use - General Terms (“General Terms”) available at the following URL: [www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms/](http://www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms/). In the event of a conflict, the SaaS Specific Offering Terms prevail over the General Terms. By ordering, accessing or using the IBM SaaS, Customer agrees to the ToU.

#### 1. IBM SaaS

The following IBM SaaS offerings are covered by these SaaS Specific Offering Terms:

- IBM Kenexa LCMS Premier on Cloud Author
- IBM Kenexa LCMS Premier on Cloud Dynamic Delivery
- IBM Kenexa LCMS Premier on Cloud Additional Report
- IBM Kenexa LCMS Premier on Cloud Additional Authoring Template
- IBM Kenexa LCMS Premier on Cloud Additional Microsoft Content Conversion
- IBM Kenexa LCMS Premier on Cloud Additional Language
- IBM Kenexa LCMS Premier on Cloud Additional Non-Production Hosted Site
- IBM Kenexa LMS on Cloud
- IBM Kenexa LMS on Cloud Human Resource Synchronization
- IBM Kenexa LMS on Cloud Data Import
- IBM Kenexa LMS on Cloud LDAP Support
- IBM Kenexa LMS on Cloud Additional Adaptive Report
- IBM Kenexa LMS on Cloud eCommerce Integration
- IBM Kenexa LMS on Cloud Additional Language
- IBM Kenexa LMS on Cloud Additional Non-Production Hosted Site
- IBM Kenexa Hot Lava Mobile on Cloud

#### 2. Charge Metrics

The IBM SaaS is sold under one of the following charge metric(s) as specified in the Transaction Document:

- a. “Access” is a unit of measure by which the IBM SaaS may be obtained. An Access is the rights to use the IBM SaaS. Customer must obtain a single Access entitlement in order to use the IBM SaaS during the measurement period specified in Customer’s Proof of Entitlement (PoE) or Transaction Document.
- b. “Authorized User” is a unit of measure by which the IBM SaaS can be obtained. Customer must obtain separate, dedicated entitlements for each unique Authorized User given access to the IBM SaaS in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. Sufficient entitlements must be obtained to cover the number of Authorized Users given access to the IBM SaaS during the measurement period specified in Customer’s Proof of Entitlement (PoE) or Transaction Document.
- c. “Eligible Participant” is a unit of measure by which the IBM SaaS can be obtained. Each individual or entity eligible to participate in any service delivery program managed or tracked by the IBM SaaS is an Eligible Participant. Sufficient entitlements must be obtained to cover all Eligible Participants managed or tracked within the IBM SaaS during the measurement period specified in Customer’s Proof of Entitlement (PoE) or Transaction Document.  
For this IBM SaaS, an Eligible Participant includes only users flagged as active in the LMS and any users in the LCMS.
- d. “Instance” is a unit of measure by which the IBM SaaS can be obtained. An Instance is access to a specific configuration of the IBM SaaS. Sufficient entitlements must be obtained for each Instance

of the IBM SaaS made available to access and use during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document

### **3. Charges and Billing**

The amount payable for the IBM SaaS is specified in a Transaction Document.

#### **3.1 Set-Up**

Set-up charges will be specified in a Transaction Document.

#### **3.2 Partial Month Charges**

A partial month charge as specified in the Transaction Document may be assessed on a pro-rated basis..

#### **3.3 On Demand**

On-Demand options will be invoiced in the month the on-demand option is ordered by Customer at the rate set forth in the Transaction Document.

#### **3.4 Overages**

If Customer's actual usage of the IBM SaaS during the measurement period exceeds the entitlement stated on the PoE, then Customer will be invoiced for the overage, as set forth in the Transaction Document.

### **4. IBM SaaS Subscription Period Renewal Options**

Customer's PoE will set forth whether the IBM SaaS will renew at the end of the Subscription Period, by designating one of the following:

#### **4.1 Automatic Renewal**

If Customer's PoE states that Customer's renewal is automatic, Customer may terminate the expiring IBM SaaS Subscription Period by written request to Customer's IBM sales representative or IBM Business Partner, at least ninety (90) days prior to the expiration date as set forth in the PoE. If IBM or its IBM Business Partner does not receive such termination notice by the expiration date, the expiring Subscription Period will be automatically renewed for either one year or the same duration as the original Subscription Period as set forth in the PoE.

#### **4.2 Continuous Billing**

When the PoE states that Customer's renewal is continuous, Customer will continue to have access to the IBM SaaS and will be billed for the usage of the IBM SaaS on a continuous basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Customer will need to provide IBM or its IBM Business Partner with ninety (90) days written notice requesting that Customer's IBM SaaS be cancelled. Upon cancellation of Customer's access, Customer will be billed for any outstanding access charges through the month in which the cancellation took effect.

#### **4.3 Renewal Required**

When the PoE states that Customer's renewal type is "terminate", the IBM SaaS will terminate at the end of the Subscription Period and Customer's access to the IBM SaaS will be removed. To continue to use the IBM SaaS beyond the end date, Customer will need to place an order with Customer's IBM sales representative or IBM Business Partner to purchase a new Subscription Period.

### **5. Technical Support**

Baseline customer support is provided with the IBM SaaS offering and Enabling Software, as applicable, during the Subscription Period. The technical and customer support available is detailed at:

[www.ibm.com/software/support/kenexa/supportlrn.html](http://www.ibm.com/software/support/kenexa/supportlrn.html)

### **6. IBM SaaS Offering Additional Terms**

#### **6.1 Third Party Access**

Subject to the terms of this ToU regarding the use of IBM SaaS, Customer may permit third parties authorized by Customer to access the IBM SaaS ("Third Parties"). Customer must notify the Third Parties of terms relating to use of the IBM SaaS. Customer is responsible for the Third Parties' access to the IBM SaaS, including but not limited to a) any claims made by the Third Parties relating to the IBM SaaS, and b) any misuses of the IBM SaaS by the Third Parties. Customer shall defend, indemnify, and hold

harmless IBM for the use of IBM SaaS by the Third Parties. This obligation is not subject to any limitation of liability.

## **6.2 Safe Harbor Certification**

IBM abides by the U.S. - EU Safe Harbor Framework as set forth by the United States Department of Commerce regarding the collection, use and retention of information collected from the European Union. For more information about Safe Harbor or to access IBM's certification statement, go to <http://www.export.gov/safeharbor/>.

## **6.3 Return or Removal of Customer Data**

Upon Customer's written request following termination or expiry of either the ToU or the Agreement, IBM, subject to its backup and retention policies, will delete or return to Customer all Personal Data made available to the IBM SaaS.

## **6.4 Cookies**

Customer agrees that IBM may use cookies and tracking technologies to collect personally identifiable information in gathering usage statistics and information designed to help improve user experience and/or to tailor interactions with users in accordance with <http://www-01.ibm.com/software/info/product-privacy/index.html>. Where required by applicable law, Customer has notified the users and obtained their consent to do all of the above.

## **6.5 Data Processing**

For transactions performed in all EU Member States, Iceland, Liechtenstein, Norway and Switzerland, the following terms apply:

Customer agrees that IBM may process Content including any Personal Data across a country border to the following countries: England, Canada, China, Germany, India, Ireland, Mexico, Singapore, Vietnam and the USA.

Customer agrees that IBM may, on notice, vary this list of country locations when it reasonably determines it necessary for the provision of the Cloud Services.

When IBM's US-EU and Swiss-EU Safe Harbor Frameworks do not apply to a transfer of EEA or Swiss Personal Data, the parties or their relevant affiliates may enter into separate standard unmodified EU Model Clause agreements in their corresponding roles pursuant to EC Decision 2010/87/EU with optional clauses removed. All disputes or liability arising under these agreements, even if entered into by affiliates, will be treated by the parties as if the dispute or liability arose between them under the terms of this Agreement.

## **6.6 Derived Benefit Locations**

Where applicable, taxes are based upon the location(s) Customer identifies as receiving benefit of the IBM SaaS. IBM will apply taxes based upon the business address listed when ordering an IBM SaaS as the primary benefit location unless Customer provides additional information to IBM. Customer is responsible for keeping such information current and providing any changes to IBM.

## Appendix A

IBM Kenexa Learn on Cloud is a platform that enables a Customer to develop, provide, and track learning content. Customer may order one or a combination of any of the three IBM Kenexa Learn on Cloud products listed below:

- IBM Kenexa LCMS Premier on Cloud Author
- IBM Kenexa LMS on Cloud
- IBM Kenexa Hot Lava Mobile on Cloud

Initial implementation services are required for the IBM Kenexa LCMS Premier on Cloud Author and the IBM Kenexa LMS on Cloud products and will be addressed under a separate Statement of Work (SOW).

Initial implementation services for Hot Lava Mobile on Cloud are described below.

### 1. IBM Kenexa LCMS Premier on Cloud Author

IBM Kenexa LCMS Premier on Cloud Author includes the Author function that enables development of reusable content in a collaborative environment for multi-modal delivery; manages and reuses content with searching, client-based metadata, dynamic taxonomy, object tracking, and reporting capabilities; can import, tag, track, and manage external, or legacy, content; and can author content for single-sourcing. This IBM SaaS offering includes entitlement to one production site and one non-production site (i.e. a staging site)

#### 1.1 Optional Orderable Features for LCMS Premier on Cloud Author (*available after initial implementation services*)

- a. IBM Kenexa LCMS Premier on Cloud Dynamic Delivery  
Allows e-learning to be delivered directly from LCMS using AICC standards or other supported methods. Content is dynamically formatted at the time of delivery to meet the needs of the audience and the medium in which it is delivered.
- b. IBM Kenexa LCMS Premier on Cloud Additional Report  
Provides an additional report beyond the included standard supported reports. The report is limited to data contained in the standard database and does not include any modifications to the standard database.
- c. IBM Kenexa LCMS Premier on Cloud Additional Authoring Template  
Provides one additional template that contains standards for authoring content in support of specific Customer requirements.
- d. IBM Kenexa LCMS Premier on Cloud Additional Microsoft Content Conversion  
Provides one additional mapping file that enables the importing and conversion of a specified formatted Word or PowerPoint file into native LCMS format.
- e. IBM Kenexa LCMS Premier on Cloud Additional Language  
Provides an additional language pack for language support beyond the base language pack provided with IBM Kenexa LCMS Premier on Cloud Author.
- f. IBM Kenexa LCMS Premier on Cloud Additional Non-Production Hosted Site  
Entitles the client to an additional staging site they can use for internal testing or training purposes.

### 2. IBM Kenexa LMS on Cloud

A configurable Learning Management System to administer, document, track, report, and deliver courses in support of classroom, online, and mobile learning. Supports learning with and from colleagues and experts by using and integrating social software capabilities in a secure environment. This IBM SaaS offering includes entitlement to one production site and one non-production site (i.e. a staging site)

## 2.1 Optional Orderable Features for LMS on Cloud (*available after initial implementation services*)

- a. IBM Kenexa LMS on Cloud Human Resource Synchronization  
Enables Customer to sync the LMS users from their current HR information system. IBM will provide the format for the user import. Customer is responsible for providing user import in the specified format.  
Up to 8 hours of remote consulting services will be provided to support installation, configuration and data validation for this feature. These services expire 90 days from purchase regardless of whether all hours have been used.
- b. IBM Kenexa LMS on Cloud Data Import  
Enables the importing of historical training data into the LMS. IBM will provide the format for the historical data import. Customer is responsible for providing historical data import in the specified format using an Excel spreadsheet. Up to 8 hours of remote consulting services will be provided to support installation, configuration and data validation for this feature. These services expire 90 days from purchase regardless of whether all hours have been used.
- c. IBM Kenexa LMS on Cloud LDAP Support  
Integrates the LMS with a third party directory server using the LDAP protocol.
- d. IBM Kenexa LMS on Cloud Additional Adaptive Report  
Provides an additional report beyond the included standard supported reports. The report is limited to data contained in the standard database and does not include any modifications to the standard database.
- e. IBM Kenexa LMS on Cloud eCommerce Integration  
Enables the LMS to interface with eCommerce.
- f. IBM Kenexa LMS on Cloud Additional Language  
Provides an additional language pack for language support beyond the base language pack provided with IBM Kenexa LMS on Cloud.
- g. IBM Kenexa LMS on Cloud Additional Non-Production Hosted Site  
Entitles the client to an additional staging site they can use for internal testing or training purposes.

## 3. IBM Kenexa Hot Lava Mobile on Cloud

A mobile learning solution to develop, deliver and analyze the use of various types of device-independent mobile content to meet a variety of communications, mobile learning and performance support scenarios. Includes the ability to develop content once and deploy it to mobile devices and tablets.

Standard Hot Lava Mobile implementation includes remote configuration and setup of the following features:

- *IBM Kenexa Builder for Microsoft PowerPoint* component for authoring content to be delivered on mobile devices; and
- The *Hot Lava Mobile Delivery Engine* for publishing mobile content, editing user permissions for access, and tracking delivery of mobile content.

## Appendix B

### IBM Kenexa Learn on Cloud

IBM provides this SLA to its Customers subject to the following terms. The version of this SLA that is current at the commencement or renewal of the term of your subscription will apply. You understand that the SLA does not constitute a warranty to you.

#### 1. Definitions

- a. "Authorized Contact" means the individual you have specified to IBM who is authorized to submit Claims under this SLA.
- b. "Availability Credit" means the remedy IBM will provide for a validated Claim. The Availability Credit will be applied in the form of a credit or discount against a future invoice of subscription charges for the Service.
- c. "Claim" means a claim submitted by your Authorized Contact to IBM pursuant to this SLA that a Service Level has not been met during a Contracted Month.
- d. "Contracted Month" means each full month during the term of the Service measured from 12:00 a.m. Eastern US time on the first day of the month through 11:59 p.m. Eastern US time on the last day of the month.
- e. "Customer" means an entity subscribing for the Service directly from IBM and which is not in default of any material obligations, including payment obligations, under its contract with IBM for the Service.
- f. "Downtime" means a period of time during which production system processing for the Service has stopped and all of your users are unable to use all aspects of the Service for which they have appropriate permissions. Downtime does not include the period of time when the Service is not available as a result of:
  - (1) Planned System Downtime.
  - (2) Events or causes beyond IBM's control (e.g., natural disaster, internet outages, etc.).
  - (3) Problems with Customer or third party applications, equipment or data.
  - (4) Customer or third party acts or omissions (including anyone gaining access to the Service by means of your passwords or equipment).
  - (5) Failure to adhere to required system configurations and supported platforms for accessing the Service.
- g. "Event" means a circumstance or set of circumstances taken together, resulting in a failure to meet a Service Level.
- h. "Planned System Downtime" means a scheduled outage of the Service for the purpose of service maintenance.
- i. "Service" means the IBM Kenexa service(s) to which this SLA applies. This SLA applies to each Service individually and not in combination.
- j. "Service Level" means the standard set forth below by which IBM measures the level of service it provides in this SLA.

#### 2. Availability Credits

- a. In order to be eligible to submit a Claim you must have logged a support ticket for each Event with the IBM customer support help desk for the applicable Service, in accordance with IBM procedure for reporting Severity 1 support issues. You must provide all necessary detailed information about the Event and reasonably assist IBM with the diagnosis and resolution of the Event to the extent required for Severity 1 support tickets. Such ticket must be logged within 24 hours of your first becoming aware that the Event has impacted your use of the Service.
- b. Your Authorized Contact must submit your Claim for an Availability Credit no later than three (3) business days after the end of the Contracted Month which is the subject of the Claim.

- c. Your Authorized Contact must provide to IBM all reasonable details regarding the Claim, including but not limited to, detailed descriptions of all relevant Events and the Service Level claimed not to have been met.
- d. IBM will measure and report internally total combined Downtime during each Contracted Month. For each valid Claim, IBM will apply the highest applicable Availability Credit based on the total combined Downtime during each Contracted Month. IBM will not be liable for multiple Availability Credits for the same Event in the same Contracted Month.
- e. The total Availability Credits awarded with respect to any Contracted Month will not, under any circumstance, exceed 10 percent (10%) of one twelfth (1/12th) of the annual charge paid by you to IBM for the Service.
- f. IBM will use its reasonable judgment to validate Claims based on information available in IBM's records, which will prevail in the event of a conflict with data in your records.
- g. THE AVAILABILITY CREDITS PROVIDED TO YOU IN ACCORDANCE WITH THIS SLA ARE YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM.

**3. Service Levels – Availability of Service during a Contracted Month**

Achieved Service Level (during a Contracted Month)	Availability Credit (% of Monthly Service Invoice for Contracted Month which is the subject of a Claim)
93.0% - 99.2%	5%
Less than 93%	10%

“Achieved Service Level” percentage is calculated as: (a) the total number of minutes in a Contracted Month (minus the minutes of Planned System Downtime), minus (b) the total number of minutes of non-scheduled Downtime in a Contracted Month, divided by (c) the total number of minutes in a Contracted Month (minus the minutes of Planned System Downtime), with the resulting fraction expressed as a percentage.

**4. Exclusions**

This SLA is made available only to IBM Customers. This SLA does not apply to the following:

- Beta and trial Services.
- Non-production environments, including but not limited to test, staging, disaster recovery, or QA.
- Claims made by an IBM Customer’s users, guests, participants and permitted invitees of the Service.
- If you have breached any material obligations under the Terms of Use, Acceptable Use Policy or your contract for the Service, including without limitation, breach of any payment obligations.