



## IBM Terms of Use – SaaS Specific Offering Terms

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### IBM Kenexa Skills Assessments

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 Skills Assessments on Cloud
- IBM Kenexa Skills Assessments on Cloud Pre-Paid
- IBM Kenexa Skills Assessments On Cloud Enterprise
- IBM Kenexa Skills Assessments On Cloud Staffing Industry

#### 2. Charge Metrics

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

- a. “Event” is a unit of measure by which the IBM SaaS can be obtained. Event entitlements are based on the number of occurrences of a specific event related to the use of the IBM SaaS. Event entitlements are specific to the IBM SaaS and the type of event may not be exchanged, interchanged, or aggregated with other Event entitlements of another IBM SaaS or type of event. Sufficient entitlements must be obtained to cover every event that occurs during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.
- b. “Location” is a unit of measure by which the IBM SaaS can be obtained. A Location is a single physical site corresponding with Licensee's business address for such physical site. Sufficient entitlements must be obtained to cover the number of Locations accessing the IBM SaaS 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 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.

##### 3.2 Pay per Use

For each assessment completed by a test taker, Customer will be charged per the rate and terms specified in the Transaction Document.

#### 4. Term and Renewal Options

##### 4.1 Term

The term of the IBM SaaS will begin on the date that IBM notifies Customer that Customer have access to the portions of the IBM SaaS that are described in the Transaction Document. The PoE or Transaction Document will confirm the exact date of the start and end of the term, as well as how or whether the term will renew. Customer is permitted to increase Customer's level of use of the IBM SaaS during the term by contacting IBM or an IBM Business Partner. IBM will confirm the increased level of usage in a Transaction Document.

##### 4.2 IBM SaaS Term Renewal Options

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

#### **4.2.1 Automatic Renewal**

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

#### **4.2.2 Continuous Billing**

When the Transaction Document notes that Customer's billing 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 billing basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Customer will need to provide IBM or an 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.

#### **4.2.3 Renewal Required**

When the Transaction Document notes that Customer renewal type is "terminate", the IBM SaaS will terminate at the end of the term 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 term.

### **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/supportasm.html](http://www.ibm.com/software/support/kenexa/supportasm.html)

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

#### **6.1 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/>.

#### **6.2 Normative Data**

Notwithstanding anything to the contrary, for normative research, analyses and reporting purposes only, IBM may retain and use the Customer content provided to IBM under this TOU in aggregated, anonymous format (i.e., so that Customer cannot be identified as the source of the confidential information and so that personally identifiable information allowing the identification of individual employees and/or applicants is removed). The provisions of this section will survive the termination or expiration of the transaction.

#### **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 Data Collection**

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.

## Appendix A

IBM Kenexa Skills Assessments is a library of more than 1,500 different tests designed to help employers and recruiters determine candidates' skills as Basic, Intermediate or Advanced. Customers purchase entitlements to access the entire library or, with regard to IBM Kenexa Skills Assessments On Cloud Staffing Industry, the staffing suite.

IBM Kenexa Skills Assessments are fully-automated with 24x7 online access, automated scoring and automated reporting. Customer's designated users will have access to detailed Assessment results.

### Specific IBM SaaS Offering Features:

- IBM Kenexa Skills Assessments on Cloud – automated skills assessments that includes administration and generated report(s). Bill on a per use basis.
- IBM Kenexa Skills Assessments on Cloud Pre-Paid – automated skills assessments that includes administration and generated report(s). Purchased prior to use in a block of a predetermined number for use within the three-year subscription period specified in PoE or Transaction Document.
- IBM Kenexa Skills Assessments On Cloud Enterprise – automated skills assessments that includes administration and generated report(s). Allows for use within the Customer's Enterprise during the Subscription Period specified in PoE or Transaction Document. Customer is entitled to a defined number of assessments as set forth in the PoE or Transaction Document. Customer will be charged for any additional tests administered at the rate specified in in the PoE or Transaction Document.
- IBM Kenexa Skills Assessments On Cloud Staffing Industry - automated skills assessments that includes administration and generated report(s). Billing is site-based (only locations signed up are charged) and allows for an unlimited number of assessments per location provided that it is used by individuals in the staffing industry to place candidates in 3<sup>rd</sup> party job positions. An organization is in the Staffing Industry if its primary offering is temporary or temporary-to-permanent placement of personnel with a third party organization, as well as government funded entities that assist individuals in re-entering the workforce. These government funded entities include Workforce Development Offices, One-Stops, and Goodwill Offices.