



IBM Terms of Use – SaaS Specific Offering Terms

IBM Kenexa LCMS Premier on Cloud

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: <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, Client agrees to the ToU.

The ToU is governed by the IBM International Passport Advantage Agreement, the IBM International Passport Advantage Express Agreement, or the IBM International Agreement for Selected IBM SaaS Offerings, as applicable ("Agreement") and together with the ToU make the complete agreement.

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 Delivery on Cloud
- 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 Microsoft Content Conversion
- IBM Kenexa LCMS Premier on Cloud Additional Language
- IBM Kenexa LCMS Premier on Cloud Additional Non-Production Hosted Site
- IBM Kenexa LCMS Premier on Cloud Express

2. Charge Metrics

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

- Access** – is a unit of measure by which the IBM SaaS may be obtained. An Access is the right to use the IBM SaaS. Client must obtain a single Access entitlement in order to use the IBM SaaS during the measurement period specified in the Client's Proof of Entitlement (PoE) or Transaction Document.
- Authorized User** – is a unit of measure by which the IBM SaaS can be obtained. Client 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 the Client's PoE or Transaction Document.
- 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 the Client's PoE or Transaction Document. For this IBM SaaS, an Eligible Participant is any user in the LCMS.
- 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 the Client's 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 Charges

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

3.2 On Demand Charges

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

4. Term and Renewal Options

The term of the IBM SaaS begins on the date IBM notifies Client of their access to the IBM SaaS, as documented in the PoE. The PoE will specify whether the IBM SaaS renews automatically, proceeds on a continuous use basis, or terminates at the end of the term.

For automatic renewal, unless Client provides written notice not to renew at least 90 days prior to the term expiration date, the IBM SaaS will automatically renew for the term specified in the PoE.

For continuous use, the IBM SaaS will continue to be available on a month to month basis until Client provides 90 days written notice of termination. The IBM SaaS will remain available to the end of the calendar month after such 90 day period.

5. Technical Support

During the subscription period and after IBM notifies Client that access to the IBM SaaS is available, technical support for the IBM SaaS is provided via email and an online problem reporting system. Any enhancements, updates, and other materials provided by IBM as part of any such technical support are considered to be part of the IBM SaaS and therefore governed by this ToU. Technical support is included with the IBM SaaS and is not available as a separate offering. Support tickets will be assigned a severity level based on the table below:

| Severity | Severity Definition | Response Time Objectives During Support Hours |
|----------|--|---|
| 1 | Critical business impact/service down: Business critical functionality is inoperable or critical interface has failed. This usually applies to a production environment and indicates an inability to access services resulting in a critical impact on operations. This condition requires an immediate solution. | Within 2 hours |
| 2 | Significant business impact: A service feature or function is severely restricted in its use or Client is in jeopardy of missing business deadlines. | Within 3 hours |
| 3 | Minor business impact: Indicates the service or functionality is usable and it is not presenting a critical impact on operations. | Within 1 business day |
| 4 | Minimal business impact: An inquiry or non-technical request. | Within 2 business days |

Appendix A

1. IBM SaaS Description

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 includes entitlement to one production site and one non-production site.

"Non-Production" means the IBM SaaS can be used by Client only for internal non-production activities, including testing, staging, quality assurance activity and/or developing internally-used additions or extensions to the IBM SaaS using published application programming interfaces. Client is not authorized to use any part of the IBM SaaS for any other purpose without acquiring the appropriate production entitlements. The SLAs do not apply for non-production sites.

2. Optional / Additional Features for LCMS Premier on Cloud Author (available after initial implementation services)

- IBM Kenexa LCMS Premier Delivery on Cloud
Required for Clients receiving e-learning delivery via the AICC standard, or content using delivery APIs. Content is dynamically formatted at the time of delivery.
- IBM Kenexa LCMS Premier on Cloud Additional Authoring Template
Provides one additional template that contains standards for authoring content in support of specific Client requirements.
- 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.
- 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.
- 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.
- IBM Kenexa LCMS Premier on Cloud Express
Entitles Client to functions that help generate new e-learning content using the LCMS with little or no formal user training. Client is required to have five or more IBM Kenexa LCMS Premier on Cloud Author entitlements to be eligible to order this IBM SaaS.

Appendix B

IBM provides the following availability service level agreement ("SLA") for the IBM SaaS as specified in a PoE. The SLA is not a warranty. The SLA is available only to Client and applies only to use in production environments.

1. Availability Credits

Client must log a Severity 1 support ticket with the IBM technical support help desk within 24 hours of first becoming aware of an event that has impacted the IBM SaaS availability. Client must reasonably assist IBM with any problem diagnosis and resolution.

A support ticket claim for failure to meet an SLA must be submitted within three business days after the end of the contracted month. Compensation for a valid SLA claim will be a credit against a future invoice for the IBM SaaS based on the duration of time during which production system processing for the IBM SaaS is not available ("Downtime"). Downtime is measured from the time Client reports the event until the time the IBM SaaS is restored and does not include time related to a scheduled or announced maintenance outage; causes beyond IBM's control; problems with Client or third party content or technology, designs or instructions; unsupported system configurations and platforms or other Client errors; or Client-caused security incident or Client security testing. IBM will apply the highest applicable compensation based on the cumulative availability of the IBM SaaS during each contracted month, as shown in the table below. The total compensation with respect to any contracted month cannot exceed 10 percent of one twelfth (1/12th) of the annual charge for the IBM SaaS.

2. Service Levels

Availability of the IBM SaaS during a contracted month

| Availability during a contracted month | Compensation (% of monthly subscription fee* for contracted month that is the subject of a claim) |
|--|--|
| 93.0 – 99.2% | 5% |
| Less than 93% | 10% |

* If the IBM SaaS was acquired from an IBM Business Partner, the monthly subscription fee will be calculated on the then-current list price for the IBM SaaS in effect for the contracted month which is the subject of a claim, discounted at a rate of 50%. IBM will make a rebate directly available to Client.

Availability, expressed as a percentage, is calculated as: the total number of minutes in a contracted month minus the total number of minutes of Downtime in a contracted month divided by the total number of minutes in the contracted month.