

IBM Kenexa Workplaces Agreement

Customer Name: As shown on the Order Form (“Customer”, also called “you” and “your”).

This IBM Kenexa Workplaces Agreement (the “Agreement”) governs your acquisition and use of the IBM solution consisting of the fixed-price, IBM Kenexa Workplaces Software as a Service product and related professional services described in Section 2 (Service Description) of this Agreement and to be provided by IBM (the “Services”).

You agree that you do not require, and will not submit, a Customer purchase order for the Services and that your acceptance of IBM’s quote and order form (“Order Form”) containing specific details related to each individual transaction constitutes acceptance of the terms and conditions of this Agreement. Your use of the Services, or allowing others to do so, or making any payment for the Services also constitutes acceptance of the terms and conditions of this Agreement. To the extent there is any contradiction, inconsistency or ambiguity between the terms of the Order Form and this Agreement, the terms of the Order Form shall prevail.

1. Scope

Under this Agreement IBM will provide Services related to an employee survey for the number of Customer employees nominated in the Order Form. Services will include overall project management, design and set-up of survey instrument, communication templates, survey administration, and reporting of results. All Services are provided in English unless otherwise specified on the Order Form.

In addition, IBM will:

- a. Perform the work remotely, except for any project-related activity which IBM determines would be best performed at your New Zealand facility. Such activity will be billable to you.
- b. Provide the Services during normal business hours (8:30am to 5:15pm, local time, Monday through Friday), except holidays. If necessary, you will provide after-hours access to your facilities to IBM personnel. Out-of-town personnel may work hours other than those defined as normal business hours to accommodate their travel schedules.

2. Service Description

A. Project Management Services

- 1) IBM will provide project management services, as identified on the Order Form, or in a planning document to lead the planning and implementation of the Services. Services will begin with project initiation through project completion as indicated by the project plan.
- 2) A project conference call (“Project Kick-Off”) will be held on a date to be determined by the parties and identified in the Order Form.
- 3) IBM will create and manage a detailed project plan, including critical path timing and planned deliverables.
- 4) Consulting hours, that are additional to the project management services identified on the Order Form, are not included in the charges. The cost of such consulting hours will be calculated and listed on the Order Form where selected by the Customer.

B. Survey Design

- 1) Customer will use the IBM Kenexa NZ Workplaces Survey or the IBM Kenexa NZ Best Workplaces Survey, as specified on the Order Form, consisting of IBM Kenexa’s best practice survey items.
- 2) If nominated on the Order Form, the charges (as specified on the Order Form) may include up to an additional ten (10) survey items. Items selected shall be communicated to IBM’s project team during Project Kick-Off for review and inclusion.
- 3) There will be one (1) Survey Version designed and available online.
- 4) A Survey Version is defined as any unique set of items and demographics in a particular order. Re-ordering of items or demographics within the survey may constitute a different Survey Version.
- 5) Any translation services are not included in the charges. The cost of such services will be calculated and billed in accordance with optional services listed below.

C. Trending to Historical Data (NOTE: ONLY APPLICABLE IF NOMINATED ON THE ORDER FORM)

- 1) IBM will provide One (1) year of historical data to be included in the reporting.
- 2) A 2nd year of historical data may be purchased as an additional optional service.

D. Benchmarking (NOTE: ONLY APPLICABLE IF NOMINATED ON THE ORDER FORM)

- 1) Charges for this project include the provision of IBM’s benchmarking data. The Order Form will list the number of benchmarks provided by IBM to be included in the standard report/s.
- 2) Additional benchmarks may be purchased as an additional optional service.

Benchmarking data purchased by you from IBM is for your exclusive, internal use only. You will not transfer, loan or sell benchmarking data to any third party without the prior written consent of IBM and you agree to keep it secure and confidential.

- E. Communication Templates
- 1) IBM will provide templates for Customer to modify for communications purposes.
 - 2) With the exception of survey invitations for attributed surveys, all communications will be sent by Customer.
- F. **Demographics (NOTE: ONLY APPLICABLE IF NOMINATED ON THE ORDER FORM)**
- 1) IBM will receive from the Customer one (1) final set of demographic options in an agreed format to upload into the survey.
 - 2) The Customer will ensure that there will be no organisational changes or updates to occur after receipt of the final data file.
 - 3) If changes to demographics become necessary after signoff milestones, such services will be priced additionally and may delay the timing of any deliverables. Sign off milestones will be identified in the planning documents.
- G. Survey Administration
- 1) IBM will conduct one (1) point-in-time survey administration for all employees.
 - 2) The schedule for survey administration will be mutually agreed upon.
 - 3) Where nominated on the Order Form the charges includes the survey having a number of attributed demographic questions (number to be nominated on the Order Form), where IBM will pre-populate the responses for these questions and IBM will create generic survey links for Customer to send on to participants.
 - 4) Where the survey includes attributed demographics, IBM will receive one (1) final "staff list" from the Customer in an agreed format to upload into the survey.
- H. **Paper Surveys (NOTE: ONLY APPLICABLE IF NOMINATED ON THE ORDER FORM)**
- 1) One (1) standard paper survey version will be created in English.
 - 2) Production and data entry costs for a nominated number of pen/paper surveys received (number to be nominated on the Order Form) are included in the charges.
- I. Online Support
- 1) IBM support to Customer's end users will be available via email during the survey administration period to be identified in the planning document.
- J. Online Data Reporting
- 1) IBM will provide Customer access to the online reporting tool, which includes:
 - i. Response rate tracking.
 - ii. All descriptive reporting (section scores; survey item scores, high/low scores).
 - iii. Gap analysis (biggest gaps between scores across any question or demographic combination of choice).
 - iv. Demographic analysis (drill down analysis) where available.
 - v. Cross tabbing functions (combine and/or filter demographics as required) where available.
 - vi. Comments reporting (verbatim comments, viewable by question and any demographic).
 - vii. Consolidated reporting (authorised users can print or save file to a Consolidated Report of a particular group's results).
 - viii. Custom report wizard (select specific questions to appear together on a single graph).
 - 2) Access to the online reporting tool is provided via username and password, and is set up according to differential access privileges (e.g., whole of organisation only, a manager's own team and no other).
 - 3) The charges include the provision of up to five (5) unique log-ins. Additional log-ins may be purchased as optional services.
- K. **Key Driver Analysis (NOTE: ONLY APPLICABLE IF NOMINATED ON THE ORDER FORM)**
- The charges include the provision of a Key Driver Analysis at total organisational level. Key Driver Analysis is a high-level analytical report designed to help Customer target efforts by identifying the key leverage points for improving employee engagement levels.
- L. **Comments Analysis (NOTE: ONLY APPLICABLE IF NOMINATED ON THE ORDER FORM)**
- The charges include the provision of Comments Analysis at total organisation level.
- M. **Executive Presentation of Results and Recommendations (NOTE: ONLY APPLICABLE IF NOMINATED ON THE ORDER FORM)**
- 1) The charges include the delivery of one (1) executive summary presentation of overall results, including key findings, priorities analysis and recommendations for organisational improvement. The Executive Summary will be presented by an IBM consultant and provided in the form of a PowerPoint presentation.
 - 2) Related IBM travel expenses and disbursements will be billed additionally at direct cost to Customer.

N. IBM Kenexa Best Workplaces (NOTE: THIS SECTION N ONLY APPLIES TO CUSTOMERS PARTICIPATING IN THE “BEST WORKPLACES” COMPETITION)

- 1) You agree to participate in the IBM Kenexa Best Workplaces program in good faith. IBM reserves the right to investigate and disqualify from the competition any organization considered to have acted in a way that brings the validity of the survey into disrepute.
- 2) If, having registered, you decide not to proceed with your survey, IBM may require payment for the Basic Survey Setup and Administration charge (in the amount of \$995 plus GST), which you agree to pay. You further agree to pay for any additional work undertaken by IBM in respect of additional options chosen on the registration.
- 3) Benchmarking data purchased by you from IBM is for your exclusive, internal use. You understand that benchmarking data cannot be transferred, loaned or sold by you to any third party without the prior written consent of IBM and you agree to keep it secure and confidential.
- 4) IBM agrees that only aggregated survey questionnaire data of participating organizations will be used for the purposes of providing benchmarking data, and that in the case of industry sector benchmarking data, this aggregated survey questionnaire data will only be provided where the number of organizations in any sector grouping is five or more and where the number of respondents from any single organization within that industry sector benchmarking group does not exceed 50% of the total number of respondents making up that industry sector group as a whole.
- 5) Customer understands and accepts the eligibility rules that apply in respect of the awards component of the survey, the selection of category finalists and the overall winner, and as detailed on the IBM Kenexa Best Workplaces website, including requirements around:
 - i. All employees must be given the opportunity to complete the survey, including full-time and part-time employees. It may include contractors or casuals and comply with the eligibility rules.
 - ii. Customer must achieve a response rate as specified on the Order Form.
 - iii. The organisation must have been operating in the New Zealand market for at least twelve (12) months.
 - iv. Only responses from New Zealand-based staff are considered when finalists are selected. Employees based offshore may participate and will be viewable for reporting purposes, however when finalists are selected, responses from overseas employees will be excluded.
 - v. Participation is in good faith and staff exercise their free-will to participate.
 - vi. Survey period is within the competition period in any given year.
- 6) You acknowledge and agree that the sponsors of the IBM Kenexa Best Workplaces survey may contact you from time to time regarding their services and that you will have the opportunity to remove yourself from each sponsor's list upon first contact.
- 7) You acknowledge and agree that IBM may publish your name as one of the participants in the survey and/or as one of the participants in an industry sector benchmarking group unless you specifically, and in writing, request that it not be published in advance of the Project Kick-off.
- 8) You agree that IBM may use the data completed by you to allow IBM the ability to offer, for example, benchmarking services to clients.
- 9) As a client of IBM, you will automatically be placed on IBM's email newsletter list. You can request to be removed from this list at any time.
- 10) You agree that if you are selected as one of the Category Finalists or Overall Winner your information may be used as material for the feature stories on the winners of the awards.

O. Data Delivery/Data Storage

IBM will archive and maintain electronic data from each administration for a period of one (1) year after delivery of data for that administration.

P. Tool Training

The charges of this project includes one (1) phone-based, up to thirty (30) minute training session on IBM's tools. The training session can accommodate up to ten (10) participants.

3. Additional Optional Services

Additional Optional services are available and will be listed on the Order Form where selected by the Customer.

4. Your Responsibilities

You will have all prerequisite hardware and software as required by IBM to be used during the provision of the solution. This does not include any hardware or software normally used by IBM consultants in the performance of their day-to-day responsibilities with IBM.

If making available any facilities, software, hardware or other resources, you will obtain any licenses or approvals related to these resources that may be necessary for IBM and its subcontractors to perform the Services. IBM will be relieved of its obligations that are adversely affected by your failure to promptly obtain such licenses or approvals. You agree to reimburse IBM for any reasonable costs and other amounts, including costs of litigation and settlements, which IBM may incur from your failure to obtain these licenses or approvals.

5. Materials Ownership and License

IBM or its suppliers will own the copyright in Materials created as part of the Services. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (with Customer's Enterprise only). "Materials" means literary works or other works of authorship (such as code, documentation, reports, assessments, surveys, global normative data and similar works) that IBM may deliver to Customer as part of the Service.

6. Confidentiality and Data Protection

The Service is designed to protect the proprietary content that you may input into the Service and to provide for access and use of such content only in accordance with the provision of the Services. Except as otherwise specified in Section 2 (Service Description) above, the Services limit access and use of your proprietary content to IBM employees and contractors as needed to deliver the Services. IBM will not disclose your proprietary content, and will return or destroy your content upon the expiration or cancellation of the Services, or earlier upon your request. IBM reserves the right to charge for certain activities performed at your request or direction (such as delivering content in a specific format).

The Services comply with the US-EU and US-Swiss Safe Harbor Frameworks, unless otherwise specified in Section 2 (Service Description). IBM agrees to provide you notice of any unauthorised third party access to your content of which we become aware and to provide reasonable efforts to remediate identified security vulnerabilities. If your content is lost or damaged, IBM will assist you in restoring the content from your last available back up copy in compatible format.

Some of your content or other data may be subject to governmental regulation or otherwise may require security measures beyond those specified by IBM for the Service. You agree not to input such content in the Service or to otherwise provide such data in conjunction with other Services unless we have first agreed in writing to provide additional required security measures. You are responsible for all necessary permissions and notifications (including those relating to individuals' information) to include the content in the Service and you grant IBM permission to use, store and process the content in the delivery of the Services.

7. Estimated Schedule

The start date and end date of the Services are as specified on the Order Form. IBM will use commercially reasonable efforts to carry out its obligations in accordance with any dates or time periods referred to or specified in the Order Form. However, unless otherwise expressly stated in the Order Form, the parties agree that any date or time period stated in the Order Form is intended for planning and estimating purposes only, and is not contractually binding.

8. Charges & Taxes

The Service will be conducted on a fixed price basis. The fixed price for providing the Services defined in this Agreement will be as specified on the Order Form. This fixed price is exclusive of any travel and living expenses and other reasonable expenses incurred in connection with the Services.

You agree to pay IBM for the Services, including the cost of additional reporting options selected by you, in advance (with the exception of disbursements which will be invoiced on completion of the survey), plus applicable taxes, travel and living expenses, and other reasonable expenses incurred in connection with the Services. Payment is due upon receipt of invoice, payable as IBM specifies in its invoice. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties. In the event of late payment, IBM reserves the right to suspend the provision of Services and to charge interest on amounts overdue.

If, having registered, you decide not to proceed with your survey IBM may require payment for the basic survey setup and administration charge (in the amount of \$NZ995 plus GST) which you agree to pay. You further agree to pay for any additional work undertaken by IBM in respect of additional options chosen on the registration.

All charges are exclusive of any applicable taxes. If any government imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Service itself, that is not otherwise accounted for in the amount payable, you agree to pay it when IBM invoices you. If the rate of goods & services tax changes IBM may adjust the charge or other amount payable to take into account that change for the date the change becomes effective.

In the event of a dispute, you cannot withhold 100% of any monies outstanding, only the percent directly relating to the disputed deliverable or service component.

9. Liability and Indemnity

IBM's entire liability for all claims in the aggregate arising from your use of the Services acquired hereunder will not exceed the amount of any actual direct damages up to the amounts paid in the prior twelve (12) months for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries and contractors. IBM will not be liable for special, incidental, exemplary, indirect or economic consequential damages, lost profits, business, revenue, goodwill, or anticipated savings.

If a third party asserts in a litigation against you that a Service acquired hereunder infringes that party's patent or copyright, IBM will defend you against that claim and pay damages that a court finally awards against you or that are included in a settlement approved by IBM, provided that you promptly notify IBM in writing of the claim, supply information requested by IBM, and allow IBM to control the defense and settlement. IBM reserves the right to modify or replace the Service with an equivalent non-infringing one or, if replacement is not reasonably available, to discontinue the Service and provide a credit for any pre-paid unexpired term. IBM

has no liability for claims that include, in whole or part, items not provided by IBM. You are responsible for any violation of law or any third party rights caused by your content or, except as provided in this paragraph, your use of the Service.

10. Warranties and Disclaimers

IBM warrants it will provide the Service using commercially reasonable care and skill in accordance with Section 2 (Service Description) above. The warranty period is the term of the Service.

IBM DOES NOT WARRANT UNINTERRUPTED OR ERROR- FREE OPERATION OF A SERVICE. THESE WARRANTIES ARE THE EXCLUSIVE WARRANTIES FROM IBM. THEY REPLACE ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

The warranties specified in this clause are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited to the extent permitted by the applicable legislation. The Consumer Guarantees Act 1993 will not apply in respect of any goods or services which IBM provides, if you acquire the goods or services for the purposes of a business as defined in that Act.

11. Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to your business, including those relating to the Services that you acquire under this Agreement or that IBM's provision of or your receipt of particular Services under this Agreement meet the requirements of such laws. Neither party is obligated to take any action that would violate applicable law. Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

12. Termination

You may terminate a project on written notice to IBM. IBM may terminate a project if you do not meet your obligations concerning it. Upon termination, IBM will stop its work in an orderly manner as soon as practical. You agree to pay IBM for all Services IBM provides and any materials IBM delivers through the project's termination. Payment includes any charges IBM incurs in terminating contracts.

13. General

IBM may use global resources (personnel and resources in locations worldwide) and third party suppliers to support the delivery of the Service.

Assignment of this Agreement and the rights and obligations under it, including entitlements to the Service, is not permitted except to a subsidiary or to a successor organisation by merger or acquisition. Assignment by IBM in conjunction with the sale of the portion of IBM's business that includes the Service is not restricted. IBM is also permitted to assign its rights to payments without obtaining Customer's consent.

Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

Electronic Communications – To the extent permitted under applicable law, each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

Amendment – Any amendment to this Agreement will not be effective unless agreed in writing and signed by both parties. Additional or different terms in any written communication from you (such as an order) are void.

Neither party is responsible for failure to fulfil any obligation due to causes beyond its control.

No action may be brought by either party more than two (2) years after the cause of action arose or, for non-payment, more than two (2) years after the due date of the last payment obligation.

The rights, duties, and obligations of each party are valid only in New Zealand except that all licenses are valid as specifically granted. Both parties agree to the application of the laws of New Zealand to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

The Order Form and this Agreement are the complete agreement regarding the Services, and replace any prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between you and IBM regarding the solution. Additional or different terms in any written communication from you are void.