

IBM Danmark ApS
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Complete Agreement: This Cloud Services Agreement (CSA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this CSA (together, the Agreement) under which Client may order Cloud Services, which may consist of IBM Cloud Services or other labor based Services to support use of Cloud Services IBM provides (IBM Products) or cloud or other services a third party provides that Client acquires from IBM (Non-IBM Products).

Transaction Documents: Transaction Documents (TDs) provide the specifics of transactions, such as charges and a description of and information about the IBM Products and Non-IBM Products. Examples of TDs include statements of work, service descriptions, ordering documents and invoices. There may be more than one TD applicable to a transaction.

Attachments: Documents identified as Attachments provide supplemental terms that apply across certain types of transactions such as a solution attachment.

In the event of conflict, an Attachment prevails over this CSA and a TD prevails over both the CSA and any Attachment. Any conflicting terms in an Attachment or TD that override terms of this CSA will be identified in the TD or Attachment accepted by the Client and only apply to the specific transaction.

1. Cloud Services

a. IBM Cloud Services	<ul style="list-style-type: none"> IBM Cloud Services are "as a service" IBM offerings that IBM makes available via a network, such as software as a service, platform as a service, infrastructure as a service, or other network delivered services. Each IBM Cloud Service is described in a TD. IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance. Technical support and service level commitments, if any, are specified in an Attachment or TD.
b. Non-IBM Products	<ul style="list-style-type: none"> IBM may offer Non-IBM Product, or an IBM Product may enable access to a Non-IBM Product. A TD will identify any applicable third party terms that govern Client's use of Non-IBM Products. Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. Third-party terms and privacy practices govern use of a Non-IBM Cloud Service or other Service, including Content Client may provide, grant access to or input to. IBM will invoice Client for charges due and submit Client's order details to the third-party provider for the enablement and delivery of the Non-IBM Product. IBM is not a party to any third party agreement and is not responsible for Non-IBM Products. Access to ongoing Non-IBM Products may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM Products.
c. Order Acceptance	<ul style="list-style-type: none"> Client accepts the applicable Attachment or TD for Cloud Services by ordering, enrolling, using, or making a payment. IBM accepts Client's order by confirming the order or enabling access.
d. What IBM Provides	<ul style="list-style-type: none"> IBM provides the facilities, personnel, equipment, software, and other resources necessary for IBM to provide IBM Cloud Services. IBM provides generally available user guides and documentation to support Client's use of IBM Cloud Services.
e. Enabling Software	<ul style="list-style-type: none"> Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD.

	<ul style="list-style-type: none"> Enabling Software is not part of the Cloud Service and Client may use Enabling Software only in connection with use of the Cloud Service in accordance with any licensing terms specified in a TD. The licensing terms will specify applicable warranties, if any. Otherwise, Enabling Software is provided as is, without warranties of any kind.
f. What Client Provides	<ul style="list-style-type: none"> Client will provide hardware, software and connectivity to access and use the Cloud Services, including any required Client-specific URL addresses and associated certificates.
g. Right to Use and Client Responsibilities	<ul style="list-style-type: none"> Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires. Client is responsible for the use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
h. Acceptable Use Terms	<ul style="list-style-type: none"> Cloud Services may not be used to undertake any activity or host Content that: <ul style="list-style-type: none"> (1) is unlawful, fraudulent, harmful, malicious, obscene, or offensive; (2) threatens or violates the rights of others; (3) disrupts or gains (or intends to disrupt or gain) unauthorized access to data, services, networks, or computing environments within or external to IBM; (4) sends unsolicited, abusive, or deceptive messages of any type; or (5) distributes any form of malware. Client may not use Cloud Services: i) for crypto-mining, unless otherwise agreed by IBM in writing; or ii) if failure or interruption of the Cloud Services could lead to death, serious bodily injury, or property or environmental damage. Client may not: <ul style="list-style-type: none"> (1) reverse engineer any portion of a Cloud Service; (2) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or (3) combine a Cloud Service with Client's value add to create a Client-branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.
i. Preview Cloud Services	<ul style="list-style-type: none"> Cloud Services or features of Cloud Services are considered "preview" when IBM makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality. Examples of preview Cloud Services include beta, trial, no-charge, or preview-designated Cloud Services. Any preview Cloud Service is excluded from available service level agreements and may not be supported. IBM may change or discontinue a preview Cloud Service at any time and without notice. IBM is not obligated to release preview Cloud Services or make an equivalent service generally available. IBM may provide Client opportunities to voluntarily provide feedback in connection with the use of IBM Products, which IBM may use for any purpose.

2. Content and Data Protection

a. Content Client Provides	<ul style="list-style-type: none"> Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to IBM Cloud Services or information or data Client may provide, make available or grant access to, in connection with IBM providing other Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the IBM Cloud Services or other Services. Use of the IBM Cloud Services or other Services will not affect Client's ownership or license rights in Content.
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b. Use of Content	<ul style="list-style-type: none"> IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the applicable IBM Cloud Service or other Services. IBM will treat Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services or perform other Services.
c. Client Responsibilities	<ul style="list-style-type: none"> Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services or to provide other Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services or use by IBM in providing other Services. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services or to provide other Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services or provide or allow access of Content to IBM to provide Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures. Client is responsible for adequate back-up of Content on Client managed systems prior to providing or allowing access to IBM to provide Services.
d. Data Protection	<ul style="list-style-type: none"> IBM Data Security and Privacy Principles (DSP), at http://www.ibm.com/cloud/data-security, apply for generally available standard IBM Cloud Services and other Services. Specific security features and functions of an IBM Cloud Service or other Services will be described in the applicable Attachment or TD. Client is responsible for selecting, ordering, enabling, and using available data protection features appropriate to support Client's use of the Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use or the use of Content with other Services IBM will provide. Client acknowledges that the use of Cloud Services or other Services meets Client's requirements and processing instructions required to comply with applicable laws.
e. IBM's Data Processing Addendum	<ul style="list-style-type: none"> IBM's Data Processing Addendum (DPA) is found at http://ibm.com/dpa. The DPA and applicable DPA Exhibit(s) apply to IBM's processing of personal data on behalf of the Client.
f. Removal of Content	<ul style="list-style-type: none"> For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud Services, other Services, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content; however, some Content may remain in the IBM Cloud Services backup files until expiration of such files as governed by IBM's backup retention practices.

3. Changes and Withdrawal of Cloud Services

a. IBM Right to Change Cloud Services	<ul style="list-style-type: none"> At any time and at IBM's discretion, IBM may change: <ol style="list-style-type: none"> the IBM Cloud Services, including the corresponding published descriptions; and the DSP and other published data security and privacy documentation for the IBM Cloud Services. The intent of any change to the above will be to: <ol style="list-style-type: none"> make available additional features and functionality; improve and clarify existing commitments; or maintain alignment to current adopted operational and security standards or applicable laws. Changes will not degrade the security or data protection features or functionality of the IBM Cloud Services.
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	<ul style="list-style-type: none"> Changes to the published descriptions, DSP, or published other documents as specified above, will be effective when published or on the specified effective date. Any changes that do not meet conditions specified above will only take effect, and Client accepts, upon: <ul style="list-style-type: none"> (1) a new order; (2) the term renewal date for the Cloud Services that automatically renew; or (3) notification from IBM of the change effective date for ongoing services that do not have a specified term.
b. Withdrawal of a Cloud Service	<ul style="list-style-type: none"> IBM may withdraw an IBM Cloud Services on 12 months' notice. IBM will continue to provide withdrawn IBM Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering. Non-IBM Products may be discontinued at any time if the third party discontinues or IBM no longer makes available such services.

4. Warranties

a. IBM Warrants	<ul style="list-style-type: none"> IBM warrants that it provides IBM Cloud Services or IBM Services using commercially reasonable care and skill and as described in the applicable TD. These warranties end when the IBM Cloud Services or other Services end. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.
b. Warranty Limitations	<ul style="list-style-type: none"> IBM does not warrant uninterrupted or error-free operation of the IBM Cloud Services. IBM does not warrant it will correct all defects. While IBM endeavors to provide security measures to keep all data secure, IBM does not warrant IBM can prevent all third party disruptions or unauthorized third party access. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM. IBM makes preview Cloud Services or Non-IBM Products under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Services.

5. Charges, Taxes, and Payment

a. Charges	<ul style="list-style-type: none"> Client's right to use an IBM Product or Non-IBM Product is contingent on Client paying applicable charges as specified in a TD or applicable agreement under which Client acquired the entitlements. Client is responsible to acquire additional entitlements in advance of any increase of its use. Client agrees to pay all applicable charges specified in a TD and charges for use in excess of authorizations. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM and late payment fees may apply. Prepaid IBM Products or Non-IBM Products must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid, except as may be specified in an Agreement. If IBM commits to pricing for Cloud Services as specified in a TD, IBM will not change such pricing during the specified term. If there is not a specified commitment, then IBM may change pricing on thirty days' notice. A change applies on the invoice date or the first day of the charging period or new term on or after the effective date IBM specifies in the notice.
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b. Cross Border Taxes	<ul style="list-style-type: none"> • In the event Client is required to pay any withholding or deduction of tax required under an applicable governmental entity regulation based on IBM's charge for a cross border transaction, Client will increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law. • If Client imports, exports, transfers, accesses, or uses an IBM Product or Non-IBM Product across a border, Client agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.
c. Invoicing	<ul style="list-style-type: none"> • IBM will invoice: <ol style="list-style-type: none"> (1) recurring charges at the beginning of the selected billing frequency term; (2) overage and usage charges in arrears; and (3) one-time charges upon IBM's acceptance of an order.

6. Liability and Intellectual Property Protection

a. Liability for Damages	<ul style="list-style-type: none"> • IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the service that is the subject of the claim, regardless of the basis of the claim. • IBM will not be liable for special, incidental, exemplary, indirect or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. • These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.
b. What Damages are Not Limited	<ul style="list-style-type: none"> • The following amounts are not subject to the above cap: <ol style="list-style-type: none"> (1) third party payments related to infringement claims described in subsection c below; and (2) damages that cannot be limited under applicable law.
c. Infringement Claims	<ul style="list-style-type: none"> • If a third party asserts a claim against Client that the IBM Product infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM. • To obtain IBM's defense against and payment of infringement claims, Client must promptly: <ol style="list-style-type: none"> (1) notify IBM in writing of the claim; (2) supply information requested by IBM; and (3) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts. • IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open-source code that IBM selects and embeds in an IBM Product.
d. Claims Not Covered	<ul style="list-style-type: none"> • IBM has no responsibility for claims based on: <ol style="list-style-type: none"> (1) Non-IBM Products; (2) items not provided by IBM; (3) IBM's proper use of any Client required third-party product or service related to the administration of the transaction; or (4) any violation of law or third party rights caused by Content, or any Client materials, designs, or specifications.

7. Term and Termination

a. Term of a Cloud Service	<ul style="list-style-type: none"> • The term begins on the date IBM notifies Client that Client can access the Cloud Services.
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	<ul style="list-style-type: none"> • The ordering TD will specify whether the Cloud Services renew automatically, proceed on a continuous use basis, or terminate at the end of the term. • For automatic renewal, unless Client provides written notice of non-renewal to IBM or the IBM Business Partner involved in the Cloud Services at least 30 days prior to the term expiration date, the Cloud Services will automatically renew for the specified term. • For continuous use, the Cloud Services will continue to be available on a month to month basis until Client provides 30 days written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the end of the calendar month after the 30-day period.
<p>b. Suspension of an IBM Cloud Service</p>	<ul style="list-style-type: none"> • IBM may suspend or limit, to the extent necessary, Client's use of an IBM Cloud Service if IBM reasonably determines there is a: <ul style="list-style-type: none"> (1) material breach of Client's obligations; (2) security breach; (3) violation of law; or (4) breach of the Acceptable Use Terms. • IBM will provide notice prior to a suspension as commercially reasonable. • If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the IBM Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the IBM Cloud Services.
<p>c. Termination of Cloud Services</p>	<ul style="list-style-type: none"> • Client may terminate the IBM Cloud Services on 30 days' notice: <ul style="list-style-type: none"> (1) at the written recommendation of a government or regulatory agency following a change in either applicable law or the IBM Cloud Services; (2) if a change to the IBM Cloud Services causes Client to be noncompliant with applicable laws; (3) if IBM notifies Client of a change to the IBM Cloud Services that has a material adverse effect on Client's use of the IBM Cloud Services, provided that IBM will have 90 days to work with Client to minimize such effect. • In the event of any such Client termination above or a similar termination of a Non-IBM Product, IBM will refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. • Client may terminate the IBM Cloud Services for material breach of IBM's obligations by giving notice and reasonable time to comply. • If the Cloud Services are terminated for any other reason, Client will pay to IBM, on the date of termination, the total amounts due per the Agreement. • Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.
<p>d. Termination of this CSA</p>	<ul style="list-style-type: none"> • Either party may terminate: <ul style="list-style-type: none"> (1) this CSA without cause on at least 30 days' notice to the other after expiration or termination of its obligations under each Agreement; or (2) immediately for cause if the other is in material breach of the Agreement, provided the non-complying party is given notice and reasonable time to comply. • Termination of this CSA does not terminate transactions in effect that are not affected by the cause of the material breach and provisions of the Agreement as they relate to such transactions remain in effect until fulfilled or otherwise terminated in accordance with their terms. • Any terms, that by their nature extend beyond the CSA or Agreement termination, remain in effect until fulfilled and apply to successors and assignees. • Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Client's failure to pay, or Client providing inaccurate or fraudulent Client account or payment information to acquire IBM Products or Non-IBM Products, is a material breach.

8. Governing Laws and Geographic Scope

a. Applicable Laws	<ul style="list-style-type: none"> Both parties agree to the application of the laws of the country of Client's business address to the Agreement, without regard to conflict of law principles. Any disputes will be brought before a court of competent jurisdiction within such country. The rights and obligations of each party are valid only in the country of Client's business address.
b. Compliance with Laws	<ul style="list-style-type: none"> Each party is also responsible for complying with: <ul style="list-style-type: none"> (1) laws and regulations applicable to its business and Content; and (2) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdictions that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; or ii) use of any portion of a Cloud Service from a country outside Client's business address.
c. Enforcement and Other Rights	<ul style="list-style-type: none"> If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

9. General

a. IBM's Role	<ul style="list-style-type: none"> IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary. IBM does not undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's business or operations, and Client is responsible for its use of IBM Products and Non-IBM Products. IBM is acting as an information technology provider only. IBM's direction, suggested usage, or guidance or use of an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain their own expert advice. Each party is responsible for determining the assignment of its and its affiliates personnel, and their respective contractors, and for their direction, control, and compensation.
b. CSA Changes	<ul style="list-style-type: none"> Since this CSA may apply to many future orders, IBM may change this CSA by providing Client at least 90 days' notice. CSA changes are not retroactive. They will only apply as of the effective date to: <ul style="list-style-type: none"> (1) new orders; (2) continuous IBM Products and Non-IBM Products that do not expire; and (3) renewals. For transactions with a defined renewable contract period stated in a TD, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders, continuing use after the change effective date, or allowing transactions to renew after receipt of the change notice. Except as provided in this section and the Changes and Withdrawal of Cloud Services section above, all other changes to the Agreement must be in writing accepted by both parties.
c. Business Conduct	<ul style="list-style-type: none"> IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.

<p>d. Business Contact and Account Usage Information</p>	<ul style="list-style-type: none"> • IBM, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content. • Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, user ID, and tax registration information. • Account usage information is required to enable, provide, manage, support, administer, and improve IBM Products. Examples of account usage information include digital information gathered using tracking technologies, such as cookies and web beacons during use of the IBM Cloud Services. • The IBM Privacy Statement at https://www.ibm.com/privacy/ provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. • When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify individuals and obtain consent.
<p>e. IBM Business Partners</p>	<ul style="list-style-type: none"> • IBM Business Partners who use or make available IBM Products or Non-IBM Products are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings. • If IBM notifies Client their current IBM Business Partner will no longer resell an IBM Product, Client may select to acquire auto renewing or continuous use Cloud Services directly from IBM or from another authorized IBM Business Partner.
<p>f. Assignment</p>	<ul style="list-style-type: none"> • Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. • IBM may assign rights to receive payments. IBM will remain responsible to perform its obligations. • Assignments by IBM in conjunction with the sale of the portion of IBM's business that includes an IBM Product or Non-IBM Product is not restricted. • IBM may share this Agreement and related documents in conjunction with any assignment.
<p>g. Enterprise Companies</p>	<ul style="list-style-type: none"> • This CSA applies to IBM and Client (accepting this CSA) and their respective Enterprise companies that provide or acquire IBM Products or Non-IBM Products under this CSA. • The parties shall coordinate the activities of their own Enterprise companies under the CSA. • Enterprise companies include: <ul style="list-style-type: none"> (1) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares); and (2) any other entity that controls, is controlled by, or is under common control with Client or IBM and has signed a participation agreement.
<p>h. Notices and Administration</p>	<ul style="list-style-type: none"> • All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address. • The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. • Any reproduction of the Agreement made by reliable means is considered an original. • The Agreement supersedes any course of dealing, discussions, or representations between the parties. • Where approval, acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
<p>i. Cause of Action</p>	<ul style="list-style-type: none"> • No right or cause of action for any third party is created by the Agreement or any transaction under it. • Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. • Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.

<p>j. Global Resources</p>	<ul style="list-style-type: none"> ● IBM may use personnel and resources in locations worldwide, including contractors, to support the delivery of IBM Products and Non-IBM Products. ● Client's use of the IBM Products and Non-IBM Products may result in the transfer of Content, including personal data, across country borders. ● A list of countries where Content may be transferred and processed is described the applicable TD or support documentation. ● IBM is responsible for the obligations under the Agreement even if IBM uses a contractor and will have appropriate agreements in place to enable IBM to meet its obligations.
<p>k. Use of Client Requested Third Party Services</p>	<ul style="list-style-type: none"> ● If IBM and Client agree to use a Client requested third-party service to support the procurement or payment activities associated with an Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the third-party service. ● In the event: i) the third-party service becomes unavailable for any reason; or ii) the third-party provider modifies the service or terms of use in a manner IBM deems commercially unacceptable, the Client agrees to directly accept documents. ● Client remains responsible to IBM for timely payments of invoices and for any claims or proceedings related to the third-party service provider's failure to comply with applicable laws or for such provider's use, misuse, or disclosure of data or confidential information. IBM agrees to promptly notify Client in writing of any such claim or proceeding.