

## Chapter 5 - Client Relationship Agreement for Programs -US Federal Government

---

This Client Relationship Agreement for Programs (CRA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under the CRA (together, the "Agreement") under which Client may order Programs (IBM Products), third-party programs (Non-IBM Products). An IBM Product may include available support services (Services).

Transaction Documents (TDs) provide the specifics of transactions, such as charges and a description of and information about the Product. Examples of TDs include license information, licensed program specifications, ordering documents, supplements, or invoices. There may be more than one TD applicable to a transaction.

Attachments provide supplemental terms that apply across certain types of IBM Products and Non-IBM Products.

In the event of conflict, an Attachment prevails over this CRA and a TD prevails over both the CRA and any Attachment and will only apply to the specific transaction.

### 1. Program License

For Programs packaged with IBM's International Program License Agreement (IPLA) or IPLA family license agreements for early release, evaluation, or non-warranted Programs, that have specific use rights and terms, those terms apply. For all other IBM Programs, the following license applies. The terms of the IPLA and terms of this CRA related to acquisition and licensing of Programs are equivalent terms.

- a. A Program is an executable IBM-branded computer program and related material and includes whole and partial copies. Program details are described in TDs and can be found in the Program's system command directory, at <http://www.ibm.com/software/sla> (for Passport Advantage Programs) or <http://www.ibm.com/support/knowledgecenter> (for other IBM Programs), or as otherwise specified by IBM. IBM Software Policies (such as backup, temporary use and IBM approved cloud environments) available at [www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies) apply to Client's use of Programs. Programs do not include Machine Code or Project Materials as those terms may be defined in an applicable CRA Attachment.
- b. Copies of Programs are copyrighted and licensed.
- c. Client is granted a nonexclusive license to:
  - i. use each copy of a Program, subject to the terms of the Agreement and up to the number of license entitlements Client acquires from IBM or an IBM Business Partner ("Authorized Use");
  - ii. make and install copies to support such Authorized Use; and
  - iii. make a backup copy as described in IBM's Software Policies – see (a) above.
- d. Programs may be used by Client, its employees and contractors only within Client's Enterprise. Client may not rent or lease a Program or provide commercial IT, hosting or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program (except to the extent assignment or transfer may not be legally restricted or as is expressly permitted in a TD or as otherwise agreed by IBM in writing). Additional rights may be available for additional fees or under different terms.
- e. The license granted for a Program is subject to Client:
  - i. reproducing copyright notices and other markings on any copy;
  - ii. ensuring anyone who uses the Program: i) does so only on Client's behalf within Client's Authorized Use; and ii) complies with the license terms and the Agreement;
  - iii. not reverse assembling, reverse compiling, translating, or reverse engineering the Program, except as expressly permitted by law without the possibility of contractual waiver; and
  - iv. not using any of the elements of the Program or related licensed material separately from the Program.
- f. If a TD for a Program ("Principal Program") states that a "Supporting Programs" is included with the Principal Program, Client may use the Supporting Program subject to any license limitations of the Principal Program and only to support the Principal Program.
- g. The license applies to each copy of the Program that Licensee makes.
- h. An update, fix, or patch to a Program is subject to the terms governing the Program unless new terms are provided in an updated TD. Client accepts such new terms by issuing an order, upon installation of the update, fix, or patch. If a Program is replaced by an update, Client agrees to promptly discontinue use of the replaced Program.
- i. Selected licensing type and metrics applicable to a Program license are specified in an Attachment or TD. All Programs licensed on a server or capacity-based metric must be licensed to the full capacity of the server on

which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements and terms as set forth in Attachments and TDs.

- j. For Programs packaged with an IPLA or IBM License Agreement for Non-Warranted Programs, if Client as licensee is dissatisfied with a Program for any reason, Client may terminate the license by returning the Program and proof of entitlement to IBM or the authorized IBM Business Partner within 30 days of the original acquisition date of such Program for a refund of the amount paid. For a downloaded Program, contact the party Licensee acquired the Program from for refund instructions.
- k. Acceptance – the Government's acceptance of a Program is the earlier of the second business day after the Programs' standard transit allowance, or receipt of the Program, or when IBM provides the Government authorization to download the product via a Proof of Entitlement. Notwithstanding anything herein to the contrary, the parties agree as follows: (i) the ordering activity may negotiate an extension regarding the time of acceptance before issuing a delivery order; and (ii) the parties may mutually agree on the acceptance period for overseas orders.
- l. Termination – Upon any termination of Client's license, Client will promptly destroy all copies of the Program.

## **1.1 Mainframe Monthly License Charge Programs**

The following additional provisions below govern IBM's provision of monthly license charge Programs for mainframe servers (MLC Programs)

### **1.1.1 Definitions**

**Date of Installation** – for an MLC Program, the second business day after the Program's standard transit allowance period; for a copy of an MLC Program, the date (specified in a TD) on which IBM authorizes Client to make a copy of the Program; for a chargeable component (also called a feature), the date Client uses the chargeable component or a copy.

**Designated Machine** – a Machine or non-IBM machine specified in the "Mainframe Exhibits" at:

<http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html> and available upon request.

**Program Services** – defect correction information, restrictions, or bypasses that IBM provides for an MLC Program.

### **1.1.2 Charges**

- a. Client incurs the initial charge for an MLC Program upon its Date of Installation. Client agrees to promptly notify IBM of any changes to its environment that impact usage charges and pay any applicable charges; recurring charges will be adjusted accordingly.

### **1.1.3 MLC Program Warranty**

- a. During the warranty period, which expires when the applicable Program Services are no longer generally available, IBM provides Program Services without charge instead of S&S. An MLC Program is only eligible for warranty if Client obtained its license for the MLC Program while Program Services were available for the MLC Program.

### **1.1.4 License for MLC Programs**

- a. Client may use the MLC Program only in the country in which the MLC Program's license is acquired.
- b. Under each license, IBM authorizes Client to: (a) run or execute the MLC Program only on the Designated Machine specified by Client to IBM under the terms of Section (f -Additional Obligations) below; (b) solely in support of the level of use authorized by IBM, make and install copies of the MLC Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, and not for productive work (for example, production, development, test, program maintenance, mirroring, etc.); and (c) use any portion of the MLC Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to (i) resolve problems related to the use of the MLC Program, and (ii) modify the MLC Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.
- c. For each MLC Program, Client agrees to: (a) provide IBM with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine; (b) notify IBM of the Date of Installation of each chargeable component; (c) comply with any additional or different terms in its LPS or another Attachment or Transaction Document; and (d) ensure that anyone who uses it (accessed either locally or re-motely) does so only for Client's authorized use and complies with IBM's terms regarding MLC Programs.

### **1.1.5 Distributed System License Option**

For eligible MLC Programs, as announced by IBM, Client may make a copy, referred to as a "Distributed System License Option" (DSLO Copy), provided the Client: (a) also maintains a basic license for the MLC Program (Basic License); (b) provides problem documentation and receives Program Services (if any) only through the location of the Basic License; and (c) distributes to, and installs on, the DSLO Copy's Designated Machine, any release, correction, or bypass that IBM provides for the Basic License.

### **1.1.6 Program Services**

IBM Provides Program Services for an MLC Program instead of S&S. Program Services are available only (a) for the unmodified portion of the current release of a warranted MLC Program, and (b) for at least one year following the MLC

Program's general availability. If IBM can reproduce Client's reported problem in the specified operating environment, IBM will issue Program Services. IBM provides Program Services on an on-going basis until IBM terminates them with at least six months' prior written notice.

#### 1.1.7 License Termination

Client may terminate the license for an MLC Program at any time, in accordance with the Federal Acquisition Regulations, by providing at least one month's prior written notice to IBM. Upon any termination of Client's license to use a Program, Client will promptly destroy all copies of the Program after party terminated the license.

#### 1.1.8 Additional Definitions

The following definitions may be used in other IBM agreements which apply to MLC Programs and solely for the purpose of such other IBM agreements, modify or are in addition to the definitions specified in the Agreement:

**IBM Product** – a Machine, MLC Program, or Other IBM Program.

**ICA Program** – an MLC Program.

**Non-IBM Program** – a non-IBM program licensed under a third party's license agreement.

**Other IBM Program** – a Program that is not an MLC Program.

**Product** – a Machine, non-IBM machine, Program or non-IBM program.

## 2. Content and Data Protection

- a. Content consists of information or data Client may provide, make available or grant access to, in connection with IBM providing 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 Services. Use of the Services will not affect Client's ownership or license rights in Content.
- b. IBM, its affiliates, and contractors of either may access and use the Content solely for the purpose of providing and managing the applicable Services. IBM will treat all Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to perform Services.
- c. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content to provide the Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access to or inputs individuals' information, including personal or other regulated data for use by IBM in providing the Services.
- d. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM to provide Services, Client will not provide or allow access to Content 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 of Content to IBM to provide Services.
- e. IBM Data Security and Privacy Principles (DSP), at <http://ibm.com/terms/?id=z126-7745>, apply for generally available standard Services as identified in a TD. At IBM's discretion, IBM may change the DSP from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality.
- f. The specific security features and functions of a Service will be described in the applicable Attachment and TD. Client is responsible for assessing the use of Content with the Services IBM will provide. Client acknowledges that the Services meet Client's requirements and processing instructions required to comply with applicable laws.
- g. IBM's Data Processing Addendum (DPA) is found at <http://ibm.com/dpa>. A DPA Exhibit(s) will specify how IBM will process personal data contained in Content. The DPA and applicable DPA Exhibit(s) apply to IBM's processing of personal data on behalf of the Client. Please contact your IBM representative for the applicable Data Processing Exhibit.
- h. If IBM stores any Content on IBM computing resources, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the 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 backup files until expiration of such files as governed by IBM's backup retention practices.

## 3. Warranties

- a. IBM warrants that a Program when used in its specified operating environment conforms to its specifications. The warranty period for a Program (not the Program component of an Appliance) is 12 months from acquisition, or the initial license term if less than 12 months, unless another warranty period is specified in an Attachment or TD.
- b. During the Program warranty period, Client will have access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses as described in the IBM Support Guide at <http://www.ibm.com/support/pages/node/733923>.
- c. Unless Client elects to discontinue S&S, Client must provide a funded Delivery Order for the annual S&S renewal at then-current charges. IBM will offer S&S until the S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.

- d. If a Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM or the IBM Business Partner and upon such return receive a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use terminates.
- e. **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. IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third-party disruptions or unauthorized third-party access to an IBM Product. 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. Non-IBM Products and preview products, or identified non-warranted IBM Products are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Products.**
- f. Additional support available during or after the warranty period may be available under separate agreement.

#### 4. Charges, Taxes, Payment, and Verification

- a. Client's right to use an IBM Program or Non-IBM Program 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.
- b. Client will be invoiced all applicable charges specified in a TD for an IBM Product or Non-IBM Product, and charges for use in excess of authorizations. The Government will be invoiced for products upon shipment. IBM shall state separately on invoices taxes excluded from the fees, and the Client agrees either to pay the amount of the taxes or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice receipt date, in accordance with the Prompt Payment Act, to an account specified by IBM. 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. The parties agree no tangible personal property (e.g. media or publications) shall transfer to Client if: i) IBM delivers Programs electronically to Client, or ii) Client claims a sales or use tax exemption for Programs IBM delivers electronically to Client.
- c. If applicable, Client agrees 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; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.
- d. 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.
- e. IBM will invoice: i) recurring charges at the beginning of the selected billing frequency term; ii) overage and usage charges in arrears; and iii) one-time charges upon IBM's acceptance of an order.

##### 4.1 Licensing Verification

- a. Client will, for all Programs at all sites and for all environments, create, retain, and each year provide to IBM upon request within 30 days' advance notice: i) a report, in a format requested by IBM using records, system tools output, and other system information; and ii) supporting documentation (collectively, "Deployment Data").
- b. Upon reasonable notice, IBM and its independent auditors may verify Client's compliance with this Agreement, at all sites and for all environments, in which Client uses (for any purposes) Programs. Verification will be conducted in a manner that minimizes disruption to Client's business and may be conducted on Client's premises, during normal business hours. IBM will have a written confidentiality agreement with the independent auditor. In addition to providing Deployment Data described above, Licensee agrees to provide to IBM and its auditors additional accurate information and Deployment Data upon request.
- c. Client shall promptly order and IBM will invoice for charges at IBM's current rates associated with i) any deployments in excess of authorizations indicated on or by any annual report or verification; ii) applicable software, maintenance or subscription and support services (S&S) for such excess deployments for the lesser of the duration of such excess use or two years; and iii) any additional charges and other liabilities determined as a result of such verification, including but not limited to taxes, duties, and regulatory fees as IBM specifies in an invoice.

#### 5. Liability and Intellectual Property Protection

- a. 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 Product 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. The following amounts are not subject to the above cap: i) third-party payments related to infringement claims described in the paragraph c below; and ii) damages for which liability cannot be limited under applicable law.

- c. If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will indemnify the Client against that claim, at IBM's expense and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client must promptly: i) notifies IBM in writing of the claim; and ii) supplies information requested by IBM. The Government shall make every effort to permit IBM to fully participate in the defense and/or settlement of such claim. However, IBM understands such participation will be under the control of the Department of Justice. 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. IBM has no responsibility for claims based on: i) Non-IBM Products; ii) items not provided by IBM; iii) IBM's proper use of any Client required third-party product or service related to the administration of the transaction; iv) any violation of law or third-party rights caused by Content or any Client materials, designs, specifications; or v) Client's use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

## 6. Governing Laws and Geographic Scope

- a. Each party is responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdiction, including the International Traffic in Arms Regulations 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 any Content.
- b. Both parties agree to the application of the laws of the US Federal Government apply without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. 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 the Cloud Service from a country outside Client's business address. 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.

## 7. General

- a. Parties will not disclose confidential information to employees or contractors of the other party without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this CRA.
- b. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's business or operations. 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, guidance, or Client's use of an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its 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.
- c. For Programs IBM provides to Client in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Client and IBM.
- d. Client may not use IBM Products or Non-IBM Products if failure or interruption of the IBM Products or Non-IBM Products could lead to death, serious bodily injury, or property or environmental damage.
- e. 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.
- f. 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. IBM may offer Non-IBM Products, or an IBM Product may enable access to Non-IBM Product, that may require acceptance of third party terms presented to the Client. Third party terms and privacy practices govern use of a Non-IBM Product or 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. Terms are reviewed and accepted by the Client. Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. IBM is not a party to such third party agreements and is not responsible for such 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.
- g. 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 reported errors and digital information gathered using tracking technologies, such as cookies and web beacons, during use of IBM Products. The IBM Privacy Statement at [www.ibm.com/privacy/](http://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.

- h. An IBM Product or Non-IBM Product or feature of an IBM Product or Non-IBM Product is considered "preview product" when IBM makes such product or features available at no charge, with limited or pre-release functionality, or for a limited time, to try available functionality (such as beta, trial, evaluation, no-charge, or designated preview products). Service level agreements, if any, do not apply to preview products. A preview product may not be covered by support and IBM may change or discontinue a preview product at any time and without notice. For any preview product that is provided as pre-release, IBM is not obligated to release a generally available product. Client is responsible to return a preview product or place an order under generally available terms for acquiring IBM Product or Non-IBM Products beyond the preview period. IBM may provide Client opportunities to voluntarily provide feedback in connection with the use of IBM Products, which IBM may use for any purpose.
- i. 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.(e.g., Leases). IBM will remain responsible to perform its obligations. Assignment 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.
- j. 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. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations.
- k. IBM may use personnel and resources in locations worldwide, including third-party contractors, to support the delivery of IBM Products and Non-IBM Products. As allowable per the Client Contract, Client's use of IBM Products or Non-IBM Products may result in the transfer of Content, including personally identifiable information, across country borders. A list of countries where Content may be transferred and processed is described in the applicable support documentation. IBM is responsible for the obligations under the Agreement even if IBM uses a third-party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.
- l. US Government Enterprise is defined as the US Government Agency acquiring IBM products and/or services for the exclusive use by that Agency.
- m. 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. If there is a claim or proceeding against IBM related to IBM's proper use of Client's requested third party service, IBM reserves the right, subject to the Contract Disputes Act, to seek reimbursement from the Client for reasonable costs and amounts IBM is required to pay associated with such claims or proceedings. This includes claims or proceedings due to the third party service 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.