

Agreement for IBM Scholars Offering

The purpose of the IBM Scholars Offering is to make available certain Programs, Educational Materials, and Software Maintenance at no charge under this Agreement for IBM Scholars Offering (the "Agreement") to you, a "Registered Faculty Member" and to your enrolled students.

You accept the terms of this Agreement by completing the registration process at <http://www.ibm.com/university>.

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This Agreement and any IBM license agreements or any other agreements under which Eligible Products are made available to you are the complete agreement between you and IBM France regarding the use of those Eligible Products and replace any prior oral or written communications between you and IBM regarding this offering. If there is a conflict between any of the terms of other applicable licenses and agreements and those of this Agreement, the terms of this Agreement prevail to the extent that the terms conflict.

1. Definitions

Institution: an accredited higher education institution approved by IBM to participate in this offering. Qualifications for approval are listed at the following Web site: <http://www.ibm.com/university>

Registered Faculty Member: a member of an Institution's faculty who has registered, with the authorization of their Institution, to participate in this offering.

Educational Materials: The term "Educational Materials" means information technology-related educational material which IBM makes commercially available. Educational Materials may be delivered in the form of software or written material. Educational Materials may be computer-based training (CBT) or Web-based training (WBT) courses, Webcasts, tutorials, and publications in Adobe Acrobat ("pdf") format such as workbooks, charts, white papers, and IBM Redbooks.

Eligible Products: Eligible Products include Programs, Software Maintenance, Educational Materials, and other resources that are listed in IBM's Scholars Eligible Product List (the "List"). The List is available at <http://www.ibm.com/university> for Programs.

2. License

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1. one or more of the Institution's servers or personal computers located on its premises (and grant access to such servers and personal computers, including unlimited connections to such servers, to your enrolled students) and
2. personal computers owned by you and your enrolled students, one copy per user.

You may use Programs and Educational Materials and distribute them only to enrolled students.

Programs and Educational Materials may not be 1) used, copied, modified, or distributed except as provided in this Agreement; 2) reverse assembled, reverse compiled, or otherwise translated, except as specifically permitted by law without the possibility of contractual waiver; 3) sublicensed, rented, or leased; or 4) used for commercial or administrative purposes.

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4. Software Maintenance

IBM provides assistance only to your Single-Point-of-Contact ("SPOC") at no additional charge for each eligible Program acquired under this Agreement.

While Software Maintenance is in effect:

- 1) IBM will make available to you the most current commercially available version, release, or update to all of the Programs you acquire under this Agreement, should any be made available.

- 2) IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.

IBM provides assistance via (1) Web-based self service which permits access to a knowledge base of product documentation, frequently asked questions, hints and tips, technical notes, readme files, programming samples, newsgroups, product fixes and refreshes, and product evaluations; and (2) e-mail support.

Software Maintenance does not include assistance for 1) the design and development of applications, 2) your use of Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement. Software Maintenance may not be available for all Programs.

5. Your Responsibilities

You represent that you are a Registered Faculty Member.

You agree to

- 1) provide the name and applicable identification (e.g., user id) of your SPOC in the registration process. You may function as your own SPOC or you may designate a student or employee of the Institution for that purpose;
- 2) ensure that the SPOC and any student to whom you provide access to any Eligible Products has read, understands, and agrees to be bound by the terms of this Agreement;
- 3) maintain records of all copies made of Eligible Products, including the names and IDs of the users to whom they were distributed;
- 4) provide to IBM an annual report on your utilization of this offering, by the anniversary date of your registration, in a manner that IBM designates; and
- 5) notify IBM in writing when you are no longer a member of the faculty of the Institution of which you were a member when you registered.

6. No Warranty

SUBJECT TO ANY STATUTORY WARRANTIES WHICH CAN NOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTY OF NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE ELIGIBLE PRODUCTS.

The exclusion also applies to any of IBM's subcontractors, suppliers, or program developers (collectively called "Suppliers").

Manufacturers, suppliers, or publishers of non-IBM Programs may provide their own warranties.

7. Data Privacy

You agree to allow IBM and entities within International Business Machines Corporation and the subsidiaries it owns by more than 50 percent ("Enterprise") to store and use contact information provided by you, including names, phone numbers, and e-mail addresses, anywhere IBM does business. IBM will process and use such information in connection with our business relationship, and IBM reserves the right to provide such information to entities within its Enterprise, its contractors, Business Partners, and assignees for uses consistent with their collective business activities, including communicating with you (for example, for processing orders, for promotions, and for market research).

8. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than:

- 1) damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 2) the amount of any other actual direct damages up to the charges you paid for the Eligible Product that is the subject of the claim. If you receive the Eligible Product that is the subject of the claim at no charge, then IBM is not liable for any actual direct damages other than those specified in item 1 above in this section.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Under no circumstances is IBM, its subcontractors, suppliers or Program developers liable for any of the following even if informed of their possibility:

- 1) loss of, or damage to, data;
- 2) special, incidental, or indirect damages or for any economic consequential damages; or
- 3) lost profits, business, revenue, goodwill, or anticipated savings.

9. Change in Terms

IBM may change the terms of this Agreement by giving you one month's notice . The revised terms will be posted at the IBM Scholars offering Web site, www.ibm.com/university.

Otherwise, for any other change to be valid, both of us must agree in a signed writing. Changes are not retroactive.

Additional or different terms in any written communication from you are void.

10. Term and Termination

The offering has no term end date.

If IBM determines that you or your Institution no longer qualify for this offering, IBM will so notify you or your Institution, as applicable, in writing and give you three months in which to requalify. If at the end of the three month period, you or Institution still do not qualify, IBM will terminate Software Maintenance but you and your enrolled students may continue to use the Programs and Educational Materials.

If you fail to comply with the terms of this Agreement, IBM may terminate Software Maintenance and all of your licenses to use Programs and Educational Materials that you have acquired under this Agreement.

You may terminate this Agreement on written notice to IBM following the expiration or termination of your obligations but you and your enrolled students may continue to use the Programs and Educational Materials.

IBM may terminate this Agreement on three month's written notice to you. However, you and your enrolled students may continue to use the Programs and Educational Materials.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

11. General

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

You agree to comply with applicable export laws and regulations.

Neither you nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

Neither you nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

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

12. Geographic Scope

The rights, duties, and obligations of each of us are valid only in the country where Programs, Educational Materials and Software Maintenance were made available.

13. Governing Law

The laws of France govern this agreement.

The "United Nations Convention on Contracts for the International Sale of Goods" does not apply.

All disputes arising out this Agreement or relating to its violation or execution, shall be settled by Commercial Courts of Paris even in matters concerning multiple parties or impleader actions or emergency protective actions in summary proceedings or on ex parte motion.

Both of us agree that this Agreement is the complete agreement between us regarding the IBM Scholars offering.

By signing this Agreement you accept its terms.

Agreed to:

Organization name

By _____
Authorized signature

Name
Date

Address