

Agreement for IBM Academic Initiative

The purpose of the IBM Academic Initiative is to make available certain Programs, Educational Materials, and Software Maintenance at no charge under this Agreement for IBM Academic Initiative (the "Agreement") to you, a "Registered Faculty Member" or a "Registered Graduate Teaching Assistant."

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

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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.

Registered Graduate Teaching Assistant: a graduate student who teaches under the supervision of a Registered Faculty Member and has registered to participate in this offering.

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

Students: Students enrolled in the classes for which you are responsible.

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If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon Eligible Products supplied by IBM under this Agreement, then you agree to pay that amount as IBM specifies in its invoice or equivalent document or supply exemption documentation.

4. **Software Maintenance**

IBM provides assistance only to you 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.
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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 unless otherwise specified by IBM.

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 either a Registered Faculty Member or a Registered Graduate Teaching Assistant.

You agree to

1. ensure that the 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;
2. maintain records of all copies made of Eligible Products, including the names and email addresses of the users to whom they were distributed;
3. upon request from IBM, provide a report on your utilization of this offering to IBM, in a manner that IBM designates; and
4. notify IBM in writing when you are no longer
 - (a) a faculty member; or
 - (b) a graduate teaching assistantat the Institution by which you were employed when you registered for this offering.

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 IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT REGARDING THE ELIGIBLE PRODUCTS.

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

7. **Business Contact Information**

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 your business contact information, including names, business telephone numbers, and business e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors acting on IBM's behalf, IBM Business Partners who promote, market, and support certain IBM products and services, and assignees for uses consistent with our business relationship.

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.

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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 *by email*. The revised terms will be posted at the IBM Academic Initiative Web site, <http://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 your Institution still do not qualify, IBM will terminate Software Maintenance but you and your 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 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 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

1. You may not assign this Agreement, in whole or in part, without the prior written consent of IBM. Any attempt to do so is void.
2. You agree to comply with applicable export laws and regulations.
3. Neither of us grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent.
4. All information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.
5. Each of us is free to enter into similar agreements with others.
6. Each of us grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
7. 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.
8. You agree that this Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against you except as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.
9. 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.
10. Neither you, nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
11. 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 Canada*.

13. Governing Law

Both you and IBM consent to the application of the laws of *Canada* to govern, interpret, and enforce all of your and IBM's 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.