

Master the Mainframe - Education Initiative Agreement

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The purpose of this IBM Master the Mainframe Education Initiative agreement (“Agreement”) is to make available certain software, resources, cloud services for educational and non-commercial research only to qualifying students, employees or contractors with educational institutions, or individuals engaged in educational activities related to an IBM certification program or IBM Open Badge program. As an authorized representative, you accept the terms of this Agreement by completing the registration process and accessing the Eligible Resources..

This Agreement and any IBM license agreements or any other agreements under which Eligible Resources are made available are the complete agreement between you and IBM regarding the use of those Eligible Resources. This Agreement replaces 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 publicly- or privately-funded educational institution approved by IBM to participate in this offering.

Registered Educator: a member of an Institution’s teaching or research staff who has registered, with the authorization of their Institution, to participate in this offering.

Student: a student of an Institution who has the authorization of their Institution to participate in this offering, or an individual who has registered to participate in an IBM certification or Open Badge program.

Educational Materials: The term “Educational Materials” means educational material that IBM or a third party on behalf of IBM may make commercially available. Educational Materials may be tutorials, instructor guides, student guides, lab guides, lab exercises, slide decks, sample tests, syllabi, workbooks, charts, white papers, data sets and IBM Redbooks. Educational Materials may be delivered in the form of software or written material, computer-based training (CBT) or Web-based training (WBT) courses, Webcasts, or Adobe Acrobat (“PDF”) or csv files or revisable formats.

Eligible Resources: Eligible Resources include software, cloud services, Educational Materials, and other resources provided as part of the initiative.

2. License

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Eligible Resources may not be 1) used, copied, modified, or distributed except as provided in this

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4. **Cloud Services**

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5. **Charges and Taxes**

IBM provides Eligible Resources under this Agreement at no charge. IBM makes programs, versions, releases, and updates of such Eligible Resources available to you as downloads, promotional codes or other distribution methods. However, if you require programs, versions, releases, or updates of such Eligible Resources or that are available in digital media (including public, private or hybrid clouds), IBM may provide it to you for a charge.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM’s net income, upon

Eligible Resources supplied by IBM under this Agreement, then you agree to pay that amount as IBM or IBM authorized partner/agency specifies in an invoice or equivalent document or supply exemption documentation.

6. **IBM Support and Maintenance**

IBM does NOT provide support or maintenance for any Eligible Resources provided through this Agreement. IBM provides administrative assistance only to you for access to each Eligible Resource available under this Agreement. IBM provides no-charge assistance for most resources via web-based self-service forums and portals which permits access to a knowledge base of documentation, frequently asked questions, hints and tips, technical notes, readme files, programming samples, newsgroups, product fixes and refreshes, and product evaluations. The link to the initiative forum for questions is www.ibm.com/mtmforum.

7. **Your Responsibilities**

You represent that you are either a Registered Educator or a Student.

You agree to:

1. Read, understand, and agree to be bound by the terms of this Agreement.
2. As a Registered Educator ensure that any Student to whom you provide access to any Eligible Resources has read, understands, and agrees to be bound by the terms of this Agreement. Except for Cloud services, you also agree to maintain records of all copies made of Eligible Resources, including the names and email addresses of the users to whom they were distributed.
3. Allow IBM to monitor your utilization of resources available thru this offering and publicly report on overall participation in this initiative. Except with respect to Student activities and submissions resulting from participation in this initiative, and the level of success (or failure) of lab exercises available as part of an Eligible Resource, which may be made periodically to the Registered Educator (“Student Progress Reports”), at no time will your individual participation be publicly shared without your consent. IBM provides such Student Progress reports as a courtesy, on an “as is” basis, and is not liable for any harm or damage resulting from a failure to provide a Student Progress Report or from any inaccuracy contained in a Student Progress Report.
4. Cloud access must be requested by each qualifying Registered Educator and Student.
5. You may not misuse our Eligible Resources. For example, don’t interfere with our Eligible Resources or try to access them using a method other than the interface and the instructions that IBM provides.
6. You agree to indemnify, defend and hold harmless IBM, our affiliates, contractors, service providers, employees, agents and their respective employees, officers, and directors from and against any third party claim (and pay all damages that a court of competent jurisdiction awards to such third party and any reasonable attorneys’ fees and expenses of defense incurred by IBM), related to or arising from your violation of the Agreement, your use of the Eligible Resources.
7. Eligible Resources may not be used in any jurisdiction for unlawful, obscene, offensive, or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating the third party rights.

8. **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 RESOURCES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. 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.

9. **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, name of Institution or place of employment, business or Institution telephone numbers, and business or Institution 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 resources, products and services, and assignees for uses consistent with our business relationship.

10. 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 Resources that is the subject of the claim. If you receive the Eligible Resources 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.

11. Change in Terms

IBM may change the terms of this Agreement by giving you one month’s notice via mail or e-mail. The revised terms will be posted at the registration page for this initiative, for any other change to be valid, both of us must agree through a digital signature or signed writing. Changes are not retroactive.

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

12. Term and Termination

Unless otherwise stated in the offer description, this Agreement and your access to, and use of, Eligible Resources will expire on the earlier of (i) August 31 following the date of your acceptance of this Agreement; or (ii) the date you cease to qualify for participation as outlined in this Agreement. If IBM determines that you or your Institution no longer qualify for this initiative, or if the IBM certification or Open Badge program in which you were participating is no longer available, IBM will so notify you or your Institution, as applicable, in writing via email. You agree that IBM may immediately terminate your access to and use of the Eligible Resources including Derivative Works you created. If you fail to comply with the terms of this Agreement, IBM may immediately and without prior notice terminate your access to and use of the Eligible Resources including Derivative Works you created. You may terminate this Agreement on written notice to IBM at zSkills@us.ibm.com following the expiration or termination of your obligations or status. With your termination you forfeit your rights to use any resources you may have acquired under this Agreement. IBM may terminate this Agreement on one month’s written notice (via email) to you. In this instance you may continue using materials which you have developed with IBM cited in your Derivative Works, however you must discontinue use of all Education Resources by the date(s) stated in the termination notice. 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.

13. 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. Upon request by either you or IBM, the parties or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in the content uploaded into the Eligible Resources.

14. Geographic Scope

The rights, duties, and obligations of each of us are valid only in the country of the Institution’s physical address, or for Students who qualified for participation as a result of participation in an IBM certification or Open Badge program, the country where such Student is physically located. IBM may provide the Eligible Recourses through its affiliates.

15. Governing Law

Both parties agree to the application of the laws of the country where the transaction is performed (or for Cloud Services, the laws of the country of the Institution’s address, or the county of a Student’s address while participating in the initiative where such Student who qualified for the initiative through participation in an IBM certification program or Open Badge program) to the Agreement, without regard to conflict of law principles. USA Only: U.S. Government Users Restricted Rights – Use, duplication, or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.