



MEMORANDUM OF UNDERSTANDING (MOU)

IBM Academic Initiative with Burapha University

This Memorandum of Agreement ("MoU") is entered into an effective as 9 June 2022 ("Effective Date"), by and between:

IBM THAILAND COMPANY LIMITED a corporation duly organized and existing under the laws of the Kingdom of Thailand, having its registered office at 388 Phaholyothin Road, Samsen Nai Subdistrict, Phayathai District, Bangkok by Mr. Sawat Asdaron authorized person to bind the juristic person, which is further referred to in this memorandum of association and hereinafter unless the context otherwise requires be referred to as "**IBM**".

- and -

Burapha University, located at 169 Long-Hard Bangsaen Road, Saensook, Muang, Chon Buri 20131 by Associate Professor Dr. Watcharin Gasaluck as President of Burapha University, which is further referred to in this memorandum of association and hereinafter unless the context otherwise requires be referred to as "**UNIVERSITY**".

Whereas:

IBM and the UNIVERSITY have entered discussions concerning the provision of certain Programs, Educational Materials, and Software Maintenance at no charge under this Agreement, to the UNIVERSITY. Specifically, this document is concerned with the IBM Academic Initiative program "Enhancing IBM Academic initiative for Market Needs". This course is referred in this document as "**PROGRAM**".

Now therefore this MoU witnesses:

IBM Academic Initiative is a global program that offers no-charge access to resources (training materials, curriculum guides, software, hardware, and cloud computing) to help faculty strengthen their educational programs so their students can compete in the job market of any industry.

I. DEFINITIONS

IBM Primary Contact: A representative of IBM who serves as the direct contact of this PROGRAM.

UNIVERSITY Primary Contact: A representative of UNIVERSITY who serves as the direct contact of IBM and this PROGRAM

Region: Thailand

Institution: A university or college that is a member of UNIVERSITY or has Instructor(s) who is/are member(s) of UNIVERSITY.

IBM Academic Evangelist: An Instructor of an institution who is authorized by IBM to deliver or conduct IBM Academic Initiative training sessions or classes to IBM Academic Instructors and students of an institution.

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



Educational Materials: The term "Educational Materials" means information technology-related educational material that IBM makes commercially available. Educational Materials may be tutorials, instructor guides, student guides, lab setup guides, lab exercises, slide decks, sample tests, syllabi, workbooks, charts, white papers, 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") files or revisable formats.

Student: A student enrolled in an institution.

II. OBJECTIVES

IBM and the UNIVERSITY will cooperate in a manner that aims to:

- 1) Uplift the standards of Information Technology, Computer Science, and Computer Engineering curriculum in Thailand, by offering quality course materials free to colleges and universities.
- 2) Make available the course materials and online curriculums that are relevant to the dynamic and growing needs of the industry to enrich the learning experience of the students, by way of lectures, hands-on lab exercises, and certification exams.
- 3) Provide a venue for Instructors to network, collaborate and share strategies in delivering the IT courses to the students, as well as the enhancement of the course materials and related resources.

III. ELIGIBLE RESOURCES

Eligible Resources include software, cloud services, Educational Materials, and other resources that are listed in IBM's Academic Initiative on the hub catalog at www.ibm.com/academic and as follows:

- 1) **License:** IBM grants you a nonexclusive, nontransferable license to use Eligible Resources solely for instruction and learning, as well as noncommercial research at the Institution. This use includes the design, development and testing of applications, hardware or virtual environments created by you. Eligible Resources cannot be used in production environments. Only Registered Educators may make copies, including backup copies, to support the level of use authorized, provided that the copyright notices and any other legends of ownership are reproduced on each copy or partial copy of the Eligible Resources. Registered Educators may use Eligible Resources and distribute them only to Registered Students enrolled in specific courses/programs requiring access.

Eligible Resources may not be (i) used, copied, modified, or distributed except as provided in this Agreement; (ii) reverse assembled, reverse compiled, or otherwise translated, except as specifically permitted by law without the possibility of contractual waiver; (iii) sublicensed, rented, or leased; (iv) have Internet "links" to or from the offering for third parties to access. No Eligible Resource may be used for commercial or administrative purposes. In addition, Eligible Resources may not be used for noncredit courses which do not lead to nationally recognized qualifications or levels of academic achievement unless indicated to the contrary by IBM on the hub catalog at www.ibm.com/academic. IBM shall have no responsibility for any costs required for certification examinations and training for any Registered Educator and Registered Students.

- 2) **Derivative Works:** Registered Educators may modify, translate, or take excerpts from select Educational Materials that IBM provides ("Derivative Works") subject to two exceptions specified in the Catalogue: (i) those Educational Materials from which you may not create a Derivative Work and (ii) those from which you are required to create a Derivative Work from part, or all, of such Educational Materials.

Derivative Works are subject to the same license terms as the Educational Materials. Upon request, Registered Educators will provide IBM with a copy of any such Derivative Work. IBM has (i) an irrevocable, nonexclusive, worldwide, paid-up license to use, reproduce, display, distribute (internally



and externally) copies of, and prepare derivative works based on, any such Derivative Works and (ii) the right to authorize others to do any of the former.

The terms of this Agreement apply to each copy a Registered Educator may make. Registered Students may not modify, translate, or take excerpts from the Educational Materials that IBM provides.

- 3) **Cloud Services:** Some Eligible Resources may be made available to you remotely through the Internet providing access to (i) functionality of programs, services and (ii) infrastructure and includes related offering materials as part of the remote offering. Access to and use of the IBM cloud-based offerings may be subject to additional terms and conditions. IBM cloud offers may not be programs but may require you to download other software in order to use. You agree that IBM is not providing you or your Institution with access to the Internet in order to use IBM cloud offers and that you remain responsible for Internet access. You also acknowledge that IBM and its subsidiaries (i) do not control the transfer of data over telecommunications facilities, including the Internet, and (ii) in a public Internet environment cannot commit to particular confidentiality obligations.

Eligible Resources available through the Internet may not be "framed" or "mirrored" forming part of an IBM cloud offering, other than on your own intranets in connection with your authorized use of the IBM cloud offering.

- 4) **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.

- 5) **IBM Support and Maintenance:** IBM does NOT provide support or maintenance for any Educational 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. Links to most IBM support resources can be found at: www.ibm.com/support.

IV. IBM RESPONSIBILITIES

- 1) Guide and provide course materials and online curriculums that can be used by IBM Academic Initiative when delivering IBM training courses or classes to the UNIVERSITY instructors and students.
- 2) Organize networking activities participated by Instructors of different institutions.
- 3) Provide an IBM Primary Contact.

As the representative of IBM, the IBM Primary Contact agrees to coordinate with IBM Academic Evangelists on issues/concerns in delivering the IBM Academic Initiative courses to other instructors and students.

V. RESPONSIBILITIES OF THE UNIVERSITY

As an IBM Academic Initiative program, the UNIVERSITY agrees to:



- 1) Conduct an IBM Academic Initiative training session for the program to students within twelve (12) months after attending the IBM Academic Initiative training course materials or online curriculums. The training session can be incorporated to an existing subject or delivered as a stand-alone subject participated by at least twenty (20) students. The UNIVERSITY is responsible for coordinating with his/her school administrator in seeking the approval from the latter in incorporating or delivering the Program in his/her institution.
- 2) Update the UNIVERSITY Primary Contact in his/her region regarding IBM Academic Initiative activities (e.g., name and no. of students trained, schedule of training, name and no. of students who passed the certification exam).
- 3) Ensure, as a Registered Educator, that any Registered 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.
- 4) Allow IBM to monitor your utilization of resources available thru this offering and publicly report on overall IBM Academic Initiative participation. At no time will your individual participation be publicly shared without your consent.
- 5) Request Cloud access by each qualifying Registered Educator and Registered Student.
- 6) Comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of Products, technology, Services, or data, directly or indirectly, to certain countries, or for certain end uses or end users.
- 7) Never to undertake any activity connected with the use of Eligible Resources that may directly or indirectly support terrorists or acts of terrorism, or for any other unlawful purpose.

VI. USAGE AND LIMITATION OF ACADEMIC INITIATIVE RESOURCES

The UNIVERSITY must abide on the usage and be aware on the limitation of the academic initiative resources as stated on the IBM Agreement for IBM Academic Initiative document (please refer to the attached document).

VII. BREACH OF MOU

In the event of any breach of the terms of this MoU, which is capable of rectification, by either party hereto, such other party shall be entitled to call upon the party to rectify such breach within thirty (30) days from the date of the notice, failing which the breach shall be deemed to be a material breach, and shall entitle such other party to rescind this MoU for material breach.

VIII. TERM AND TERMINATION

The offering is in been effective for the period of 3 years from the date this MOU is completely signed by both parties.

If IBM determines that the UNIVERSITY no longer qualifies for this offering, IBM will so notify the UNIVERSITY, as applicable, in writing and give the UNIVERSITY six months in which to requalify. If at the end of the six (6) months period, the UNIVERSITY still does not qualify, IBM will terminate Software Maintenance, but the UNIVERSITY and his/her students may continue to use the Programs and Educational Materials.

The UNIVERSITY may terminate this Agreement on written notice to IBM following the expiration or termination of the UNIVERSITY's obligations, but the UNIVERSITY and his/her students may continue to use the Programs and Educational Materials. IBM may terminate this Agreement on three month's written notice to the



UNIVERSITY. However, the UNIVERSITY and his/her 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.

IX. LIMITATION OF LIABILITY

Neither Party shall be liable to the other for any loss profits or anticipated savings, or other economic consequential damages or incidental damages resulting from a breach or default under this Agreement. 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; or
- 2) Special, incidental, or indirect damages or for any economic consequential damages; or
- 3) Lost profits, business, revenue, goodwill, or anticipated savings.

X. COSTS

Manufacturers, suppliers, or publishers of non-IBM programs may provide their own costs. Each party will be responsible for its own expenses if it is not in the responsibility and scope of this MoU.

XI. GEOGRAPHIC SCOPE

The rights, duties, and obligations of each of us are valid only in Thailand.

XII. GOVERNING LAW

Both the UNIVERSITY and IBM consent to the application of the laws of Thailand 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.

XIII. GENERAL

This Understanding shall not be construed to be an agency or a partnership or joint venture or an employment relationship. Neither party shall be entitled to bind the other party with any third party by its actions unless it has specifically obtained the prior written consent of such other party to do so.

Each party is an independent contractor, and nothing under this MoU shall be construed to create an employment relationship, whether for tax or for any other purpose, nor any partnership or joint venture between the parties. No provision of this MoU grants either party any express or implied right of authority to assume or create any obligations or responsibility on behalf of or in the name of the other party or bind the other party in any manner or thing whatsoever. Neither party nor its personnel shall be considered employees of the other.

Neither party shall assign or transfer this Understanding or any benefits or rights or obligations accruing to it under this Understanding, without the prior written consent of the other party

This MoU supersedes all prior oral or written communication, discussions and representations communicated between the parties hereto in respect of the subject matter of this MoU. Any modification to this MoU shall only be made by way of a written document duly executed by representatives of both parties hereto.

If any provision of this MoU is held to be unenforceable or illegal under certain circumstances for any reason, such decision shall not affect the validity or enforceability of such provisions under other circumstances or the



remaining provisions hereof and such provisions shall be reformed only to the extent necessary to make them enforceable under such circumstances.

Any notice under this MoU will be in writing and delivered by hand or by registered mail, return receipt requested, to the other party at the registered office or as may be substituted by the notice. If any notice is sent by mail, notice will be effective on the date of receipt.

IN WITNESS WHEREOF, the parties hereto have executed this Understanding on the date, month, and year, hereinabove written.

Acknowledge for:

For Burapha University (“UNIVERSITY”)

For IBM Thailand Co., Ltd. (“IBM”)

Name: **Assoc. Prof. Dr. Watcharin Gasaluck**

Name: **Mr. Sawat Asdaron**

Title: **President of Burapha University**

Title: **Managing Director of IBM Thailand and Managing Partner of IBM Consulting**

Signature:

Signature:

Date: June 9, 2022

Date: June 9, 2022

Witnesses:

Name: **Asst. Prof. Dr. Krisana Chinnasarn**

Name: **Mr. Pipat Lekhachaiworakul**

Title: **Dean of Faculty of Informatics, Burapha University**

Title: **IBM Academic Initiative Program Assistant**

Signature:

Signature:

Date: June 9, 2022

Date: June 9, 2022

Name: **Dr. Apichart Thongyou**

Title: **Chairman of The Working Committee of Eastern Economic Corridor Human Development Center (EEC HDC)**

Signature:

Date: June 9, 2022