

PART TWO

DEFINITIONS

The following definitions apply throughout this contract.

“Contractor” means individuals or companies with whom the University enters into a contract for the delivery of course instruction.

“Confidential Information” means, subject to the following sentence, all information and know-how disclosed by the University to the Contractor in any manner (whether orally, in writing, electronically or otherwise), including information such as: University business data, plans and reports; research results; software, related technologies and documentation; legal opinions; the nature and content of this contract; and Personal Information.

Confidential Information does not include information that:

- (i) is or becomes generally available to the public other than as a result of a disclosure by the Contractor or its representatives in breach of this contract;
- (ii) becomes available to the Contractor on a non-confidential basis from a source other than the University or its representatives, so long as the Contractor does not believe, after a good faith inquiry, that such source is bound by a confidentiality agreement with the University or is otherwise prohibited by a contractual, legal or fiduciary obligation from transmitting the information to the Contractor;
- (iii) was known to the Contractor on a non-confidential basis prior to disclosure to the Contractor by the University or its representatives, so long as such information is not known by the Contractor to be subject to another confidentiality agreement with or other obligation of secrecy of the University or another party;
- (iv) which is independently acquired or developed by the Contractor other than in breach of this contract; or
- (v) is required by law or court order to be disclosed.

“Deliverables” means the deliverables set forth in Schedule A and any deliverables set forth in the Deliverables section in Part One of this contract.

“Learner” means an individual who registers and participates in a course.

“Moodle” means the Learning Management System software owned or licensed by the University to provide course content and activities in an online environment.

“Personal Information” means data and information about Learners; information or opinions about other University-affiliated individuals or their relationship with the University; information that would identify an individual; personal opinions in Learner essays and discussions; and personal information as defined under the *Freedom of Information and Privacy Protection Act (FOIPPA)*.

“Records” means any data or information created during conduct of this contract such as accounting Records, notes, writings, lists, files, reports, correspondence, emails, tapes, cards, maps, machines, technical data, and any other documents which are in tangible documentary form, computer memory or any other format.

TERMS AND CONDITIONS

1. GOVERNING LAW AND JURISDICTION

This contract is governed by and will be construed and enforced in accordance with the laws of Canada and British Columbia.

British Columbia courts and all courts competent to hear appeals from those courts have exclusive jurisdiction over this contract.

2. CURRENCY

The currency is Canadian dollars unless otherwise stated.

3. ENTIRE CONTRACT AND WAIVER

This document is the entire contract between the University and the Contractor for the Deliverables.

This contract supersedes any previous contract for the Deliverables.

4. PERFORMANCE BY CONTRACTOR AND UNIVERSITY RESPONSIBILITIES

The Contractor will cause the Instructor to provide all Deliverables. The Contractor will not sub-contract any of the Deliverables without the prior written approval of the University.

The University will perform the duties set forth in Schedule A (University Responsibilities).

5. PARAMOUNTCY AND AMENDMENTS

To the extent of any conflict between any provision in:

- Part One of this contract and any provision in Part Two of this contract, the provision in Part One will apply;
- Part Three of this contract and any other provision of this contract, the provision in Part Three will apply; and
- a policy or in terms and conditions referenced in this contract (e.g. by website link) but not reproduced in this contract and any other provision in this contract, such other provision in this contract (and not the referenced provision) will apply.

Any part of this contract may be changed, but both parties must agree to the change in writing.

6. TIME OF ESSENCE

The Contractor will immediately inform the University of any issue that may affect the contract. The Contractor will meet the Deliverables deadlines.

7. RELATIONSHIP BETWEEN THE PARTIES

The Contractor is an independent contractor, and not an employee, of the University. No Contractor employees, agents, or subcontractors are, nor will be deemed to be, University employees. The Contractor and its employees, agents and subcontractors are not entitled to any University employment-related benefits.

Neither party is the agent or legal representative of the other. Neither party has the authority to assume or create any obligation on behalf of, or in the name of, the other.

8. ASSIGNMENT OF RIGHTS AND OBLIGATIONS

The Contractor may not assign any rights or obligations under this contract without the University's prior written consent.

9. COMPLIANCE WITH LAWS

The Contractor will comply with all legal requirements to operate as an independent contractor (including tax law) and to provide the services in this contract.

The Contractor will comply with all applicable federal, provincial, and city laws, ordinances, and regulations.

10. INSURANCE

The Contractor is solely responsible for maintaining any and all insurance coverage applicable to the Contractor's business.

11. NON-EXCLUSIVE ARRANGEMENT

This is a non-exclusive contract and the University retains the right to enter into other contracts to provide services similar or identical to those described in the Deliverables.

The Contractor retains the right to perform work for other clients.

12. PERFORMANCE OF SERVICES

The Contractor will provide the Deliverables to the University's reasonable satisfaction.

The Contractor will act with sound professional and business ethics.

13. LOSSES AND DAMAGES

The Contractor is responsible for all University property or data that the Contractor uses or holds. The Contractor will promptly compensate the University for any loss or damage to such items, to the University's reasonable satisfaction. The Contractor represents and warrants to the University that the Contractor has the right to use all Course Materials supplied by the Contractor (whether because the Contractor owns such Course Material or has a license or some other right to use such Course Material in connection with this contract).

Without limiting the foregoing, the Contractor and the Instructor will jointly and severally indemnify the University and its past, present and future governors, officers, council members, employees and agents (the "Indemnified Parties") from and against any and all expenses, losses, damages or liabilities (including reasonable legal fees and expenses) relating to (i) breach by the Contractor, Instructor or any Contractor employee, agent or sub-contractor of any provision in this contract; or (ii) any claim or action (including regarding injury or death of persons and/or damage or destruction of property) against the Indemnified Parties by any third party in connection with this contract.

IN NO EVENT WILL THE UNIVERSITY BE LIABLE TO THE CONTRACTOR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR SIMILAR DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND REGARDLESS OF THE CAUSE OF ACTION FROM WHICH THEY ARISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.

14. PAYMENT FOR SERVICES

The Contractor will submit to the attention of the Administrative Contact invoices for payment in accordance with the invoicing instalment dates, or earlier if deliverable is complete and signed off by signatory, and other terms set forth in Part One of this contract in the section "Contract Fees and Invoicing," and invoices must contain the following information:

- date of invoice;
- name and address of Contractor;
- Contractor's HST number (if applicable);
- contract number (an invoice must pertain to only one contract number; if payments are required against more than one contract, separate invoices must be submitted to the University);
- distinct invoice number;
- total invoice amount; and
- contract fees, HST and total invoice amount, which must be itemized separately.

15. METHOD OF PAYMENT

The University will pay the contract fees in accordance with the "Contract Fees and Invoicing" section in Part One of this contract.

The University has the right to verify that the Deliverables have been satisfactorily completed and that the amounts invoiced are in accordance with this contract.

The University will pay validated and substantiated invoices within 30 calendar days after receipt of the invoice.

16. NON RESIDENT TAX

The University will withhold 15% of the fees, pursuant to regulation 105 of the Canadian *Income Tax Act* (http://www.cra-arc.gc.ca/tx/nnrsdnts/cmmn/rndr/trty_gdlns-eng.html) if the Contractor is a non-resident of Canada (<http://www.cra-arc.gc.ca/tx/nnrsdnts/ndvdl/nnrs-eng.html>).

The University will not withhold fees if the services are provided outside of Canada or if the Contractor is non-resident and has applied for an exemption (<http://www.cra-arc.gc.ca/E/pbg/tf/r105/README.html>) and the University has received prior written exemption or waiver from Canada Revenue Agency.

17. NON-SOLICITATION

During the term of this contract (under Clause 22 Term and Termination) and for the following two years, the Contractor may not directly or indirectly solicit any University staff, contractors or officers (including other instructors/professors) for employment or retention as an independent contractor with the Contractor or any third party. For the purposes of this clause, solicitation will not include solicitations solely through advertising by way of general circulation or through a search firm, so long as the Contractor or its representatives did not direct or encourage such search firm to solicit a specifically named University employee, contractor or officer.

18. CONFIDENTIALITY

The Contractor may have access to Confidential Information while carrying out this contract.

The Contractor will: (a) hold all Confidential Information in strict confidence; (b) store all Confidential Information in a secure manner; (c) protect all Confidential Information from unauthorized use, disclosure, or disposal; and (d) not disclose any Confidential Information to anyone who is not authorized by the University to receive it.

The Contractor will use the Confidential Information only to provide the Deliverables, and will not use the Confidential Information for the Contractor's own benefit or for the benefit of any third party.

The Contractor agrees to cause the Contractor's employees, agents and sub-contractors to comply with this Clause 18. Upon the University's request, the Contractor will provide a written agreement evidencing such requirement. The Contractor will be responsible for any breach of this Clause 18 by the Contractor's employees, agents or sub-contractors.

The Contractor will immediately report any actual or suspected breach of these provisions to the Administrative Contact.

The Contractor acknowledges that a breach by it of any these confidentiality provisions will cause the University to sustain damages for which the University would not have an adequate remedy in monetary damages and which may cause irreparable harm. Accordingly, the Contractor agrees that in the event of any such breach or apprehended breach, the University will be entitled to the remedy of specific performance of these confidentiality covenants/obligations and/or preliminary and/or permanent injunctive relief and other equitable relief in addition to any other remedy to which it may be entitled.

All confidentiality provisions in this Clause 18 apply during and after the contract term for so long as the Confidential Information remains confidential.

Upon termination or expiration of this contract, the Contractor will retain and destroy all Confidential Information in accordance with Clause 19 (Records Management).

The Contractor may address questions regarding Confidential Information and these provisions to the Registrar.

19. RECORDS MANAGEMENT

The Contractor will allow the University to inspect and copy all Records, Deliverables and other materials produced, created, or received while performing the services, whether or not complete.

Upon termination or expiration of this contract, the Contractor will promptly deliver one copy of all course-related Records and items to the University. Upon confirmation of receipt of Records by the University the Contractor will destroy all Confidential Information, unless the Contractor is required by law to retain such Confidential Information for a longer period.

20. REPORTS AND REVIEWS

The Contractor will promptly notify the Academic Contact and Administrative Contact of any Learners who become "inactive" during the course.

The University will make reasonable efforts to contact "inactive" registrants to determine the reason for their inactive status.

The University will inform the Contractor of any Learners whose status is changed to "active".

Upon request, the Contractor will promptly and fully inform the University of all Deliverables that have been completed.

The Contractor will promptly and fully inform the University if the Deliverables are at risk of non-completion. If the University determines a remedy for such potential non-completion, the Contractor will comply with the University's remedy.

21. BREACH OF CONTRACT

Each party will promptly notify the other party in writing of any actual or suspected breach by the other party of any part of this contract. The non-compliant party will promptly cure the breach so that there is no further damage to the other party.

22. TERM AND TERMINATION

The term of this contract will commence on the "Contract term from" date specified in Part One of this contract and will remain in effect until the completion and approval of final deliverable(s) as noted in this contract. The contract may be terminated by:

- either party upon written notice to the other party if the other party breaches any term or condition of this contract and fails to cure such breach within 30 calendar days after receipt of written notice of the breach;

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- either party upon written notice to the other party if the other party ceases to function as a going concern;
- either party upon written notice to the other party if the other party becomes the subject of voluntary or involuntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, and such petition or proceeding is not dismissed within 30 calendar days thereafter;
- the University at its option upon written notice of no less than 30 calendar days to the Contractor; or
- the Contractor upon written notice of no less than 30 calendar days to the University, subject to acceptance of such termination by the University, in the University's sole discretion.

The notice of termination must be in writing giving the reasons for the termination. Unless otherwise noted, the termination will be effective upon receipt of such notice.

23. FEES UPON TERMINATION

Promptly after expiration or termination of this contract in accordance with Terms and Conditions, Clause 22 (Term and Termination), the University will pay the Contractor fees proportionate to the Deliverables completed to the University's reasonable satisfaction, and will thereafter have no further liability for fees to the Contractor.

The University may, at its discretion, pay the Contractor an additional sum as full and final fees for early termination.

24. CLAUSES SURVIVING AFTER TERMINATION

Upon expiration or termination of this contract pursuant to Clause 22 (Term and Termination), the provisions set forth in Clauses 13 (Losses and Damages), 17 (Non-Solicitation), 18 (Confidentiality), 19 (Records Management) and 23 (Fees Upon Termination), together with all provisions of this contract necessary for the interpretation and enforcement of such provisions, will survive such expiration or termination.

25. NOTICES

All notices and instruction must be delivered to the Administrative Contact, in the case of the University, and the primary contact, in the case of the Contractor, as designated in Part One of this contract, or to any other individual, address, fax number or e-mail address that a party designates by written notice to the other party.

A notice is considered to have been received:

- on the day it is delivered by hand to the addressee's address;
- on the day it is sent to the addressee's fax number;
- on the day it is delivered by prepaid courier to the addressee's address;
- seven calendar days after it is sent by prepaid registered mail to the addressee's address; or
- one calendar day after being sent by email to the addressee's e-mail address.

26. WEBSITE LINKS

The University does not guarantee that website links referred to in this contract will be current; if such links are not current, the Contractor will nevertheless be bound by the referenced policy. The University may from time to time make changes to the policies referred to herein, and the Contractor agrees to be bound by such changes.

27. UNIVERSITY RESPONSIBILITIES

a) General

The University will:

- use reasonable efforts to respond to enquiries made to the University computer help desk within one calendar day during regular operating hours (Help Desk Hours of Operation: <https://confluence.royalroads.ca:8443/display/ITKNOW/Help+Desk+Hours+of+Operation>).
- respond to questions sent to the Academic Contact or the Administrative Contact within seven calendar days;
- provide reasonable access to the information and instructional facilities the Contractor needs in order to provide the Deliverables; and
- consider any requests to extend any deadline dates, approval of which is in the University's sole discretion.
- consider any issues or problems, and use reasonable efforts to resolve such issues or problems and communicate as appropriate with Contractor;

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- if it determines appropriate, hold periodic discussions/debriefings, contributing to the ongoing evaluation processes;
- upon the Contractor's request, verify that the Contractor has completed the Deliverables; and
- if it determines appropriate, perform quality assessments of the Deliverables.

b) Planning and preparation

After this contract is signed and before the Contractor begins, the University will:

- at the University's sole discretion, have preparatory meetings with the Contractor to review items such as standards, procedures, and due dates.