

**ROYAL ROADS UNIVERSITY - ASSOCIATE FACULTY  
PROFESSIONAL SERVICES CONTRACT: NON-TEACHING**

The following are **Part Two** of the Royal Roads University Associate Faculty Professional Services Contract:

- Terms and Conditions;
- Schedule A – Privacy Protection.

<b>DEFINITIONS</b>
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The following definitions apply throughout this contract.

**“ACCESS”**, within the Privacy and Protection Schedule, means disclosure by the provision of access.

**“ACT”** means the Freedom of Information and Protection of Privacy Act (FIPPA).

**“CONTRACTOR”** means individuals or companies with whom the University enters into a contract for the provision of service as specified in the contract.

**“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:

- a. 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;
- b. 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;
- c. 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;
- d. which is independently acquired or developed by the Contractor other than in breach of this contract; or
- e. is required by law or court order to be disclosed.

**“CONTACT INFORMATION”** means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.

**“(COURSE) MATERIALS”** means any pedagogical documents or Records, whether in tangible documentary form, digital, or any other format, that are required for the performance of this contract, including, but not limited to: the course overview / outline, course syllabus, course schedule, class list(s), lecture content, study guides, supplementary materials, required/recommended readings/texts, activity descriptions, examination grading sheets, and instrument reports.

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

**“PERSONAL INFORMATION”** means recorded information about an identifiable individual, other than contact information collected, used or accessed by the Contractor in the course of providing the Services or in connection with the Agreement, for example: data and information about students; information or opinions about other University-affiliated individuals or their relationship with the University; information that would identify an individual; personal opinions in student essays and discussions; and personal information as defined under the Act.

**“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.

**“SERVICES”** means the services to be provided by the Contractor under the Agreement.

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

The University will perform the duties set forth in Section 27 (University Responsibilities).

**5. PARAMOUNTCY AND AMENDMENTS**

To the extent of any conflict between any provision in:

- a. Part One of this contract and any provision in Part Two of this contract, the provision in Part One will apply;
- b. Part Three of this contract and any other provision of this contract, the provision in Part Three will apply; and
- c. 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.

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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 Contractor 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 AND EXPENSES**

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 the signatory, and other terms set forth in Part One of this contract in the section "Contract Fees, Allowable Expenses and Invoicing."

Invoices must contain the following information:

- a. date of invoice;
- b. unique invoice number;
- c. name and address of Contractor;
- d. Contractor's GST number (if applicable);
- e. 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);
- f. information about deliverable being paid, including course number and name;
- g. total invoice amount, with contract fees, GST, and allowable expenses itemized separately.

**15. METHOD OF PAYMENT**

The University will pay the contract fees and allowable expenses in accordance with the "Contract Fees, Expenses 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](#) if the Contractor is a [non-resident of Canada](#).

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](#) and the University has received prior written exemption or waiver from Canada Revenue Agency.

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**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 solicitation 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**

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.

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**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 "Contract term to" date specified in Part One of this contract, or until earlier terminated under this Clause 22.

The contract may be terminated by:

- a. 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;
- b. either party upon written notice to the other party if the other party ceases to function as a going concern;
- c. 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;
- d. the University at its option upon written notice of no less than 30 calendar days to the Contractor; or
- e. 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:

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

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**27. UNIVERSITY RESPONSIBILITIES**

**1. CONTEXT**

The University's role is to oversee the provision of the course specified in this contract.

**2. UNIVERSITY RESPONSIBILITIES**

**a. General**

The University will:

- I. use reasonable efforts to respond to enquiries made to the University [Computer Help Desk](#) within one calendar day during regular operating hours;
- II. respond to questions sent to the "Academic Contact" or the "Administrative Contact" within seven calendar days;
- III. provide reasonable access to the information and instructional facilities the Contractor needs in order to provide the Deliverables;
- IV. consider any requests to extend any deadline dates, approval of which is in the University's sole discretion.
- V. consider any issues or problems, and use reasonable efforts to resolve such issues or problems and communicate as appropriate with Contractor;
- VI. if it determines appropriate, hold periodic discussions/debriefings, contributing to the ongoing evaluation processes;
- VII. upon the Contractor's request, verify that the Contractor has completed the Deliverables; and
- VIII. 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:

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

**SCHEDULE A – PRIVACY PROTECTION**

**1. PURPOSE**

- a. The purpose of this Schedule is to:
  - I. Ensure that RRU complies with the Act with respect to personal information; and
  - II. Ensure that, as a service provider, the Contractor is aware of and complies with the Act with respect to the protection of personal information.

**2. COLLECTION OF PERSONAL INFORMATION**

- a. Unless the Agreement otherwise specifies, or RRU otherwise directs in writing, the Contractor may only collect or create personal information that is necessary for the delivery of the Services, the performance of the Contractor's obligations or the exercise of the Contractor's rights under the Agreement.
- b. Unless the Agreement otherwise specifies or RRU otherwise directs in writing, the Contractor will only collect personal information directly from the individual the information is about.
- c. Unless the Agreement otherwise specifies or RRU otherwise directs in writing, the Contractor must tell an individual from whom the Contractor collects personal information:
  - I. the purpose for collecting it;
  - II. the legal authority for collecting it, and,
  - III. the title, business address and business telephone number of the person designated by RRU to answer questions about the Contractor's collection of personal information.

**3. ACCURACY OF PERSONAL INFORMATION**

The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or RRU to make a decision that directly affects the individual the information is about.

**4. REQUESTS FOR ACCESS TO OR CORRECTION OF PERSONAL INFORMATION**

If the Contractor receives a request for access to or correction of personal information from a person other than RRU, the Contractor must promptly advise the person to make the request to RRU unless the Agreement expressly requires the Contractor provide such access and, if RRU has advised the Contractor of the name or title and contact information of an official of RRU to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

**5. CORRECTION OF PERSONAL INFORMATION**

- a. Within 5 business days of receiving a written direction from RRU to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
- b. When issuing a written direction under section 8, RRU must advise the Contractor of the date the correction request to which the direction relates was received by RRU in order that the Contractor may comply with section 10.
- c. Within 5 business days of correcting or annotating any personal information under section 8, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to RRU, the Contractor disclosed the information being corrected or annotated.
- d. If the Contractor receives a request for correction of personal information from a person other than RRU, the Contractor must promptly advise the person to make the request to the RRU and, if RRU has advised the Contractor of the name or title and contact information of an official of RRU to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

**6. PROTECTION OF PERSONAL INFORMATION**

The Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement. The Contractor shall comply with the requirements of any policies developed from time to time by RRU concerning the security of personal information and applicable to the service provider. RRU will provide the Contractor with written notice of any such policies.

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**7. STORAGE AND ACCESS TO PERSONAL INFORMATION**

- a. Unless RRU otherwise directs in writing, the Contractor must not store personal information outside Canada or permit access to personal information from outside Canada.
- b. The Contractor must not store personal information on removable media, except with the prior written approval of RRU and at all times ensuring that all personal information stored on removable media is secured at all times including the use of encryption software.
- c. The Contractor must ensure that only those individuals who require access to the personal information to perform their obligations under the Agreement are provided access (each an "Authorized User"). The Contractor represents that it has the ability to track and audit access by its Authorized Users. The Contractor will review access by its Authorized Users at least every six months to ensure access is current and up to date and any unauthorized access to or use of personal information is identified and addressed.

**8. RETENTION OF PERSONAL INFORMATION**

Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by RRU in writing to confidentially and securely dispose of it or deliver it as specified in the direction.

**9. USE OF PERSONAL INFORMATION**

Unless RRU otherwise directs in writing, the Contractor may only use personal information if that use is related to and necessary for the delivery of the Services, the performance of the Contractor's obligations under the Service Agreement, or the exercise of the Contractor's rights, under the Agreement.

**10. DISCLOSURE OF PERSONAL INFORMATION**

- a. Unless RRU otherwise directs in writing, the contractor may only disclose personal information to any person other than RRU if the disclosure is related to and necessary for the delivery of the Services, the performance of the Contractor's obligations, or the exercise of the Contractor's rights under the Agreement, or as directed by RRU.
- b. Unless the Agreement otherwise specifies or RRU otherwise directs in writing the Contractor must not disclose personal information outside Canada.

**11. NOTICE OF FOREIGN DEMANDS FOR DISCLOSURE**

- a. The Contractor acknowledges that section 30.2 of the Act imposes obligations on RRU and the Contractor to immediately provide notice to the Minister responsible for the Act if a foreign demand for disclosure of personal information is received. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in its custody or under its control the Contractor:
  - I. receives a foreign demand for disclosure;
  - II. receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
  - III. has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure.
- b. The Contractor must immediately notify RRU and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

**12. INSPECTION OF PERSONAL INFORMATION**

In addition to any other rights of inspection RRU may have under the Agreement or under statute, RRU, or its delegates, may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any personal information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to its management of personal information or its compliance with the Schedule. The Contractor must permit, and provide reasonable assistance to, any such inspection, including by making its personnel available to provide such information as may be necessary to facilitate such inspection.

**13. COMPLIANCE WITH THE ACT AND DIRECTIONS**

- a. The Contractor must in relation to personal information comply with:
  - I. the requirements of the Act, including any applicable order of the Commissioner under the Act; and
  - II. any direction given by RRU under this Schedule



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- b. The contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider to RRU.

**14. NOTICE OF NON-COMPLIANCE**

If for any reason the Contractor does not comply, including suspected privacy breach, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify RRU immediately of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

**15. TERMINATION OF AGREEMENT**

In addition to any other rights of termination which RRU may have under the Agreement or otherwise at law, RRU may terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

**16. INTERPRETATION**

- a. In this Schedule, references to section by number are to sections of this Schedule unless otherwise specified in this Schedule.
- b. Any reference to the “Contractor” in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors and agents comply with this Schedule.
- c. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.