

TRU PRIVACY SCHEDULE

CUSTODY AND CONTROL OF DATA

1.1. Purpose

The purpose of this Schedule is to: (a) enable Thompson Rivers University to comply with its statutory obligations under the Act with respect to personal information; and (b) ensure that the Contractor is aware of and complies with its statutory obligations under the Act with respect to personal information.

1.2. Definitions:

- (a) "Access Agreement" means an agreement between Personnel and the Contractor requiring the security of Personal Information.
- (b) "Act" means the Freedom of Information and Protection of Privacy Act (British Columbia), as amended from time to time.
- (c) "Associate" has the meaning specified in the Act.
- (d) "Authorized Site" means Contractor's head office in British Columbia or at such other location in Canada as may be approved in writing by TRU.
- (e) "Agreement" means the Agreement to which the Schedule is appended.
- (f) "Contractor" means the Contractor identified on the cover page of this agreement.
- (g) "Commissioner" means the BC Information and Privacy Commissioner appointed under the Act.
- (h) "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.
- (i) "Personal Information" means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor or otherwise held on behalf of the Contractor as a result of the Agreement or any previous agreement between TRU and the Contractor dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the "control of a public body" within the meaning of the Act.
- (j) "Personnel" means any employees, agents, representatives or Associates of the Contractor who provide the Services or to whom access is made available to Personal Information for the purposes of fulfilling the Contractor's obligations under the Agreement.
- (k) "Record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information, including Personal Information, is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.
- (l) "Schedule" means this Privacy Schedule, as may be amended from time to time.
- (m) "TRU" means Thompson Rivers University

1.3. Interpretation

In this schedule, references to sections by number are to sections of this schedule unless otherwise specified in this schedule.

1.4. Contractor Subject to the Act

- (a) The Contractor must in relation to Personal Information comply with: (a) the requirements of the Act applicable to the Contractor, including any applicable order of the Commissioner under the Act; and (b) any direction given by TRU under this Schedule. If TRU learns of a Commissioner order applicable to the Contractor's services, it will notify the Contractor.
- (b) The Contractor acknowledges that it is familiar with the requirements of the Act governing Personal Information that are applicable to it as a Contractor.

1.5. Collection of Personal Information

- (a) Unless the agreement otherwise specifies or TRU otherwise directs in writing, the Contractor may only collect, create or hold, on behalf of TRU, Personal Information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the agreement.
- (b) The Contractor may only collect Personal Information if expressly authorized by the agreement. Where authorized to do so, and unless the agreement otherwise specifies or TRU otherwise directs in writing, the Contractor shall: (i) collect personal information directly from the individual the information is about; and (ii) tell an individual from whom the Contractor collects personal information the purpose for collecting it; the legal authority for collecting it; and the title, business address and business telephone number of the person designated by TRU to answer questions about the Contractor's collection of personal information.

1.6. Accuracy of Personal Information

Where applicable to the services provided by the Contractor pursuant to the agreement, the Contractor shall make every reasonable effort to ensure the accuracy and completeness of any personal information that comes into their custody pursuant to this agreement and which may be used by the Contractor or TRU to make a decision that directly affects the individual the information is about.

1.7. Receiving Requests for Access or Correction to Personal Information

If a request is received under the Act for access to, or correction of, Records that are in the custody of the Contractor but under the control of TRU, the Contractor must promptly advise the person to make the request to TRU and if TRU has advised the Contractor of the name or title and contact information of an official of TRU 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. The Contractor must provide the Records to TRU for management by TRU's Information and Privacy Officer. This shall occur within a reasonable time frame to enable TRU to comply with the Act. If a request is permitted by the Act, the Contractor shall be responsible for providing the Records at the Contractor's expense to TRU. If the Contractor is expressly authorized by the Agreement to manage the request for correction of records, the Contractor shall do so in accordance with Section 1.8 of this schedule.

1.8. Correction of Personal Information

The Contractor may only correct Personal Information if expressly authorized by the Agreement. Where authorized to do so, and unless the Agreement otherwise specifies or TRU otherwise directs in writing:

- (a) Within 5 business days of receiving a written direction from TRU 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 paragraph (a), TRU must advise the Contractor of the date the correction request to which the direction relates was received by TRU in order that the Contractor may comply.

- (c) Within 5 business days of correcting or annotating any personal information, 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 TRU, the Contractor disclosed the information being corrected or annotated.

1.9. Control of and Rights in the Record

All right, title and interest in, and control and custody of, all records shall remain with TRU. No interest or any right respecting the record, other than as expressly set out herein, is granted to the Contractor under this schedule, by implication or otherwise. If personal information is collected by the Contractor and transmitted to TRU, such personal information is deemed to be under the control of TRU.

1.10. Access to and Use of Personal Information

- (a) The Contractor is hereby granted temporary access to Personal Information pursuant to the terms and conditions of this Schedule, for the sole and express purpose of fulfilling its obligations under the Agreement and for no other use or purpose except as required to comply with any Canadian statutory or other legal requirement, including an Order of a Canadian Court, although any disclosure of Personal Information remains subject to Section 1.12 of this Schedule. The Contractor shall not copy or reproduce any written materials containing Personal Information without TRU's prior written consent. Notwithstanding the foregoing, the Contractor may access Records containing Personal Information for a Permitted Purpose. However, if Records containing Personal Information are disclosed outside of Canada or accessed from outside of Canada, the Contractor must comply with its obligations as a service provider to a public body under the Act.
- (b) The Contractor shall not take any action to obtain access of any kind to any Personal Information from any location outside of Canada except as permitted by the Act and then only subject to such processes and access controls as may be imposed by TRU from time to time.
- (c) Except as otherwise permitted under this Schedule, the Contractor shall not remove, physically, electronically or in other manner whatsoever from the authorized premises of TRU, any Personal Information without TRU's prior written consent. Except as otherwise permitted under this Schedule, the Contractor shall not store any Personal Information or permitted back-up copies of the Personal Information off-site unless expressly authorized by TRU. Where authorized, Contractor must store back-up records off-site in Canada under conditions that are the same as or better than on-site storage conditions for original Records.
- (d) The Contractor will ensure that only Personnel who have entered into an Access Agreement may access the Personal Information. Unless approved by TRU, the Contractor may not enter into any form of a Personal Information sharing relationship with any other party.

1.11. Return or Destruction of the Record Upon Request

- (a) Unless the Agreement otherwise specifies, the Contractor must retain Personal Information until directed by TRU in writing to dispose of it or deliver it as specified in the direction. Upon the request of TRU for any reason whatsoever, and unless required to do otherwise in order to comply with any Canadian statutory or other legal requirement, including an Order of a Canadian Court, although any disclosure of Personal Information remains subject to Section 1.12 of this Schedule, the Contractor shall deliver to TRU or destroy promptly, according to TRU's instructions, all documents or other Records in any form or format whatsoever in the Contractor's possession constituting or based upon Personal Information and shall confirm that delivery or destruction to TRU in writing. If, for any reason, the Contractor fails to return or destroy any Record in accordance with this Section 1.11, the Contractor's obligations pursuant to this Schedule will continue in full force and effect.
- (b) In the event of destruction of electronic Personal Information by the Contractor, the following instructions shall be adhered to:

- i) Personal Information erasure may be accomplished by software erasure (where feasible) or by physical destruction of the media
- ii) Software erasure must be at a minimum to US DoD standard 5220.22-M (this standard is achievable through several products such as Norton WipeInfo)
- iii) Physical destruction of paper media can be done by burning, by cross-cut shredding, or by pulping
- iv) Physical destruction of disc media can be done by use of tools such as hammers, band saws, or drills in order to render the device no longer useable; and
- v) Some media such as diskettes can be run through a degausser in order to render them no longer readable.

1.12. Disclosure to Third Parties

Except as specifically permitted by TRU in writing, the Contractor shall not disclose and shall not allow any Personnel to disclose in any manner whatsoever any Personal Information to any person, firm or corporation without the prior written consent of TRU. The Contractor agrees that such consent shall only be provided if such disclosure is permitted under the Act and the third party agrees, in writing, to be bound by the Act.

1.13. Notice of Unauthorized Disclosure

In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Contractor, the Contractor must immediately notify TRU. In this section, the phrase "unauthorized disclosure of personal information" will bear the same meaning as in section 30.5 of the Act.

1.14. Privacy Representative

If required by TRU, immediately upon execution of the Agreement the Contractor shall appoint a representative to be responsible for the Contractor's compliance with this Schedule and the Act (the "Privacy Representative"). The Contractor shall grant its Privacy Representative sufficient authority to communicate and execute documents on behalf of the Contractor as may be required from time to time for this purpose. The Contractor shall promptly provide TRU with the name of its Privacy Representative and shall promptly notify TRU of any change of its Privacy Representative.

1.15. Notice of Breach

If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify TRU 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.

The Contractor shall notify TRU immediately of the disclosure of Personal Information to any person or entity not authorized by the Agreement to have such Personal Information, including full details of such disclosure. The Contractor shall co-operate with TRU in preventing the recurrence of such disclosure and to the extent feasible, in recovering the disclosed Personal Information, including any copies thereof.

1.16. Personnel Bound by the Act

The Contractor and TRU hereby further acknowledge and agree that in order to fulfill its obligations under the Agreement it may be necessary for the Contractor to grant to Personnel access to Personal Information. The Contractor hereby agrees that:

- (a) it shall only make Personal Information available to Personnel to the extent it is necessary for the purpose of fulfilling the Contractor's obligations under the Agreement

- (b) it shall not make Personal Information available to any Personnel while any such persons are physically located outside of Canada, except as permitted by the Act and agreed by TRU in writing
- (c) whenever requested by TRU, the Contractor shall cause each of the Personnel providing services on behalf of the Contractor under the Agreement to enter into an Access Agreement, in a form and substance acceptable to TRU wherein:
- i) the Personnel agree, among other things, to comply with the requirements of all applicable laws including in particular the requirements of the Act as if that person were originally bound by the Act
 - ii) TRU is granted the right to demand that the Personnel who breached the obligation be removed from the provision of services pursuant to the Agreement
 - iii) the Contractor shall be required to renew and refresh any or all such agreements from time to time at the reasonable request of TRU; and
 - iv) the Contractor shall, upon request by TRU, provide a copy of the access agreement, the process for executing the agreements and the list of staff associated with the client's project or initiative who have signed the agreement within the last 12 months.
- (d) the Contractor shall properly advise each of the Personnel providing services under the Agreement of the requirements of the Contractor under this Schedule and the Act. If requested by TRU, the Contractor shall provide and conduct specific ongoing training for all such individuals in form and substance reasonably satisfactory to TRU. The Contractor acknowledges its obligations and, to the extent legally permissible, will address any non-compliance with this Agreement, by their staff, at their discretion; and
- (e) notwithstanding the foregoing, the Contractor specifically assumes all responsibility for the Personnel and for the breach by any of them of any provision of the Act or this Schedule. The Contractor hereby agrees to defend, indemnify and hold harmless TRU, and its directors and officers from and against any and all loss, cost, liability or expense suffered or incurred by TRU, and its directors, officers, employees or representatives or any of them with respect to any breach or alleged breach by the Contractor of any of its covenants or obligations under this Schedule, or its non-compliance with the provisions of the Act.

1.17. Subcontractors

Any reference to the Contractor in this Schedule includes any subcontractor, agent, or licensor retained by the Contractor to perform obligations or provide services under the Agreement and the Contractor must ensure that any such subcontractors, agents, or licensors comply with this Schedule.

1.18. Audit and Inspection

In addition to any other rights of inspection TRU may have under the Agreement or under statute, the Contractor shall permit TRU and/or its representatives and agents to conduct periodic audits of Records related to performance by the Contractor and the Personnel and permitted subcontractors, if any, of the Contractor's obligations under this Schedule. TRU 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 this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

1.19. Default

In addition to any other rights of termination which TRU may have under the Agreement or otherwise at law, TRU may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, 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.

Without limiting the generality of the foregoing, the Contractor agrees that in addition to any other rights or remedies TRU may have for material breach of this Schedule, TRU has the right to an injunction or other equitable relief in any court of competent jurisdiction enjoining a threatened or actual material breach of this Schedule by the Contractor.

1.20. Termination

Upon the expiration or earlier termination of the Agreement, the Contractor shall promptly return to TRU or destroy promptly, according to TRU's instructions, all Records in the Contractor's possession pursuant to the Agreement, whether created by the Contractor or by others, constituting or based upon Personal Information and shall confirm that delivery or destruction to TRU in writing.

In the event of a change to the Act or any other applicable privacy legislation or the issuance of a directive or policy by the government of the Province of British Columbia or a finding or report by the Commissioner, such that TRU reasonably considers that the terms and conditions of the Agreement for the protection of Personal Information are deficient, TRU and the Contractor will enter into good faith negotiations in an effort to cure any deficiency and agree to new or amended terms of the Agreement such that it is no longer deficient. Should such negotiations fail, TRU may terminate all or any portion of the Agreement in accordance with the termination requirements in the Agreement, upon provision of written notice to the Contractor or upon such other future date as TRU may specify in writing in such notice.

1.21. No Withholding

The Contractor shall not be entitled to, and hereby waives any and all right to, withhold any Personal Information from TRU to enforce any alleged payment obligation or in connection with any dispute relating to the terms of the Agreement or any other matter between TRU and the Contractor.

1.22. Investigation

The Contractor shall co-operate with any TRU investigation of a complaint that TRU's personal information has been used contrary to the act or this schedule.

1.23. Storage and Access to Personal Information

The Contractor shall maintain Personal Information only at an Authorized Site. Except as permitted by the Act, no Personal Information may be stored or accessed from outside Canada and no person outside Canada shall have access in any manner to Personal Information except as expressly approved by TRU in writing. The Contractor will notify TRU prior to changing the Authorized Site.

1.24. Segregation of Data

The Contractor shall take reasonable steps to ensure that all Personal Information is securely segregated from any information owned by the Contractor or third parties, including access barriers, physical segregation, password authorization and public key encryption systems. The Contractor must store Personal Information on agreed upon media using techniques enabling access only by authorized persons, including encryption and compression of Personal Information.

1.25. 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.

1.26. Paramountcy

- (a) The Contractor must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 1.27 (b), the law of any jurisdiction outside Canada.
- (b) Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.
- (c) The Contractor acknowledges that TRU is a public body subject to the Act.

1.27. Survival

The obligations of the Contractor in this Schedule will survive the termination of the agreement.

1.28. Amendment

Upon enactment of any British Columbia law or regulation or amendment to such law or regulation affecting the use or disclosure of Personal Information, or the publication of any decision of a British Columbia court relating to such law or regulation, or the publication of any interpretive policy or opinion of any government agency charged with the enforcement of any such law or regulation, TRU, by written notice to the Contractor, may specify the amendment of this Schedule in such manner as TRU reasonably determines necessary to comply with such law or regulation to the extent such law or regulation is directly applicable and enforceable against the Contractor. This provision is additional to any rights of TRU to terminate pursuant to Section 1.21 of this Schedule.

1.29. Inconsistency

If a provision of the Agreement (including any direction given by TRU under this Schedule) conflicts with a requirement of the Act or an applicable order of the Commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict. Where, in TRU's reasonable opinion, there is ambiguity regarding whether a provision conflicts, the conflicting provision will be inoperative to the extent determined by TRU.

1.30. Specific Covenants - Personal Information Handling

If the Contractor will manage Personal Information as part of the services, the Contractor shall:

- (a) take a physical inventory, at least annually, of all Personal Information, to identify any losses
- (b) ensure that access systems require individual user identification to be unique and re-authenticated each time access is made to Personal Information
- (c) implement appropriate controls for the issue, change, cancellation, and audit-process of user identifications and authentication mechanisms
- (d) ensure authentication codes and passwords are confidential, are pseudo-random in nature or vetted through a verification technique designed to counter triviality and repetition, are no fewer than 6 characters in length, are one-way encrypted, are excluded from automatic log-in procedures and are changed irregularly and at least semi-annually
- (e) maintain and implement formal procedures for terminated employees, agents, representatives and Associates who have had access to Personal Information; and
- (f) design and implement an automated, always-on auditing system which can be accessed by TRU to monitor access to and use of Personal Information, which system creates an audit trail that automatically records the identity of anyone who accesses Personal Information, recording the date and time of access, and which flags access or access attempts that fall outside set criteria (e.g. access outside regular business hours).

1.31. Excluded Records - Advanced Education

This Schedule does not apply to any information, documents or records that:

- (a) do not contain Personal Information
- (b) relate solely to the Contractor's internal administration, finances or management, unless they contain Personal Information about an individual other than the Contractor's own employees, officers, directors, agents, Contractors, suppliers or contractors
- (c) relate solely to the Contractor's internal labour and employment matters, unless they contain Personal Information about an individual other than the Contractor's own employees, officers, directors, agents, Contractors, suppliers or contractors; or
- (d) TRU and the Contractor have expressly agreed in writing fall outside the scope of this Schedule.