

## UVic Mitacs-Accelerate Internships and Mitacs-Elevate Fellowships: Program Terms and Non-Disclosure Agreements

This package includes the following:

- Information about the Mitacs-Accelerate internship and Mitacs-Elevate fellowship programs; and
- Terms and Conditions for these programs at the University of Victoria.

In order to apply for a Mitacs-Accelerate Internship or Elevate Fellowship, student/post-doctoral applicants should print off and complete the **Acknowledgement and Agreement to Accept Mitacs Terms** available on the UVic Office of Research Services website at <https://www.uvic.ca/research/assets/docs/Grants/externalfunding/MITACS%20Acknowledgement.pdf> and submit this form, together with the completed Mitacs application form and a standard UVic Research Application Summary Form ([https://www.uvic.ca/research/assets/docs/Grants/rasf\\_06july2018.pdf](https://www.uvic.ca/research/assets/docs/Grants/rasf_06july2018.pdf)) to the UVic Office of Research Services, Administrative Services Building, room B202.

If a Non-Disclosure Agreement (NDA) is required for a Mitacs-Accelerate or Mitacs-Elevate project, please refer to <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php> or contact [contract@uvic.ca](mailto:contract@uvic.ca) for a copy of the NDA template developed for use with these programs.

### **TERMS FOR GRADUATE STUDENT & POST DOCTORAL EDUCATIONAL PROJECTS AT THE UNIVERSITY OF VICTORIA (“UVic”) FUNDED THROUGH THE MITACS-ACCELERATE INTERNSHIP PROGRAM (“MITACS-ACCELERATE”) & THE MITACS-ELEVATE FELLOWSHIP PROGRAM (“MITACS-ELEVATE”) AS ADMISTERED BY MITACS (the “Terms”)**

#### **Mitacs Program Overview:**

Mitacs is a Canadian, not-for-profit organization, delivering applied programs designed to foster innovation and research between industry and academia. Mitacs Accelerate and Mitacs Elevate are research-based internship and fellowship programs respectively, used to support research involving interns / fellows, their academic supervisor and a sponsor where the research takes place both on-campus and on-site with the sponsor(s). For more details please see <http://www.mitacs.ca>.

In each Mitacs program the intern does not become an employee of the sponsor and will not sign any agreements with the sponsor. Where it is necessary for an intern to access information proprietary or confidential to the sponsor, the intern and the sponsor will execute UVic’s standard, reciprocal NDA developed for use in Mitacs Accelerate and Elevate internships, available online at <https://www.uvic.ca/research/assets/docs/Grants/externalfunding/MITACS%20Confidentiality%20Agreement%20Template.pdf>.

## **Terms and Conditions Acceptable for UVic Mitacs Accelerate and Elevate Projects:**

It has been UVic's experience that the vast majority of sponsors under the Mitacs' programs expect to own the IP generated during the Project. Therefore, the default terms for the Project provide for Sponsor ownership of intellectual property (available online at <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php>). However, if appropriate for the project, the intern, supervisor and sponsor may agree to have Creator ownership of intellectual property (available online at <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php>) or, if there is pre-negotiated agreement between the sponsor and UVic for a special sponsor program having general application to university student/post-doctoral research internship and fellowships, these terms may apply.

At application stage the intern, academic supervisor, and sponsor should confirm through the **Acknowledgement and Agreement to Accept Mitacs Terms** which terms and conditions will apply to the proposed project. In the absence of such confirmation, the 'Sponsor-Owned Terms' shall apply (available online at <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php>).

In the 'Sponsor-Owned Terms', the sponsor's interest is subject to certain limitations reflecting the Mitacs program requirements and UVic policies, intended to foster academic research and growth. UVic assumes no risk associated with the use by the sponsor of the research produced by the intern and academic supervisor; this is reflected in provisions in both the 'Sponsor-Owned Terms' and the 'Creator-Owned Terms' relating to warranties, disclaimers and indemnification.

UVic does not have the resources to negotiate individual agreements relating to a Mitacs Accelerate or Elevate project. If the choices identified above do not satisfy the needs of a sponsor, the sponsor is encouraged to explore other relationships with UVic, its faculty and students – for example, the UVic Co-operative Education Program, which facilitates the hiring of UVic students.

## **Appendix 'A': Sponsor-Owned Terms**

The terms and conditions set out herein shall apply if (a) at application stage the Intern, Academic Supervisor and Sponsor have confirmed through the **Acknowledgement and Agreement to Accept Mitacs Terms** form that the 'Sponsor-Owned Terms' shall apply to the proposed Project; or (b) the Intern, Academic Supervisor and Sponsor do not confirm at application stage that an alternative set of terms and conditions have application to the Project.

### **Definitions**

In the terms and conditions that follow:

- "Intern" means the graduate student or post-doctoral fellow ("PDF") participating in Mitacs Accelerate or Mitacs Elevate. For Mitacs Accelerate clusters involving multiple interns, "Intern" means all of the interns participating in the cluster.
- "Academic Supervisor" means the academic supervisor of an Intern.
- "Sponsor" means the sponsoring organization(s) participating in Mitacs Accelerate or Mitacs Elevate.
- "Project" means the activities undertaken pursuant to the Mitacs Accelerate/Elevate internship/fellowship.
- UVic, the Intern, the Sponsor and the Academic Supervisor are each individually referred to as a "Party", and collectively as the "Parties".

### **Confidentiality**

It is expected that a Sponsor will not provide any confidential information to the Intern, PDF or Academic Supervisor. In the event the Project requires the exchange of confidential information, UVic's standard Non-Disclosure Agreement for Mitacs projects will be used (available online at <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php>).

### **Ownership and Use of Intellectual Property**

For the purposes of these Terms,

- (1) "**Background Intellectual Property**" means Intellectual Property other than Project Intellectual Property, including without limitation any proprietary tools, techniques or methodologies of the Academic Supervisor or a third party used to generate the research results.
- (2) "**Intellectual Property**" or "**IP**" means the right, title or interest in or to patents, trademarks, copyrights, database rights, design rights, trade secrets, applications for the foregoing, and similar rights recognized from time to time in any jurisdiction together with all rights of action in relation to the infringement of any of the foregoing.
- (3) "**Project Intellectual Property**" means Intellectual Property created during and as a direct result of work undertaken for a Project. For clarity, Project Intellectual Property does not include Background Intellectual Property.

Each Party will retain all right, title and interest in and to its Background Intellectual Property, provided or used in the Project and no license to use any Background Intellectual Property is granted or implied by these Terms excepting that each Project participant will be deemed to have been granted a royalty-free, non-exclusive license to use the Background Intellectual Property of another Project participant which that Project participant makes available for use in a Project, but only to the extent reasonably necessary to undertake that Project. Except as expressly provided otherwise, nothing in these Terms will be construed as a transfer or assignment of any right, title or interest in or to any Intellectual Property, by one Project participant to another.

The Sponsor will own all right, title and interest in and to the Project Intellectual Property other than copyright in Publications as that term is defined in the following section.

The Sponsor grants each of UVic, the Intern and the Academic Supervisor a royalty-free, non-exclusive, perpetual, irrevocable license to use the Project Intellectual Property for research, scholarly publication, educational and other non-commercial purposes.

### **Publication**

The Intern, the Academic Supervisor and UVic are not restricted from presenting, publishing or otherwise disseminating the results of any research relating to a Project (including without limitation the Project Intellectual Property) at symposia, professional meetings or for academic evaluation or other academic purposes (including, without limitation, publishing thesis, course reports, journal articles or other academic publications) (a "Publication") provided that during the Project and for a period of two years following the completion or other termination of the Project, the Academic Supervisor and the Intern will provide the Sponsor with a copy of any proposed Publication containing the results of any research relating to a Project or any Project Intellectual Property at least thirty (30) days in advance of the proposed publication date. The Sponsor may, within fifteen (15) days following receipt of a copy of the proposed publication require by written notice to UVic, the Academic Supervisor and the Intern that the proposed publication date be delayed, for a period of not greater than sixty (60) days, so as to permit the Sponsor to make application to register a patent with respect to the Project Intellectual Property. Failing receipt of such notice in the time and in the manner provided, UVic, the Academic Supervisor and the Intern will be at liberty to publish the proposed publication without further notice to the Sponsor.

In the event the Project requires the exchange of confidential information, UVic's standard Non-Disclosure Agreement (NDA) for Mitacs projects will be used (available online at <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php>). This NDA provides for Sponsor review of proposed Publications and for the Sponsor to require that its confidential information be removed prior to publication.

Copyright in any Publication will be owned by the author excluding any software code and related technical documentation created as part of the Project, which shall be Project Intellectual Property.

### **Warranty Disclaimer and Indemnity**

The Sponsor acknowledges that the Project is experimental and exploratory in nature and that no promise is made with respect to the achievement of any results, desired or otherwise, in a given Project. The Sponsor agrees to undertake its own due diligence prior to any use of the Project Intellectual

Property. No warranty or representation is given with respect to the Project Intellectual Property including, without limitation, any implied warranties as to merchantability, fitness for a particular purpose or of non-infringement. UVic, the Academic Supervisor and the Intern expressly disclaim all obligations and liabilities for damages of any kind or nature whatsoever including, but not limited to, direct, indirect, special, incidental, punitive and consequential damages, solicitors' and experts' fees, and court costs (even if they have been advised of the possibility of such damages, fees or costs), arising out of or in connection with the Project or any use in any manner whatsoever of any research results or Project Intellectual Property.

The Sponsor will hold harmless and indemnify UVic, its Board of Governors, executives, faculty, staff, employees, agents, successors and assigns (including without limitation the Academic Supervisor and the Intern) from and against any and all claims or judgments, including all associated legal fees, expenses and disbursements actually incurred, on a solicitor and own client basis, from or arising out of the use by the Sponsor, or anyone for whom the Sponsor is in law responsible or any of their successors or assigns, of Project Intellectual Property or the research results of a given Project, including without limitation any damages of any kind or nature whatsoever (including but not limited to direct, indirect, special, incidental, punitive or consequential), losses of any kind or nature (including without limitation loss of revenues, profits, savings, business, data or records) or costs arising in any manner whatsoever (including arising from or incidental to any product liability or other lawsuit, claim, demand or other action brought), directly or indirectly, from or out of any use whatsoever of Project Intellectual Property or the research results of the Project.

### **General**

Notwithstanding the foregoing, the terms regarding publication, the academic and research license and warranties and indemnification will survive the end or other termination of the Project.

No Party will be responsible to the other Parties for non-performance or delay in performance occasioned by any cause beyond its control, including, without limitation, acts or omissions of the other party, acts of civil or military authority, strikes, lockouts, embargoes, insurrections or Acts of God. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost provided that the Party affected gives the other Parties prompt notice of such delay and makes reasonable efforts to correct the reason for the delay. For greater certainty, the unavailability of the Intern or the Intern's failure to fulfill his or her obligations pursuant to the Project are matters beyond the control of UVic. In the event this occurs, the Sponsor may elect to terminate the Project but shall have no recourse or remedy against UVic or the Academic Supervisor.

The Sponsor will not use or permit others to use the name of UVic or the Academic Supervisor, or refer to their participation in the Project for commercial purpose without the written consent of UVic.

Unless otherwise agreed in writing by UVic, these Terms shall apply to Mitacs-Accelerate & Mitacs-Elevate Fellowships where the Memorandum is signed by the last of the Parties on or after March 15, 2014.

These terms are the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous agreements, understandings or terms of the Parties, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter of the terms except as specifically set forth herein.

## **Appendix 'B': Creator-Owned Terms**

The terms and conditions set out herein shall apply if at application stage the Intern, Academic Supervisor and Sponsor have confirmed through the **Acknowledgement and Agreement to Accept Mitacs Terms** form that the 'Creator-Owned Terms' shall apply to the proposed Project.

### **Definitions**

In the terms and conditions that follow:

- "Intern" means the graduate student or post-doctoral fellow ("PDF") participating in Mitacs Accelerate or Mitacs Elevate. For Mitacs Accelerate clusters involving multiple interns, "Intern" means all of the interns participating in the cluster.
- "Academic Supervisor" means the academic supervisor of an Intern.
- "Sponsor" means the sponsoring organization(s) participating in Mitacs Accelerate or Mitacs Elevate.
- "Project" means the activities undertaken pursuant to the Mitacs Accelerate/Elevate internship/fellowship.
- UVic, the Intern, the Sponsor and the Academic Supervisor are each individually referred to as a "Party", and collectively as the "Parties".

### **Confidentiality**

It is expected that a Sponsor will not provide any confidential information to the Intern, PDF or Academic Supervisor. In the event the Project requires the exchange of confidential information, UVic's standard Non-Disclosure Agreement for Mitacs projects will be used (available online at <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php>).

### **Ownership and Use of Intellectual Property**

For the purposes of these Terms,

- (1) **"Background Intellectual Property"** means Intellectual Property other than Project Intellectual Property, including without limitation any proprietary tools, techniques or methodologies of the Academic Supervisor or a third party used to generate the research results.
- (2) **"Intellectual Property"** or **"IP"** means the right, title or interest in or to patents, trademarks, copyrights, database rights, design rights, trade secrets, applications for the foregoing, and similar rights recognized from time to time in any jurisdiction together with all rights of action in relation to the infringement of any of the foregoing.
- (3) **"Project Intellectual Property"** means Intellectual Property created during and as a direct result of work undertaken for a Project. For clarity, Project Intellectual Property does not include Background Intellectual Property.

Each Party will retain all right, title and interest in and to its Background Intellectual Property, provided or used in the Project and no license to use any Background Intellectual Property is granted or implied by these Terms excepting that each Project participant will be deemed to have been granted a royalty-free, non-exclusive license to use the Background Intellectual Property of another Project participant

which that Project participant makes available for use in a Project, but only to the extent reasonably necessary to undertake that Project. Except as expressly provided otherwise, nothing in these Terms will be construed as a transfer or assignment of any right, title or interest in or to any Intellectual Property, by one Project participant to another.

Project Intellectual Property shall be owned in accordance with the UVic policy on intellectual property, online at [https://www.uvic.ca/universitysecretary/assets/docs/policies/GV0215\\_1180\\_.pdf](https://www.uvic.ca/universitysecretary/assets/docs/policies/GV0215_1180_.pdf). UVic will have a royalty-free, perpetual, irrevocable, non-exclusive license to use any Project Intellectual Property for research, teaching and other non-commercial purposes. Sponsor has the right to use, copy and internally distribute any Project progress reports provided by the Intern for internal purposes. If Sponsor is a governmental or non-profit organization, subject to compliance with the section “Warranty Disclaimer and Indemnity” below and with the agreement of the Intern and UVic Supervisor, Sponsor has the right to use, copy and distribute any Project progress reports and/or Project results for governmental or other non-profit purposes. If Sponsor requires an option for a license to use the Project Intellectual Property for commercial purposes, an option agreement following the form of UVic’s standard Option Agreement for Mitacs projects (available online at <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php>) must be signed by the Parties.

Project Intellectual Property that is conceived or created jointly by at least one individual from each of UVic and the Sponsor, will be jointly owned. For the purposes of this Agreement and for all forms of Project Intellectual Property, each joint owner may independently license, enforce, collect royalties, make, use, sell, import, distribute, copy, and have made and otherwise enjoy benefits of such jointly owned Project Intellectual Property without any obligation to account to, obtain permission from, or share royalties with the other joint owners.

For avoidance of doubt, nothing in these terms and conditions, and no activities of Intern or Academic Supervisor as part of the Project, shall be construed as a transfer or assignment to Sponsor of any right, title or interest in any Project Intellectual Property.

### **Publication**

Intern, Academic Supervisor and UVic are not restricted from presenting, publishing or otherwise disseminating the results of any research relating to a Project (including without limitation the Project Intellectual Property) at symposia, professional meetings or for academic evaluation or other academic purposes (including, without limitation, publishing thesis, course reports, journal articles or other academic publications) (a “Publication”) provided that during the Project and for a period of two years following the completion or other termination of the Project, to the extent a Publication contains Project Intellectual Property that the Sponsor has an interest in as a creator or in which the Intern has granted the Sponsor an option, the Academic Supervisor and Intern will provide Sponsor with a copy of any such proposed Publication at least thirty (30) days in advance of the proposed publication date. Sponsor may, within fifteen (15) days following receipt of a copy of such proposed Publication, require by written notice to UVic, Academic Supervisor and Intern that the proposed publication date be delayed, or a period of not greater than sixty (60) days, so as to permit Sponsor to make application to register a patent with respect to the Project Intellectual Property. Failing receipt of such notice in the time and in the manner provided, UVic, Academic Supervisor and Intern will be at liberty to publish the proposed Publication without further notice to Sponsor.

In the event the Project requires the exchange of confidential information, UVic's standard Non-Disclosure Agreement (NDA) for Mitacs projects will be used (available online at <https://www.uvic.ca/research/conduct/home/contracts/standard-terms/index.php>). This NDA provides for Sponsor review of proposed Publications and for the Sponsor to require that its confidential information be removed prior to publication.

### **Warranty Disclaimer and Indemnity**

The Sponsor acknowledges that the Project is experimental and exploratory in nature and that no promise is made with respect to the achievement of any results, desired or otherwise, in a given Project. The Sponsor agrees to undertake its own due diligence prior to any use of the Project Intellectual Property. No warranty or representation is given with respect to the Project Intellectual Property including, without limitation, any implied warranties as to merchantability, fitness for a particular purpose or of non-infringement. UVic, the Academic Supervisor and the Intern expressly disclaim all obligations and liabilities for damages of any kind or nature whatsoever including, but not limited to, direct, indirect, special, incidental, punitive and consequential damages, solicitors' and experts' fees, and court costs (even if they have been advised of the possibility of such damages, fees or costs), arising out of or in connection with the Project or any use in any manner whatsoever of any research results or Project Intellectual Property.

The Sponsor will hold harmless and indemnify UVic, its Board of Governors, executives, faculty, staff, employees, agents, successors and assigns (including without limitation the Academic Supervisor and the Intern) from and against any and all claims or judgments, including all associated legal fees, expenses and disbursements actually incurred, on a solicitor and own client basis, from or arising out of the use by the Sponsor, or anyone for whom the Sponsor is in law responsible or any of their successors or assigns, of Project Intellectual Property or the research results of a given Project, including without limitation any damages of any kind or nature whatsoever (including but not limited to direct, indirect, special, incidental, punitive or consequential), losses of any kind or nature (including without limitation loss of revenues, profits, savings, business, data or records) or costs arising in any manner whatsoever (including arising from or incidental to any product liability or other lawsuit, claim, demand or other action brought), directly or indirectly, from or out of any use whatsoever of Project Intellectual Property or the research results of the Project.

### **General**

Notwithstanding the foregoing, the terms regarding publication, and warranties and indemnification will survive the end or other termination of the Project.

No Party will be responsible to the other Parties for non-performance or delay in performance occasioned by any cause beyond its control, including, without limitation, acts or omissions of the other party, acts of civil or military authority, strikes, lockouts, embargoes, insurrections or Acts of God. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost provided that the Party affected gives the other Parties prompt notice of such delay and makes reasonable efforts to correct the reason for the delay. For greater certainty, the unavailability of the Intern or the Intern's failure to fulfill his or her obligations pursuant to the Project are matters beyond the control of UVic. In the event this occurs, the Sponsor may elect to terminate the Project but shall have no recourse or remedy against UVic or the Academic Supervisor.

The Sponsor will not use or permit others to use the name of UVic or the Academic Supervisor, or refer to their participation in the Project for commercial purpose without the written consent of UVic.

Unless otherwise agreed in writing by UVic, these Terms shall apply to Mitacs-Accelerate & Mitacs-Elevate Fellowships where the Memorandum is signed by the last of the parties on or after March 15, 2014.

These terms are the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous agreements, understandings or terms of the Parties, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter of the terms except as specifically set forth herein.