

CONCORDIA UNIVERSITY Standard Terms and Conditions for MITACS Projects

While MITACS’ stance on intellectual property is to defer to the host university’s intellectual property policy, it has been our experience that most MITACS partnering Companies expect to own the intellectual property developed in the course of MITACS Project. To avoid delays in implementing Projects, Concordia has developed standard terms and conditions for MITACS Projects (the “**Terms**”). Except where there is a separate agreement in place between Concordia and the Company related to the work to be performed under the Project, these Terms shall govern all other MITACS Projects undertaken by Concordia.

By signing the MITACS Memorandum contained in the Application, the Company, the Intern, and the PI confirm: i) their understanding and acceptance of these Terms; and ii) that the Project will be governed by these Terms. If you require any modification to these Terms, please contact the Research Partnerships and Innovation Unit in the Office of Research at: office.of.research@concordia.ca prior to submitting your Application.

All capitalized terms used in this document are defined in **Annex B**.

1. INTELLECTUAL PROPERTY (IP)	
<u>Project Intellectual Property (PIP)</u>	All rights in PIP contained in the deliverables shall vest with the Company excluding: copyright in any academic work, including without limitation, theses, presentations, publications, and conference papers; and (b) any IP covered by a separate agreement to which Concordia, or a third party representative, and Company are party to. Company grants Concordia a royalty-free, worldwide, perpetual, irrevocable non-exclusive license to use the PIP for its internal research and educational purposes.
<u>Background Intellectual Property (BIP)</u>	Each Party will remain the owner of its respective BIP and nothing herein will be interpreted as implicitly or explicitly transferring any right, interest or title to such BIP. Each Party grants to the other Party a royalty-free non-exclusive right to use their respective BIP for the sole purpose of conducting the research activities under the Project, which right terminates upon completion or termination of the Project.
2. CONFIDENTIAL INFORMATION (CI)	
<u>Non-disclosure</u>	The Parties may disclose CI, one to the other, to facilitate work under the Project. Such information shall be safeguarded and will only be disclosed to individuals who have a “need to know” within the receiving Party’s organization, provided that such individuals have obligations of confidentiality to the receiving Party no less stringent than the obligations of receiving Party under these Terms. Each Party shall also strictly protect such CI from disclosure to third parties, and will treat the CI with the same degree of care with which the disclosing Party treats and protects its own proprietary and confidential information against public disclosure, but with no less than reasonable care.
<u>Legal Exception</u>	A Party may be compelled by law to disclose a disclosing Party’s CI, and such Party shall be entitled to do so provided that it promptly notifies the disclosing Party, to enable them to obtain a protective order or adequate remedy. If the disclosing Party is unable to obtain the requisite protective order, the receiving Party shall only disclose that portion of disclosing Party’s CI that it is legally required to disclose.

<p><u>Other Exceptions</u></p>	<p>The following do not constitute CI:</p> <ul style="list-style-type: none"> • <i>Information that receiving Party can show was known by it prior to receiving such CI from disclosing Party;</i> • <i>Information that is or becomes generally available to the public other than as a result of disclosure directly or indirectly by receiving Party in breach of these Terms;</i> • <i>Information that is or becomes available to receiving Party on a non-confidential basis from a third party, that is not in breach of its obligations to the disclosing Party;</i> • <i>Information that can be shown to have been developed independently by receiving Party without use of disclosing Party's CI; or</i> • <i>Information of which disclosing Party has authorized the unrestricted disclosure.</i>
<p>3. PUBLICATION</p>	
<p><u>Publication rights</u></p>	<p>The Parties are free to present, publish or otherwise disseminate the results of any research relating to a Project (including without limitation the PIP) at symposia, professional meetings or for academic evaluation or other academic purposes. The Publishing Party will provide a notice of intention to publish a Proposed Disclosure to the Notified Party at least thirty (30) days in advance of publication specifying the intended date of dissemination. The Notified Party shall have fifteen (15) days after receipt of a Proposed Disclosure, to object to such Proposed Disclosure on the basis that it contains the Notified Party's CI or discloses PIP for which the Company intends to seek patent protection. Where the Notified Party does not object in writing within fifteen (15) days of receipt of the Proposed Disclosure, the Publishing Party may proceed with the dissemination of the Proposed Disclosure without further notice to the Company.</p>
<p><u>Grounds of objection</u></p>	<p>Where a Notified Party makes a timely objection to a Proposed Disclosure on the grounds that it contains the Notified Party's CI, the Publishing Party shall remove, mask, or normalize any such CI from the Proposed Disclosure as requested by the Notified Party. The Parties will negotiate in good faith to arrive at an acceptable version of the Proposed Disclosure within the original thirty (30) day notice period. Where the Company makes a timely objection to a Proposed Disclosure on the grounds that it discloses PIP for which the Company intends to seek protection, the Intern and the PI shall delay the Proposed Disclosure, for a period not to exceed six (6) months from the date the Proposed Disclosure was originally received by the Company.</p>
<p><u>No delay in thesis</u></p>	<p>The Parties agree there shall be no delay in the defense of a student's thesis or in a student's graduation. In the event a student's thesis contains PIP for which the Company wishes to seek protection, Concordia, the PI and the Intern shall:</p> <ul style="list-style-type: none"> • <i>arrange for such thesis to be submitted and examined in confidence;</i> • <i>ensure that any examiner not already covered by a suitable obligation of confidentiality sign a confidentiality and non-use agreement for that purpose; and</i> • <i>not make the Intern's thesis public for a period not to exceed six (6) months from the date it was originally received by the Company.</i>

4. WARRANTY AND INDEMNIFICATION	
<u>No Warranty</u>	Company understands clearly the uncertainties and other risks commonly related to scientific research and experimental development, and therefore also understand that PI and Intern can perform specifically agreed tasks but do not guarantee that any foreseeable or specific product or technology will result from the Project. No warranty or representation is given with respect to any BIP or PIP including, without limitation, any implied warranties as to merchantability, fitness for a particular purpose or of non-infringement. Concordia expressly disclaims 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 Project data, deliverable, results or PIP.
<u>Indemnity</u>	The Company will hold harmless and indemnify Concordia, its governors, officers, faculty, staff, employees, agents, successors and assigns from and against any and all claims or judgments, including all associated legal fees, expenses and disbursements actually incurred from or arising out of the use any Project data, deliverable, results or PIP by the Company, its affiliates, customers, licensees or anyone for whom the Company is in law responsible or any of their successors or assigns.
<u>Representation</u>	The Company's signatory to the MITACS Application hereby represents and warrants that s/he has the authority, or has been authorized, to bind the Company to the obligations contained herein.
5. EXPORT CONTROL	
The Parties shall comply with any law, by-law, regulation, rule, order, ruling, policy or directive, from any relevant jurisdictional authority or body, governing or controlling the transfer, export, retransfer, re-export or furnishing of information. Each Party shall inform the other Party of any restriction or control applying to the circulation of any given information prior to disclosing such information to such other Party, or as soon as possible after such restriction or control comes into force and neither Party will disclose information under the Project that is controlled or otherwise restricted from use or export under the International Traffic in Arms Regulations (ITAR).	
6. PROJECT PERIOD and EARLY TERMINATION	
<u>Project Period</u>	The start and end dates of a Project are as set out in the Notice of Award for the Project.
<u>Default</u>	If a Party is in default of its obligations hereunder and such default is not cured within thirty (30) days after a written notice of default is received by the defaulting Party, the other Party may, without prejudice to any rights or remedies provided at law, terminate the Project upon giving a further written notice of termination at the expiration of the thirty (30) day cure period provided for above (the " Effective Date of Termination "). The Parties acknowledge that the unavailability of an Intern or his/her failure to fulfill his/her obligations to the Project are matters beyond Concordia's control. The Company, acting reasonably, may terminate a Project if it deems that an Intern has failed to fulfill his/her obligations as set out in the Application and a replacement intern mutually acceptable to the Parties has not been identified

	within the thirty (30) day cure period provided for above, or such other delay as may be mutually agreed to in writing by the Parties.
<u>Financial liability</u>	Company will be financially responsible for its share of all Project-related expenses up to the Effective Date of Termination and for reasonable non-cancellable commitments made by Concordia, prior to receipt of a notice of default.
<u>Insolvency</u>	Company's participation in the Project shall be automatically terminated and Concordia released of its obligations to Company should Company become bankrupt or insolvent, make an assignment for the benefit of creditors, and/or take the benefit of any statute relating to bankrupt or insolvent debtors. Any rights that may have accrued to the benefit of Company prior to such termination, including but not limited to any rights to PIP granted under section 1 of these Terms, shall automatically become null and void.
7. GENERAL	
<u>Governing Law</u>	Province of Québec and the laws of Canada applicable therein and the Parties hereby submit to the jurisdiction of the courts of the Province of Québec.
<u>Notice Concordia</u>	Director, Research Partnerships and Innovation Office of Research, Concordia 1455 de Maisonneuve Blvd West, GM 910 Montréal, QC H3G 1M8 Tel: (514) 848-2424 ext : 4874 Email: mailto:OOR.Partnerships@concordia.ca
<u>Notice Company</u>	Unless otherwise specified through a written notice provided to Concordia, notices to Company shall be sent to the Company contact identified in the MITACS Application.
<u>Publicity</u>	Neither Party shall, without prior written authorization from the other, use any trade or service mark(s) owned or controlled by the other Party. Additionally, neither Party shall use the name of the other Party, nor of any employee of the other Party, in any advertising or publicity without the prior written approval of an authorized representative of the other Party. Notwithstanding the foregoing, the Parties agree that they shall be free to disclose, without prior authorization from the other Party: a) the names of the Parties and the nature of the relationship established herein, b) the names of Concordia participants, c) the title of the Project, d) the duration of the Project, and e) sum to be paid or paid for the Project.
<u>Survival</u>	The following provisions shall survive the expiration or termination of the Project regardless of the reasons for its expiration or termination, in addition to any other provision which by law or by its nature survive: Intellectual Property, Confidential Information, Publication, No Warranty, Indemnity, Insolvency, Publicity and Survival.
<u>Entirety</u>	These Terms constitute the entire agreement between the Parties with respect to the subject matter hereof and shall replace all prior or contemporaneous agreements or understandings, oral or written as far as they relate to the Project.

ANNEX A

ACKNOWLEDGEMENT

By signing the MITACS Application, we, the PI and the Intern(s), each independently hereby confirm having read and understood the Terms and agree to be bound by them and uphold the obligations created under the Terms, such as they relate to me.

Each of us hereby assign to Concordia all rights such as I may hold in any PIP generated by me in connection with the Project, excluding copyright in any academic work, including without limitation, theses, presentations, publications, and conference papers, and waive in favor of Concordia all moral rights in any Computer Software created by me under this Project.

Upon request from Concordia, each of us shall do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts and documents as may be required by the Office of Vice-President, Research and Graduate Studies, to confirm such assignment of intellectual property rights and waiver of moral rights.

I, an Intern, further agree to return all Confidential Information and Project Intellectual Property to the PI upon the completion or termination of my participation in the Project and destroy all copies, reprints, reproductions and translations of such Confidential Information and Project Intellectual Property in my possession or under my control, including those existing in electronic form.

I, the PI, further agree to ensure that prior to the participation in the Project of an intern not identified in the Application (“New Intern”), that I will inform the New Intern of his/her obligations under the Terms and procure from him/her a signed “Intervention of an Intern”, attached hereto as Appendix C, and forward the originally signed copy to the Office of Research to the attention of the Director, Research Partnerships and Innovation.

ANNEX – B

- **Application:** means the MITACS Project application form, which includes the Project description, including the deliverable(s) and the MITACS memorandum;
- **Background IP or BIP:** means all IP conceived, developed, or reduced to practice by a Party prior to, or independent of, their participation in the Project which a Party at its sole discretion makes available for the purposes of performing work under the Project;
- **Company:** means the partner organization(s) as identified in the MITACS Application and participating in a MITACS supported Project;
- **Computer Software:** means any computer programs in source or object code, computer program documentation recorded in any form or medium, including any modification to such programs and documentation;
- **Concordia University:** means a corporation duly incorporated by the Concordia Act, S.Q. 1948, c. 91 as amended by S.Q. 1959-60, c. 191 and S.Q. 2006, c. 69 having its head office at 1455 de Maisonneuve Blvd. West, Montreal, QC - H3G 1M8;
- **Confidential information (CI):** means any information which is confidential in nature or that is treated as being confidential by the disclosing Party, whether such information is or has been conveyed to a Receiving Party orally or visually or in written or other tangible form, and whether such information is received or accessed by a receiving Party, directly or indirectly, such as in the course of discussions or other investigations; provided that if such information is in tangible form it will be marked with a restrictive legend of the disclosing Party, and for any information disclosed orally, it shall be identified as such by the disclosing Party at the time of disclosure and reduced to writing in summary form, marked with a restrictive legend, and delivered to the receiving Party within thirty (30) days of the oral or visual disclosure;
- **Intellectual Property (IP):** includes any idea, improvement, algorithms, Invention or discovery, whether or not patented or patentable, any technical data, know-how or trade secret, any design, any Computer Software or any work subject to copyright, whether or not such design or copyright is registered or registrable;
- **Intern:** means the Concordia student or postdoc identified in a MITACS Application or in the intern profile form completed or to be completed by the PI;
- **Invention:** means any new and useful art, process, methodology, technique, machine, manufacture or composition of matter, or any new and useful improvement of any art, process, methodology, technique, machine, manufacture or composition of matter;
- **Notice of Award:** is the award letter issued by MITACS outlining the conditions of the award;
- **Notified Party:** a Party that receives a notification and copy of the Proposed Disclosure;
- **Party:** means any one of Concordia or the Company and **Parties** means collectively Concordia and the Company;
- **Principal Investigator or PI:** means the Concordia supervisor of an Intern as indicated on an Application;
- **Project:** means the research project described in the MITACS Application;
- **Project IP or PIP:** means all IP which is first conceived or reduced to practice during the course of the Project, excluding third party Computer software which includes but is not limited to, commercially available consumer off the shelf Computer Software and Computer Software subject to open source licenses;
- **Proposed Disclosure:** includes theses, articles, seminars and other oral or written presentations; and
- **Publishing Party:** a Party that wishes to publish a Proposed Disclosure.

Appendix C

INTERVENTION OF AN INTERN

Whereas, I _____, wish to participate in the Project as an Intern. I hereby confirm having read and understood Concordia's standard terms and conditions for MITACS projects, available for reference at: XXXXX (the "**Terms**") and hereby agree to be bound by the Terms and uphold the obligations created under the Terms, such as they relate to me.

I hereby assign to Concordia all rights such as I may hold in any PIP generated by me in connection with the Project, excluding copyright in any academic work, including without limitation, theses, presentations, publications, and conference papers, and waive in favor of Concordia all moral rights in any Computer Software created by me under this Project.

I further agree to return all Confidential Information and Project Intellectual Property to the PI upon the completion or termination of my participation in the Project and destroy all copies, reprints, reproductions and translations of such Confidential Information and Project Intellectual Property in my possession or under my control, including those existing in electronic form.

Upon request from Concordia, I shall do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts and documents as may be required by the Office of Vice-President, Research and Graduate Studies, to confirm such assignment of intellectual property rights and waiver of moral rights.