

## **McGill University**

### **Terms and Conditions for Mitacs Accelerate Internships and Mitacs Elevate Fellowships**

While Mitacs does not impose an intellectual property policy, McGill has its standard terms and conditions with regards to Mitacs Accelerate Internships and MITACS Elevate Fellowships as set out in the attached document. McGill's terms and conditions provide for ownership by the partnering organization of most intellectual property developed during the Mitacs funded project. If you require any modification to these standard terms and conditions you should contact the Office of Industry Partnerships at [innovation.vpip@mcgill.ca](mailto:innovation.vpip@mcgill.ca) prior to submitting your application.

While it is possible to deviate from these standard terms and conditions we have found that most Mitacs partnering organizations expect to own the intellectual property developed during the project and any deviation from the standard terms and conditions may result in considerable delays.

If there is already an agreement between McGill and the partnering organization related to the work to be performed during the project then the terms of the signed agreement will apply.

At the application stage, McGill University, the intern, the academic supervisor and the partnering organization should confirm their acceptance of these McGill standard Mitacs Accelerate Internship or Mitacs Elevate Fellowship terms and conditions, by signing the Mitacs Memorandum located in the MITACS application form.

For those internships and fellowships requiring a non-disclosure agreement (NDA), please contact the Office of Industry Partnerships at [innovation.vpip@mcgill.ca](mailto:innovation.vpip@mcgill.ca) indicating *NDA for Mitacs* in the subject line.

## **Terms and Conditions for Graduate Student and Post-Doctoral Fellowship projects at McGill University funded through the Mitacs Accelerate Internships or Mitacs Elevate Fellowships programs**

### **Program Overview**

**Mitacs Accelerate** is a research internship program whereby an intern (McGill full-time graduate student or McGill post-doctoral fellow) applies university expertise to solve a business-related research challenge. During the internship project, the intern is expected to spend half of his/her time at the industry partner's facility. The Mitacs Accelerate internship normally lasts 4 months.

Up-to-date information on this program is provided on the Mitacs website (<https://www.mitacs.ca/accelerate>).

**Mitacs Elevate** is a two-year training program for post-doctoral fellows to lead and undertake an industrially-relevant project and gain valuable industry experience through this academic industry collaboration. Additional information is provided on the MITACS website (<https://www.mitacs.ca/elevate>).

### **Definitions**

**"Academic Supervisor"** means the academic supervisor of an Intern as indicated on Mitacs proposal application

**"Agreement"** means the terms and conditions set forth in this document entitled "Terms and conditions for graduate student and post-doctoral fellowship project at McGill University funded through the Mitacs Accelerate Internships or Mitacs Elevate Fellowships programs" as agreed to by the McGill Intern, Academic Supervisor and Partnering Organization in the Memorandum forming part of the Mitacs' application form.

**"Background Intellectual Property"** or **"Background IP"** means IP, other than Project Intellectual Property, conceived, developed, reduced to practice or otherwise made or acquired by a Party prior to the effective date of the Project or outside of the scope of the Project and used to generate the research results.

**"Intellectual Property"** or **"IP"** means the right, title or interest in or to patents, copyrights, trademarks, registered industrial designs, 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.

**"Intern"** means the Graduate Student or Post-Doctoral Fellow ("PDF") participating in Mitacs Accelerate or Mitacs Elevate.

**"McGill"** means The Royal Institution for the Advancement of Learning/McGill University.

**"Mitacs Accelerate"** is a research-based internship program used to support research involving Interns, their Academic Supervisors, and a Partnering Organization.

**“Mitacs Elevate”** is a PDF fellowship program that supports PDFs working on applied research projects with Canadian companies;

**“Partnering Organization”** means the partnering organization(s) as identified in the application and participating in a Mitacs Accelerate or Mitacs Elevate Project.

**“Party”** means individually McGill, Partnering Organization and Intern and collectively the **“Parties”**.

**“Project”** means the activities undertaken pursuant to the Mitacs Accelerate internship or Mitacs Elevate fellowship.

**“Project Intellectual Property”** or **“Project IP”** means IP created during and as a direct result of the work undertaken for a Project and specifically excludes the Background IP.

### **Confidentiality**

McGill expects that no confidential information will be disclosed between the Parties during the course of the Project. In the event that a non-disclosure agreement is necessary, McGill’s standard mutual Non-Disclosure Agreement is to be signed.

### **Project**

Unless otherwise expressly agreed to, all work under the Project shall be completed and funded in accordance with the Project application form submitted to and approved by Mitacs.

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

Each Party will retain all rights, title and interest in and to its Background IP provided or used in the Project and no license to use any Background IP is granted or implied by this Agreement excepting that each Party will be deemed to have been granted a royalty-free non-exclusive license to use the Background IP of another Party which that Party makes available for use in the context of the Project, but only to the extent necessary to undertake that Project.

The Partnering Organization will own all rights, title and interest in and to the Project IP other than: (a) copyright in Publications as that term is defined in the following section; (b) any Intellectual Property or other subject matter covered by separate agreement to which McGill and Partnering Organization are parties and active during the time of the Project and (c) any third party tools that are used in the Project.

The Partnering Organization grants each of McGill, the Intern, and the Academic Supervisor and members of the research team a royalty-free, non-exclusive, perpetual, irrevocable license to use the Project IP for research, scholarly publication, educational and other non-commercial purposes.

Except as expressly provided otherwise, nothing in this Agreement will be construed as a transfer or assignment of any right, title or interest in or to any IP, by one Party to the others.

## **Publication**

The Parties are not restricted from presenting, publishing or otherwise disseminating the results of any research relating to a Project (including without limitation the Project IP) at symposia, professional meetings or for academic evaluation or other academic purposes (including, without limitation, publishing theses, 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 Partnering Organization with a copy of any proposed Publication containing the results of any research relating to a Project or any Project IP at least thirty (30) days in advance of the proposed publication date. The Partnering Organization may, within fifteen (15) days following receipt of a copy of the proposed Publication require by written notice to McGill 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 Partnering Organization to make an application to register a patent with respect to the Project IP. Failing receipt of such notice in the time and in the manner provided, McGill and the Intern will be at liberty to publish the proposed Publication without further notice to the Partnering Organization.

## **Warranty Disclaimer and Indemnity**

The Partnering Organization 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, for a specific Project. The Partnering Organization agrees to undertake its own due diligence prior to any use of the Project IP. No warranty or representation is given with respect to the Project IP including, without limitation, any implied warranties as to merchantability, fitness for a particular purpose or of non-infringement. McGill, the Intern and the Academic Supervisor 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 data, results or Project IP.

The Partnering Organization will hold harmless and indemnify McGill, 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 Partnering Organization, or anyone for whom the Partnering Organization is in law responsible or any of their successors or assigns, of Project IP 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 IP, including the data and results of the Project.

## **Term and Termination**

This agreement shall come into effect as of the start date of Project, as set out in the Notice of Award, and shall remain in effect for the duration of the Project, unless terminated earlier in accordance with the terms below.

A Party may terminate this Agreement immediately upon notice to the other Parties, in the event of:

- i) material breach or non-compliance by one of the other Parties of some obligation, undertaking, representation, warranty in this Agreement, if such default is not remedied within thirty (30) days of receipt by such other Party of written notice to that effect;
- ii) one of the other Parties becoming bankrupt or insolvent, going into receivership, making an assignment of its assets to the benefit of its creditors, taking advantage of any statute which may be in force in relation to bankruptcy or insolvent debtors, or ceasing to conduct business in the normal course; or
- iii) default on the part of one of the other Parties caused by a force majeure, where such default lasts for more than six (6) months.

McGill shall also be able to terminate this Agreement in the event that the Academic Supervisor leaves the employment of McGill, becomes permanently disabled or passes away. In such a case, the Parties will attempt in good faith to identify another Academic Supervisor at McGill. Should they be unable to find a mutually acceptable replacement, McGill shall be able to terminate this Agreement under this section.

The Parties acknowledge that 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 McGill. In the event this occurs, the Partnering Organization may elect to terminate the Project but shall have no recourse or remedy against the Intern, McGill or the Academic Supervisor.

Upon receipt by a Party of a notice of termination under this Agreement or expiry of the delay within which default may be cured, McGill will make all reasonable efforts to stop work on the Project and limit further spending on the Project, provided that McGill shall have the right to disburse any sum of money committed at the time of termination and any unused funds will be returned to Mitacs.

## **General**

Each Party must comply with all applicable laws, regulations and rules in its jurisdiction.

In the event that goods or information falling under Canadian or United States export control rules, controlled goods or arms regulations are required to be provided by the Partnering Organization to McGill, Academic Supervisor or Intern, Partnering Organization will so inform McGill in writing prior to any such disclosure. Partnering Organization shall not forward or provide any such information to McGill, the Intern or Academic Supervisor without the express written permission of McGill. The burden shall be on

Partnering Organization to make it available only to eligible individuals as designated by McGill, or to obtain the appropriate license or approval from the relevant agency, or to invoke an available exception, exemption or exclusion. In the event the Project research results or any data developed in the course of the Project constitute controlled goods under Canadian law, the Parties will cooperate so that the requirements of the law are met prior to disclosure of such results or data. McGill shall have the right to terminate any Project if the disclosure of such information, under license or otherwise, would destroy McGill's ability to invoke the fundamental research exclusion with regard to the conduct or reporting of its research or McGill is unable to comply with the requirements of the Partnering Organization.

If, for any reason, any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, the remainder of the Agreement shall be enforced to the fullest extent possible.

During the course of the Project, the Intern remains a student/PDF of McGill. The Intern does not become an employee of the Partnering Organization and will not sign any agreements with the Partnering Organization.

No Party shall use the name, trademark or logo of the other Parties without their written consent.

The Parties agree to cooperate with each other to ensure that each may enjoy all rights conferred under this Agreement. In the event of a dispute arising out of or relating to this Agreement, the affected Party shall promptly notify the other Party (the "**Notice Date**") and the Parties shall attempt in good faith to resolve the matter. Any disputes not so resolved within a period of thirty (30) days from the Notice Date shall be referred to the Vice-Principal Research and International Relations or the Associate Provost (Graduate Education), Dean of Graduate and Postdoctoral Studies of McGill and the President/CEO or equivalent of the Partnering Organization for resolution.

No Party or Project participant will be responsible to the others 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 Party prompt notice of such delay and makes reasonable efforts to correct the reason for the delay.

It is agreed by the Parties that this Agreement shall be governed by and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein and hereby submit to the jurisdiction of the courts of the Province of Québec.

The Parties acknowledge that this Agreement and the relationship between the Partnering Organization and McGill will be subject to the Quebec Privacy Act.

The provisions relating to Ownership and Use of Intellectual Property; Warranty Disclaimer and Indemnity, Publication and Dispute Resolution will survive the end or other termination of the Project.

Unless agreed to in writing, this Agreement shall apply to Mitacs Accelerate Internships and Mitacs Elevate Fellowships where the Memorandum is signed by the last of the Parties on or after January 1, 2015.