
If your food business is selected to participate in the Circular Food Innovation Lab, you will be asked to complete the following form.

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is made among the City of Vancouver (the “**City**”) and the Participating Parties who execute this agreement. In consideration for the disclosure by any party (a “**Disclosing Party**”) to any other party (a “**Receiving Party**”) of certain confidential information and discussions related to the Circular Food Innovation Lab project, a consultation process focussing on improving methods to eliminate avoidable food waste (the “**Purpose**”), the parties hereby agree as follows:

1. **Definition of Confidential Information.** As used in this Agreement, the term “**Confidential Information**” shall mean any and all non-public information, whether in written, oral, electronic or any other form, furnished by a Disclosing Party that is related to the Purpose including, without limitation, draft documents, proposed regulations, scientific, technical, financial, planning and other information, all non-public combinations of separate items that individually may or may not be generally known, items for which a Disclosing Party is under an obligation of confidentiality to third parties, as well as all analyses, reports and compilations prepared by or for a Receiving Party, including or based on such information, and all copies and tangible embodiments of the foregoing in all media
2. **Exclusions.** Confidential Information does not include information that is:
 - (a) publicly available without breach of this Agreement
 - (b) anonymous or has been redacted to make it anonymous;
 - (c) disclosed by one party of this Agreement to a third party that has executed an agreement similar to this Agreement with respect to information related to the Purpose;
 - (d) disclosed to a third party if the party that received such information and intends to disclose it has the prior written consent of the Disclosing Party for the disclosure of such information to that third party;
 - (e) released pursuant to the terms and conditions of the EMILY CARR UNIVERSITY OF ART + DESIGN (ECUAD) Standard Intellectual Property Terms and Conditions for Graduate Student Educational Projects funded through The Mitacs Accelerate Internship Program (Mitacs Accelerate), which are attached as Appendix “A”; or
 - (f) required to be disclosed by law or by the order of any judicial, administrative or similar body with enforcement powers; provided, however, that the Receiving Party will promptly notify the Disclosing Party of this requirement, in writing, and will co-operate reasonably with the Disclosing Party, at the Disclosing Party’s expense, in challenging the disclosure.
3. **Ownership.** All right, title and interest in and to a party’s Confidential Information is and will continue to be the exclusive property of that party.

4. **Non-Disclosure and Non-Use.** The Receiving Party will not, directly or indirectly, copy, transmit, reproduce, summarize, quote, make available, sell or disclose any of the Confidential Information or the Receiving Party's recollections thereof to any third party without the express written consent of the Disclosing Party. The Receiving Party will not make any use whatsoever of the Confidential Information, except to the extent necessary for the Purpose.
5. **Safeguard of Confidential Information.** The Receiving Party agrees to exercise the highest degree of care in safeguarding the Confidential Information of the Disclosing Party against loss, theft, destruction or inadvertent disclosure. The Receiving Party will limit disclosure of the Confidential Information to those of its employees, directors, officers, counsel or consultants who have a need to know it for the Purpose and who are bound by an obligation of confidentiality similar to that set forth in this Agreement. The Receiving Party will be responsible for any breach of this Agreement by such persons.
6. **City as Public Body.** The parties to this Agreement each acknowledge that the City is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as the same may be amended or superseded from time to time ("FOIPPA") and that as a public body under FOIPPA, the City may be requested to disclose Confidential Information provided to it by any of the Participating parties and all Participating Parties agree that any such disclosure by the City will not constitute a breach of the City's obligations hereunder. The parties to this Agreement further acknowledge and agree that the City has procurement policies which may require the City to publicly disclose Confidential Information should the parties enter into a contract and the Participating parties agree that any such disclosure by the City will not constitute a breach of the City's obligations hereunder.
7. **Return of Confidential Information.** Upon completion of the Purpose or at such other time as a Disclosing Party may request, a Receiving Party will destroy or promptly return and deliver to the Disclosing Party all originals and copies of the Confidential Information, in whatever form, which the Receiving Party requests and will destroy all extracts, analyses, notes or other documents, including computer files, prepared by or for the Receiving Party including or based on the Confidential Information and will certify such return and destruction, in writing, to the Disclosing Party if requested to do so.
8. **Injunction.** The Participating Parties acknowledge and agree that any breach of this Agreement by any party will cause irreparable harm to the other parties. If a party fails to abide by the terms of this Agreement, any party will be entitled to an injunction, specific performance or other equitable relief as well as any equitable accounting of all profits and benefits arising out of any breach of this Agreement and no bond or other security will be required from the other party in connection therewith. The rights and remedies specified in this Agreement are in addition to, and not in substitution for, any rights or remedies of the innocent party, at law or in equity. If a party is successful in obtaining an injunction or is otherwise successful in any other action arising out of a breach of this Agreement, the other party will pay to the innocent party the full amount of its legal fees and expenses incurred in pursuing such action(s).
9. **Term and Survival of Obligations.** This Agreement will remain in full force and effect until June 1, 2023. The obligations of a Receiving Party respecting the use, disclosure and return of Confidential Information acquired from a Disclosing Party and the rights of a Disclosing Party provided herein to enforce such obligations will survive the expiration or termination of this Agreement.
10. **Binding Nature.** This Agreement will be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

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- 11. **No Warranty.** All Confidential Information is provide “AS IS” and without any warranty, express, implied or otherwise, regarding its accuracy, completeness, performance, non-infringement or fitness for a particular purpose.

- 12. **Assignment.** No party may assign or transfer this Agreement or any rights or obligations under this Agreement without the prior written consent of the other parties.

- 13. **Entire Agreement.** This Agreement represents the entire agreement and understanding of the parties hereto with respect to the non-disclosure of the Confidential Information described herein. This Agreement supersedes all prior written or oral agreements and all negotiations, conversations or other communications or understandings of the parties hereto with respect to the subject matter described herein.

- 14. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, a suitable provision will be substituted therefore to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable provision. The validity and enforceability of the remaining provisions will not be affected or impaired thereby.

- 15. **Governing Law and Jurisdiction.** This Agreement will be governed by the laws of the Province of British Columbia and Canada applicable therein and the parties hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.

- 16. **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All of these counterparts will constitute one agreement, binding on the parties, notwithstanding that all parties are not signatories to the same counterpart. A fax or electronic copy of this Agreement executed by a party, in counterpart, will constitute a properly executed, delivered and binding agreement or counterpart of the executing party.

READ, UNDERSTOOD AND AGREED, this ____ day of _____, 2022.

NAME OF PARTY: _____
by its authorized signatory:

NAME OF PARTY: _____
by its a authorized signatory:

Name:
Title:

Name:
Title:

NAME OF PARTY: _____
by its authorized signatory:

NAME OF PARTY: _____
by its a authorized signatory:

Name:
Title:

Name:
Title:

APPENDIX “A”

EMILY CARR UNIVERSITY OF ART + DESIGN (ECUAD) Standard Intellectual Property Terms and Conditions for Graduate Student Educational Projects funded through The Mitacs Accelerate Internship Program (Mitacs Accelerate)

MITACS ACCELERATE PROGRAM OVERVIEW

The **Mitacs Accelerate** Program connects Canadian businesses with university researchers in all disciplines who have advanced levels of expertise in areas that address vital research opportunities. It partners graduate student and postdoctoral fellow interns (Accelerate Interns) and their supervising professors (Academic Supervisors) with companies, hospitals, government agencies and not-for-profit organizations (Partner Organization). These connections help partners utilize new tools, technologies and methodologies to address issues that are vital to an organization’s success. Partner Organizations benefit from the power of advanced research while interns and their professors benefit from new research opportunities.

Internships are available to all faculties, schools and departments at ECUAD The **Mitacs Accelerate** Program is administered by Mitacs, with the support of the Province of British Columbia and the Government of Canada.

This program funds Accelerate Interns to undertake research on site with the Partner Organization, applying cutting-edge tools, techniques or methodologies to research issues and problems arising within the organization. This on site research is expected to account for approximately 50% of the Accelerate Intern’s time during the period of the internship. The Accelerate Intern will then spend the remaining time at his/her home university with their Academic Supervisor, evaluating the best techniques or methodologies to be applied to the identified research issue.

Goal of Mitacs Accelerate funded Projects The **Mitacs Accelerate** mission for this internship program is to initiate and foster linkages with primarily BC-based industrial, governmental and not-for-profit organizations that require advanced university-based research techniques and technologies to deal with problems of strategic importance to BC and Canada. ECUAD works with Mitacs in achieving this mission by partnering with industry on research projects (Projects) that may involve the generation, application, or commercialization of new research based tools.

Funding for Mitacs Accelerate Projects

Funding for any Mitacs Accelerate Project is determined by the Mitacs Accelerate Terms and Conditions of the Award included in the communication of results of the proposal application.

TERMS AND CONDITIONS

These ECUAD Standard Intellectual Property Terms and Conditions are incorporated by reference into the Memorandum section of each Mitacs Project Application for use with Mitacs Accelerate Projects.

Confidentiality It is expected that a Partner Organization will not provide any confidential information to the Accelerate Intern, Academic Supervisor, or other ECUAD personnel who may work on a Project. In the event a Project requires the exchange of confidential information, that exchange may only occur under a Non-Disclosure Agreement agreed to by ECUAD, the Accelerate Intern, the Academic Supervisor, and other ECUAD personnel, as applicable.

Ownership and Use of Intellectual Property, Data & Results For the purpose of these Terms and Conditions, the following words or expressions have the meanings indicated:

“Background” means information, technique, know-how, materials, technology, design work, intervention, and rights in Intellectual Property (regardless of the form or medium in which they are disclosed or stored) that are provided by one party to another for use in the Project, except any Results;

“Intellectual Property” means patents, trademarks, industrial designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognized from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above; and

“Results” means all data, inventions, discoveries, software code, improvements, information, knowhow, designs, results, and Intellectual Property first identified or reduced to practice or writing by the Accelerate Intern, Academic Supervisor, or other ECUAD personnel in the course of the Project.

The Partner Organization shall own the Intellectual Property in the Results other than the following:

- (1) any Intellectual Property or other subject matter covered by one or more separate agreements to which ECUAD and the Partner Organization are parties and active during the dates of the Project;
- (2) any third party proprietary tools that are used in the performance of the Project; and
- (3) the copyright in the materials produced by the Accelerate Intern, Academic Supervisor, or other ECUAD personnel as a result of the Project as more particularly described in the Publications and Copyright section below.

The party contributing to the Project any Background (or its licensors) shall own the Intellectual Property therein. No licence to use any Intellectual Property is granted or implied by these Terms except when such rights are expressly stipulated. Each party grants the others a royalty-free, non-exclusive licence to use its Background for the purpose of carrying out the Project.

The Partner Organization grants the Accelerate Intern, Academic Supervisor, and other ECUAD personnel a royalty-free, non-exclusive, perpetual, irrevocable licence to use the Results for the purpose of carrying out the Project and for research, scholarly publication, educational or other non-commercial use.

Publications and Copyright None of the Accelerate Intern, the Academic Supervisor, or any ECUAD personnel are restricted from presenting Results from the Project at symposia, professional meetings, or for academic evaluation or other purposes, or from publishing thesis, course reports, or in journals or other publications (Publications), provided that the Accelerate Intern is expected to provide the Partner Organization copies of the proposed disclosure at least thirty (30) days before the presentation or publication date. Should the Partner Organization object to the proposed disclosure it should give written notice to the author within fifteen (15) days after delivery of the proposed disclosure. Notwithstanding the foregoing, the parties acknowledge that opportunities for Publications may arise unexpectedly and a more timely response may be necessary, and each party agrees to use reasonable efforts to cooperate to allow Publications to proceed as proposed. The Partner Organization may object to the

proposed disclosure on the grounds that: (1) it contains confidential information (other than any Results) that was disclosed to the author by the Partner Organization, or (2) it discloses patentable subject matter belonging to the Partner Organization which needs protection.

If the Partner Organization makes objection on the grounds of the inclusion of its confidential information, the author will remove such confidential information immediately from the proposed disclosure, after which the proposed disclosure may be presented or published. If the Partner Organization makes an objection on the grounds of protection of patentable subject matter, the author will delay the proposed disclosure to permit the Partner Organization to file one or more patent applications with one or more patent offices directed to such patentable subject matter (Delay). A provisional patent application will be considered to be a patent application in the United States of America for these purposes. The Delay will be no longer than sixty (60) days from the date the proposed disclosure was delivered to the Partner Organization, after which the proposed disclosure may be presented or published.

The author of any Publications, excluding software code and related technical documentation developed as part of the Project research, will retain copyright therein.

Warranty Disclaimer and Indemnity Each Project is experimental and exploratory in nature and no particular results can be guaranteed by ECUAD, the Accelerate Intern, the Academic Supervisor, or any ECUAD personnel. The Partner Organization must undertake its own due diligence with respect to all matters arising from a Project.

The Partner Organization will defend, indemnify and hold harmless ECUAD, the Academic Supervisor, the Accelerate Intern, and any of their officers, directors, employees, students and agents from all liabilities, demands, damages, expenses including all reasonable legal fees and other costs of litigation, resulting directly or indirectly from the use of the Results, including any Intellectual Property therein, by the Partner Organization or any entity taking rights to the same through the Partner Organization.

Effective Date These Terms and Conditions apply to Mitacs Accelerate Internships at ECUAD, the Memorandum for which is signed by the last of the parties on or after August 1, 2019