

## **CANARIE DAIR USAGE AGREEMENT**

**BETWEEN:**

**CANARIE INC (“CANARIE”)**

**-and-**

**You or the entity you represent (the “User”)**

**(collectively the “Parties”, each a “Party”)**

***Last updated September 17, 2013***

**WHEREAS** CANARIE is an industry-led, not-for-profit corporation, created in 1993 as a collaborative venture involving industry, the research and education communities and the federal government to take advantage of the potential economic opportunities inherent in advanced research networking;

**WHEREAS** CANARIE has since 1993, been the third party delivery organization for Canada’s research and innovation networks and has experience in the design, development and operation of advanced networks and networking tools, or working in partnership with the private sector, in creating collaborative partnerships and in delivering in accordance with the Government of Canada’s accountability regime;

**WHEREAS** CANARIE’s Network is the one, essential national network infrastructure to support advanced research in Canada and to maintain Canada’s leadership in the development of advanced research networks;

**WHEREAS** part of CANARIE’s Network is the Digital Accelerator for Innovation and Research (“**DAIR**”) and CANARIE wishes to provide access to DAIR in furtherance of CANARIE’s mandate to leverage the CANARIE Network to assist firms operating in Canada, and Canadian Universities, to advance innovation and commercialization of products and services to bolster Canada’s technology innovation capabilities;

**WHEREAS** CANARIE has entered into a Contribution Agreement with Industry Canada dated the 4<sup>th</sup> day of September 2012 (the “**Contribution Agreement**”) to continue the operation and development of CANARIE’s Network as essential research infrastructure for the advancement of Canadian science and technology, and to increase the use of CANARIE’s Network to benefit Canadians;

**WHEREAS** pursuant to the terms of the Contribution Agreement, CANARIE may enter into agreements for research and development activities in technical areas that support CANARIE’s objectives;

**AND WHEREAS** CANARIE and the User wish to enter into an agreement by which the User will be able to access DAIR on the terms and conditions herein;

**NOW THEREFORE** in consideration of the premises and mutual covenants herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties) the parties hereto covenant and agree as follows:

**1. TERM OF AGREEMENT**

- a) This Agreement takes effect when the User clicks the “I accept” button or check box presented with these terms.
- b) The User represents to CANARIE that they are lawfully able to enter into an agreement, whether as an individual or, if on behalf of an entity they represent, with the legal authority to bind the User to this Agreement.
- c) So long as the User is in compliance with the terms of this Agreement and the Acceptable Use Policy attached hereto as Schedule “A” (the “**AUP**”), the User shall have access to DAIR beginning from the creation of the user account by CANARIE and terminating one year after creation of the user account by CANARIE (the “**Term**”) on the terms and conditions herein.
- d) CANARIE will determine and enforce the set of resources the User has access to, including physical (e.g. CPU, memory, disk), logical (e.g. file descriptors, port numbers, bandwidth) and synthetic (e.g. packet forwarding paths) resources.

**2. ACCESS TO DAIR**

- a) The User acknowledges that misuse of DAIR or violation of the AUP can lead to temporary or permanent disabling of accounts and administrative or legal actions.
- b) Connecting Equipment: The User is responsible for the installation, operation, maintenance and all costs related to the User’s equipment or software at its premises that may be required to make use of DAIR.

**3. TERMS OF USE**

- a) The User acknowledges and agrees that they are using DAIR on an “as is” basis and that DAIR will be maintained by CANARIE on a “reasonable efforts” basis. The User further acknowledges and agrees that CANARIE makes no warranties as to the safety of data or proprietary information on DAIR and that CANARIE will not be held liable in the event of any loss, damage or misappropriation of data.
- b) Without limiting the generality of the foregoing,
  - i. CANARIE shall not be responsible for any limitations, technological problems or systems failure of DAIR, including but not limited to any such limitations, technological problems or system failures that cause damage to the User's data, equipment or software.
  - ii. The User acknowledges and agrees that they are solely responsible for their content on DAIR, including their data, software, and connectivity configuration (e.g. DNS) and that CANARIE will have no responsibility or liability for same.

- iii. The User acknowledges that CANARIE will provide on a “reasonable efforts” basis for the storage, retention, protection or backing up of the User's data on DAIR, but CANARIE in no way warrants or guarantees the safety or security of such data.

#### 4. **USER ACCOUNTABILITY**

The User acknowledges that they are solely responsible for their activities on DAIR and may be liable under applicable administrative or legal sanctions for their actions.

#### 5. **REPORTING**

- a) The User acknowledges that CANARIE has reporting and accountability obligations to both its Board of Directors and Industry Canada and agrees that they shall provide CANARIE with such information and reports related to the User's activities enabled by DAIR and the results of those activities as CANARIE may request (each an “**Information Request**”).
- b) The User acknowledges and agrees that ignoring or refusing to provide information in response to an Information Request may lead to CANARIE temporarily or permanently disabling User's account.

#### 6. **FEES**

- a) The User shall pay CANARIE the fees set out in the fee schedule, attached hereto as Schedule “B” (the “**Fee Schedule**” outlining the “**Fees**”).
- b) Notwithstanding any other provision hereof, in anticipation of new services being offered by CANARIE, the parties agree that CANARIE, in its sole discretion may, from time to time, amend the Fee Schedule to include fees for new services without notice to the User who shall be under no obligation to subscribe to, nor to pay fees for, any such additional services. The Fee Schedule is posted on <http://www.canarie.ca/en/dair-program>
- c) The User acknowledges and agrees that the Fees payable in accordance with the Fee Schedule are payment for the Term of this Agreement and are calculated on a monthly basis. Therefore:
  - i. Should the User move to a lower fee tier (a “Tier” as outlined on the Fee Schedule) there shall be no refund of Fees paid to CANARIE.
  - ii. Should the User move to a higher Tier, further Fees may be owing by the User. In the event this Agreement is terminated, other than if termination is by CANARIE in accordance with section 12(d) of this Agreement, no Fees shall be refunded to the User.
  - iii. The User shall pay any and all Fees in advance of being provided access to DAIR.

#### 7. **PUBLIC COMMUNICATIONS**

- a) The User will not issue any release or publicity concerning this Agreement or its subject matter except with prior written approval of CANARIE, which consent will not be unreasonably withheld.

- b) The User further agrees that all materials produced with respect to DAIR (including, but not limited to, publicly accessible websites) shall reference CANARIE's role. The User acknowledges that the right to display and otherwise use CANARIE's corporate name, corporate identity, and logo is granted to the User only with respect to the DAIR Project and the User agrees that it will not use the same in any other manner at any other time, with the exception only of any rights to use the same arising from the User's membership in CANARIE, if applicable.
- c) The User agrees that all communications related to the DAIR Project shall be made in both official languages for any nation-wide communication aimed at the general public and for any communication aimed at the general public residing in bilingual regions.
- d) CANARIE has the right to release to the Government of Canada any reports and other information received or produced in accordance with this Agreement. CANARIE has the right to use such materials, excluding proprietary information, in the implementation of its public communications and accountability strategy.
- e) The User grants the right for CANARIE to display and otherwise use the User's corporate name, corporate identity, and logo only with respect to the DAIR Project and CANARIE agrees that it will not use the same in any other manner at any other time.

## 8. **INTELLECTUAL PROPERTY**

- a) The Parties hereby acknowledge and agree that all intellectual property belonging to each Party as well as all rights arising therefore shall remain the sole and exclusive property of that Party.
- b) All right, title and interest in and to any intellectual property which may be created, generated or produced in connection with the User's use of DAIR shall vest in the User. Notwithstanding the foregoing, the User acknowledges and agrees that all right title and interest in DAIR and the intellectual property related thereto is and remains that of CANARIE.
- c) Any enhancement to the intellectual property of CANARIE made as a result of the User's use of DAIR shall belong exclusively to CANARIE.

## 9. **INDEMNIFICATION**

The User agrees to indemnify, save and hold harmless CANARIE against any and all liability, expense, damage, cost or claim arising from or in relation to or in any way connected with the User's use of DAIR.

## 10. **ARBITRATION**

- a) All questions, controversy, or claims arising out of or relating to this Agreement shall be settled by arbitration in accordance with the Arbitration Act (Ontario) as amended from time to time by a single arbitrator (the "Arbitrator") appointed by the mutual agreement of the parties hereto; and failing such agreement by the Senior Regional Justice of the Ontario Superior Court in Ottawa.

- b) The arbitration will take place in the City of Ottawa.
- c) The Arbitrator has the right to grant legal and equitable relief including injunctive relief and the right to grant permanent and interim injunctive relief. The Arbitrator shall not amend or otherwise alter the terms and conditions of this Agreement. The Arbitrator shall render a decision within 90 days after his or her appointment as Arbitrator.
- d) Any claim arising out of or relating to the terms of this Agreement shall be made in writing and shall be served upon the party against whom the claim is made not more than twelve (12) months from the date of the alleged breach and any such claim not made within such twelve (12) month period shall be deemed to have been abandoned and shall be absolutely barred.

The final award of the Arbitrator shall be final and binding on the parties with no appeal to any court. It shall be a condition precedent to any action in any court that the final award of the Arbitrator shall have been made. The parties hereby agree to carry out any decision or order of the Arbitrator in good faith.

**11. NO WARRANTIES**

- a) CANARIE makes no express or implied warranty as to DAIR, the conditions of research thereon or the fitness for purpose of DAIR for research or a particular purpose or form of research or as to the fitness of any intellectual property, resulting property or generated information or product that may be made or developed using DAIR.
- b) CANARIE makes no warranty that the goods, services, materials, products, processes, information or data to be furnished hereunder will accomplish intended results or are fit for any purpose including the intended purpose or that any of the above will not interfere with privately owned rights of others. CANARIE shall not be liable for any damages attributed to the use of DAIR or the use of intellectual property, information generated or product made using DAIR.

**12. TERMINATION**

- a) CANARIE may terminate this Agreement without notice in their sole and absolute discretion in the event the User violates the AUP, and when such termination occurs there shall be no refund of Fees.
- b) The User acknowledges and agrees that only a limited number of users can have access to DAIR at a given time and that should the User not make use of DAIR, CANARIE may terminate this Agreement without notice in their sole and absolute discretion.
- c) The User may terminate this Agreement at any time by giving 30 days written notice in writing to CANARIE. Should the User terminate this Agreement there shall be no refund of Fees.
- d) CANARIE may terminate this Agreement for any reason other than a termination under section 12(a) upon the provision of 30 days written notice to the User. Should

CANARIE terminate this Agreement pursuant to this section 12(d) CANARIE shall provide the User with a refund of the Fees paid for the Term prorated for the portion of the Term which remains.

**13. ACKNOWLEDGEMENT OF APPROPRIATE USE**

- a) The User acknowledges and agrees that their use of DAIR is subject to the Acceptable Use Policy attached hereto as Schedule "A". The User acknowledges that they have read the AUP and will abide by its terms. The User acknowledges that CANARIE may amend the AUP from time to time in its sole and absolute discretion and that the User shall be bound by any such amendments.
- b) The User acknowledges and agrees that CANAIRE in its sole and absolute discretion has the right to determine what constitutes a violation of the AUP and can suspend or terminate User's use of DAIR without notice and in their sole absolute discretion should User violate the AUP.

**14. NOTICES**

- a) Any notice or other written communication required or permitted hereunder shall be in writing.

- b) All such notices to CANARIE Inc. shall be addressed to:

By mail or personal delivery:      Attn: Chief Financial Officer  
45 O'Connor Street, Suite 500  
Ottawa, Ontario  
K1P 1A4

By facsimile:                              (613) 943-5443

By e-mail:                                    [nancy.carter@canarie.ca](mailto:nancy.carter@canarie.ca)

- c) All such notices to the User shall be addressed using the information provided with their DAIR submission.
- d) Any such notice or other written communication shall, if mailed as aforesaid be effective eight (8) calendar days from the date of posting; if given by facsimile or e-mail, shall be effective on the first business day after reception; and if given by personal delivery shall be effective on the day of delivery.

Either party may at any time change its address by giving notice of such change of address to the other party in the manner specified in this paragraph.

## Schedule “A”

### Acceptable Use Policy

This Acceptable Use Policy (“AUP”) is intended to provide the User with guidance as to the prohibited uses of the Digital Accelerator for Innovation and Research (“DAIR”). The examples outlined in this Policy are intended to be illustrative for the User and do not provide an exhaustive list of actions that will constitute unacceptable use of DAIR.

Within the broader goal of advancing the development of the digital economy in Canada, CANARIE network infrastructure and services are provided to support research, education, advanced application development and usage by Canadian research, education, government and industry organizations.

DAIR can be used for any legal purpose in support of this goal, so long as it does not interfere with or adversely affect the operation of DAIR, the CANARIE network or any network user, as may be determined by CANARIE.

CANARIE reserves the right, to modify this AUP from time to time and intends to provide advance notice of any such modifications.

#### **A. PROHIBITED USES:**

##### **1. NO ILLEGAL USE:**

- a) Users shall not use DAIR for any illegal purpose or use, or encourage, promote, facilitate or instruct others to use DAIR for any illegal purpose.
- b) Users shall not use DAIR to make available any Illegal Content, including the transmission, distribution, display or storage of any such content.
- c) Illegal content includes, but is not limited to content that is obscene, defamatory offensive or abusive, content that violates, misappropriates or infringes the intellectual property, proprietary rights or privacy of any third parties, content that may be harmful such as offering fraudulent goods or engaging in deceptive practices and content that is in violation of law including advertising or making available gambling or displaying, disseminating, storing or transmitting child pornography (collectively the “**Illegal Content**”).

##### **2. NO SECURITY VIOLATIONS:**

- a) Users shall not violate the integrity or security of any computer or communications system, software application, network or computing device, or network (individually a “**System**”, collectively the “**Systems**”), including but not limited to any unauthorized access to any System or a breach of the security or authentication measures of any System.

- b) Users shall not share their DAIR accounts or passwords with others.
- c) Users shall not attempt to access or use DAIR by unauthorized means, including but not limited to impersonating another person or user, or misuse of passwords, usernames or user information.
- d) Users shall not modify or circumvent access or security controls to DAIR in order to perform actions outside their authorized privileges or allow others to do same.

**3. NO DATA MODIFICATION OR DESTRUCTION:**

Users shall not intentionally modify, move or delete any information or programs on DAIR or a System.

**4. NO DENIAL OF SERVICE ACTIONS:**

Users may not deliberately interfere with other users accessing DAIR.

**5. NO INTERFERENCE:**

- a) Users shall not interfere with the proper functioning of DAIR or any System, including any deliberate attempt to overload a system..
- b) Users shall not attempt to avoid any use limitations placed on DAIR or a System, including but not limited to access or storage restrictions.
- c) Users shall not engage in denial of service network abuses, such as inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.

**6. SOFTWARE USE:**

- a) Users shall not possess, use or transmit any illegally obtained software using DAIR.
- b) Any software used on DAIR must be appropriately acquired and used pursuant to and according to the relevant licensing for such software.
- c) Users shall not intentionally introduce, transmit or use any malicious software, including but not limited to computer viruses, Trojan horses or worms.

**B. USER OBLIGATIONS AND ACKNOWLEDGEMENTS:**

**7. NOTIFICATION:**

Users shall notify CANARIE immediately if they become aware that:

- a) the account they use to access DAIR has been compromised;
- b) their DAIR password has been compromised;
- c) any misuse, abuse or criminal activities occur in relation to DAIR;
- d) they become aware of any violation of this policy;
- e) there are any changes in their contact information.



## **C. DISCLAIMERS:**

### **8. NO GUARANTEE OF PRIVACY:**

CANARIE provides absolutely no privacy guarantees with regard to the use of DAIR or with regard to any data, software or proprietary information that is stored on, uploaded to or used in connection with DAIR.

### **9. NO GUARANTEE OF RELIABILITY:**

CANARIE does not provide any guarantees with respect to the reliability DAIR or any component thereof, which may be rebooted or reinstalled, amended, altered, discontinued or closed at any time.

### **10. BACKING UP OF DATA:**

CANARIE makes no warranties as to the safety of data or proprietary information on DAIR and CANARIE will not be held liable in the event of any loss of or damage to data.

## **D. TERMS OF USE**

### **11. NO DATA RETENTION:**

CANARIE reserves the right to remove any data from DAIR at any time. Users must remove from DAIR any data they wish to retain, on or before the end of their Term.

### **12. NO SECURITY OF PROPRIETARY INFORMATION:**

CANARIE is not responsible for theft or loss of proprietary information (code, data, intellectual property) on DAIR.

### **13. MONITORING:**

Users have no explicit or implicit expectation of privacy. CANARIE retains the right to monitor the content of all activities on DAIR and networks and access any files without prior notice or consent of Users. DAIR may retain copies of any network traffic, computer files or messages indefinitely without any knowledge or consent.

### **14. MODIFICATION:**

CANARIE reserves the right to modify the Policy at any time by posting a revised version at [www.canarie.ca](http://www.canarie.ca).

### **15. VIOLATION OF POLICY:**

Whether an action violates this Policy will be determined by CANARIE in their sole and absolute discretion. In the event CANARIE determines that this Policy has been violated CANARIE may remove or disable User access to their account, modify or remove any content that violates this policy, and/or report any activity that appears to be in violation of law to the appropriate authorities. CANARIE may also cooperate with law enforcement, regulators or other third parties in the investigation and prosecution of illegal conduct in any way that CANARIE sees fit.

### **16. TERMINATION:**

In the event a User violates this Policy or authorizes or assists others to violate this Policy

CANARIE may in their sole and absolute discretion suspend or terminate that User's use of DAIR.

**17. ENFORCEMENT OF THE AUP:**

CANARIE reserves the right, but has no obligation, to investigate violations of this AUP or misuse of DAIR. In the event that CANARIE discovers any violations of this AUP they may choose to make any modifications required to ensure that the User is in compliance with the terms herein.

**Schedule “B”**

**Fee Schedule**

The DAIR pricing structure is based on the quota, or maximum quantity, of virtual cores (Compute Unit) and disk space (Disk Unit) available to the User for the Term of the Agreement.

<b>Tier</b>	<b>Compute Unit Quota</b>	<b>Fee</b>
<b>FREE</b>	<b>0 to 4</b>	<b>\$ 0</b>
<b>1</b>	<b>Greater than 4</b>	<b>(Compute Units – 4) * \$100</b>

<b>Tier</b>	<b>Disk Unit Quota</b>	<b>Fee</b>
<b>FREE</b>	<b>0 to 4</b>	<b>\$ 0</b>
<b>1</b>	<b>Greater than 4</b>	<b>(Disk Units – 4) * \$10</b>

Fees are with respect to the Term of the Agreement and are not prorated for duration.