

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 March 14, 2019

WHEREAS:

- A. CANARIE manages the operation and development of the CANARIE network, and related programs and services, to enable Canadians to engage in leading-edge research and take advantage of inherent economic opportunities;
- B. CANARIE is a vital component of Canada’s digital research infrastructure and an important element in support of the Government’s Science, Technology and Innovation Strategy;
- C. One of CANARIE’s programs supports the Digital Accelerator for Innovation and Research (“DAIR”). CANARIE wishes to provide access to DAIR to leverage the CANARIE network to assist firms operating in Canada and Canadian institutions to advance innovation and commercialization of products and services to bolster Canada’s technology capabilities;
- D. CANARIE entered into a Contribution Agreement with Industry Canada (the ministry now known as Innovation, Science and Economic Development), dated the 9th of October 2015 (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;
- E. 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 Expected Results; and
- F. 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. DEFINITIONS

In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions will have the following meanings. Certain other capitalized terms and expressions are defined elsewhere in this Agreement.

- 1.1. “Agreement,” “hereto,” “herein,” “hereof,” “hereunder,” and similar expressions refer to this Agreement and not to any particular section or any particular portion of this Agreement and includes all schedules attached to this Agreement.
- 1.2. “DAIR” means the set of resources the User has access to, which CANARIE will determine and enforce, which may include physical (e.g. CPU, memory, disk), logical (e.g. file descriptors, port numbers, bandwidth) and synthetic (e.g. cloud services/APIs, packet forwarding paths) resources.

2. TERM OF AGREEMENT

- 2.1. This Agreement takes effect when the User clicks the “I accept” button or check box presented with these terms.
- 2.2. 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.
- 2.3. 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.

3. 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) 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.

4. SERVICE LEVEL

- 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. firewall rules, DNS) and that CANARIE will have no responsibility or liability for same.
 - iii. The User acknowledges that CANARIE will provide for, on a “reasonable efforts” basis, the storage, retention, protection or back up of the User's data on DAIR, but CANARIE in no way warrants or guarantees the safety or security of such data.

5. 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.

6. REPORTING

- a) The User acknowledges that CANARIE has reporting and accountability obligations to both its Board of Directors and Innovation, Science and Economic Development (ISED) 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.

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 participation (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 DAIR 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 DAIR participation 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 CANARIE the right to display and otherwise use the User's corporate name, corporate identity, and logo only with respect to DAIR participation 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.
- 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.
- 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.

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 CANARIE 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 e-mail: 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 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 and terms of use of the Digital Accelerator for Innovation and Research (“DAIR”). The examples outlined in this AUP 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) User 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) User 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) User 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) User shall not share their DAIR accounts or passwords with others.
- c) User 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) User 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:

User shall not intentionally modify, move or delete any information or programs that are provisioned by CANARIE on DAIR or a System.

4. NO DENIAL OF SERVICE ACTIONS:

User may not deliberately interfere with other users accessing DAIR.

5. NO INTERFERENCE:

- a) User shall not interfere with the proper functioning of DAIR or any System, including any deliberate attempt to overload a system.
- b) User shall not attempt to avoid or circumvent any use limitations placed on DAIR or a System, including but not limited to access or storage restrictions.
- c) User 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.
- d) Network probing or port scanning tools are only permitted on the DAIR System provided to User for verification of connectivity configuration. Unauthorized port scanning, for any reason, is strictly prohibited.

6. SOFTWARE USE:

- a) Although legal in Canada, mining of bitcoins is not an acceptable use for DAIR.
- b) User shall not possess, use or transmit any illegally obtained software using DAIR.
- c) Any software used on DAIR must be appropriately acquired and used pursuant to and according to the relevant licensing for such software.
- d) User shall not intentionally introduce, transmit or use any malicious software, including but not limited to computer viruses, Trojan horses or worms.

B. TERMS OF USE:

7. NOTIFICATION:

User 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; and
- d) they become aware of any violation of this AUP.

8. NO DATA RETENTION:

CANARIE reserves the right to remove any data from DAIR at any time. User must remove or transfer from DAIR any data they wish to retain, on or before the end of their Term. Charges may apply for data transfer where CANARIE deems the charges excessive, in their sole and absolute discretion.

9. NO SECURITY OF PROPRIETARY INFORMATION:

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

10. MONITORING:

User has 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 User. DAIR may retain copies of any network traffic, computer files or messages indefinitely without any knowledge or consent.

11. MODIFICATION:

CANARIE reserves the right to modify this AUP at any time by posting a revised version at www.canarie.ca.

12. VIOLATION OF THIS AUP:

Whether an action violates this AUP will be determined by CANARIE in their sole and absolute discretion. In the event CANARIE determines that this AUP has been violated CANARIE may remove or disable User access to their account, modify or remove any content that violates this AUP, 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.