

**CANARIE
RESEARCH SOFTWARE PROGRAM
PROJECT AGREEMENT**

between

CANARIE Inc.

and

«Name_of_Lead_Contractor»

THIS AGREEMENT is made as of the «Day» day of «Month» «Year».

BETWEEN:

CANARIE Inc., a corporation without share capital incorporated under the laws of Canada (hereinafter referred to as “CANARIE”)

AND:

«Name_of_Lead_Contractor», «Organization_type_» incorporated under the laws of «Country_or_Province» (hereinafter referred to as the “Lead Contractor”)

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 Digital Research Infrastructure Strategy;
- C. CANARIE entered into a Contribution Agreement with Industry Canada (the ministry known as Innovation, Science and Economic Development (ISED)), dated the 6th of July 2019 (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;
- D. CANARIE and the Lead Contractor acknowledge that funding for this Project is part of a contribution received by CANARE from the federal government;
- 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;
- F. CANARIE and the Lead Contractor wish to enter into an agreement for the performance by the Lead Contractor of a collaborative project that will accelerate the development of software that enables researchers to make use of Canadian digital infrastructure in their research, on the terms and conditions contained in this Agreement (the “Project”); and
- G. The Project shall be carried out by the Lead Contractor.
OR
The Project shall be carried out by the Lead Contractor and the following participant(s) (the “Participants”) who shall be managed by the Lead Contractor for the purposes of the Project and of this Agreement:

«Participant» «Province»,

«Participant1» «Province1»
«Participant2» «Province2»

NOW THEREFORE in consideration of the premises and the 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 “Audit Report” shall have the meaning prescribed in paragraph 6.4 herein.
- 1.3 “CANARIE’s Expected Results” shall have the meaning prescribed in the Contribution Agreement, and are attached hereto as Schedule “C”.
- 1.4 “Claim” shall have the meaning prescribed in paragraph 5.1 herein.
- 1.5 “Contribution” shall have the meaning prescribed in paragraph 4.1 herein.
- 1.6 “Contribution Agreement” means the Contribution Agreement between CANARIE and Industry Canada (the ministry now known as Innovation, Science and Economic Development), dated the 6th day of July, 2019.
- 1.7 “Effective Date” shall have the meaning prescribed in paragraph 4.3 herein.
- 1.8 “Eligible Costs” means the costs of the Lead Contractor, and the Participants if any, as set out in Schedule “B” attached hereto.
- 1.9 “Technical Report(s) and Demonstration(s)” shall have the meaning prescribed in paragraph 6.3 herein.
- 1.10 “In-Kind Costs” means the costs of the project contributed by the Lead Contractor, and the Participants if any, as set out in Schedule “B” attached hereto.
- 1.11 “Intellectual Property” includes all intellectual and industrial property rights produced or generated during the performance of the Project, which are capable of protection by patents, trademarks, copyright, design patents, or foreign equivalents of any of the foregoing, and trade secrets and know-how produced or generated during the performance of the Project which are capable of being licensed.

1.12 “Minister” shall mean the Minister of Innovation, Science and Economic Development (Canada) or such successor ministry responsible for the administration of the Contribution Agreement.

1.13 “Participant(s)” means the participant(s) listed in recital G to this Agreement, if any.

1.14 “Parties” means CANARIE and the Lead Contractor, and Party means either of them, as the context permits or requires.

1.15 “Project” means the Project set out in paragraph 3.1 herein.

1.16 “Project Completion Date” shall have the meaning prescribed in paragraph 5.2 herein.

1.17 “Technical Review” shall have the meaning prescribed in paragraph 6.3 herein.

2. TERM OF AGREEMENT

The term of this Agreement shall be from the Effective Date until:

- Three (3) years following the Project Completion Date; or,
- Three (3) years following the date on which the Project is terminated in accordance with paragraphs 19 or 20 hereof.

3. ENGAGEMENT

3.1 The Lead Contractor shall perform the Project in accordance with the conditions, responsibilities, and duties particularly described in the Statement of Work attached hereto as Schedule “A”, (“the Statement of Work”).

3.2 The Lead Contractor shall comply with all reasonable evaluation, audit, accountability, and reporting requirements established by CANARIE, from time to time, so that CANARIE may assess the ongoing performance of the Lead Contractor and the Participants, if any, as required by the Contribution Agreement.

3.3 The Lead Contractor shall ensure that the agreements entered into with the Participants include provisions that specify that the Participant shall comply with the obligations and required provisions as established by CANARIE.

3.4 The Lead Contractor shall ensure that the agreements entered into with any Participants include provisions that acknowledge the federal government’s role in the funding provided to the Project.

3.5 The Lead Contractor shall administer the funds in accordance with CANARIE rules and regulations. It will use accounting and purchasing procedures that conform to the Lead Contractor’s standards, practices, and policies.

3.6 The Lead Contractor hereby represents, warrants, and covenants with CANARIE that the Project activities described in the Statement of Work:

3.6.1 Shall be carried out at any location in Canada where the Lead Contractor or any one of the Participants, if any, normally carries on business; and

3.6.2 Shall be completed on or before «Completion_date».

4. COST SHARING CONTRIBUTION

4.1 Subject to all other provisions of this Agreement, CANARIE will make a cost sharing contribution (the “Contribution”) to the Lead Contractor, with respect to the Project, of an amount equal to the lesser of:

- «%_Contribution»% of the total Eligible Costs incurred in accordance with Schedule “B” (the “Schedule of Eligible Costs”) and identified in the Statement of Work; and,
- «\$_Contribution».

4.2 For greater certainty, the Contribution will be allocated to phases of the Project, as detailed here and identified in the Statement of Work:

4.2.1 Up to «\$_Contribution1» for the development phase (April 1, 2020 – March 31, 2021),

4.2.2 Up to «\$_Contribution2» for the 1st maintenance phase (April 1, 2021 – March 31, 2022).

4.2.3 Up to «\$_Contribution3» for the 2nd maintenance phase (April 1, 2022 – March 31, 2023).

4.3 CANARIE shall not make any advance payments nor contribute to any cost incurred by the Lead Contractor prior to «effect_day» «effect_month» «effect_year» (“the Effective Date”).

5. PAYMENT PROVISIONS

5.1 CANARIE’s contribution to the Project shall be paid to the Lead Contractor on the basis of written claims (the “Claims”) submitted quarterly by the Lead Contractor in such form and containing such information as CANARIE may require. Each Claim shall include Eligible Costs incurred and paid by the Lead Contractor and the Participants, if any, and shall be certified in writing by the designated accounting representative of the Lead Contractor and shall be accompanied by such other supporting documentation as CANARIE may require. **A minimum of 15% of In-Kind Costs must be documented in each Claim.**

5.2 CANARIE shall not have any obligation to pay more than 90% of each Claim submitted nor of the total Contribution prior to the date on which the Project is completed to the

satisfaction of CANARIE (the “Project Completion Date”). CANARIE reserves the right to limit payment of Claims to the rate (amounts) originally indicated in the Project’s Statement of Work, unless increased rates of spending have been indicated as required by paragraph 6.1.

- 5.3 CANARIE reserves the right to reduce the Contribution where Eligible Costs have not been claimed as identified in the Statement of Work.
- 5.4 Upon approval by CANARIE of (a) the Technical Report(s) and Demonstration(s), and (b) the Audit Report (if required), CANARIE shall pay the outstanding balance of the Contribution, if any, to the Lead Contractor and consider the Project complete.
- 5.5 CANARIE shall not have any obligation to pay the Contribution, or any part thereof, unless the Lead Contractor, on or before the date of the first Claim, has demonstrated to CANARIE’s satisfaction that the Lead Contractor has secured a commitment and a capability to finance the Project.
- 5.6 The Lead Contractor further acknowledges and agrees that, in the event that CANARIE has paid a Claim to the Lead Contractor and that it is later determined by CANARIE that the Claim or any portion thereof was not for an Eligible Cost under the Agreement, then the Lead Contractor shall repay such amount to CANARIE or CANARIE may, at its option, set-off such amount against future payments to the Lead Contractor.
- 5.7 Where the Lead Contractor or a Participant are in material breach of a term of this Agreement, CANARIE may, in its sole and absolute discretion, cease payment under this Agreement until such breaches are rectified to CANARIE’s satisfaction.

6. MONITORING, AUDITS, AND REPORTING REQUIREMENTS

- 6.1 The Lead Contractor shall submit future cash flow requirements as part of any Claim.
- 6.2 The Lead Contractor shall submit an attestation of total financial assistance received for the Project, including Canadian government assistance, in such form as CANARIE shall require as part of any Claim.
- 6.3 The Lead Contractor agrees to facilitate the performance by CANARIE of informal technical reviews during the course of the Project (the “Technical Review”). The Lead Contractor shall submit to CANARIE Technical Report(s) and Demonstration(s) (the “Technical Report(s) and Demonstration(s)”), in such form and containing such information as CANARIE shall require.
- 6.4 The Lead Contractor agrees that, at CANARIE’s discretion, the Project may be audited by a financial auditor selected by CANARIE at the end of the Project at CANARIE’s expense. The auditor shall prepare a written report (the “Audit Report”) based on such audit. The Audit Report shall include an itemized statement of all Eligible Costs and In-Kind Costs incurred and paid for in connection with the Project.

- 6.5 The Lead Contractor agrees that in addition to the audit required under paragraph 6.4 hereof, the Project may be audited by CANARIE's external auditor or an auditor acceptable to CANARIE at such other time or times as CANARIE and the Lead Contractor mutually agree.
- 6.6 The Lead Contractor undertakes to provide all necessary access and reasonable assistance to the financial auditor during any audit contemplated by this Agreement, including, without limitation, full and complete access to all the financial statements, records, data, and supporting documentation relating to the Project and all financial or other information of the Lead Contractor which the auditor deems reasonably necessary to complete the audit. The Lead Contractor shall ensure that all Participants, if any, shall agree to be bound by the provisions of this Article 6.6 and to provide the same information and access to CANARIE as if the Participants were signatories to this Agreement, and to so acknowledge in writing.
- 6.7 The Lead Contractor has obtained the consent of the Participants, and all personnel designated in the Statement of Work, to the collection, use, and disclosure of their personal information in connection with the Project.
- 6.8 The Lead Contractor agrees that the Project implementation will report to the CANARIE Registry and Monitoring System, which may be revised or updated from time to time, and which can be found here:
<https://www.canarie.ca/about-us/documents/?wpdmc=research-software>
Minimum reliability over any 7 day period, as measured by the CANARIE Registry and Monitoring System, shall be 99%.
- 6.9 The Lead Contractor agrees that the results of the Project will be made available to researchers to use at no cost, through the CANARIE Research Software Registry, for a period of 3 years from the end of any maintenance and user support funding period or until the results of the Project are declared end of life.

7. REPAYMENT OF CONTRIBUTION

In the event that commercializable Intellectual Property is developed during the performance of the Project, the Lead Contractor shall repay some or all of the Contribution to CANARIE. The contribution repayment shall be based on: a) the relative value of the CANARIE Contribution to the development costs of the Intellectual Property in question; b) actual sales of the Intellectual Property; and c) such other reasonable variables as may be determined by the Parties.

8. OTHER GOVERNMENT ASSISTANCE

- 8.1 The total assistance, including Canadian government assistance, received for the Project by the Lead Contractor shall not exceed 100 percent of Eligible Costs. For the purposes of this Agreement, Canadian government assistance includes funding from federal, provincial, territorial and municipal governments that is being used to support Eligible Costs.

- 8.2 The Lead Contractor hereby acknowledges and represents to CANARIE that for the purposes of the Project, no other federal, provincial, or municipal government assistance (other than assistance under this Agreement) has been requested or received by any Participant or the Lead Contractor.
- 8.3 The Lead Contractor shall inform CANARIE promptly and in writing of any further federal, provincial, or municipal assistance to be received by it or a Participant for the Project no later than the day that such assistance has been received and CANARIE shall have the right to reduce the amount of the Contribution by an amount equal to any such government assistance or by the fair market value (as determined by CANARIE or its auditors) of any non-cash government assistance.

9. PROGRAM EVALUATION

The Lead Contractor and the Participants, if any, shall participate in any program evaluation which CANARIE or the Minister may conduct in relation to the Contribution Agreement or the Project. Such participation shall include making information and records related to the Project available to the evaluators of the Project.

10. BOOKS AND RECORD KEEPING

- 10.1 The Lead Contractor shall keep and maintain proper records, data, and supporting documents on Project activities, expenditures, progress, and accomplishments, which records, data, and supporting documents shall at all times during normal office hours, and upon reasonable notice be open to CANARIE and the Minister or its representative for inspection and audit for the purposes of evaluating whether the objectives of the Project are being achieved, to verify Eligible Costs, to ensure that all conditions set out in this Agreement are being complied with, and to evaluate the success of the Project following its completion.
- 10.2 The Lead Contractor undertakes and agrees to preserve and keep available all records, data, and supporting documents relating to the Project, for a period of three (3) years following the Project Completion Date.

11. INTELLECTUAL PROPERTY

- 11.1 All right, title, and interest in and to any Intellectual Property which may be created, generated, or produced in connection with or as a result of the performance of the Project by the Lead Contractor and Participants, if any, shall vest in the Lead Contractor and Participants according to an agreement among the Lead Contractor and Participants and approved by CANARIE in advance.
- 11.2 The Lead Contractor shall make every reasonable effort to have the results of the Project exploited in Canada for the benefit of Canada, and shall take reasonable precautions to preclude follow-on research and production outside Canada unless CANARIE agrees in advance, and in writing, in each case that it is advantageous to

Canada to do otherwise. Notwithstanding the foregoing, the Lead Contractor and Participants, if any, do not require the consent of CANARIE to license or sub-license any of the Intellectual Property for use only in conjunction with the sale of any of the products developed under the Project.

- 11.3 The Lead Contractor shall not transfer, assign, mortgage, or in any way encumber its right, title, interest in and to, or custody of, any Intellectual Property of the Project, without the prior written consent of CANARIE, and shall ensure that all Participants agree to the same with respect to their proprietary rights. Notwithstanding the foregoing, the written consent of CANARIE is not required where the Lead Contractor or any Participant enters into a reasonable commercial arrangement with a third party for the purpose of honouring its contractual obligations to CANARIE to exploit the results of the Project.
- 11.4 CANARIE shall not unreasonably withhold its consent pursuant to section 11.3. Notwithstanding the foregoing, CANARIE may impose any reasonable conditions necessary to safeguard its security interest prior to granting such consent. In the event that the Lead Contractor or any Participant contravenes section 11.3, CANARIE shall be deemed to have acquired, during the term of the Agreement hereof, a fully paid up, royalty free, and non-exclusive license to use, with the right to sub-license, the Intellectual Property created, generated, or produced during or as a result of the performance of the Project.
- 11.5 The Lead Contractor undertakes to use reasonable efforts to exploit the results of the Project supported under this Agreement. In the event that reasonable efforts have not been made by the Lead Contractor to exploit the results of the Project within two (2) years after the Project Completion Date, the Lead Contractor acknowledges and agrees CANARIE shall have a paid-up, royalty free, non-exclusive license to use or sub-license the Intellectual Property created, generated, or produced during or as a result of the performance of the Project.

12. PUBLIC COMMUNICATIONS

- 12.1 The Lead Contractor shall 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. Consent given by CANARIE for any particular publicity or press release will not be deemed to be consent to any other particular publicity or press release. The Lead Contractor hereby consents to an initial public announcement by or on behalf of CANARIE and/or the Minister in the form of a news release.
- 12.2 The Lead Contractor further agrees that all materials produced with respect to the Project (including, but not limited to, publicly accessible websites) shall reference CANARIE's role in the Project. The Lead Contractor acknowledges that the right to display and otherwise use CANARIE's corporate name, corporate identity, and logo is granted to the Lead Contractor only with respect to the Project and the Lead Contractor 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 Lead Contractor's membership in CANARIE, if applicable.

- 12.3 The Lead Contractor agrees that all communications related to the 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. The Lead Contractor further agrees to ensure that any communication aimed at the general public of a unilingual region be considered for publication in the minority press of that region whenever there is a significant minority group of official language or where a significant demand otherwise exists.
- 12.4 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.
- 12.5 The Lead Contractor agrees to provide CANARIE with a copy of all promotional material developed in relation to the Project. Where a copy cannot be provided, the Lead Contractor agrees to grant CANARIE access to such material.

13. CONFIDENTIALITY

- 13.1 From time to time during the term of this Agreement, the Lead Contractor may reveal to CANARIE information which the Lead Contractor considers proprietary or confidential (the "Confidential Information"). To the extent legally permitted, CANARIE shall use reasonable care to hold the Confidential Information in confidence, protect the Confidential Information and disclose it only to CANARIE employees, officers, and directors with a need to know such Confidential Information. Information (a) generally available to the public; (b) already in the possession of CANARIE without restriction; (c) received from a third party without obligation of confidentiality; or, (d) developed independently by CANARIE without reference to the Lead Contractor's Confidential Information, shall not be considered Confidential Information.
- 13.2 Subject to the provisions of the *Access to Information Act* (Canada), all information provided to the Minister pursuant to this Agreement shall be kept confidential by the Minister unless CANARIE and the Lead Contractor agree otherwise in writing.

14. CONFLICT OF INTEREST

- 14.1 The Lead Contractor covenants and agrees that no member of the House of Commons or Senate of Canada shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.
- 14.2 The Lead Contractor declares that the Lead Contractor has no interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in carrying out the Project. Should an interest be acquired during the life of the Agreement, the Lead Contractor shall declare it immediately to CANARIE.

15. STATUS OF PARTIES

- 15.1 CANARIE and the Lead Contractor declare that nothing in this Agreement shall be construed as creating a partnership, joint venture, or agency relationship between CANARIE and the Lead Contractor.
- 15.2 The Parties recognize that this Agreement must not in any way restrict either Party hereto from any undertaking outside the scope of this Agreement, either jointly or independently unless such an undertaking contravenes section 14.2 herein.

16. REPRESENTATIONS AND WARRANTIES

- 16.1 The Lead Contractor, to the best of its knowledge, represents and warrants to CANARIE and acknowledges and confirms that CANARIE is relying on such representations and warranties in connection with the entry into this Agreement:
- 16.1.1 The Lead Contractor is an individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation, with or without share capital, unincorporated associations, consortia, Canadian university, college or hospital or other entity with a presence in Canada, and, if applicable, is duly incorporated and organized and validly subsisting and not in default under the laws of Canada or any province therein and which carries on business in Canada;
 - 16.1.2 The Lead Contractor warrants that no more than half of the membership and Board of Directors of the Lead Contractor is composed of representatives or agents of the federal government.
 - 16.1.3 The Lead Contractor and the Participants, if any, are financially viable;
 - 16.1.4 No Federal Government institution (federal department, agency, or Crown corporations including their research facilities) shall receive any portion of the Contribution paid to the Project;
 - 16.1.5 The Project is scientifically sound and technologically feasible;
 - 16.1.6 The Project supports CANARIE's Expected Results as found in Schedule "C" of this Agreement;
 - 16.1.7 That where lobbyists are utilized, they shall be registered in accordance with the *Lobbying Act* and that no actual or potential conflict of interest exists nor any contingency fee arrangement;
 - 16.1.8 That any former public servant that derives benefit from this Agreement shall be in compliance with the *Values and Ethics Code for the Public Sector*, the *Policy on Conflict of Interest and Post-Employment* or the *Conflict of Interest Act*;

16.1.9 That any former public office holder that derives benefit from this Agreement shall be in compliance with the *Values and Ethics Code for the Public Sector*, the *Policy on Conflict of Interest and Post-Employment* or the *Conflict of Interest Act*;

16.1.10 That the Project is not a “designated project” being carried out on “federal lands” as such terms are defined under the *Canadian Environmental Assessment Act, 2012*; and

16.1.11 That the Lead Contractor shall comply with all federal, provincial, territorial, municipal and other applicable laws governing the Lead Contractor, including but not limited to, statutes, regulations, by-laws, rules, ordinances and decrees. This includes legal requirements and regulations relating to environmental protection, including the *Canadian Environmental Assessment Act, 2012*, and the successful implementation of and adherence to any mitigation measures, monitoring or follow-up program, which may be prescribed by federal, provincial, territorial or municipal bodies.

17. INDEMNIFICATION

17.1 The Lead Contractor hereby agrees to indemnify and save harmless CANARIE against any and all damages or claims for damages of any nature whatsoever arising out of or in relation to or in any way connected with the performance of the Project by the Lead Contractor.

17.2 Notwithstanding paragraph 17.1, in no event shall the Lead Contractor and the Participants, if any, be liable to CANARIE for damages in excess of the amount of the Contribution actually paid to the Lead Contractor by CANARIE.

18. ASSIGNMENT OF DISPUTES TO CANARIE

In the event of a dispute between the Lead Contractor and a Participant or in the event a Participant’s conduct is in violation or breach of the terms of this Agreement or of the agreement between the Lead Contractor and the Participant (each a “Dispute”), CANARIE shall have the right, at their sole expense and discretion, to participate in any negotiations with respect thereto and to begin and conduct any arbitration or action that they see fit in regards to such Dispute. The Lead Contractor assigns any such Disputes to CANARIE and will fully co-operate with CANARIE and their solicitors in any proceedings with respect to any such Disputes.

19. TERMINATION FOR DEFAULT

19.1 CANARIE may terminate this Agreement at any time for default.

19.2 The following constitute events of default:

- 19.2.1 The Lead Contractor becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
 - 19.2.2 An order is made or resolution passed for the winding up of the Lead Contractor or the Lead Contractor is dissolved;
 - 19.2.3 The Lead Contractor has made material misrepresentations to CANARIE;
 - 19.2.4 The Lead Contractor indicates that the Lead Contractor is unable to complete the Project and requests that the Project be terminated before it is completed;
 - 19.2.5 The Lead Contractor makes a materially false or misleading statement concerning assistance by CANARIE in a prospectus or other document related to raising funds; and
 - 19.2.6 The Lead Contractor has not met or satisfied a term or condition in this Agreement.
- 19.3 If an event of default as set out in paragraph 19.2 has occurred, or is likely to occur, CANARIE, acting reasonably, may exercise one or more of the following remedies:
- 19.3.1 Suspend or terminate any obligation by CANARIE to contribute or continue to contribute to the costs of the Project, including any obligation to pay an amount owing prior to the date of such suspension or termination;
 - 19.3.2 Direct the Lead Contractor to, and the Lead Contractor shall forthwith, transfer and deliver to CANARIE clear title to, custody of, and the unrestricted right to use, the Project assets and Intellectual Property; and
 - 19.3.3 Demand that the Lead Contractor immediately repay to CANARIE, all amounts paid by CANARIE to the Lead Contractor on account of the Contribution.

No reference to nor exercise of any specific right or remedy by CANARIE shall prejudice or preclude CANARIE from exercising or invoking any other remedy in respect thereof, whether at law or in equity or expressly provided for herein.

- 19.4 Upon the occurrence of the event of default in paragraph 19.2.6 hereof, the Lead Contractor shall have 30 days from the date of notification of default to cure the default before CANARIE exercises its rights under paragraph 19.3 hereof.

20. TERMINATION WITHOUT DEFAULT

- 20.1 CANARIE may immediately terminate this Agreement on written notice to the Lead Contractor in the event of any substantial amendment to or the cancellation of the Contribution Agreement.

- 20.2 In the event this Agreement is terminated in accordance with the provisions of paragraph 20.1 hereof, any and all Claims for Eligible Costs and expenses up to the time of such termination shall be due and payable to the Lead Contractor by CANARIE as soon as reasonably practicable. Payment of such final amounts shall constitute full and final payment by CANARIE to the Lead Contractor for any and all matters and liabilities arising from the termination, and the Lead Contractor hereby releases CANARIE from any further claims relating to the termination of this Agreement.
- 20.3 In the event of circumstances beyond the control of the Lead Contractor, the Lead Contractor may request in writing the termination of this Agreement without default. This termination right shall be subject to the Lead Contractor demonstrating to CANARIE's satisfaction, acting reasonably, that the circumstances in question were unanticipated, not preventable and beyond the control of the Lead Contractor acting as a prudent and careful manager of the Project.
- 20.4 The Lead Contractor may, in any other circumstance, request in writing the termination of this Agreement, without default, subject to the Lead Contractor paying to CANARIE the total Contribution payments received by the Lead Contractor from CANARIE under this Agreement as at the date on which the Lead Contractor gives notice of termination under this paragraph. The Lead Contractor acknowledges that such payment will be paid as liquidated damages and not as a penalty and such amount is a liquidated amount which represents the Parties genuine pre -estimate of the minimum amount of damages which CANARIE would suffer as a direct result of the premature termination of this Agreement by the Lead Contractor, and, except that the liquidated damages shall constitute CANARIE's sole entitlement to damages as a result of termination by the Lead Contractor under this paragraph, is without prejudice to any other rights to which CANARIE may then be entitled.

21. CURRENCY

All sums of money referred to in this Agreement are expressed in Canadian Dollars unless otherwise stated.

22. ARBITRATION

- 22.1 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.
- 22.2 The arbitration will take place in the City of Ottawa.
- 22.3 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 ninety (90) days after his or her appointment as Arbitrator.

22.4 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.

22.5 Once the Arbitrator is seized of the matter, the final award of such Arbitrator shall be a condition precedent to an action in any court, including but not limited to an action to determine procedural or other issues involving the arbitration itself, and such award shall be final and binding on the Parties with no appeal to any court. The Parties hereby agree to carry out any decision or order of the Arbitrator in good faith.

23. NOTICES

23.1 Any notice or other written communication required or permitted hereunder shall be in writing and:

23.1.1 Delivered personally to the Party or, if the Party is a corporation, an officer of the Party to whom it is directed; or

23.1.2 Sent by registered mail, postage prepaid, return receipt requested (provided that such notice or other written communication shall not be forwarded by mail if on the date of mailing there exists an actual or imminent postal service disruption in the city from which such communication is to be mailed or in which the address of the recipient is found); or

23.1.3 Sent by electronic mail with reception acknowledged by the final recipient.

23.2 All such notices shall be addressed to the Party to whom it is directed at the following addresses:

If to:	CANARIE Inc.
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

If to:	«Name_of_Lead_Contractor»
By mail or personal delivery:	Attn: «Signing_Authority», ("Signing Authority") «Position» «Street_Address_1» «Street_Address_2»

«City»
«Province3»
«Postal_Code»
By e-mail: «Email_for_Signing_Authority»

23.3 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 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.

23.4 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.

24. FURTHER ASSURANCES

The Parties hereto shall do all further acts and things and execute all further documents reasonably required in the circumstances to effect the provisions and intent of this Agreement.

25. ASSIGNMENT

25.1 The Agreement shall not be assigned in whole or in part by either Party without the prior written consent of the other Party, not to be unreasonably withheld, and any assignment made without that consent is void and of no effect.

25.2 No assignment of the Agreement shall relieve the Lead Contractor from any obligation under the Agreement or impose any liability upon CANARIE unless otherwise agreed to in writing by CANARIE.

26. ENTIRE AGREEMENT

26.1 This Agreement together with the schedules attached hereto constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, understandings, and discussions, whether oral or written, and there are no other warranties, agreements, or representations between the Parties except as expressly set forth herein.

26.2 The following schedules are attached hereto and form an integral part of this Agreement:

Schedule “A” – Statement of Work
Schedule “B” – Schedule of Eligible Costs
Schedule “C” – CANARIE’s Expected Results

26.3 The Statement of Work is attached hereto as Schedule “A”, which sets out the relevant details for the Project, including the contributions by the Lead Contractor and the Participants, if any. The Project will be governed by this Agreement and by the

additional terms contained in the Statement of Work, which additional terms will form an integral part of this Agreement. In the event of any inconsistency, the provisions of the main body of this Agreement will prevail over the Statement of Work, unless expressly contemplated and agreed to as taking precedence over the main body of the Agreement.

27. PROPER LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

28. TIME OF ESSENCE

Time shall be of the essence of this Agreement.

29. COUNTERPARTS

This Agreement may be executed in several counterparts, all of which together shall constitute one and the same instrument.

30. AMENDMENT

This Agreement may be altered, amended, or annulled at any time by the mutual consent in writing of the Parties hereto.

31. INTERPRETATION

It is the desire of the Parties hereto that this Agreement be accorded a liberal interpretation consistent with its declared intent and purpose.

32. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision hereof and any such invalid or unenforceable provision will be deemed to be severable.

33. WAIVERS

No amendment, waiver, or termination of this Agreement will be binding unless executed in writing by the Parties to be bound hereby. No waiver of any provision of this Agreement will be deemed or will constitute a waiver of any other provision, nor will any such waiver constitute a continuing waiver unless expressly provided.

34. ENUREMENT

This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

35. SIGNING AUTHORITY DESIGNATION

The Lead Contractor's Signing Authority hereby designates the following individuals to act on his or her behalf:

1: An accounting representative who has custody of the CANARIE funds, and who is accountable for CANARIE financial accounts, related records, and the submission of financial reports to CANARIE.

«Accounting_Representative_Name_Title»

Name and title

Phone: «Phone»

E-mail: «Email»

Signature

2: A technical liaison between the Lead Contractor and CANARIE.

«Technical_Liaison_Name_Title»

Name and title

Phone: «Phone1»

E-mail: «Email1»

Signature

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IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto.

SIGNED, SEALED AND DELIVERED

CANARIE Inc.

Date: _____ By: _____

Jim Ghadbane, President and CEO

«Name_of_Lead_Contractor»

Date: _____ By: _____

« Signing_Authority», «Position»

SCHEDULE "A"
To the Research Software Program Project Agreement

STATEMENT OF WORK

Attached.

**SCHEDULE “B”
To the Research Software Program Project Agreement**

Schedule of Eligible Costs

GENERAL CONDITIONS

The definitions and descriptions of Eligible Costs and In-Kind Expenditures are applicable to the Lead Contractor and the Participants, if any, in each Project.

Costs shall be claimable to the extent that they are reasonable and are within the intent of the Agreement, in the opinion of CANARIE.

All goods and services including labour provided by the Lead Contractor in each Project shall be valued at cost and shall not include any mark-up nor exceed market value.

Costs incurred prior to the effective date of an Agreement for a specific Project are not eligible.

Where applicable, the cost of all goods and services shall include the non-recoverable portion of taxes incurred.

All costs must align with the approved budget. Pre-approval is required from CANARIE before any Eligible Cost in excess of those in the approved budget can be claimed.

In each Project, final payment will not be made until all costs incurred have been paid.

This Schedule of Eligible Costs applies equally to all goods and services (including labour) acquired from related parties or associates. CANARIE is not obliged to accept any of these costs as eligible unless access is provided to the relevant records of the related entity.

ELIGIBLE COSTS

1. DIRECT LABOUR

- 1.1 Direct salaries paid at the rates shown in payroll documents.
- 1.2 Direct salaries include statutory holidays, vacation, and sick leave pro-rated according to the % of time allocated to the Project.
- 1.3 Overtime hours may only be claimed at the regular hourly rate.
- 1.4 The salaries of management and administrative staff directly attributable to a Project when qualified senior management work on the Project at a rate not greater than that of the highest paid engineer or researcher in the company or organization.

- 1.5 Time sheets, time logs or other CANARIE approved labour attestation forms must be used to support actual hours worked by Project staff.
- 1.6 Actual fringe benefit costs **MUST not exceed 20%** of eligible direct labour costs in any claim.

2. DIRECT MATERIALS

Costs for software licence fees required for completion of the Project, the costs of which **MUST not exceed 5%** of the total of all eligible Project costs.

3. SUB-CONTRACTORS AND CONSULTANTS

- 3.1 Work performed by Canadian sub-contractors or consultants to advance a Project to the extent it is identified in the Statement of Work. The fees charged must be reasonable and not exceed fair market value.
- 3.2 The total cost of sub-contractors and consultants fees **MUST not exceed 5%** of the total of all eligible Project costs.
- 3.3 Fee-for-service contracts with federal labs that have the authority to collect revenue.
- 3.4 Work performed by foreign sub-contractors or consultants to advance a Project to the extent it is identified in the Statement of Work and approved budget, and pre-approved in writing by CANARIE.

4. TRAINING

Training and the costs thereof, to the extent that training is required for users to benefit from the Project development.

5. TRAVEL

Domestic travel costs essential for the completion of a Project or exploitation of the results of the Project, as approved in the budget, the cost of which **MUST not exceed 3%** of the total of all eligible Project costs.

6. NON-RECOVERABLE TAXES

The Goods and Services Tax or Harmonized Sales Tax where the amount is not refundable in whole or in part by the Canada Revenue Agency as an input tax credit, or as a rebate.

7. NON-ELIGIBLE COSTS

Non-eligible costs include, but are not limited to:

- Salaries and benefits of university faculty or Principal Investigator;

- Overhead and general office costs, for example utilities, rent, office supplies, telephone costs;
- Equipment and equipment repairs and maintenance, for example computers, lab equipment;
- CANARIE Inc. membership fees;
- Legal fees;
- Professional fees unless they are directly associated with the management of the Project;
- Trademarks and patents;
- Interest portion for equipment purchased by means of a lease;
- User manuals except first drafts and essential technical documentation;
- Fines;
- Costs related to the prosecution of claims against the government; and
- Costs of facilities, buildings, and land.

IN-KIND COSTS

1. IN-KIND LABOUR

- 1.1 In-kind salaries paid at rates shown in payroll and incurred for the completion of the Project, include but are not limited to:
 - University faculty; and
 - Principal Investigator.
- 1.2 In-kind salaries include statutory holidays, vacation, and sick leave pro-rated according to the % of time allocated to the Project.
- 1.3 Fringe benefit costs related to in-kind labour **MUST not exceed 20%** of eligible in-kind labour in any claim.
- 1.4 Time sheets, time logs or other CANARIE approved labour attestation forms must be used to support actual hours worked by Project staff included as In-kind Expenditures.

Note: In-Kind contributions must be at least 15% of total eligible Project costs.

SCHEDULE “C”

To the Research Software Program Project Agreement

CANARIE’S Expected Results

Through the eligible activities undertaken with its contribution, CANARIE is expected to:

- (a) Enhance opportunities for collaborative knowledge creation and innovation within Canada’s research and education communities through the maintenance and development of the CANARIE network and related tools and services;
- (b) Expand the research and education community’s access to and utilization of the CANARIE network and the availability of tools and programming that increase the effectiveness of its use; and,
- (c) Enable the creation of innovative ICT products and services and accelerate their commercialization in Canada.