

TRANSITION AGREEMENT FOR THE TRANSFER OF THE .CA DOMAIN NAME REGISTRY

UNIVERSITY OF BRITISH COLUMBIA, a university governed in accordance with the laws of the Province of British Columbia ("UBC")

- and -

CANADIAN INTERNET REGISTRATION AUTHORITY, a corporation incorporated pursuant to the laws of Canada ("CIRA")

WHEREAS the parties and Her Majesty the Queen in right of Canada as represented by the Minister of Industry ("CANADA") are parties to an agreement as of the date hereof ("the Umbrella Agreement");

AND WHEREAS the Umbrella Agreement requires UBC and CIRA to cooperate in achieving an orderly transition of the management, operation, and control of the .ca domain space to CIRA;

AND WHEREAS the Umbrella Agreement requires CIRA to operate or cause to be operated the .ca domain space in accordance with the principles and structure set out by CANADA in a letter dated March 11, 1999 from CANADA to CIRA and in accordance with other principles, being in the public interest and being reasonable, as CANADA may, from time to time, set;

AND WHEREAS on May 12, 1999, the Registrar of Trade-marks, at the request of UBC, gave public notice of the mark .ca as a mark of UBC pursuant to section 9(1)(n)(ii) of the Trade-marks Act (the "Official Mark");

AND WHEREAS the parties desire to enter into this Agreement in part to meet their obligations pursuant to the Umbrella Agreement;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. In this Agreement:

a) ".ca Registrations" means the active registrations in the .ca domain space entered by John Demco or UBC prior to the date of this Agreement and to be entered between the date of this Agreement and the Operational Transfer Date;

b) ".ca Rules" means the policies and procedures relating to the management and operation of the .ca domain space that UBC and CIRA may agree to establish prior to the Operational Transfer Date;

c) "cdnnet.ca" means the domain name cdnnet.ca, the current registry domain name;

d) "Pre-Transition Domain Name Database" means the information set forth in Schedule "A" hereto concerning .ca Registrations compiled by or for John Demco or UBC prior to the Operational Transfer Date;

e) "Operational Transfer Date" means July 1, 2000 or such later date as CIRA may notify UBC of in writing;

f) "Grace Period" means the period commencing on June 1 or such later date as CIRA may notify UBC of in writing at least 10 days prior to its start and ending on the Operational Transfer Date; and

g) "Registrar" means an entity authorized by CIRA to enter or cause to be entered registration particulars assigning .ca domain names to IP addresses in such registry as CIRA may establish or adopt.

2. Subject to Article 3 of this Agreement, UBC shall continue to manage and operate the .ca domain space from the date of this Agreement to the Operational Transfer Date in accordance with the same policies and procedures and with at least the same quality of service as John Demco and UBC managed and operated the .ca domain space immediately prior to the date of this Agreement. Without limiting the generality of the foregoing, UBC will not charge registrants for any .ca Registrations of record existing as at April 30, 2000. However, UBC may charge registrants for any .ca Registrations from May 1, 2000 to the Operational Transfer Date. With respect to any .ca Registrations for which UBC has charged registrants:

a) UBC shall notify the registrants prior to the start of the Grace Period, that they will be required to enter into a standard "click-wrap" registrant agreement with CIRA within the Grace Period, such "click-wrap" registrant agreement being the same as that used by CIRA for registrants generally; and

b) Provided that the registrants enter into said "click-wrap" registrant agreement with CIRA during the Grace Period and provided that the registrants enter into an agreement with UBC or another Registrar containing such provisions as CIRA may require from Registrars generally, CIRA shall accept such .ca Registrations and shall recognize UBC, or such entity as UBC may designate, as the Registrar of record for such .ca Registrations, provided that UBC or such entity as UBC may designate becomes certified as a Registrar in accordance with CIRA's general certification requirements and enters into a registrar agreement that is the same in form and substance as that used by CIRA for Registrars generally.

With respect to all other .ca Registrations, UBC shall send an e-mail notice to such registrants (the form of such notice to be approved in advance by CIRA), prior to the start of the Grace Period, that each such .ca Registration will expire at the end of the Grace Period unless the registrant, prior to the end of the Grace Period:

a) applies to CIRA through a certified Registrar to pre-register, in accordance with the policies and rules of CIRA, the same .ca domain name, with such new registration to take effect on the Operational Transfer Date; and

b) enters into a "click-wrap" registrant agreement with CIRA, such "click-wrap" registrant agreement being the same as that used by CIRA for registrants generally and enters into an agreement with a Registrar containing such provisions as CIRA may require from Registrars generally.

3. From the date of this Agreement to the Operational Transfer Date, UBC shall promptly implement .ca Rules in managing and operating the .ca domain space.

4. The parties acknowledge that commencing on the Operational Transfer Date, CIRA will create a new registry of domain names within the .ca domain space using information provided directly to CIRA by the registrants, as contemplated by Article 2, as well as all new registrants. Subject to Article 5 of this Agreement, UBC shall provide CIRA with such reasonable access to the Pre-Transition Domain Name Database as CIRA may require to enable CIRA to obtain information concerning .ca Registrations for the purpose of comparing and verifying information that CIRA obtains from registrants during the Grace Period, as contemplated by Article 2. CIRA shall only use the Pre-Transition Domain Name Database for the purposes specified in this Article 4 and shall comply with all applicable laws in making such use of the Pre-Transition Domain Name Database.

5. UBC makes no representations or warranties generally with respect to the Pre-Transition Domain Name Database or specifically with respect to CIRA's right to use the Pre-Transition Domain Name Database. CIRA shall undertake its own due diligence to ensure that it has the right to use the Pre-Transition Domain Name Database in the manner provided in Article 4 of this Agreement without breaching any rights of third parties, including any individual privacy rights that registrants may have. Nothing in this Agreement shall be construed so as to require UBC to act or omit to act in such a manner as to breach any rights of third parties. Effective as of the Operational Transfer Date, UBC hereby assigns to CIRA all of the world-wide right, title and interest which may subsist in the copyright and/or sui generis database rights which may then, or in the future exist, and all related rights in the Pre-Transition Domain Name Database including, without limitation, all such rights of

UBC, John Demco and all other authors of the Pre-Transition Domain Name Database and UBC shall cause John Demco and all other authors of the Pre-Transition Domain Name Database to waive, in favour of CIRA, any moral rights which they may have therein. Effective as of the Operational Transfer Date, CIRA hereby grants to UBC an irrevocable, royalty-free, world-wide, non-exclusive license in perpetuity to use, copy, distribute, or otherwise deal with the Pre-Transition Domain Name Database in any lawful manner and to grant sublicenses to do same.

6. With effect as of the Operational Transfer Date, UBC shall, and shall cause John Demco to, transfer to CIRA, the management, operation and control of the .ca domain space. In order to effect such transfer, UBC shall prepare, execute and forward to CANADA all required documentation (which the parties currently understand is comprised of a letter from UBC to the relevant international bodies authorizing such transfer), and shall take any other necessary steps identified by CIRA, to cause CIRA to be recognized at the international level as having the exclusive authority to operate the top level domain servers for the .ca domain. UBC agrees that from and after the Operational Transfer Date, UBC shall have transferred all right of UBC to manage, operate and control the .ca domain space and UBC shall have no further rights in respect of the .ca domain space. Notwithstanding any other provision of this Agreement, UBC acknowledges and agrees that, in connection with such transfer, CIRA shall not assume or be responsible for any liabilities or obligations in connection with UBC's and John Demco's management, operation and control of the .ca domain space and that UBC shall remain responsible for such liabilities and obligations.

7. CIRA hereby acknowledges that it does not have, and agrees that it shall not make, any claim of any right, title or interest in the Pre-Transition Domain Name Database, except the right of access described in Articles 4 and 5 of this Agreement or pursuant to the terms and conditions of such other written agreement as CIRA and UBC may enter into.

8. In recognition of UBC's fundamental role in developing the .ca domain space over the past twelve years and the goodwill established during that time in the .ca domain space, CIRA agrees to compensate UBC by an amount equal to \$4,348,800, which is equal to the number of .ca domain registrations at the time of concluding this agreement (which is defined as 86,976) times a fee of \$10 per year times a duration of 5 years. CIRA shall pay the foregoing amount of \$4,348,800 to UBC, by way of installments, which shall be delivered to UBC not later than each anniversary of the effective date of this Agreement until the amount is paid in full. Each instalment shall be equal to the greater of:

a) 50% of CIRA's annual operating surplus from its preceding fiscal year; and

b) \$2 times the number of registrations in respect of which CIRA has collected fees during the previous fiscal year, provided that CIRA shall collect fees on an annual basis for each top-level domain within the .ca domain space.

Of the total obligation of \$4,348,800, no less than 50% shall be formally identified by UBC as being for special purposes consistent with UBC's academic mission, to be jointly agreed to by CIRA and UBC and accompanied by appropriate publicity, such agreement not to be unreasonably withheld by CIRA. The choice as to which of the total obligation shall be so designated to specific purposes shall be at UBC's discretion.

9. With effect as of the Operational Transfer Date, UBC shall transfer to CIRA the registry domain name, cdnnet.ca. For a period of one year after the Operational Transfer Date, CIRA shall ensure that a web site located at cdnnet.ca displays a message substantially in the form set forth in Schedule "B" hereto (or such other form as the parties may agree to) and provides links to a web site of CIRA's choosing and a web site of UBC's choosing. Such web site may automatically redirect users to a web site of CIRA's choosing after a reasonable period of time, which shall in any event not be less than 30 seconds, has elapsed. Commencing one year after the Operational Transfer Date, CIRA may, if it wishes, use cdnnet.ca as a direct link to the CIRA web site that includes a list of Registrars. CIRA shall not give greater prominence to one Registrar over another on such list except in the order in which the Registrars are listed, and such list shall be presented in such order as CIRA may determine in its discretion, acting reasonably and objectively.

10. UBC hereby agrees to maintain the Official Mark and to forebear from asserting its rights respecting the Official Mark against CIRA until such time as the Registrar of Trade-marks has given public notice of CIRA's adoption and use of the .ca mark or CIRA has received the consent of another public authority to use the .ca mark and has so notified UBC. However, in any event, after one year has elapsed from the Operational Transfer Date, UBC may withdraw publication of notice of the Official Mark, whereupon UBC's obligation under this Article 10 shall come to an end.

11. If a dispute arises concerning this Agreement, the parties shall attempt to resolve the matter as follows:

a) first, by negotiation;

b) second, by mediation by a mutually acceptable mediator;

c) if the dispute cannot be resolved otherwise or if the parties are unable to agree on a mediator or an appointed mediator is unable to get the parties to agree to a resolution, the dispute shall be finally settled by binding arbitration in Ottawa in accordance with the Arbitration Act, S.O. 1991, C. 17, as amended and judgment on the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction to do so..

12. Any notice or request required or permitted to be given or made pursuant to this Agreement shall be given or made in writing by letter, facsimile or e-mail,

if to UBC addressed as follows:

The University of British Columbia
6328 Memorial Road
Vancouver, British Columbia V6T 1Z2
Attention: Ted Dodds
Associate Vice President, Information Technology
Facsimile: (604) 822-5116
E-mail: Ted.Dodds@ubc.ca

and if to CIRA addressed as follows:

Canadian Internet Registration Authority
c/o CANARIE Inc.
4th Floor
110 O'Connor Street
Ottawa, Ontario K1P 1H1
Attention: Chair of the Board
Telephone: (613) 943-5454
Facsimile: (613) 943-5443
E-mail: COB@cira.ca

Any such notice or request if sent by mail shall be deemed to have been given or made on the actual date of receipt, and if sent by facsimile or e-mail shall be deemed to have been given or made on the date of the facsimile or e-mail transmission. If such notice or request is given by facsimile or e-mail, a confirmation copy of such notice must be sent by mail. Either party may change the address for notice or request by notice to each of the other parties hereto.

13. Each of the parties hereto warrants that it has the power and authority to enter into this Agreement, that the person signing this Agreement on its behalf has the authority to execute this Agreement on its behalf, that it has the right and ability to carry out its obligations set out in this Agreement and that it has entered into this Agreement in good faith.

14. In the event that CANADA, pursuant to Article 6 of the Umbrella Agreement, designates a party other than CIRA to manage, operate, and control or cause to be managed, operated, and controlled,

the .ca domain space, and further provided that such other party enters into a written agreement with UBC to assume all outstanding obligations of CIRA under this Agreement, UBC shall release CIRA from any further obligation to perform such outstanding obligations.

15. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the parties hereto have signed this Agreement effective the date first set forth above.

UNIVERSITY OF BRITISH COLUMBIA

CANADIAN INTERNET REGISTRATION AUTHORITY

SCHEDULE "A"

PRE-TRANSITION DOMAIN NAME DATABASE

The Pre-Transition Domain Name Database shall consist of the following fields:

- ?? Subdomain
- ?? Date-Received
- ?? Date-Approved
- ?? Date-Modified
- ?? Organization
- ?? Type
- ?? Description
- ?? Admin-Name
- ?? Admin-Title
- ?? Admin-Postal
- ?? Admin-Phone
- ?? Admin-Fax
- ?? Admin-Mailbox
- ?? Tech-Name
- ?? Tech-Title
- ?? Tech-Postal
- ?? Tech-Phone
- ?? Tech-Fax
- ?? Tech-Mailbox
- ?? NS1-Hostname
- ?? NS2-Hostname
- ?? NS3-Hostname
- ?? NS3-Netaddress
- ?? NS4-Hostname
- ?? NS4-Netaddress
- ?? NS5-Hostname
- ?? NS5-Netaddress
- ?? NS6-Hostname
- ?? NS6-Netaddress
- ?? Notes

SCHEDULE "B"

CDNNET.CA WEB SITE

Effective [INSERT OPERATIONAL TRANSFER DATE], the .CA domain registry function has been undertaken by the Canadian Internet Registration Authority ("CIRA"). [Click here for access to the](#)

CIRA web site or just wait 30 seconds and you will be automatically redirected. [INSERT GRAPHIC BUTTON]
If you wish to register a new .CA domain name using [INSERT UBC DESIGNATED NAME] as your Registrar, please click here. [INSERT GRAPHIC BUTTON] ENTRER LE TEXTE