

USAGE AGREEMENT SURFsara Systems and Services

This usage agreement (hereinafter: "the Agreement") sets out the terms and conditions that apply to the use of the Lisa, Cartesius, HPC Cloud and Spider systems and services (hereinafter: "the System") made available by SURFsara, located at Science Park 140, 1098 XG Amsterdam (hereinafter: "SURFsara"). By accessing or otherwise using the System, User agrees to be fully bound by this Agreement. Please read this Agreement carefully before using the System. If you do not agree to be bound by all of these terms and conditions, please do not access or use the System.

Definitions

- i. Contract: the agreement concluded between the User and the System on the basis of which the User can use the System.
- ii. Data Processing Agreement: the agreement (including annexes), as referred to in Article 28(3) of the GDPR (official legal text).
- iii. GDPR: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- iv. Institute: the (legal) person that gives the order to SURFsara for provision of Services.
- v. Personal Data: all information relating to a Data Subject; a natural person who can be directly or indirectly identified, in particular based on identifiers as referred to in Article 4(1) of the GDPR.
- vi. Special categories of Personal data: Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, and genetic data, biometric data for the purpose of uniquely identifying a natural person, or data concerning health or data concerning a natural person's sex life or sexual orientation, as referred to in Article 9 GDPR.
- vii. System: All systems and services made available by SURFsara.
- viii. User: a (natural) person associated in any way with the Institute, such as personnel, teachers and/or students, who is authorized by the Institute to use (a certain part of) the Service.
- ix. Project: an accepted proposal granted via the contract to a user, with a defined beginning and end in time and therefore defined scope and resources.

Article 1. Usage of the System

1.1. SURFsara hereby grants to User a limited license to use the functionalities made available to User through the System. This license is non-exclusive and non-transferable. No rights are granted to User hereunder other than as expressly set forth in this Agreement.

1.2. The System, any parts or specific functionalities thereof may only be accessible after login. User must keep his/her access credentials confidential and must make use of adequate security tools against unauthorized use of the System made available by SURFsara.

1.3. SURFsara assumes that all actions undertaken from User's account after logging in are authorized and supervised by User. This means User is solely liable for the loss of access credentials and account numbers, and for any misuse by third parties resulting thereof.

1.4. In case Personal Data is processed by User on the System, a separate Data Processing Agreement (DPA) needs to be agreed on between Institute/User and SURFsara. Please contact avg@surfsara.nl.

1.5. PLEASE NOTE, the System is suitable for processing of Personal Data or any kind of other (research) data that falls in up to risk level "Medium". The security measures on the System are attuned to this risk level. In case a User intends to process sensitive data (such as Special categories of Personal Data) on the System, the Institute and/or User himself is required and responsible for taking additional measures to adequately secure the data.

Article 2. Acceptable use

2.1. User is not permitted to use the System for other purposes than the project was granted for or as agreed on in the Contract. Moreover, User is not permitted to use the System for any purpose that violates Dutch laws or other applicable international laws and regulations.

2.2. User is not permitted to exceed resource allocations in the Contract . User is responsible for the consequences of exceeding the the resource allocations.

2.3. User is not permitted to attempt to try to access or use parts of the System, programs and/or files that do not belong to the User or to which the User has not been granted access.

2.4. User is not permitted to license, sub-license, rent, lease, transfer, time share or otherwise make the System available for access by third parties in whole or in part.

2.5. Upon encountering any kind of errors in the System, software, compilers, data communication, and system disruptions, User agrees to report these without undue delay to SURFsara.

2.6. Within thirty (30) days of a request from SURFsara, User will fully document and certify that User's use of the software and System at the time of the request is in conformity with the terms of this Agreement, and User agrees to permit SURFsara to verify the accuracy of this certification. Any non-conformities and the costs to solve these will be borne by User.

Article 3. Intellectual property

3.1. Unless stated otherwise, all copyrights, trademarks and all other intellectual property rights in and to the software made available by SURFsara and the System are and shall remain the sole and exclusive property of SURFsara (and/or its affiliates or third party licensors).

Article 4. Availability and maintenance

4.1. To the extent reasonable within its power, SURFsara grants the User shared access to the System.

4.2. SURFsara reserves the right to manage all System usage in order to assure full optimal usage of the System. SURFsara will limit as much as possible the time

of the System's unavailability due to maintenance or any unforeseen reason. However, maintenance can take place at any time, even if this may negatively impact the availability of the System. Maintenance is announced in advance whenever possible.

4.3. Support on the System is available conform the description that can be found on the SURF website under "Helpdesk SURFsara services".

4.4. All processor hours User lost as a result of failure or defective functioning of the System may not be accounted for and may therefore not turn up in usage statistics for the User

4.5. User agrees not to request any indemnity or compensation other than mentioned in 4.4 from SURFsara and the suppliers of the various equipment and software for any damage suffered as a result of defects of the System.

4.6. User will take the necessary precautions to avoid unnecessary loss of processor hours and/or data.

Article 5. Privacy

5.1. SURFsara respects the privacy of Users. Personal data provided by User pertaining to user credentials will be handled with due care and in line with the General Data Protection Regulation (GDPR) and other applicable privacy laws and regulations.

5.2. More information regarding the processing of personal data can be found in the privacy statement available on the website of SURF

5.3. Only applicable for the Spider system: Data and files shared by the user in the Public folder of the project space will be accessible to anyone within and outside of the System. The username of the owner of these files is also visible. SURFsara takes no responsibility if sensitive data or information is shared in this folder by User.

5.4 Only applicable for Lisa and Cartesius systems: We track statistics and runtime information of software run on the systems. Information traceable to an individual is for internal use only; summary statistics may be shared publicly. More information can be found in the user's webpage: <https://userinfo.surfsara.nl/documentation/xalt> including the possibility to opt-out of providing this information

Article 6. Liability

6.1. The liability limitations referred to in this Agreement shall not apply in cases of intentional misconduct or deliberate recklessness on the part of SURFsara, or for any other liability that may not otherwise be lawfully excluded or limited.

6.2. Notwithstanding the first paragraph of this article, the total liability of SURFsara for attributable direct damages shall be limited to the amount of EUR 50.000 (fifty thousand euros).

6.3. In no event shall SURFsara be liable for indirect damages, consequential damages, lost profits, missed savings or damages through business interruption, loss of (business) data, or any other pecuniary loss in connection with any claim, damage or other proceeding arising under this Agreement.

6.4. Damages may only be claimed if reported in writing to SURFsara within two (2) weeks after the damage occurred.

6.5. In case of force majeure, SURFsara is never required to compensate for damages suffered by User. Force majeure will be deemed to include, among other things, communications and/or power failure, (distributed) denial of service and other network attacks, operational failures, riots, insurrections, labor disputes, actions of government, restrictions on import and/or export, war, fire, flooding, natural disasters and/or any inability to perform which is caused by SURFsara's suppliers. In case of force majeure SURFsara will use its best efforts to find a suitable remedy or alternative source to overcome said force majeure.

Article 7. Changes to Agreement

7.1. SURFsara may change or add additional terms and conditions to this Agreement as well as change any prices at any time.

7.2. SURFsara shall announce changes or additions at least thirty (30) days before they become effective.

7.3. Use of the System after the date of effect of aforementioned changes shall constitute User's acceptance of the changed or added-to terms and conditions.

Article 8. Termination of Agreement

8.1. This Agreement is automatically terminated on the closing date assigned to the project or after the ending of the project grant.

8.2. Notwithstanding art. 8.1, in case User or the signatory of the initial project grant agreement has entered into contract renewal negotiations, the initial term of this Agreement may be extended, with mutual consent, until the negotiations have ended

8.3. Upon termination of this Agreement, User will secure on local (not SURFsara) storage all of his/her and his collaborators' files remaining in the System.

8.4. In case User leaves the project prior to the closing date assigned to the project, the User will inform SURFsara in writing and clean up all personal files on the System. Only on request of the User, SURFsara will grant another designated User within the project access to the remaining files and/or data.

8.5. Within a maximum period of six (6) months after the termination of this Agreement SURFsara will proceed to remove all usernames falling under this Agreement as well as the remaining files and/or data. If only a part of the agreement (access to specific systems) is terminated only these related usernames and data will be removed. SURFsara will not be liable for the loss of this data.

Article 9. Disclaimer of Warranties

SURFsara DISCLAIMS RESPONSIBILITY FOR ANY HARM RESULTING FROM YOUR USE OF THE SYSTEM. SURFsara DISCLAIMS TO THE FULLEST EXTENT PERMITTED, ALL GUARANTEES AND EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE

AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS, AND ANY WARRANTIES REGARDING THE AVAILABILITY, SECURITY, RELIABILITY, TIMELINESS AND PERFORMANCE OF THE SYSTEM. YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR HARDWARE DEVICES OR LOSS OF DATA THAT RESULT FROM THE USE OF THE SYSTEM.

Article 10. Miscellaneous provisions

10.1. At all times User must be able to prove to SURFsara its connection to a scientific institution or contracted party with access to the System.

10.2. If any provision in this Agreement proves to be null and void, or otherwise unenforceable, this shall not affect the applicability of this Agreement as a whole. In such cases, SURFsara will adopt one or more new provisions that implement the intention of the original Agreement as much as possible.

10.3. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of The Netherlands.

10.4. If there is any dispute about any parts and/or implementation of this Agreement, the Court of Amsterdam has exclusive jurisdiction.