

**SOFTWARE DISTRIBUTION AGREEMENT****24 May 2011****BETWEEN:**

**Canonical Limited** registered in the Isle of Man (company number 110334C) whose registered office is at One Circular Road, Douglas, Isle of Man, IM1 1AF ("**Canonical**"); AND

[Publisher name] registered in the [country] whose registered office is at [ADDRESS] (the "**Licensor**");  
each a "Party" and together the "Parties".

**WHEREAS:**

Licensor wishes for Canonical to distribute Licensor's Software as further described in Exhibit A.

**All distribution of Licensor's Software by Canonical is governed by this Agreement.**

**We agree to the terms of this Agreement**

**Signed for and on behalf of Canonical Limited:**

NAME:

TITLE:

DATE:

**We agree to the terms of this Agreement**

**Signed for and on behalf of Licensor:**

NAME:

TITLE:

DATE:

## **1 HOW THIS AGREEMENT WORKS**

- 1.1 This Agreement sets out the only terms and conditions upon which Canonical will contract with the Licensor for the distribution of Licensor's Software and all other terms and conditions, express or implied, are excluded to the fullest extent permitted by law.
- 1.2 No terms or conditions included in or delivered with or contained in any Licensor proposal, purchase order, separate licence agreement, or similar will form part of the Agreement and Licensor waives any right to rely on such terms and conditions.
- 1.3 In the event of a difference between these legal terms and conditions and any additional terms contained in any Exhibit, these legal terms and conditions shall prevail to the extent of the difference.
- 1.4 Any changes to this Agreement after the date of signature will be valid only if in writing and signed by a duly authorised representative of Canonical.

### **1.5 Definitions and Interpretation**

When used in this Agreement the following terms shall have the following meanings:

**'Agreement'** means these legal terms and conditions and all applicable Exhibits.

**'Commencement Date'** means the date of this Agreement.

**'Canonical Group'** means Canonical, its holding company and any Subsidiary of either Canonical or such holding company.

**'Canonical Representative'** means the Canonical representative set out Exhibit A.

**'Confidential Information'** means any information, including but not limited to, formulas, patterns, compilations, software, programs, devices, methods, techniques and processes, financial information and data, business plans, business strategies, marketing plans, Licensor lists, price lists, cost information, information about Personnel, descriptions of new products and new product development, scientific and technical specifications and documentation and pending or abandoned patent applications of a Party, the Canonical Group or, in the case of the Licensor, its group, now known or in possession of, or hereafter learned or acquired, that derives economic value actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and the terms of this Agreement.

**'Fees'** means the charges payable by Canonical to Licensor for the Software distribution rights, as set forth in Exhibit A.

**'Intellectual Property Rights'** means copyright, database right, patents, registered and unregistered design rights, industrial design rights, mask works, registered and unregistered trade marks, domain names and trade secrets and all rights to apply for any of the above whether subsisting in the United Kingdom or any other part of the world.

**'Licensor Representative'** means the Licensor representative set out in Exhibit A.

**'Personnel'** means individuals working for a Party as employees or contractors.

**'Senior Managers'** means the representatives set out in Exhibit A authorised to resolve disputes on behalf of the relevant Party.

**'Software'** means the software application identified by name and version number in Exhibit A.

**'Subsidiary'** means a subsidiary as defined under English law.

**'Term'** means unless otherwise stated in Exhibit A, a period of 12 months starting from the Commencement Date and where this Agreement is renewed, subsequent periods of 12 months starting on the anniversary of the Commencement Date. For the avoidance of doubt, each such Term shall be independent from any other Term.

**'Trade Marks'** means the trade marks identified in Exhibit B.

- 1.6 References to clauses and Exhibits are to the clauses of and Exhibits to this Agreement.
- 1.7 Headings are for convenience only and shall be ignored in interpreting this Agreement.
- 1.8 For the purpose of this Agreement, the words include, includes and including shall be deemed to be non-exhaustive.

## **2 WHAT CANONICAL WILL DO FOR THE LICENSOR**

- 2.1 Subject to Canonical's acceptance of the Software for distribution, Canonical will make the Software available for download to users of the Ubuntu operating system and its variants through the method(s) specified in Exhibit A.
- 2.2 Canonical will include Licensor's end user license agreement, if applicable, in all distributions of the Software subject to Supplier providing such end user license agreement
- 2.3 in the appropriate format with the Software as delivered by Licensor to Canonical.

## **3 LICENSOR RESPONSIBILITIES**

- 3.1 Licensor shall provide a copy of the Software which meets Canonical's technical, security, and quality standards.
- 3.2 Subject to this Agreement, Licensor hereby grants to Canonical Group, for the Term, a worldwide, non-exclusive, royalty-free licence to install, deploy, reproduce, modify, and run the Software for the purposes of testing and evaluation and to distribute the Software using the method(s) described in Exhibit A.

## **4 REPORTING, PAYMENT, AND RECORDS**

- 4.1 If Exhibit A indicates that Canonical may distribute the Software without Fees, this clause 4 (Reporting, Payment, and Records) shall not apply.
- 4.2 Canonical shall provide to Licensor, within thirty (30) days of the end of each calendar quarter, a report of the quantity of copies of Software distributed by Canonical in the preceding calendar quarter ("Report"). Canonical shall keep accurate records of all copies of Software distributed by Canonical.
- 4.3 Licensor shall provide Canonical with an invoice for the Distribution Fees associated with the Report.
- 4.4 Licensor shall invoice the Fees for distribution of the Software in accordance with Exhibit A. Canonical shall pay all Fees within 30 days of the date of receipt of a valid invoice.
- 4.5 Canonical shall, for a period of three (3) years following their creation, keep complete books and records containing all data reasonably required for verification of all amounts payable hereunder. At Licensor's request, Canonical shall provide Licensor with documents evidencing Canonical's compliance with its payment obligations hereunder.

## **5 PRIVACY AND CONFIDENTIALITY**

- 5.1 Each Party (and its officers, Personnel, agents and sub-contractors) shall use the Confidential Information of the other Party (or its group companies) for the limited and sole purpose of exercising that Party's rights or performing that Party's obligations under this Agreement.
- 5.2 Each Party shall keep secret and confidential all Confidential Information of the other (and its group companies) and shall not (and shall procure that its officers, Personnel, agents and sub-contractors shall not) copy, use or disclose any such information to any third party, other than as may be necessary to comply with its obligations under this Agreement.
- 5.3 The obligation of confidence shall not apply where the Confidential Information: is required to be disclosed by operation of law; was lawfully in the possession of the recipient prior to disclosure by the other Party; is subsequently lawfully acquired from a third party without breach of any known obligation of confidence; is or becomes generally available to the public through no act or default of the recipient; or is disclosed on a confidential basis for the purposes of obtaining professional advice.
- 5.4 Each Party shall give the other immediate notice of any disclosure required by operation of law by telephone and in writing.
- 5.5 Each Party agrees that damages would not be an adequate remedy for any failure to comply with clauses 5.1-5.2 and that the other Party shall be entitled to the remedies of injunction, specific performance and/or other equitable relief for any threatened or actual failure to comply with clauses 5.1-5.2.
- 5.6 If Licensor does not wish to receive information about Canonical's products and services Licensor should notify Canonical by email at [privacy@canonical.com](mailto:privacy@canonical.com).

- 5.7 Each Party shall comply with all data protection or privacy legislation applicable to that Party's performance of this Agreement, including (where relevant), but not limited to, the Data Protection Act 1998 and subordinate legislation made under that Act.

## **6 INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights of either Party in existence on or before the Commencement Date shall remain the property of their respective owner. Except as expressly agreed otherwise in writing by the Parties, any and all Intellectual Property Rights developed or created by a Party after the Commencement Date as part of the delivery of the Services or performance under this Agreement shall be owned solely by the Party that developed or created such Intellectual Property Rights, and for the avoidance of doubt, any Intellectual Property Rights created by Canonical in the provision of the Services shall remain the property of Canonical.
- 6.2 Licensor hereby grants Canonical Group, for the Term, a licence to use the Trade Marks in association with the Software and Canonical's distribution thereof, including but not limited to, use in marketing materials and advertising relating to the Software.
- 6.3 Canonical agrees to abide by the Trade Mark and logo usage guidelines set forth in Exhibit B.

## **7 ESCALATION**

- 7.1 If there is a disagreement in relation to this Agreement, the Parties shall use their reasonable endeavours to negotiate and settle the disagreement. If it is not possible to settle the disagreement within 14 days, the Licensor Representative and the Canonical Representative shall meet to try to resolve the matter. If the matter is not resolved at that level within 14 days of the matter having first been considered by the Representatives or such longer period as may be agreed by the Parties, then the matter may be referred by either Party to a meeting to be convened between the Senior Managers of the Parties in person or by telephone. If any such meeting fails to result in a settlement within 14 days of such referral to it (or it is not possible to convene such a meeting within this period) then the matter may be referred to the courts by either Party.
- 7.2 Subject to clause 7.4, neither Party shall refer any dispute to the courts unless and until the dispute resolution procedures of this clause have been followed and the deadline for settlement under clause 7.1 has expired.
- 7.3 For the avoidance of doubt, the Parties' obligations under this Agreement shall not be affected as a result of any matter being dealt with under the dispute resolution procedure set out in this clause 7.
- 7.4 Nothing in this clause 7 shall prevent either Party applying to the courts of any country for injunctive or other interim relief.

## **8 TERM AND TERMINATION**

- 8.1 This Agreement begins on the Commencement Date and continues for the Term unless terminated earlier in accordance with this clause 8.
- 8.2 Either Party may terminate this Agreement immediately by notice in writing if the other Party:
- 8.2.1 commits a material breach of any of the terms of this Agreement (including without limitation late payment) and, if such breach is capable of remedy, fails to remedy the breach within 14 days of receiving notice from the terminating Party specifying the breach and requiring the breach to be remedied;
- 8.2.2 enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction); or becomes insolvent; or ceases or threatens to cease to carry on business; or compounds or makes any voluntary arrangement with its creditors; or is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator; or is unable to pay its debts as they fall due; or has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or takes or suffers any similar action due to debt; or
- 8.2.3 if the equivalent of any of the events described at clause 8.2.2 under the law of any jurisdiction occurs in relation to the other Party.
- 8.3 Either Party may terminate this Agreement upon 30 days notice at any time.
- 8.4 Upon expiration or termination of this Agreement, Canonical will cease distribution of the Software.

## **9 WARRANTIES, INDEMNITY, AND LIMITATION OF LIABILITY**

- 9.1 Each Party warrants, represents and undertakes that it has the legal power and authority to enter into this Agreement.

- 9.2 Licensor warrants that:
- 9.2.1 all information (whether written or otherwise) and materials which are provided by Licensor to Canonical relating to this Agreement are accurate and comprehensive in all material respects when provided;
  - 9.2.2 the use and distribution by Canonical or any third party of any information or materials provided by Licensor under this Agreement, expressly including, without limitation, the Software, shall not breach the rights (including but not limited to Intellectual Property Rights) of any third party;
  - 9.2.3 the distribution of the Software in accordance with the method(s) and to the territories specified in Exhibit A is compliant with all applicable export control laws and regulations, and Licensor has obtained all applicable export licences to permit such distribution.
- 9.3 Licensor shall defend, indemnify, and hold harmless Canonical Group and its officers and Personnel from and against any and all claims, damages, losses, liabilities, costs, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim that the Software infringes or misappropriates any Intellectual Property Right of a third party. Canonical shall provide prompt notice to Licensor if Canonical becomes aware of any such claim, and shall provide reasonable cooperation and assistance to Licensor at Licensor's expense.
- 9.4 SUBJECT TO CLAUSES 9.5 AND 9.6, AND EXCEPT WITH RESPECT TO LICENSOR'S INDEMNITY OBLIGATIONS SET FORTH IN CLAUSE 9.3 EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER OR ANY THIRD PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY COLLATERAL CONTRACT OR OUT OF THE PRODUCTION, SALE, SUPPLY OR USE OF DELIVERABLES OR SERVICES, WHETHER BASED UPON CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF (I) THE ACTUAL AMOUNT OF FEES PAID OR PAYABLE BY CANONICAL UNDER THIS AGREEMENT DURING THE PRECEDING 12 MONTH TERM OR (II) 50,000 USD. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND IS NOT PER INCIDENT.
- 9.5 SUBJECT TO CLAUSE 9.6, AND EXCEPT WITH RESPECT TO LICENSOR'S INDEMNITY OBLIGATIONS SET FORTH IN CLAUSE 9.3 OR THE CASE OF A BREACH OF THE CONFIDENTIALITY PROVISIONS HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OR FOR ANY LOSS OF OR DAMAGE TO DATA, LOSS OF PROFIT, LOSS OF CONTRACT OR LOSS OF OTHER ECONOMIC ADVANTAGE (IN EACH CASE WHETHER DIRECT OR INDIRECT) HOWSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY COLLATERAL CONTRACT, OR THE PRODUCTION, SALE, SUPPLY OR USE (BY CANONICAL, THE LICENSOR OR ANY THIRD PARTY) OF DELIVERABLES OR SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF THAT PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF THE SAME AND WHETHER FORESEEABLE OR NOT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OR ANY LIMITED REMEDY.
- 9.6 Nothing in this Agreement shall exclude or limit the liability of either Party for: death or personal injury; or for any misrepresentation fraudulent or otherwise; or for any other liability which it is not permitted to exclude or limit as a matter of applicable law.
- 9.7 The Parties understand and agree that the limitations of liability set out in clauses 9.4 and 9.5 are a reasonable allocation of risk between the Parties and, absent such allocation, Canonical would not have entered into this Agreement.

## **10 FORCE MAJEURE**

Neither Party shall be liable for any breach of this Agreement directly or indirectly caused by circumstances beyond the reasonable control of that Party and which prevent that Party from performing its obligations to the other, provided that a lack of funds shall not be regarded as a circumstance beyond that Party's reasonable control.

## **11 NOTICES**

Any notice required to be given or sent under this Agreement shall be in writing and either delivered personally or sent by first class registered post (or equivalent) to the registered office for the time being of the recipient.

## **12 GENERAL**

- 12.1 Neither Party may assign, transfer, sub-contract, charge, create a trust over or otherwise deal in its rights and/or obligations under this Agreement (or purport to do so) without the other Party's prior written consent except to a group company pursuant to a bona fide re-structure, merger, consolidation, sale of all or substantially all of its assets, or a sale of the business to which the distribution relates.
- 12.2 Unless the right of enforcement is expressly granted, it is not intended that any provision of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement. Any member of the Canonical Group may enforce this Agreement against the Licensor.
- 12.3 A failure or delay by a Party to exercise any right or remedy under this Agreement shall not be construed or operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy by that Party.
- 12.4 During the Term and for a period of 6 months thereafter, Licensor shall not directly or indirectly, solicit or encourage any officer or any Personnel of the Canonical Group to leave or hire any officer or any Personnel of the Canonical Group.
- 12.5 This Agreement represents the entire terms agreed between the Parties in relation to its subject matter and supersedes all previous contracts or arrangements (including without limitation any usage or custom and any terms arising through any course of dealing) of any kind between the Parties relating to its subject matter. Any amendment to this Agreement shall be valid only if in writing and signed by the duly authorised representatives of the Parties.
- 12.6 Each of the provisions of this Agreement shall be construed as independent of every other such provision, so that if any provision of this Agreement shall be determined by any court of competent authority to be illegal, invalid and/or unenforceable this shall not affect any other provision of this Agreement, which shall remain in full force and effect.
- 12.7 Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties or as constituting either Party as the agent of the other Party. No Party shall have the authority to bind the other Party or to contract in the name of or create a liability against the other Party.
- 12.8 Canonical may provide copies of this Agreement in different languages for information purposes. In the event of any conflict between the versions of this Agreement in different languages, the English language version of this Agreement shall prevail and shall be used in any court proceedings.
- 12.9 Licensor acknowledges that export laws and regulations of the United States and European territories may apply to Ubuntu and other materials delivered by Canonical under this Agreement. Licensor agrees that such export control laws and regulations govern its use of Ubuntu and any such materials and agrees to comply with all such laws and regulations. Licensor will not export, directly or indirectly, Ubuntu or any such materials in violation of these laws or regulations, nor will it use them for any purpose prohibited by these laws.
- 12.10 This Agreement shall be governed by and construed in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the courts of England. The Parties irrevocably waive any claim that any proceedings in the English courts under this clause have been brought in an inappropriate forum and irrevocably agree not to raise any objection on *forum non conveniens* grounds to the commencement of such proceedings.

## EXHIBIT A

DESCRIPTION OF THE PROGRAMS	
Program name	
Program version	All versions
Program Description	
Territory	Worldwide
Distribution method	Paid download
Distribution Fees	ISV sets end-user price. Canonical retains 20% of the end-user price minus taxes

CANONICAL REPRESENTATIVES
The Canonical Representative and the Senior Manager for these Services shall be: Canonical Representative: Senior Manager: Steve George, VP Business Development
LICENSOR REPRESENTATIVES
The Licensor Representative and the Senior Manager for these Services shall be: Licensor Representative: Senior Manager:

## EXHIBIT B

<b>LICENSOR TRADE MARKS</b>
[LIST. WHERE THE TRADE MARK IS A LOGO, INCLUDE AN IMAGE]
<b>Trade Mark and logo usage guidelines</b>
[TO BE COMPLETED BY LICENSOR]