

## AGREEMENT TERMS

This Ubuntu Advantage Services Agreement (the “**Agreement**”) is a binding legal agreement between Canonical Group Limited, a company registered in England (company number 6870835) whose registered office is at Blue Fin Building, 5th floor 110, Southwark St, London SE1 0SU (“**Canonical**”), and the entity identified in the Order (the “**Customer**”). As used in this Agreement, each of Canonical and Customer is a “**Party**” and together they are the “**Parties.**”

### BACKGROUND

- A. Canonical is the commercial sponsor of the Ubuntu operating system and Customer is an end user of one or more versions of the Ubuntu operating system.
- B. Customer wishes to purchase Services, directly from Canonical or through a Canonical Reseller.
- C. Canonical will perform the Services for Customer, either directly or through a Canonical Reseller or other third party service provider, and Customer will pay Fees pursuant to this Agreement.

The Parties therefore agree as follows:

#### (1) **Interpretation**

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

**Affiliate:** a corporate entity that, directly or indirectly, controls, is controlled by or is under common control with a Party, where “control” means ownership of more than 50% of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of such corporate entity.

**Canonical Group:** Canonical and its Affiliates.

**Canonical Trade Mark Policy:** Canonical trade mark policy and brand guidelines as amended from time to time and found at <http://www.ubuntu.com/aboutus/trademarkpolicy>

**Confidential Information:** any information identified by a Party as confidential and/or which a Party ought reasonably by its nature know is of a confidential nature and includes, without limitation, the terms of this Agreement and any Supplement Agreement.

**Customer Hardware:** the Customer computer systems for which Customer purchases Ubuntu Advantage Services.

**Customer Software:** any software provided or licensed by Customer to Canonical or any member of the Canonical Group and which may be installed on or combined with Ubuntu by the Canonical Group in the performance of the Services.

**Fee(s):** the amounts payable by the Customer for the Services and/or the licence of the Licensed Trade Marks.

**Intellectual Property Rights:** 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 their equivalent in any part of the world and all rights to apply for any of the above worldwide.

**Licensed Trade Marks:** the Ubuntu name and logos in which Canonical has trade mark rights (whether or not registered or subject to a trade mark application).

**Open Source Software:** any software which is distributed under any of the many known variations of licence terms which allow the free distribution and modification of the software's source code or which require all distributors to make such source code freely available upon request, including any contributions or modifications thereto made by such distributor.

**Order:** Customer's formal request for Services as set out (1) in this Agreement, or (2) pursuant to a Reseller's ordering process.

**Personnel:** with respect to a specified Party, individuals working for the specified Party as employees or contractors.

**Reseller:** a third party authorised by Canonical to resell the Services.

**Services:** the services to be performed by Canonical as set out in Customer's Order and described in Schedule 1 to this Agreement.

**Term:** The period of time beginning on Canonical's receipt of the Fees or satisfactory completion of a credit check (if the Services are purchased directly from Canonical) or the date identified by Canonical's Reseller (if the Services are purchased through a Reseller) and ending as specified in the Order.

**Ubuntu:** a version of the Ubuntu operating system which is supported by Canonical pursuant to Canonical's public announcements and support schedule and is either Canonical's standard version with no modifications or a version modified by Canonical and delivered to Customer hereunder.

**Ubuntu Advantage:** Canonical's standard Services which relate Customer's deployment and use of Ubuntu on Customer Hardware.

**Ubuntu Assurance Programme:** Canonical's offering with respect to Ubuntu known as "Ubuntu Assurance" as may be modified by Canonical from time to time and described at <http://www.canonical.com/enterprise-services/ubuntu-advantage/assurance>.

## (2) Services

(a) Subject to this Agreement and in consideration of Customer's payment in full of the applicable Fees, Canonical shall provide, or cause its Reseller or other service provider to provide the Services on Canonical's behalf during the Term. Canonical will deliver the Services using reasonable skill and care and through suitably qualified Personnel.

## (3) Licences and Intellectual Property

(a) Subject to this Agreement, Customer's compliance with the Canonical Trade Mark Policy, and in

consideration of Customer's payment of the Fees, Canonical grants to the Customer, for the Term, a worldwide, non-exclusive licence to use the Licensed Trade Marks solely in association with Ubuntu on the Customer Hardware.

(b) Any and all Intellectual Property Rights developed or created by or on behalf of a Party shall be owned solely by the Party that developed or created such Intellectual Property Rights. For example, any Intellectual Property Rights created by Canonical in the provision of the Services shall remain the property of Canonical.

(c) Customer shall comply with all applicable software licences, including without limitation licences for Open Source Software provided by Canonical in the provision of the Services and in Ubuntu.

(d) Canonical shall comply with the licence terms of all Customer Software provided to it by Customer, where such software is noted in the relevant Supplement Agreement and the licence terms are attached thereto.

#### **(4) Customer Responsibilities**

(a) Customer may use the Services only in connection with the Customer Hardware and only during the Term. Customer shall not use the Services to manage additional or different equipment without the prior written consent of Canonical. Customer may not resell the Services.

(b) Where any information or action on the part of the Customer or its representatives is required by the Canonical Group to enable Canonical to provide the Services, Customer and/or its representatives shall, at its own expense, provide such information and assistance (including access to Customer's Personnel) in a timely manner.

(c) Customer shall be responsible for ensuring back-up of all data and software and Canonical shall not be liable for any loss of data or software or corruption to or damage of data or software.

(d) Customer has and will for the Term maintain sufficient rights and licences in any applicable Customer Software to allow the Canonical Group to perform the Services either in its original form or as modified by Customer in accordance with this Agreement and without any member of the Canonical Group being in breach of either Customer or any third party's rights.

(e) Customer is responsible for the maintenance and support of any software or services other than Ubuntu or Canonical provided software or services, including Customer Software, any local repositories and any system connectivity. Canonical shall have no responsibility for the maintenance or support of these, and shall have no liability for any failure to deliver the Services which results from Customer's failure to procure appropriate support for software or services other than Ubuntu or Canonical provided software or services.

#### **(5) Service Specific Terms**

(a) With respect to Services which include access to online services provided by Canonical such as Canonical's "Hosted Landscape" Service or support portal, the Customer shall not: allow any unauthorized access to the Services; or tamper with the Services or insert any data or information into the Services, which may affect the Services, cause any damage to Canonical or third parties, or be

unlawful.

## **(6) Confidentiality and Data Protection**

(a) Each Party shall and shall cause its officers, Personnel and agents to keep secret and confidential all Confidential Information of the other and 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; provided that Canonical may disclose Customer Confidential Information within the Canonical Group, including to the officers, Personnel and agents of the Canonical Group.

(b) 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 or independently developed by the recipient 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.

(c) Each Party shall give the other prompt written notice of any disclosure of the party's Confidential Information as required by operation of law.

(d) Each Party agrees that damages would not be an adequate remedy for any failure to comply with Clause 6.1 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 Clause 6.1.

## **(7) Fees, Payment and Expenses**

(a) If Customer is purchasing the Services directly from Canonical, Customer shall pay the Fees at the time of Customer's Order. If Customer is purchasing the Services through Canonical's Reseller, Customer shall pay the Fees in accordance with the process set forth by the Reseller.

(b) The Fees are exclusive of all applicable taxes, which Customer shall pay in addition to the Fees at the rate prevailing on the date of payment. Any sums payable by Customer to Canonical shall be paid clear of any deductions or withholdings. In the event that the Customer is required by applicable law to withhold or deduct any amounts from the Fees payable to Canonical, the Customer shall pay any additional amounts necessary to ensure that Canonical is in the same position as it would have been in had no deductions or withholdings been required. If Customer is purchasing Services through a Canonical Reseller, Customer agrees to abide by such Reseller's terms regarding taxes.

(c) Unless the subject of a genuine dispute, all Fees are non-cancellable and non-refundable. Any disputes relating to the invoicing of Fees must be made by Customer in writing within ten (10) days of the date of an invoice. Customer will not be entitled to any refund for any overpaid amounts resulting from Customer's over-reporting of Customer Hardware systems.

(d) Customer shall, for a period of 6 years following their creation, keep complete books and records containing all data reasonably required for verification of all amounts payable hereunder and shall permit Canonical and its duly authorised representatives to inspect, audit and take copies of such books and records. If any such audit discloses a payment shortfall, Customer shall make full payment of the shortfall, together with interest calculated in accordance with Clause 7.5, within thirty (30) days of the

date of Canonical's invoice, and if the shortfall exceeded by 5% or more the payment due in the period covered by the audit, Customer shall reimburse Canonical for the reasonable costs of the audit.

(e) Canonical may charge interest on any past due payment amounts, plus any related collection and legal costs. Such interest shall accrue on a daily basis at the annual rate of 2% above the base rate of Barclays Bank PLC in force from the due date until the date of payment, or the highest rate allowable by applicable law (if lower), whether before or after judgement.

(f) With respect to any Services performed at Customer's site, Customer shall reimburse Canonical for all travel-related expenses including transportation, lodging, and meal expenses. Expenses shall be determined based on Canonical's standard travel policy.

#### **(8) Warranty Disclaimer**

(a) NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE, WITH RESPECT TO THE SUBJECT MATTER HEREOF OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT OR ANY SUPPLEMENT AGREEMENT. EACH PARTY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, SATISFACTORY QUALITY, MERCHANTABILITY, SATISFACTORINESS, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

#### **(9) Ubuntu Assurance**

(a) Customer is entitled to participate in the Ubuntu Assurance Programme in place from time to time, subject to the terms and conditions thereof. If Customer is purchasing the Services through a Canonical Reseller, Canonical's liability caps in the Ubuntu Assurance Programme will be based on Canonical's list prices for the Services rather than the Fees.

(b) Should any third party claim that Customer's use of Ubuntu and/or Canonical's provision of the Services infringes the Intellectual Property Rights of that third party, Customer shall immediately notify Canonical and cease to use the affected parts of Ubuntu and/or Canonical may suspend provision of the affected parts of the Services. At Canonical's request, the Customer shall permit Canonical to have sole conduct of the claim and shall provide all assistance reasonably requested by Canonical to defend the claim. Canonical may, at its sole option and as Customer's sole and exclusive remedy: procure a right to enable it to continue performance of the affected Services or for the Customer to utilise the affected parts of Ubuntu; provide replacement software that is non-infringing or alter the Services so that the infringement is avoided.

**(10) Liability Limitations**

(a) SUBJECT TO CLAUSES 10.2 AND 10.3, AND EXCEPT IN THE CASE OF A BREACH OF THE CONFIDENTIALITY PROVISIONS HEREIN, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER OR ANY THIRD PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH A SUPPLEMENT AGREEMENT OR ANY COLLATERAL CONTRACT THERETO OR OUT OF THE PRODUCTION, SALE, SUPPLY OR USE OF UBUNTU OR SERVICES THEREUNDER, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED (I) IF THE SERVICES ARE PURCHASED DIRECTLY FROM CANONICAL, THE ACTUAL AMOUNT OF FEES PAID OR PAYABLE BY THE CUSTOMER TO CANONICAL DURING THE PRECEDING 12 MONTHS, OR (II) IF THE SERVICES ARE PURCHASED THROUGH CANONICAL'S RESELLER, CANONICAL'S LIST PRICE FOR 12 MONTHS OF THE SERVICES.

(b) SUBJECT TO CLAUSE 10.3, AND EXCEPT IN 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, EX GRATIA PAYMENTS, DIRECT OR INDIRECT 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 CUSTOMER OR ANY THIRD PARTY) OF UBUNTU 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 ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. FOR THE AVOIDANCE OF DOUBT THIS CLAUSE 10.2 SHALL NOT APPLY IN RELATION TO THE CUSTOMER'S OBLIGATION TO PAY THE FEES.

(c) The Parties understand and agree that the limitations of liability set forth in this Clause 10 are a reasonable allocation of risk between the Parties, and, absent such allocation, Canonical would not have entered into this Agreement. Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury; any misrepresentation fraudulent or otherwise; or any other liability which it is not permitted to exclude or limit as a matter of applicable law.

**(11) Term and Termination**

(a) This Agreement shall come into force on the date the Customer accepts its terms and conditions, either (i) by clicking the "Accept" or similar button, (ii) by signing this Agreement, or (iii) by signing or accepting an agreement that incorporates this Agreement by reference. This Agreement shall continue for the Term, unless earlier terminated as provided in Clause 11.2.

(b) This Agreement may be terminated immediately by notice in writing if the other Party:

i) commits a material breach 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 thereof;

ii) enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction); becomes insolvent; ceases or threatens to cease to carry on business; or any similar event.

(c) Upon expiration or termination of this Agreement for any reason, all licences granted to Customer

under this Agreement shall terminate forthwith, Customer will pay all outstanding Fees (including Fees that would otherwise have been payable with respect to the full Term), and Canonical will have no obligation to provide any Services after termination of this Agreement.

(d) Clauses 3.2, 3.3, 6, 7, 8, 10, 12, 13 and 14 of this Agreement shall survive termination.

(12) **Escalation**

(a) 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, representatives of both parties shall meet to try to resolve the matter. If the matter is not resolved within a further 14 days, the matter may be referred by either Party to a meeting between the senior managers of the Parties. Subject to Clause 12.2, neither Party shall refer any dispute to the courts unless and until the dispute resolution procedures of this Clause 12 have been followed.

(b) Nothing in this Clause 12 shall prevent either Party applying to the courts of any country for injunctive or other interim relief.

(13) **General**

(a) 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.

(b) Neither Party may assign, transfer, 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 an Affiliate 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 Services relate.

(c) 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, as amended from time to time, by any person who is not a Party to this Agreement. Any member of the Canonical Group may enforce this Agreement against the Customer.

(d) No amendment or modification of this Agreement will be valid or binding upon the Parties unless made in writing and signed by the duly authorized representatives of both parties. In addition, 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.

(e) During the Term and for a period of 6 months thereafter, neither Party shall directly or indirectly, solicit any officer or Personnel of the other to leave or hire any officer or Personnel of the other. However, nothing in this Clause 13.5 shall be construed to prohibit either Party from placing advertisements for employment that are aimed at the public at large in any newspaper, trade magazine or job-listing website.

(f) This Agreement represent the entire terms agreed between the Parties in relation to its subject



matter and supersedes all previous contracts or arrangements (including any usage or custom and any terms arising through any course of dealing) of any kind between the Parties relating to its subject matter. No terms or conditions included in or delivered with or contained in any Customer acceptance of Services, proposal, purchase order or similar document will form part of any Agreement or otherwise bind Canonical, even if Canonical signs that acceptance, proposal, order or similar document and does not expressly reject those terms or conditions.

(g) 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 and each Supplement 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.

(h) 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.

(i) 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.

(j) 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.

(k) Customer 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. Customer agrees that such export control laws and regulations govern its use of Ubuntu and any such materials and shall comply with all such laws and regulations. Customer 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.

#### (14) **Governing Law**

(a) 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, except when a Party seeks immediate injunctive relief (for example, in connection with a breach or impending breach of confidentiality obligations) that would not be reasonably effective unless obtained in the jurisdiction of the conduct at issue. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.