



KUBERMATIC

MASTER PARTNER AGREEMENT

This Master Partner Agreement (this “**Agreement**”) is made as of [redacted], 20 [redacted] (the “**Effective Date**”) by and between Kubermatic GmbH (“**Kubermatic**”), having its registered address and principal place of business at Willy-Brandt-Straße 23, 20457 Hamburg, and [redacted] having its registered address and principal place of business at [insert address] (“**Partner**”). Kubermatic and Partner are each referred to as a “**Party**,” and together the “**Parties**.”

This Master Partner Agreement, upon execution, authorizes Partner to participate in one or more of the Kubermatic Partner Program(s) under the terms included in the Schedules listed below, only in the Territory selected below. If no Territory is selected below, the Territory will be the territory in which Partner’s address above is located.

This Agreement consists of this Signature Page and the Schedules indicated below, and any additional schedules to this Agreement that may be executed during the term of this Agreement:

- Schedule A. PARTNER AGREEMENT TERMS
- Schedule B. RESELLER PARTNER SCHEDULE

The Parties select the following Territory:

Territory
<input type="checkbox"/> EMEA
<input type="checkbox"/> NORTH AMERICA
<input type="checkbox"/> APAC
<input type="checkbox"/> LATAM
<input type="checkbox"/> U.S. PUBLIC SECTOR (FEDERAL / SLED)

In witness whereof, the parties have executed this Agreement as of the Effective Date.

Kubermatic GmbH

[Insert Partner]

Signature

Signature

Name and Title (Print)

Name and Title (Print)

Date

Date



KUBERMATIC

SCHEDULE A

PARTNER AGREEMENT TERMS

1. Definitions

Capitalized terms used in this Agreement shall be defined where first used or as follows:

- 1.1. **"Affiliate(s)"** means any entity(ies) controlling, controlled by, and/or under common control with a Party hereto, where "control" means the ownership of more than 50% of the voting securities in such entity.
- 1.2. **"Confidential Information"** means the terms and conditions of this Agreement, and any other non-public technical or business information of a Party or its Affiliate, whether provided orally or in writing, that is designated in writing as "Confidential" or "Proprietary" at the time of disclosure or that due to the nature of the information the Receiving Party would reasonably understand it to be confidential information of the Disclosing Party, including information relating to a Party's techniques, ideas, concepts, algorithms, source code, methodologies, workflows, implementation processes, current and future products and services, research, engineering, designs, financial information, procurement requirements, customer lists, business forecasts, roadmaps, marketing plans, pricing, discounts and proposals. For the avoidance of doubt, Confidential Information shall not include electronic data and information submitted by or for End User to and/or through the Kubermatic Products and Services (referred to herein as **"End User Data"**).
- 1.3. **"Disclosing Party"** means the Party disclosing their Confidential Information to the Receiving Party.
- 1.4. **"End User"** means a permitted user of the Kubermatic Products and Services.
- 1.5. **"Kubermatic End User License Agreement"** means the Kubermatic End User License Agreement governing the use of Kubermatic Software that is accepted by each End User.
- 1.6. **"Kubermatic Free Software"** means Kubermatic Software provided to an End User or to Partner or any other third party: (i) at no, or a significantly reduced, cost, and (ii) for the sole purpose(s) of evaluation, demonstration, piloting, testing, NFR (Not-For-Resale), but shall exclude all elements that are Commercially Related. **"Commercially Related"** shall, for the purposes of this Agreement, include, but not be limited to, internal use, resale, and/or distribution of the Kubermatic Software as set forth in a binding purchase with Kubermatic.
- 1.7. **"Kubermatic Products and Services"** means Kubermatic Software (as defined herein) and Kubermatic Professional Services (as defined herein).
- 1.8. **"Kubermatic Professional Services"** means professional services, including but not limited to, training, enablement, best practices, and consulting which are provided by Kubermatic to an End User.
- 1.9. **"Kubermatic Software"** means software, and other branded offerings sold or licensed by Kubermatic or its Affiliates as agreed to between the Parties in an Order Form, including but not limited to, the on premise and/or SaaS version of Kubermatic's "Kubermatic Kubernetes Platform". For the avoidance of doubt, Kubermatic Software does not include, and applicable terms shall not apply to Kubermatic Free Software (as defined herein).
- 1.10. **"Kubermatic Terms and Conditions"** means the terms and conditions applicable to the use of Kubermatic Products and Services.
- 1.11. **"Master Partner Agreement Signature Page"** means the cover document for this Agreement, which sets forth the, (i) applicable agreement, (ii) Kubermatic and Partner information, (iii) Territory, (iv)

Schedule(s), (v) other information concerning the relationship between the Parties.

- 1.12. **“Order Form”** means a transactional document agreed to between the Parties, which states the Kubermatic Products being purchased, the name of the End User customer, term of use, price, and other applicable transaction details. For the avoidance of doubt, the Parties acknowledge and agree that, for this scenario, the terms and conditions stated within this Agreement, the Reseller Partner Schedule, and an executed Order Form shall govern with respect to all matters contemplated herein.
- 1.13. **“Party”** means a party to this Agreement.
- 1.14. **“Receiving Party”** means the Party receiving the Disclosing Party’s Confidential Information.
- 1.15. **“Schedule(s)”** means the schedules to the Master Partner Agreement Signature Page, which establishes the applicable relationship contemplated between the Parties as set forth in an executed Master Partner Agreement Signature Page. Additional Schedule(s) may be entered into between the Parties solely by mutual written execution. Kubermatic shall have no obligation(s), and Partner shall have no right(s), with respect to any Schedule not executed by the Parties.
- 1.16. **“Trademarks”** means a Party’s corporate name, logo, and “button” or “icon” for use within others’ software to indicate an available integration or partnership, and any other logos, slogan(s), service marks, trademarks and certification marks.
- 1.17. **“Terms”** means these Partner Agreement Terms.
- 1.18. **“Opportunity”** means a sales-accepted End User that has been introduced to Kubermatic through the register form, has been qualified as being in need of Kubermatic Products or Service and approved by Kubermatic. For the avoidance of doubt any reference or mention of a “Deal” means an opportunity defined herein.
- 1.19. **“Introduction”** means the referral of a potential End User or the provision of information by Partner which identifies the potential End User who is in need of Kubermatic Products or Services.

2. PARTNERSHIP

- 2.1. Kubermatic and Partner hereby establish the relationship(s) described in one or more Schedules. The rights and obligations of the Parties shall be subject to the applicable Schedule. This Agreement, these Terms and the applicable Schedule, to the exclusion of other Schedules that are not applicable, shall govern each instance of the relationship between Kubermatic and Partner. In the event of any conflict between these Terms and the applicable Schedule, the terms of the applicable Schedule shall control in relation to the relationship formed by such applicable Schedule.
- 2.2. Except as may be expressly set forth in a Schedule, this Agreement describes a non-exclusive relationship, and nothing in this Agreement is meant to prevent either Party from dealing with any party or from distributing any third-party products or services in any manner. Subject only to the express terms of this Agreement and any applicable Schedule, each Party is free to communicate and deal with any End User or potential End User at any time and in any manner.
- 2.3. Partner shall not purchase, use, or deploy Kubermatic Products under this Agreement for Partner’s internal purposes (**“Internal Use”**). In the event Partner desires to purchase, use, or deploy Kubermatic Products for Internal Use, the Parties shall enter into a separate agreement governing such Internal Use which shall be subject to the Kubermatic Terms and Conditions.
- 2.4. Partner and Kubermatic acknowledge and agree that Kubermatic Free Software may be limited in functions, features, maintenance and support, and may contain other limitations not present in Kubermatic Software. Unless otherwise agreed to between the Parties in writing, provisions in this Agreement regarding Kubermatic Software shall not be applicable for Kubermatic Free Software with respect to: (i) fees (as stated in Section 8 of these Terms), (ii) warranties (as stated in Section 4.1 of these Terms), (iii) indemnification (as stated in Section 14 of these Terms).

3. APPROVALS

- 3.1. Kubermatic shall be entitled in its sole discretion to withhold approval of a potential End User or refuse an opportunity communicated by Partner under this Agreement. Unless otherwise expressly agreed by the Parties, any opportunity that is not approved in writing by Kubermatic will be deemed refused. However, Kubermatic shall not refuse an opportunity in bad faith.
- 3.2. Unless Kubermatic has approved a potential End User, Partner may not start or continue any sales activities regarding the prospective End User and shall refer the opportunity to Kubermatic. Under no circumstance shall any of Partner's activities with respect to the prospective End User after the notification of refusal lead to an entitlement for a discount under this Agreement.

4. PARTNER'S GENERAL OBLIGATIONS AND WARRANTIES

- 4.1. Partner warrants that it has the ability to carry out the obligations assumed under this Agreement, and that by entering this Agreement or performing hereunder Partner will not be in breach of any express or implied obligations to any third-party binding upon it.
- 4.2. Partner shall not offer to a potential End User, or announce or indicate to a potential End User that such offer may be possible, any terms and conditions for the purchase of the Kubermatic Products and Services that deviate from Kubermatic Terms and Conditions.
- 4.3. Further, Partner shall not make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the Kubermatic Products and Services other than, or which are not consistent with those contained in the documentation supplied by Kubermatic or the Kubermatic Terms and Conditions.
- 4.4. If Partner becomes aware of any violation of the Kubermatic Terms and Conditions by an End User, Partner will notify Kubermatic without delay and will reasonably assist Kubermatic in its efforts to enforce the applicable terms.
- 4.5. In its activities under this Agreement, Partner is bound by Kubermatic's reasonable instructions.
- 4.6. Partner shall:
 - 4.6.1. not make any misrepresentations in relation to the Kubermatic Products and Services;
 - 4.6.2. not during the term of this Agreement actively market the Kubermatic Products and Services outside the Territory without the prior written consent of Kubermatic;
 - 4.6.3. supply to Kubermatic such reports, returns and other information relating to orders and projected orders for the Kubermatic Products and Services as Kubermatic may from time to time reasonably require; and
 - 4.6.4. comply with all of the guidelines and conditions of the Kubermatic Partner Program; and
 - 4.6.5. follow Kubermatic and its Affiliates' reasonable instructions in all of Partner's activities under this Agreement.

5. MARKETING

- 5.1. Partner shall use its best endeavours to promote the sale of the Kubermatic Products and Services throughout the Territory.
- 5.2. Partner shall consult with Kubermatic's marketing department before commencing any particular marketing activity in order to ensure that Kubermatic's and its Affiliates' legitimate interests are safeguarded and shall generally and at all times conduct its business in a manner that will reflect favourably on the Kubermatic Products and Services and on the good name and reputation of Kubermatic and its Affiliates.
- 5.3. Except for translations in the English language, Partner shall be responsible for a professional translation of all current marketing materials, if such extra translation is necessary for the Territory.

- 5.4. Partner will, as a matter of principle, conduct all marketing and sales activities, if any, such as those mentioned above as well as the hosting of events, appearances at trade fairs, etc., at its own cost and expense.
- 5.5. Partner shall be solely responsible for Partner's marketing activities being in compliance with all applicable laws.
- 5.6. Kubermatic provides the Kubermatic Products and Services as well as its advertising, marketing, instructional or other materials with intellectual property rights notices customary in the software industry, which notices shall not be removed by Partner.
- 5.7. Partner shall inform Kubermatic on all its major marketing, advertising and other promoting activities relating to the sale of the Kubermatic Products and Services in order to not harm or dilute the identity and image of the Kubermatic Products and Services.

6. SOFTWARE DEMONSTRATION LICENSE

Kubermatic hereby grants to Partner, valid only for the term of this Agreement or, if shorter, the term of this Schedule, the following non-exclusive, non-transferable and non-assignable license in the Kubermatic Free Software:

***Software Demonstration License:** License to use and make a reasonable number of copies of the demonstration version of the Kubermatic Free Software and its documentation, solely for Partner's own business purposes, that means for the following purpose only: for purpose of internal training and external demonstration (i.e. demonstration vis-à-vis (potential) End-Users); the grant of this license shall be free of any charge; however, an evaluation and/or productive use of the Kubermatic Free Software is not permitted.*

7. GENERAL DUTIES ON THE PART OF KUBERMATIC

Kubermatic shall:

- 7.1. provide Partner with marketing and technical assistance reasonably necessary to enable Partner to market and sell Kubermatic Products and Services;
- 7.2. collaborate with Partner and be available to support Partner throughout the entire sales process, and
- 7.3. generally provide Partner with all applicable information and assistance necessary to enable Partner to perform its obligation under this Agreement.

8. FEES, PAYMENT, DISPUTES AND INVOICING

- 8.1. Unless otherwise agreed to between the Parties in an executed Order Form, Partner agrees to pay the fees applicable to purchases in accordance with the payment terms of this Section 8.
- 8.2. Unless otherwise detailed in the applicable Schedule, all fees are due net thirty (30) days after the date of invoice.
- 8.3. Unless otherwise agreed between the Parties in an Order Form, all invoices shall be issued and paid in Euros.
- 8.4. All subscription and license fees are exclusive of, and Partner is responsible under the Reseller Partner Schedule for paying, any tax, VAT, right, tariff, fee, duty, levy or similar governmental charge that may be assessed by any jurisdiction, whether based on the delivery, possession or use of the Kubermatic Products and Services, the execution or performance of this Agreement or otherwise, provided, however, that Partner shall not have any liability for the income of Kubermatic. If, as a result of any such tax or levy, Partner is required to withhold any amount on any payment to Kubermatic, then the amount of the payment will be automatically increased to totally offset such tax or levy, so that the amount actually remitted to Kubermatic, net of all taxes or levy, equals the amount invoiced or otherwise due as agreed to between the Parties in an Order Form. If applicable, Partner shall provide Kubermatic with the proper legal certificate of the withheld taxes, as well as the proof of its payment

to the correspondent authorities.

9. Term, Termination and Effect of Termination.

- 9.1. This Agreement shall commence on the Effective Date and remain in effect for a period of twelve (12) months thereafter (“Initial Term”). Unless otherwise terminated in accordance with its terms, this Agreement and all schedules will automatically renew for consecutive periods of twelve (12) months each (“Renewal Term(s)”) unless either Party notifies the other in writing of its desire that this Agreement not renew at least thirty (30) days prior to the end of the then-current term. The Initial Term together with any Renewal Terms is referred to herein as the “Term.”
- 9.2. Unless otherwise agreed in an executed Order Form or a Schedule, all Schedules shall expire or terminate upon the expiration or termination of this Agreement.
- 9.3. The right to terminate this Agreement for good cause shall remain unaffected for both Parties. A Party shall have good cause to terminate where, taking into account all relevant circumstances of the case as well the fair and legitimate interests of both Parties, the terminating Party cannot reasonably be expected to continue the contract. If the good cause for the termination consists in a breach of a contractual obligation, giving notice of termination shall only be possible after the other Party having failed to meet a reasonably given respite for curing the breach. No such respite must be given, however, where:
 - 9.3.1. the Party that has given cause for termination finally refuses performance of the obligation in questions;
 - 9.3.2. the Party that has given cause for termination does not perform the obligation in question by the specific date, or within the specific timeframe, set for the performance of this obligation, even though the timely performance of the obligation has been declared essential by the terminating Party in the agreement, or is objectively essential as a result of other circumstances present at, and connected to, the conclusion of the agreement; or
 - 9.3.3. there are special circumstances that justify the immediate termination, taking into account both Parties’ legitimate interests.
- 9.4. The end of this Agreement as a whole through non-renewal (cf. Section 9.1 of these Terms) or termination (cf. Section 9.3 of these Terms) terminates all relationships hereunder. A Party may, however, also wish to not only one or more of the relationships renew upon the applicable anniversary of this Agreement. In this case, the Parties will discuss in good faith and, if so, agree on whether to continue with just the remaining relationship or not. The Parties hereby clarify that the termination of the Partner Agreement shall have no effect on the still existing agreements concluded under this Agreement between the respective Party and the End User.
- 9.5. Upon the non-renewal or termination of this Agreement all licenses granted by a Party to the other Party terminate, and Partner shall destroy or return to Kubermatic all material belonging to Kubermatic, its Affiliates or its licensors, including, without limitation, all copies of Kubermatic’s Confidential Information, and shall promptly certify to Kubermatic in writing that Partner has done so. In the event of only one or more of the relationships ending and the Agreement as such continuing g (cf. Section 9.4 of these Terms), the preceding sentence shall apply accordingly to the relationship(s) that has / have ended.

10. CONFIDENTIALITY

- 10.1. Confidential Information shall not include any information that: (a) is or becomes generally available to the public through no fault of or breach of this Agreement by the Receiving Party; (b) was rightfully in the Receiving Party’s possession at the time of disclosure without an obligation of confidentiality on the Receiving Party; (c) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information; (d) is rightfully obtained by the Receiving Party from a third party not under a duty of confidentiality to the Disclosing Party and without restriction on use or disclosure; or (e) the Receiving Party is permitted to publicly disclose under another provision of this

Agreement.

- 10.2. Neither Party shall disclose Confidential Information of the other Party to anyone or shall use Confidential Information of the other Party for any purpose, except in either case as necessary to exercise its rights or obligations under this Agreement ("Permitted Purposes"). Each Party shall use at least the same degree of care (but no less than reasonable care) to prevent the unauthorized use, dissemination and copying of the other Party's Confidential Information as it uses to protect its own confidential information of a like nature. Each Party shall limit the disclosure of such Confidential Information to those of its employees, consultants, Affiliates, advisors and contractors with a bona fide need to access such Confidential Information solely for the Permitted Purposes, and all such employees and contractors must be subject to binding disclosure and use restrictions at least as protective as those set forth herein. Each Party shall be responsible for any breach of this Section 10.2 by its individual employees, consultants, Affiliates' employees, advisors and contractors, as if they were that Party's own employees.
- 10.3. The obligations of confidentiality under this Section 10 shall continue indefinitely, even after Agreement has ended. A Receiving Party shall promptly return or destroy (or in the case of electronic data, use commercially reasonable efforts to delete or render practicably inaccessible by Receiving Party) Confidential Information disclosed by the Disclosing Party upon its written request.
- 10.4. This Agreement shall not be construed to prevent the Receiving Party from disclosing the Disclosing Party's Confidential Information to a court or governmental body pursuant to a valid court order, law, subpoena or regulation, provided that the Receiving Party: (a) gives reasonable notice (or such shorter period as is the maximum notice permitted under applicable law) before making the disclosure, unless prohibited by law; (b) provides reasonable assistance to the Disclosing Party in any lawful efforts by the Disclosing Party to resist or limit the disclosure of such Confidential Information; and (c) discloses only that portion of the Disclosing Party's Confidential Information which is legally required to be disclosed.
- 10.5. All Confidential Information disclosed under this Agreement will remain the property of the Disclosing Party. No license or right under any intellectual property right is granted under this Agreement or by any disclosure of Confidential Information except as expressly stated in this Agreement.

11. JOINT MARKETING

- 11.1. The Parties agree to make commercially reasonable efforts to engage in joint marketing activities. Each Party grants to the other a revocable, nonexclusive, non-transferable, royalty-free right to display such Party's respective Trademarks for the sole purpose of identifying the other as a partner, subject to the terms of this Agreement and such Party's standard trademark usage guidelines. The concrete use of all Trademarks, however, is subject to the approval of the other Party, which approval will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Partner and Kubermatic agree that the Parties execution of this Agreement shall constitute as Partners written consent and Kubermatic shall have the right to use Partner's Trademarks on applicable Kubermatic marketing collateral and documentation related to its partner program(s).
- 11.2. Neither Party shall acquire any rights of ownership to any copyrights, patents, trade secrets, trademarks or other intellectual property of the other Party. If a Party has any concerns with respect to the other Party's use of their Trademarks, it shall notify the other Party and, if requested, the other Party shall promptly make any requested changes or cease all use of such Trademark and marketing materials. On termination of this Agreement, each Party will cease use of the Trademarks of the other Party.
- 11.3. Neither Party shall engage in any deceptive, misleading, illegal or unethical practices, including but not limited to the use of the other Party's Trademarks, that may be detrimental to the other (or such other Party's services).

12. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

The Parties acknowledge and agree that, as between the Parties, Kubermatic exclusively owns all right, title and interest in and to the Kubermatic Products and Services, the Kubermatic Free Software

(including without limitation any code and any deliverables provided as part of the Kubermatic Products and Services or otherwise), Kubermatic's trade name, its Trademarks, service marks, logos, advertising slogan and icons, its copyrights, patents, technologies, trade secrets, know how, intellectual property, information and system data (whether pre-existing, or created after the Effective Date), including, between the Parties, in and to any modifications, enhancements and derivatives thereof (including, but not limited to, metrics, data and information generated by such Kubermatic Products and Services) and related software thereof. Partner does not acquire any rights, express or implied to any Kubermatic Products and Services, except as expressly granted herein and within the Schedule(s). Partner acknowledges and agrees that its rights in and to Kubermatic's technology and the Kubermatic Products and Services are limited to the license rights set forth in this Section and the applicable Schedule. Partner will not claim ownership or proprietary rights in Kubermatic's technology or the Kubermatic Products and Services. Partner shall not take any action that jeopardizes Kubermatic or its Affiliates, and/or licensors' proprietary rights or acquire any right in the Kubermatic Products and Services or Confidential Information of Kubermatic, except the limited rights specified in this Agreement or the Schedules.

13. RESTRICTIONS

- 13.1. Partner shall not, and shall not permit, engage or assist others to:
 - 13.1.1. use the Kubermatic Products and Services for any purposes other than those expressly set forth in this Agreement and the applicable Schedules;
 - 13.1.2. modify the Kubermatic Products and Services, except as may be expressly set forth in an applicable Schedule;
 - 13.1.3. use, distribute, copy, duplicate, or otherwise reproduce all or any part of the Kubermatic Products and Services other than as permitted by this Agreement or applicable, and in strict accordance with, the terms of this Agreement and the applicable Schedule.
- 13.2. Further, Partner shall not, and shall not permit, engage or assist others to use any Kubermatic Confidential Information or Kubermatic intellectual property to create, distribute, sell, license, market or promote any Partner technology or service or any third-party technology without the prior written approval from Kubermatic.
- 13.3. Partner shall keep proper, accurate and up to date records and data relating to the performance of its obligations under the Agreement and applicable Schedule, and all payments made and received by the Partner in connection with this Agreement and applicable Schedule. Partner shall retain such records from the Effective Date until at least four (4) years after the end of this Agreement.
- 13.4. Partner shall permit Kubermatic and its third party representatives (provided such representatives are subject to written confidentiality obligations in respect of any information obtained), on reasonable notice during normal business hours, to access and receive copies of the Partner's records, books of account and any other information held by or on behalf of the Partner that are solely related to Partner's obligations under this Agreement and to meet with the Partner's personnel in order to audit the Partner's compliance with its obligations under this Agreement and applicable Schedule. Such audit rights shall continue for four (4) years after the end of this Agreement. The Partner shall give all necessary assistance to the conduct of any such audits.

14. INDEMNIFICATION

- 14.1. Partner shall indemnify and hold Kubermatic and its Affiliates, management and employees harmless from and against any and all damages and costs suffered, incurred or sustained as a result of or in connection with any action, claim or proceeding made or brought by any third party alleging that any act, or omission or act, committed, or omitted, on the part of Partner infringes the third party's intellectual or industrial rights and/or its trade and business secrets, or has caused the third party any damage, except to the extent that such infringement and/or such losses and liabilities arise as a result of any act or omission by Kubermatic and/or its Affiliates, and provided that:

- 14.1.1. Partner shall only be obliged to indemnify Kubermatic if, assuming for the purposes of this Section 14.1 of these Terms that the third party's allegations are factually correct, Partner has acted, or omitted to act, with at least a degree of negligence with respect to the alleged infringement(s) and or damage incurred;
- 14.1.2. Kubermatic, as the case may be, has promptly informed Partner of such third-party action, claim or proceeding, provided that a failure to give prompt notice will not relieve Partner of any liability hereunder, except to the extent Partner has suffered actual material prejudice as a result of such failure;
- 14.1.3. Kubermatic, as the case may be, will not agree to the settlement of any such action, claim or proceeding prior to a final judgement thereon without the consent of Partner, which shall, however, not be unreasonably withheld. Kubermatic may, however, take intermediary measures at Partner's cost to put a hold on adverse developments on Kubermatic's use of the Services and/or Deliverables.

Partner will fully cooperate in the defence of such claim and/or, at its discretion, will have sole control of such defence inasmuch as this is possible and reasonable.

- 14.2. (Other) damages, unjust enrichment or other claims that Kubermatic may have as a result of Partner's acts or omissions shall not be affected by Section 14.1 of these Terms; payments made on the basis of this Section 14.1 of these Terms shall, however, be credited against such other claims if not crediting them against the claims would result in an unjust amassment of claims on the part of Kubermatic.

15. LIMITATION OF LIABILITY

- 15.1. Subject to Section 15.2 of these Terms, the Parties shall be liable towards each other for damages and wasted expenditure incurred pursuant to the applicable statutory provisions, Section 14.2 of these Terms, however, remaining unaffected.
- 15.2. While there is no limitation of the liability of either Party to the other with regard to claims for damages and wasted expenditure caused by gross negligence (*grobe Fahrlässigkeit*) or wilful misconduct (*Vorsatz*), the liability of the Parties towards each other arising out of or in connection with acts, or failures to act, caused by ordinary negligence (*einfache Fahrlässigkeit*) shall be limited to 10,000 Euros per event and 100,000 Euros overall. This limitation, however, shall not apply to Partner's indemnification obligations under Section 14 of these Terms, with regard to claims for damages based upon personal injury, damage to tangible property or product liability, or to breaches of the Parties' obligations under the applicable data protection and data security laws and regulations.

16. COMPLIANCE WITH LAWS

Partner shall comply with applicable laws, regulations and other legal requirements as may be applicable to each Party, including without limitation tax, import or export restrictions, data privacy and security, foreign exchange and consumer protection legislation. Partner will promptly notify Kubermatic of any change that Partner actually knows or should reasonably be aware of in these laws, regulations or other legal requirements that may affect Partner's performance under this Agreement, or the Schedules. Partner agrees that it will not access, download, use or export the Kubermatic Products and Services into any country or license, market or promote the Kubermatic Products and Services in any manner prohibited by the United States Export Administration Act or any other import or export laws, restrictions, or regulations (collectively the "**Export Laws**") or target any customer, prospect or end user in any territory restricted by such Export Laws. In addition, the Kubermatic Products and Services may constitute as export controlled items under the Export Laws, therefore, Partner represents and warrants that it is not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Syria, Sudan, Cuba, and North Korea) and that Partner is not otherwise prohibited under the Export Laws from partnering with Kubermatic hereunder. Partner will at all times conduct itself according to the highest standard of business ethics. Partner will not offer or provide money or anything else of value to any agent or representative of any government or government agency in order to obtain or retain business, as prohibited under any and all

anti-corruption law, rule or regulation. No payments between Partner and its End Users will be made in cash or via third parties. All such payments will be made directly by wire transfer. Partner represents and warrants that none of its principals or staff are agents or representatives of governments (as defined or identified by local law, regulation or custom) or government agencies in the Territory (as defined within the applicable Schedule). Partner will provide true, accurate, and complete information in all product orders, reimbursement requests, and other communications relating thereto.

17. GOVERNING LAW; VENUE

- 17.1. This Agreement and any disputes arising out of or related hereto will be governed by and construed in accordance with the laws of Germany, without giving effect to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.
- 17.2. The Parties hereby submit to the exclusive jurisdiction of the courts of Hamburg, Germany, for all disputes or claims arising out of or in connection with this Agreement.

18. MISCELLANEOUS

- 18.1. Partner represents and warrants that Partner has obtained the necessary consent from any (perspective) End User prior to providing to Kubermatic the name, contact information, any End User data, or any other data that identifies an individual. Partner represents and warrants that Partner uses reasonably adequate privacy and security measures and handles data in compliance with all applicable privacy laws and regulations.
- 18.2. Neither Party will be responsible for any failure to perform or any delay in performing any of its obligations under this Agreement where and to the extent that such failure or delay results directly or indirectly from an event beyond such Party's reasonable control.
- 18.3. Neither Party has the right, power or authority (whether expressed or implied) to enter into or assume any duty or obligation on behalf of the other Party. Accordingly, neither Party is, or will purport to be, authorized to legally represent the other Party. Except as specified in this Agreement or in any applicable Schedule, neither Party will be liable for any acts, omissions, contracts, commitments, promises or representations made by the other Party.
- 18.4. This Agreement (together with the Schedules) contains the entire agreement of the Parties, and supersedes any and all previous agreements addressed herein or with respect to the subject matter hereof, whether oral or written.
- 18.5. If a conflict occurs between this Agreement and any Schedule(s) and/or Order Form(s), unless otherwise specifically stated in the Schedule(s) or Order Form(s), the order of precedence shall be: (i) Order Form (if any), (ii) the Schedule(s) and (iii) this Agreement.
- 18.6. No failure of either Party to exercise or enforce any rights under this Agreement or any of the Schedules shall act as a waiver of such rights.
- 18.7. None of this Agreement, any of the Schedules, or any rights or obligations hereunder may be assigned or subcontracted by Partner, whether by operation of law (including by way of sale of assets, merger, consolidation, or otherwise) or voluntarily, without the prior written consent of Kubermatic, such consent not to be unreasonably withheld, and any such assignment or subcontracted arrangement in violation of the foregoing shall be null and void. Kubermatic may assign this Agreement or any of the Schedules at its sole discretion, upon written notice to Partner. This Agreement and the Schedules bind, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 18.8. If any provision of this Agreement or the Schedules is held to be invalid or unenforceable, the remaining provisions of this Agreement and the Schedules will remain in full force.
- 18.9. All notices and consents required or permitted to be given under this Agreement or the Schedules shall be in writing to the Parties at the addresses designated herein or to such other address as either Party may designate to the other by written notice, and shall be effective upon receipt. Written notice shall be made in the form of a letter, confirmed facsimile transmission, or acknowledged receipt of

electronic mail.

- 18.10. This Agreement and the Schedules may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all ancillary documents may be executed and delivered by facsimile or other electronic signature by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

RESELLER PARTNER SCHEDULE

Pursuant to the terms of this Agreement, this Schedule describes the terms and conditions under which Partner will resell Kubermatic Products and Services.

1. CONTRACTUAL RELATIONSHIP

- 1.1. Kubermatic, by virtue of this Agreement and this Schedule appoints Partner as a reseller (“**Reseller Partner**”) for Kubermatic Products and Services in the Territory and, in this capacity, commissions Partner with the procurement of sales of Kubermatic Products and Services. Correspondingly, Kubermatic will, as the case may be, provide certain services to Partner as a sub-contractor on an Order Form basis in order to allow Partner to perform its agreements with the End Users who have ordered the corresponding services (i.e. software maintenance and support related services for the Kubermatic Software and/or Kubermatic Professional Services) from Partner.
- 1.2. The applicable discounts as well as all pertaining provisions are detailed in **Annex 1** to this Schedule.

2. RESELLERSHIP

- 2.1. Partner is entitled to purchase from Kubermatic:
 - 2.1.1. licenses in the Kubermatic Software (on premise) including corresponding software maintenance and support services;
 - 2.1.2. subscriptions for the Kubermatic Software; and
 - 2.1.3. Kubermatic Professional Services;in Partner’s own name and for its own account, and in accordance with this Agreement and the Kubermatic Terms and Conditions as amended from time to time and as applicable for the Kubermatic Software and the Kubermatic Professional Services at the relevant time.
- 2.2. Partner is entitled to resell the Kubermatic Software and/or, as the case may be the Kubermatic Professional Services that it has ordered from Kubermatic in accordance with Section 2.1 of this Schedule to the respective End User (provided the End User domiciles within the Territory) in its own name and for its own account as follows:
 - 2.2.1. In respect of the Kubermatic Software and the corresponding maintenance and support services, the resale shall be effected by passing on to the respective End User its own licenses acquired in accordance with Section 2.1 of this Schedule, subject, however, to the process described in Section 3 of this Schedule. Prior to the resale, Partner will (a) inform its potential End User that all licenses in the Kubermatic Software are granted by Kubermatic directly, and will be granted by Kubermatic in accordance with the Kubermatic End User License Agreement applicable at the time only, and (b) provide the relevant Kubermatic End User License Agreement to its potential End User.
 - 2.2.2. Partner shall require each End User to sign or otherwise assent to (in a manner acceptable to Kubermatic) the Kubermatic End User License Agreement for the applicable Kubermatic Software. Partner shall not amend or grant any waiver under the Kubermatic End User License Agreement.
 - 2.2.3. For the avoidance of doubt, Partner is not entitled to use licenses acquired in accordance with Section 2.1 of this Schedule for Internal Use.
 - 2.2.4. In respect of Kubermatic Professional Services, Partner is entitled to resell the Services acquired in accordance with Section 2.1 of this Schedule to the End User under the condition that within the corresponding agreement between Partner and End User, Partner reserves the right to subcontract the provision of the corresponding services, in particular the right to enter into a subcontract agreement with Kubermatic on such services. The latter conditions also applies to maintenance and support services that are resold as included in the Kubermatic Software under Section 2.2.1 of this Schedule.
- 2.3. Inasmuch as Partner resells maintenance and support services included in the Kubermatic Software Services and/or Kubermatic Professional Services to an End User, Kubermatic shall, for the duration of this

Agreement or, if shorter, this Schedule enable Partner to fulfil its obligations toward the End User by performing the services as sub-contractor of Partner.

3. RESELL PROCESS AND ORDERS

- 3.1. Partner may notify Kubermatic of the Opportunity within the Territory through the process set forth in **Annex 2** to this Schedule.
- 3.2. Upon receipt of an Approval, Kubermatic will enter into an Order Form with Partner for the applicable Kubermatic Products and Services. The Order Form with Partner will include reference to: (i) the Agreement and Applicable Schedule, (ii) the name and address of the End User, (iii) the Kubermatic Products and Services to be Resold by Partner including: (a) quantity, (b) price, and (c) term of the Kubermatic Products and Services. In addition, the Order Form will state any other specific terms and conditions to be entered into between the Parties. Any terms stated by Partner in a purchase order (or similar document) shall be null and void, and are expressly rejected by the Parties.
- 3.3. Once the Order Form has been entered into, Kubermatic will issue and/or perform the applicable Kubermatic Products and Services, including making available the applicable software license key to the End User.

4. WARRANTY ET AL. OF KUBERMATIC

As regards the rights and obligations that Kubermatic has towards Partner in connection with the sale of Kubermatic Products and Services to Partner under this Schedule the Kubermatic Terms and Conditions apply.

Annex 1 – RESELLER DISCOUNTS

The reseller discount on Kubermatic’s price list for the respective Kubermatic Products and Services depends on the degree of involvement of Partner in the sales process as well as the Kubermatic Products and Services that were ordered by Partner for resale to the End User.

1. KUBERMATIC SOFTWARE

The following discount schedule is applicable for license (whether perpetual or term licenses) and/or subscription fee revenues ordered by Partner from Kubermatic in accordance with this Agreement.

Degree of Involvement in the Sales Process	ACV Discount (%), each calculated on the then-current net list price)	
	Kubermatic Open Track	Kubermatic Select Track
<p>Level 1: Lead and Pre-Sales by Kubermatic</p> <p>Kubermatic names and qualifies a potential prospect (including a contact person) who might be interested in licensing or purchasing a subscription in Kubermatic Software as a new opportunity to Partner. Kubermatic describes the reasons for the prospect’s interest in the Kubermatic Software.</p> <p>Kubermatic has conducted both pre-sales and sales processes by itself, has negotiated license scope and price.</p> <p>Partner then carries out further sales activities as well as the closing of the deal itself.</p>	2,5%*	5%*
<p>Level 2: Joint Development of the Prospect</p> <p>Kubermatic has taken the steps of Level 1 without the assistance of Partner. However, Kubermatic establishes contact between Partner and the prospect for Kubermatic and arranges a meeting for Partner with key personnel of the prospect, and takes part in such a meeting.</p> <p>Kubermatic and Partner then further develop the prospect together as a team, and the parties arrange and take part in meetings and other communication with the prospect together, until the prospect has announced its firm intention to purchase one or more licenses or a subscription in the Software.</p>	5%*	10%*
<p>Level 3</p> <p>Level 3 is reached if the Partner has named and qualified a potential prospect and conducted both pre-sales and sales processes by itself, has (observing any guidelines and instructions from Kubermatic) negotiated license scope and price, and has closed the deal with the End User without Kubermatic’s assistance.</p>	20%*	30%*
Additional Reselling Scenarios:		
License / Subscription Renewals	10,00%	15,00%

Kubermatic Professional Services Resell	10,00%	10,00%
Kubermatic Managed Services Resell	10,00%	10,00%

2. INDIVIDUAL ARRANGEMENTS

- 2.1. Kubermatic may, upon request, offer volume discounts in individual cases.
- 2.2. Kubermatic will inform Partner on new products in its portfolio (if any) and on the prices at which they may be purchasable for Partner, as and when such products become generally available.

Annex 2 - SALES OPPORTUNITY REGISTRATION PROCESS AND PROCEDURE

1. Initial Process and General Approach

- 1.1. To avoid any confusion and dispute over sales opportunities, no later than by [Datum einfügen], in any case prior the first steps of advancing opportunities under this Agreement, the Parties shall reveal to each other the then-current opportunities that may have an interest in purchasing the Kubermatic Products and Services and register such opportunities with the other Party. The opportunities shall be limited to concrete prospective End Users with whom contact has already been established and who have confirmed an interest in products like the Kubermatic Products and Services, as well as an interest in deepening the conversations on the subject. The opportunities shall be communicated to the other Party together with certain minimum information such as End User name, contact person(s) at End User (provided these have agreed hereto), meetings held/scheduled, possible timeline for the further sales process etc. The Parties further specify the details of the registrations process in Section 2 of this Annex 2.
- 1.2. The Parties shall then consult in good faith on how to proceed with regard to each registered sales opportunity, and arrive at a fair and reasonable allocation of opportunities in case of overlaps where necessary.
- 1.3. Where the Parties have identified an opportunity for Partner to resell Kubermatic Products and Services to a prospective End User, the Parties shall also set the applicable discount rate as well as, correspondingly, the level of involvement required (see also Annex 2).
- 1.4. Partner shall update the list(s) of registered opportunities as and when a new opportunity has been identified. Kubermatic shall indicate any overlaps, if and as applicable.
- 1.5. The Parties shall repeat the Pipeline Review process outlined in Section 1.2 above as and when reasonable, but at least every 4 weeks.

2. Regular Opportunity Registration Process

- 2.1. After the completion of the initial process set forth in Section 1.1 of this Annex 2, only a properly completed Opportunity Registration Form (as attached to this Annex 2 as Appendix 1) can initiate an opportunity registration and lead to Kubermatic allocating the opportunity to Partner. It is therefore in both Parties' best interest that Partner complete a Opportunity Registration Form as soon as a qualified sales opportunity is identified. Since, in most cases, the first qualified opportunity registration is approved and allocated (cf. Section 2.3 below), all partners are encouraged to submit their opportunity registrations as early as possible.
- 2.2. In the Kubermatic Partner Program, Partner is required to register individual sales opportunities. Partner may not register an account or combine opportunities.
- 2.3. Opportunity registration approval is in most cases based upon order of receipt of the registration. Kubermatic will, however, also take into account the qualification of the opportunity, the corresponding partner's ability to deal in-country/region support, and the general relationship of Partner with the prospective End user (if any).
- 2.4. If Kubermatic desires to approve a potential End User, Kubermatic will, at its sole discretion, respond to the Opportunity Registration Form and provide written confirmation that it wishes to authorize the Resale of Kubermatic Products and Services to the applicable End User ("**Approval**"). And End User will be deemed approved only upon delivery of such writing. In the event of Approval, Kubermatic shall provide information regarding the level of Partner involvement and, correspondingly, the applicable discount rate (see also Annex 1). Rejection of an Opportunity may be caused by, but not limited to: (i) the End User already being a Kubermatic customer, or (ii) an End User that Kubermatic does not wish to be associated with for any commercially reasonable reason. This includes, but is not limited to, entities located in proscribed countries or which may represent a potential export, trade, or legal risk to Kubermatic.

Appendix 1 – OPPORTUNITY/LEAD REGISTRATION FORM

Register a New Kubermatic Deal

To register a new deal, fill out the form below. Fields with an asterisk (*) are required.

Primary Contact at Customer / Prospect

Contact information for your primary contact at the customer / prospect.

First name *

Last name *

Email *

Phone number

Customer / Prospect Company Information

Contact's company information for this opportunity.

Company name *

Street address *

Postal code *

Country/Region *

Opportunity Information

Please enter the information for this opportunity.

Company employee count

Please Select

Products / Services *

Customer's cloud platform

Notes: Partner involvement / Customer requirements

Partner Sales Rep name *

Partner Form: Sales Rep email *

Kubermatic GmbH is committed to protecting and respecting your privacy, and we'll only use your personal information to administer your account and to provide the products and services you requested from us. From time to time, we would like to contact you about our products and services, as well as other content that may be of interest to you. If you consent to us contacting you for this purpose, please tick below to say how you would like us to contact you:

I agree to receive other communications from Kubermatic GmbH.

You can unsubscribe from these communications at any time. For more information on how to unsubscribe, our privacy practices, and how we are committed to protecting and respecting your privacy please review our Privacy Policy.

By clicking submit below, you consent to allow Kubermatic GmbH to store and process the personal information submitted above to provide you the content requested.

Submit

<http://partner.kubermatic.com>