



# KUBERMATIC

## AGENCY AGREEMENT

This Agency Agreement (this “**Agreement**”) is made as of [\_\_\_\_], 20\_\_ (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 [\_\_\_\_\_] 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**.”

### Background:

Kubermatic has developed and designed, and licenses and manages for its customers certain Kubermatic products and services.

Kubermatic is seeking to further its business by appointing the Partner as a commercial agent for the sale of its products and services to customers in the Territory;

Partner is prepared to act as commercial agent for Kubermatic’s products and services;

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



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## 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, 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 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.
- 1.6. **"Kubermatic Products and Services"** means Kubermatic Software (as defined herein) and Kubermatic Professional Services (as defined herein).
- 1.7. **"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.
- 1.8. **"Kubermatic Software"** means software, and other branded offerings sold to an end user by Kubermatic as a result of Partner referral, 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).
- 1.9. **"Kubermatic Terms and Conditions"** means the terms and conditions applicable to the use of Kubermatic Products and Services.
- 1.10. **"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 Services, and has been approved by Kubermatic. For the purpose of this Agreement, the End User needs to enter into a separate agreement with Kubermatic. For the avoidance of doubt, any reference or mention of a "Deal" means an Opportunity defined herein.
- 1.11. **"Receiving Party"** means the Party receiving the Disclosing Party's Confidential Information.
- 1.12. **"Territory"** means the territory/ies designated in Section 2.1 of this Agreement.
- 1.13. **"Trademarks"** means Kubermatic'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.



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## 2. Appointment as Commercial Agent; Legal Status

Territory/ies
<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)

2.1. Kubermatic, by virtue of this Agreement, appoints Partner as a commercial agent for Kubermatic Products and Services in the following territory/ies:

In this capacity, Kubermatic commissions Partner with the procurement of sales of Kubermatic Products and Services.

2.2. Partner is not authorized, and shall not have power of attorney, to enter into binding agreements with End Users on behalf of Kubermatic but shall refer the prospective End Users to Kubermatic for (i) detailed negotiations or (ii) at least (see also **Annex 1** to this Agreement, Level 1) for the conclusion of the agreement(s) to be formalized between Kubermatic and the End User. Partner shall, however, support Kubermatic in such negotiations and transaction closing proceedings upon Kubermatic's request, providing its particular expertise as applicable as a result of the agreed level of involvement (cf. **Annexes 2** and 1 to this Agreement).

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.

## 3. Exclusivity, Customer Protection

3.1. Partner shall not be granted an exclusive agency for the Territory. Kubermatic remains free to appoint other agents who may compete with Partner in the Territory and to market and sell the Products itself.

3.2. For the avoidance of doubt, there shall be no entitlement for commissions for subscription agreements that are concluded with an End User without Partner's actual, active involvement. Kubermatic neither grants Partner any customer protection, nor shall any protection in terms of territory apply. Kubermatic as well as other agents and partners of Kubermatic shall remain free to approach prospective Kubermatic customers and may continue to market and sell the Kubermatic Products and Services to such customers.

3.3. 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 9 of these Terms), (ii) warranties (as stated in Section 4.1 of these Terms), (iii) indemnification (as stated in Section 14 of these Terms).

## 4. Partner' General Obligations and Warranties

4.1. Partner warrants that it has the ability to carry out the obligations assumed under this Agreement, and



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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. Partner's Marketing Obligations**

- 5.1. Partner shall use its best endeavors to promote the sale of the Kubermatic Products and Services throughout the Territory. Partner shall consult with Kubermatic's marketing department before commencing any particular marketing activity in order to ensure that Kubermatic's legitimate interests are safeguarded and shall generally and at all times conduct its business in a manner that will reflect favorably on the Kubermatic Products and Services and on the good name and reputation of Kubermatic.
- 5.2. 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.
- 5.3. 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.
- 5.4. Partner shall be solely responsible for Partner's marketing activities being in compliance with all applicable laws.
- 5.5. 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.
- 5.6. 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



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and image of the Kubermatic Products and Services.

### 6. Software Demonstration Software

Kubermatic hereby grants to Partner, valid only for the term of this Agreement 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. Trade Marks

- 7.1. Kubermatic grants to Partner a revocable, non-exclusive, non-transferable, royalty-free right to display the Trademarks for the sole purpose of identifying Partner as a partner, subject to the terms of this Agreement and Kubermatic's trademark usage guidelines. The concrete use of all Trademarks, however, is subject to the approval of Kubermatic, which approval will not be unreasonably withheld or delayed.
- 7.2. Partner shall not engage in any deceptive, misleading, illegal or unethical practices, including but not limited to the use of the Trademarks, that may be detrimental to Kubermatic.
- 7.3. On termination of this Agreement, Partner will cease any use of the Trademarks.

### 8. General Duties on the part of Kubermatic; Approval of End Users

- 8.1. Kubermatic shall:
  - 8.1.1. provide Partner with marketing and technical assistance reasonably necessary to enable Partner to market and sell Kubermatic Products and Services;
  - 8.1.2. collaborate with Partner and be available to support Partner throughout the entire sales process; and
  - 8.1.3. generally provide Partner with all applicable information and assistance necessary to enable Partner to perform its obligation under this Agreement.
- 8.2. 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. Unless Kubermatic has approved a potential End User, Party 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 commission under this Agreement.

### 9. Fees; Payment

- 9.1. Should Kubermatic enter into an agreement with the End User procured by Partner within 6 months after the initial referral of that End User to Kubermatic, Partner shall receive a commission according to the terms and conditions of this Section 9 and **Annex 1** to this Agreement.
- 9.2. All fees are due net thirty (30) days after payment by the End User.
- 9.3. Unless otherwise agreed between the Parties, all invoices shall be issued and paid in Euros.
- 9.4. All commission claims are exclusive of, any tax, VAT, right, tariff, fee, duty, levy or similar governmental



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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, Kubermatic is required to withhold any amount on any payment to Partner, then the amount of the payment will be automatically deducted from totally offset such tax or levy, so that the amount actually remitted to Partner, net of all taxes or levy, equals the commission claim as agreed to between the Parties. If applicable, Kubermatic will be provided by the Partner with the proper legal certificate of the withheld taxes, as well as the proof of its payment to the correspondent authorities in order to reclaim any paid taxes, levy to authorities.

### **10. Term, Termination and Effect of Termination**

- 10.1. 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 Term(s) is referred to herein as the “**Term.**”
- 10.2. 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:
- 10.2.1. the Party that has given cause for termination finally refuses performance of the obligation in questions;
  - 10.2.2. 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
  - 10.2.3. there are special circumstances that justify the immediate termination, taking into account both Parties’ legitimate interests.
- 10.3. Upon the non-renewal or termination of this Agreement, all licenses granted by Kubermatic 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.

### **11. Confidentiality**

- 11.1. 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.
- 11.2. Neither Party shall disclose Confidential Information of the other Party to anyone or shall use



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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 11.2 by its individual employees, consultants, Affiliates’ employees, advisors and contractors, as if they were that Party’s own employees.

- 11.3. The obligations of confidentiality under this Section 11 shall continue indefinitely, even after this 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.
- 11.4. 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.
- 11.5. 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.

### **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. 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. 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.

### **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;



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- 13.1.2. modify the Kubermatic Products and Services;
- 13.1.3. use, distribute, copy, duplicate, or otherwise reproduce all or any part of the Kubermatic Products and Services other than as permitted, and in strict accordance with, the terms of this Agreement.
- 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 this Agreement, and all payments made and received by the Partner in connection with this Agreement. 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. 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 this Agreement 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 judgment 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





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acts or omissions shall not be affected by Section 14.1 of this Agreement; payments made on the basis of this Section 14 of this Agreement 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. Limitations 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 14.1 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

- 16.1. 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.
- 16.2. 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.
- 16.3. 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.

### 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



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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, neither Party will be liable for any acts, omissions, contracts, commitments, promises or representations made by the other Party.
- 18.4. This Agreement 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. No failure of either Party to exercise or enforce any rights under this Agreement shall act as a waiver of such rights.
- 18.6. None of this Agreement, nor any rights or obligations hereunder may be assigned or subcontracted, 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 at its sole discretion, upon written notice to Partner. This Agreement bind, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 18.7. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- 18.8. All notices and consents required or permitted to be given under this Agreement 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.
- 18.9. This Agreement 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.



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## Annex 1 - Commission

### 1. General

- 1.1. Where a Party has been allocated a new Opportunity in accordance with Annex 2, and/or where the Parties have agreed that an Opportunity registered by one Party shall be that Party's to further develop and advance in accordance with this Agreement, the respective other Party shall not itself (i.e. outside of the involvement in accordance with Annex 2) endeavor to further develop and advance the Opportunity for three (3) months as from the date of the registration. Kubermatic shall also during that time not actively assist another agent or referral partner in doing so. Unless agreed otherwise in an individual case, upon expiry of the three (3) months without a deal on the respective Kubermatic Products and Services having been closed with the prospective End User, and, irrespectively, upon the end of this Agreement, the Opportunity shall no longer be subject to the restraint prescribed by this Section 1.1, unless the Parties expressly agree otherwise.
- 1.2. In the event an Opportunity previously allocated to Partner is no longer so allocated (cf. Section 1.1 of this Annex), Kubermatic will generally notify Partner by phone or email. Kubermatic will reconsider other registrations submitted for this Opportunity. If there are no other registration requests submitted, Kubermatic will typically initiate engagement with a commercial agent or reseller of Kubermatic choosing or pursue the Opportunity through its own sales team.
- 1.3. For the avoidance of doubt, there shall be no entitlement for commissions for Kubermatic Products and Services purchases that are concluded with an End User without Partner's actual, active involvement. If, in an individual case, two parties, Partner and another referral partner, qualify for a commission, Kubermatic shall divide the commission amount in its reasonable discretion, acting in good faith. In doing so, Kubermatic shall, in particular, take into consideration the contribution of every party in bringing about and handling the purchase.



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## 2. Commission

The commission for procured sales depends on the degree of involvement of Partner in the sales process as well as the Kubermatic Products and Services that were ordered by the End User.

### 2.1. Kubermatic Software

The following commission schedule is applicable for license (whether perpetual or term licenses) and/or subscription fee revenues realized by Kubermatic from qualifying End Users referred to Kubermatic by Partner in accordance with this Agreement. Revenues from support and/or maintenance services as such are not subject to a commission.

Degree of Involvement in the Sales Process	Referral Fee Percentage (calculated on the net license revenue amounts*)
<p><b>Level 1: Partner Initiated</b></p> <p>Partner names and qualifies a potential prospect (including a contact person) who might be interested in licensing or purchasing a subscription of Kubermatic Software as a new lead. Partner describes the reasons for the prospect's interest in the Kubermatic Software and how it came about such knowledge.</p> <p>Partner then establishes contact with the prospect for Kubermatic and arranges at least one meeting for Kubermatic with key personnel of the prospect, and takes part in such a meeting.</p> <p>Kubermatic then carries out further sales activities as well as the closing of the deal itself. No additional fee percentage applies.</p>	7,5 %
<p><b>Level 2: Further Partner Involvement</b></p>	Additional Fee Percentage
<p><b>a): Joint Development of the Prospect</b></p> <p>Partner has taken the steps of Level 1 without the assistance of Kubermatic (other than Kubermatic taking part in the meeting itself). 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> <p>The closing of the deal including the final negotiations on price and license scope are carried out by Kubermatic.</p>	5 %



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<p><b>b): Sole Development of Prospect by Partner</b></p> <p>Level 2b) is reached if the Partner has 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 prospect.</p> <p>On this Level 2b, Kubermatic only concludes the contract(s) with the customer.</p>	<p>7,5 %</p>
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\* With term licenses and subscriptions, only the first 12 months of the license agreement or subscription with the End User count as the basis for the commission. If license agreements or subscriptions continue beyond those 12 months, this is commission free.

### 2.2. Kubermatic PROFESSIONAL SERVICES

Partner's commission on net revenues realized by Kubermatic from the sale of Kubermatic Professional Services to the End User in connection with a license or subscription deal concluded with an, at least, Level 2 a) involvement of Partner shall be

**5 %.**

In any case, Level 1 commissions for Kubermatic Software do not lead to any commission with regard to Kubermatic Professional Services.

### 3. Commission Claims

- 3.1. Commission claims arise as soon as and to the extent to which Kubermatic has executed the transaction and the End User has fulfilled its payment obligations. Kubermatic shall settle the commissions to which Partner is entitled on a quarterly basis. The settlement of accounts shall be completed by the 15<sup>th</sup> day after the end of the quarter.
- 3.2. With regard to follow-up deals of additional licenses or subscriptions for Kubermatic Software, and/or for Kubermatic Professional Services, that Kubermatic makes with an End User that was originally referred to Kubermatic by Partner with at least a Level 1 involvement of Partner, the Parties agree that Partner shall only receive a commission in accordance with the table above if the follow-up deals have also been achieved with a Level 1, 2a), or 2b), involvement of Partner following a corresponding registration of the Opportunity for the follow-up deal of additional licenses or subscriptions in question in accordance with Annex 2.

### 4. Loss of Entitlements to Commissions

- 4.1. Should Kubermatic not execute or perform the license purchase or subscription, the claim for commission shall lapse if and to the extent to which the non-execution or non-performance is due to circumstances for which Kubermatic bears no responsibility. Circumstances for which Kubermatic is not responsible in particular include the withdrawal from the license purchase by the End User (so long as Kubermatic has not caused such withdrawal at least negligently) as well as the withdrawal from the license purchase / termination of the subscription purchase by Kubermatic if the End User has not or not fully fulfilled the corresponding contract.
- 4.2. Further, the claim for commission shall lapse if and to the extent to which non-payment on the part of the End User is certain. Kubermatic is only obliged to take legal action and/or subsequently enforce the corresponding judgement against an End User if these measures offer a reasonable prospect of legal and commercial success, to be determined in Kubermatic's reasonable judgement made in good faith, and if Partner contributes to all expenses of the legal action to a reasonable extent.



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4.3. If the claim for commission lapses, Partner shall refund to Kubermatic any amounts that Partner has already received (if any). Kubermatic is entitled to credit refund claims against claims for commission.

4.4. This Section 4 shall apply to commissions related to Kubermatic Professional Services accordingly.

### **5. Post, contractual Entitlements to Commissions**

5.1. For a license or subscription purchase which is concluded with an End User after this Agreement has ended, Partner is entitled to a commission only if the license or subscription purchase was predominantly brought about by Partner's activities, and if the license or subscription purchase was concluded within a period of six (6) months after this Agreement has ended.

5.2. In addition, Partner has a post-contractual claim to receive a commission if the End User's binding offer to conclude the license purchase is received by Kubermatic before this Agreement has ended.

5.3. The post-contractual claim for commission does not come into existence if a successor to Partner or another commercial agent has acquired a claim to receive a commission for the license or subscription purchase, unless dividing the commission appears equitable. This is the case if either the license or subscription purchase is also brought about to a large extent by the activities of Partner, or if Partner has contributed to the processing of the license purchase to a significant extent.

5.4. This Section 5 shall apply to commissions related to Kubermatic Professional Services accordingly.



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## Annex 2 - LEAD REGISTRATION PROCESS AND PROCEDURE

### 1. Initial Process and General Approach

- 1.1. To avoid any confusion and dispute over 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 Opportunity (e.g. regarding which Party and how? As an Opportunity for direct sale resales or agency? Etc.), 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 act as commercial agent in relation to the prospective End User for said Opportunity, the Parties shall also set the applicable commission rate as well as, correspondingly, the level of involvement required (see also Annex 1).
- 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 of this Annex 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 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 completes a 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 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). The final Opportunity registration approval decision will be made by Kubermatic's sales team within seven (7) business days.
- 2.4. Generally, only one partner can earn a commission per Opportunity. In individual cases, however, it is possible for legal reasons that there is more than one commercial agent who is entitled to a (portion of the) commission. In such a case, Section 1.3 of Annex 1 applies.



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## Appendix 1 – OPPORTUNITY 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

  

Products / Services \*

  

Customer's cloud platform

  

Notes: Partner involvement / Customer requirements

  

Partner Sales Rep name \*

  

Partner Firm: 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.

<http://partner.kubermatic.com>