

## KUBERMATIC END USER LICENSE AGREEMENT

This End User License Agreement (this “**EULA**”) is an agreement made by and between Kubermatic GmbH (“**Kubermatic**”), having its registered address and principal place of business at Willy-Brandt-Straße 23, 20457 Hamburg, Germany, and you (either an individual or a single entity/company) (“**You**”) and is applicable to the Program(s) for which You have purchased a subscription from our applicable reselling partner (“**Partner**”). By way of this EULA, Kubermatic grant You a license to use the Program(s) in accordance with the below terms and conditions.

### 1. DEFINITIONS.

- 1.1. “**Affiliate**” means with respect to a party, any person or entity that controls, is controlled by, or is under common control with such party, where “control” means ownership of fifty percent (50%) or more of the outstanding voting securities (but only as long as such person or entity meets these requirements).
- 1.2. “**Community Edition**” means the Kubermatic Kubernetes Platform Community Edition (CE) of Kubermatic Kubernetes Platform that is freely available and licensed under the Apache License, Version 2.0.
- 1.3. “**Cores**” means for the purposes of this EULA the number of physical cores per CPU that You use for worker nodes.
- 1.4. “**Documentation**” means the feature descriptions and help text for a Program made available to You by the Partner in accordance with the Subscription Agreement, and updated from time to time, electronically or otherwise.
- 1.5. “**Enterprise Edition**” means the Kubermatic Kubernetes Platform Enterprise Edition (EE) of Kubermatic Kubernetes Platform that includes certain premium features beyond the features of the Community Edition, and which is licensed under this EULA, specifically Sections 2.1 to 2.3 of this EULA.
- 1.6. “**Internal Business Purposes**” means Your internal use of the Program(s) for Your ordinary course of business, including using the Program(s) to provide managed services for Your customers through IT Systems owned by You, but excluding, *inter alia*, an installation and use of the Program(s) on or for IT systems licensed/owned by third parties, regardless of whether such IT systems are operated for or at such third parties or are housed, hosted or otherwise operated by You for such third parties.
- 1.7. “**Program**” or “**Programs**” means a machine-readable version of the Community Edition and/or, where ordered, the Enterprise Edition as set forth in the applicable Subscription Agreement, including all Updates provided to You by the Partner. “Program” does not include any application programming interfaces unless specifically included in applicable Subscription Agreement.
- 1.8. “**RAM**” means for the purposes of this EULA the random access memory of the worker nodes.
- 1.9. “**Subscription Agreement**” means the agreement made between You and the Partner on the subscription for the Program(s).
- 1.10. “**Subscription Term**” means each term set forth in the applicable Subscription Agreement during which You are entitled to use the Enterprise Edition.
- 1.11. “**Update**” means corrections, fixes and other updates to a Program, as well as any new version or release of a Program, if and when made generally available by Kubermatic to its customers.
- 1.12. “**vCPUs**” means for the purposes of this EULA the physical central processing units (CPUs) that are assigned to the virtual machine(s) that You use for worker nodes.

## 2. LICENSE GRANT FOR THE ENTERPRISE EDITION.

- 2.1. **License.** Subject to the terms and conditions of this EULA, Kubermatic hereby grants You for the applicable Subscription Term a non-exclusive, non-transferable, non-sublicensable license to install and use the Enterprise Edition, including any Updates thereto, for Your Internal Business Purposes, in accordance with the Documentation and as set forth in the applicable Subscription Agreement.
- 2.2. **Scope of Use.** The Subscription Agreement may set forth the permitted number of Cores, vCPUs, RAM and/or other metrics that are (initially) covered by the Subscription Agreement. You are not prevented from using the Enterprise Edition in excess of the scope of use set forth in the Subscription Agreement (e.g. on/with more vCPUs than initially anticipated); You will, however be charged for any such excess usage by the Partner in accordance with the pricing that underlies the fees as agreed between You and the Partner in the applicable Subscription Agreement. Being in default for more than thirty (3) days with paying any subscription fees You owe to the Partner will automatically terminate Your rights under this EULA.
- 2.3. **License Restrictions.** This EULA does not afford a perpetual license, and You have no right to retain or to use the Enterprise Edition for any reason after the end of the Subscription Agreement (whether through expiry or termination). You may make a reasonable number of copies of the Enterprise Edition exclusively for inactive back-up, disaster recovery, failover or archival purposes. You have no right to rent out, lease, assign, transfer, display or otherwise distribute or make the Enterprise Edition available to any third party. The Enterprise Edition may not be used in the performance of services for or on behalf of any third party or as a service bureau. Except as permitted by statutory law, You may not modify, disassemble, decompile or otherwise reverse-engineer the Enterprise Edition nor permit any third party to do so.
- 2.4. **Community Edition.** For the avoidance of doubt, the Community Edition is not licensed under this EULA but under the terms of the Apache License, Version 2.0).

## 3. OPERATIONAL DATA AND AUDIT RIGHT.

- 3.1. **Operational Data; Compliance.** The Programs may collect certain operational data (non-personal data), which may be used by Kubermatic for various business purposes that may include customer support (on behalf of the Partner), verifying the need for and providing Updates to the Programs, (also on behalf of the Partner) market research, product development and planning, verifying Your compliance with the terms and conditions of this EULA, and protecting Kubermatic's intellectual property. Such operational data may be transmitted to Kubermatic automatically by the respective Program, if any inasmuch as documented in the Documentation.
- 3.2. **Audit Right.** Section 3.1 notwithstanding, during the Subscription Term and for a period of no less than five (5) years after the termination or expiration of this EULA, You shall maintain complete, clear and accurate records of its activities conducted under this EULA, including of the data and information on any applicable license metrics and the corresponding actual scope of use. During the term of this EULA and for five (5) years after termination or expiration hereof, Kubermatic (or its designee) shall have the right to conduct an inspection and audit of all Your relevant books and records to verify Your compliance with the terms and conditions of this EULA. Such audit will be subject to the reasonable confidentiality obligations and conducted during regular business hours at Your offices, in such a manner as not to unreasonably interfere with Your normal business activities. In no event shall audits be made hereunder more frequently than once every twelve (12) months. If such inspections should disclose any license violations, Kubermatic reserves all of its rights and claims.

#### 4. LIMITATION OF LIABILITY.

**4.1. Unlimited Liability.** Kubermatic shall be liable in accordance with the applicable statutory provisions for damages suffered by You that (i) have been caused as a result of Kubermatic, its legal representatives, its agents or auxiliaries having acted, or having failed to act where there was a duty for Kubermatic to act, in gross negligence or with willful or malicious intent; (ii) have occurred as a result of a breach of a guarantee (the term “guarantee” in accordance with the applicable statutory meaning); (iii) that are a result of a culpably caused injury to life, limb or health; and/or (iv) that are subject to product liability under the German Product Liability Act.

**4.2. Limitations.** Other than in cases that fall under Section 4.1.,

- (a) Kubermatic shall only be liable for damages that result from breaches of material obligations regarding the license grant under this EULA. For the purposes of this clause, “material obligations” are such obligations the compliance with which You will reasonably expect and which, if breached, jeopardize the achievement of the aim(s) and purpose(s) of this EULA.
  - (b) Kubermatic’s liability shall be limited to damages that are typically foreseeable in the context of an agreement such as this EULA.
  - (c) Kubermatic shall not be liable for indirect, consequential or special damages.
  - (d) Kubermatic’s liability shall also be limited to a maximum amount of 50,000 Euros overall.
- 4.3. Exclusion of Liability.** Any liability other or beyond the liability provided in Sections 4.1. and 4.2. is excluded.

#### 5. TERM; RENEWAL AND TERMINATION.

**5.1. Term and Renewal.** The term of this EULA will begin on the date on which Kubermatic receives the signed copy of this EULA or an equivalent declaration by You that confirms that You are bound by this EULA (the “Effective Date”), and may be terminated as set forth in this Section 5. The Subscription Term will be set forth in the applicable Subscription Agreement. In the event that the applicable Subscription Agreement does not state a Subscription Term or other similar term of permitted use, the term of this EULA is 12 months following the Effective Date. If so agreed between You and the Partner in the applicable Subscription Agreement, the Subscription Term and therefore Your license under this EULA will automatically renew for consecutive periods of 12 months each unless the Subscription Agreement is terminated in accordance with the Subscription Agreement.

**5.2. Termination for Program Discontinuation.** In the event Kubermatic chooses to discontinue a particular Program (end of life), Kubermatic may terminate this EULA by giving 6 months prior written notice, provided, however, that the effective date of such termination will not occur before the end of Your then-current Subscription Term(s). For the avoidance of doubt, You may continue using the Community Edition under the terms and condition of the Apache License, Version 2.0.

**5.3. Termination for Cause.** Sections 5.1 and 5.2 of this EULA notwithstanding, either party may terminate this EULA immediately by giving written notice for cause if the conditions set forth in section 314 of the German Civil Code have been met.

**5.4. Your Obligations upon Termination.** Upon termination of this EULA, You will: (a) cease the use of the Enterprise Edition; and (b) delete all complete or partial copies of the applicable Enterprise Edition; for the avoidance of doubt, You may continue using the Community Edition under the terms and condition of the Apache License, Version 2.0. Kubermatic may request a certificate signed by an authorized representative confirming Your compliance with the provisions of this Section 5.4.

## 6. GENERAL.

**6.1. Contractual Obligations.** For the avoidance of doubt, this EULA only bestows upon You the right and license to use the Enterprise Edition. In all other respects the contractual relationship and the corresponding obligations are exclusively between You and the Partner. Therefore, in particular, Kubermatic owes and makes no warranties under or in connection with this EULA, whether statutory or contractual.

**6.2. Severability.** In the event that any provision of this EULA is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified the minimum extent necessary to render the provision enforceable in a manner that most closely represents the original intent of the parties. In such an event, the remaining terms and conditions of this EULA will remain in full force and effect.

**6.3. Governing Law.** This EULA shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany under exclusion of all German and European International Private Law as well as the UN Convention on the International Sale of Goods. The exclusive venue and place of jurisdiction for all disputes arising out of or in connection with this EULA shall be Hamburg, Germany.

**6.4. Assignment.** You may not assign any of Your rights or obligations hereunder, whether by operation of law or otherwise, without Kubermatic's prior written consent (not to be unreasonably withheld) except as provided in this Section 6.4. Notwithstanding the foregoing, either party may assign this EULA in its entirety to one of its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without the other party's consent, provided the assignee has agreed to be bound by all of the terms of this EULA. If a party is acquired by, sells substantially all its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this EULA upon written notice.