

CONSULTING PARTNER AGREEMENT

This Kensu Consulting Partner Agreement (the “Agreement”), effective as of _____, 2023 (“Effective Date”) is entered into by and between Kensu, Inc. (“Kensu”) having its principal place of business at 353 Kearny Street, San Francisco, CA 94108, and _____ (“Consulting Partner”), having its principal place of business at _____.

Kensu develops and provides certain data observability cloud-based and on-premise software (the “Products”). Consulting Partner desires to locate and refer prospective suitable entities desiring to license the Products from Kensu, and Kensu wishes to receive such referrals, subject to the terms and provisions of this Agreement. For the consideration and promises set forth below, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. REFERRALS AND AUTHORITY.

1.1 **Prospects.** The Consulting Partner shall refer (as described in Section 1.2) to Kensu, entities that may be interested in licensing the Kensu Products from Kensu. Such entities shall hereinafter be referred to as the “Prospects.”

1.2 **Referrals.** The “referral” of a Prospect to Kensu shall mean the delivery to Kensu of the Deal Registration Form or other Deal Registration Process provided by Kensu and completed for the Prospect.

1.3 **Limited Appointment.** Kensu grants to Consulting Partner, a limited, revocable, non-exclusive, non-transferable right to deliver and distribute to and otherwise use with each Prospect a copy of the then-current marketing material and product literature, if any, Kensu provides to the Consulting Partner for the Products (the “Materials”). Such materials will bear Kensu’s logo and trademark (the “Trademarks”), which are, and will remain, the sole and exclusive property of Kensu. The Consulting Partner will not misappropriate any of such Trademarks and will not remove or otherwise deface any Trademark included on the Materials. The Consulting Partner shall make no representations regarding Kensu or its business or Prospects (other than those contained in the Materials) or in any way act to represent that the Consulting Partner is authorized to act in a manner which would bind Kensu in any way whatsoever. The Consulting Partner shall make no use of general advertisements or mass mailings relating to Kensu’s Products to persons not having a prior relationship to the Consulting Partner without prior consent of Kensu. The Consulting Partner will conduct itself under this Agreement consistent with ethical business practices and in a manner that will reflect favorably upon the goodwill and reputation of Kensu as solely determined by Kensu. The Consulting Partner shall neither act nor negotiate on behalf of any Prospect or Kensu. The Consulting Partner’s rights and duties under this Agreement shall be limited solely and exclusively to referring Prospects to Kensu. Kensu shall, in its sole and absolute discretion, contact, negotiate with, and enter into (or not enter into) any agreement with any Prospect referred by the Consulting Partner. The Consulting Partner’s authorization to act as a referral source is not exclusive in any manner. Kensu reserves for itself, the right to act on its own behalf, or to enter into similar agreements with others, for the purpose of selling and distributing the Products, either directly or indirectly and the Consulting Partner shall not be entitled to any remuneration of any kind by reason of sales by Kensu that result from such efforts by Kensu or others.

1.4 **Program Structure, Processing of Referral Forms, and Obligations.** The Consulting Partner and Kensu agree that for each potential Prospect, they shall undertake the following procedures. The Consulting Partner will e-mail the proper person as indicated by Kensu, with the information contained in Section 1.2. Kensu will review the information to determine, in its sole discretion, if there is a preexisting relationship between Kensu and the Prospect, whether the Prospect is otherwise an existing lead, and/or if the Products are eligible for Fees under this Agreement (“Excluded Entity”). For each Prospect, Consulting Partner will work diligently with Kensu in its sales efforts to bring an agreement between Kensu and Prospect.

1.5 **Marketing Plans.** Kensu and Consulting Partner will develop a Go To Market plan with goals for Products to be licensed under this Agreement in six-month increments (“Plan”). The first Plan will be agreed upon within thirty (30) days of the Effective Date and then each Plan thereafter will be agreed upon thirty (30) days prior to the start of the next six-month period.

2 FEES.

2.1 **Fee Payable.** Kensu shall endeavor to keep the Consulting Partner informed of the progress of its negotiations with each Prospect during the Term and Kensu shall notify the Consulting Partner of any agreement Kensu enters into with a Prospect regarding the license of the Products ("Prospect Agreement"). Kensu shall pay the Consulting Partner a referral fee ("the Fee") as set forth in Section 2.2 with respect to the Prospect Agreement between Kensu and a Prospect for the license of the applicable Products for the initial term (as set forth in the Prospect Agreement), and only if it is executed within six (6) months from the date the Prospect is accepted by Kensu and for the Products listed in the initial referral that is accepted by Kensu. The Fee shall be payable within thirty (30) days after the end of the month after receipt of payment in full from Prospect (and after any contingences have passed), subject to Section 2.2.

2.2 **Fee Amount.** Fees are due for the Products only, and are not due not for any professional services, training, and/or support. The Fees due to Consulting Partner will be 10%

2.3 **No Fee Payable.** The Consulting Partner shall not be due any Fee 1) for any Excluded Entity and 2) unless the Prospect has been "referred" by the Consulting Partner pursuant to and accepted under Section 1.

2.4 **Taxes.** The fees listed in this Agreement do not include sales, use, excise or similar taxes levied on the Fees. Kensu shall have no obligation to pay any taxes or fees related to the foregoing and/or based on Consulting Partner's gross or net income or receipts, personal property taxes, franchise taxes, any other taxes or charges based on Consulting Partner's corporate existence, personal income taxes, or any interest or penalties.

3 CONFIDENTIALITY.

Each party shall protect the other party's Confidential Information from unauthorized dissemination and use with the same degree of care that such party uses to protect its own like information, but in no event less than reasonable care. "Confidential Information" shall mean and include, but not be limited to, either party's software, data, database, product plans, products, costs, prices, finances, marketing plans, business opportunities, and research and development originated by the disclosing party, not previously published or otherwise disclosed to the general public, not previously available without restriction to the party, nor normally furnished to others without restriction, and which the disclosing party desires to protect against unrestricted disclosure or use. "Confidential Information" shall not include information that (i) is or enters the public domain through no fault of the receiving party; (ii) is known and has been reduced to tangible form by the receiving party prior to the time of disclosure; (iii) is independently developed by the receiving party without access to or use of the Confidential Information; (iv) is made generally available by the disclosing party without restriction on disclosure; or (v) is disclosed by the receiving party with the disclosing party's prior written consent. Neither party shall use the other party's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Both parties acknowledge that the restrictions relating to Confidential Information contained in this Agreement are reasonable and necessary to protect their legitimate interests, that violation of these restrictions could cause damage to the other party, and that the other party will be entitled to seek injunctive relief against each violation.

4 WARRANTIES.

Consulting Partner represents and warrants that there exists no actual or potential conflict of interest concerning this Agreement. Consulting Partner further represents that Consulting Partner's performance under this Agreement does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party. Consulting Partner hereby warrants that it will perform its obligations hereunder diligently and in a professional and workmanlike manner.

5 DISCLAIMER AND LIMITATION OF LIABILITY.

EXCEPT FOR THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, EACH PARTY'S LIABILITY TO THE OTHER, INCLUDING ALL LIABILITIES ARISING OUT OF OR RELATED TO THIS AGREEMENT, FROM ANY CAUSE OR CAUSES, AND REGARDLESS OF THE LEGAL THEORY, INCLUDING BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT

LIABILITY, OR STATUTORY LIABILITY, SHALL NOT IN THE AGGREGATE EXCEED THE REFERRAL FEES PAID TO CONSULTING PARTNER CORRESPONDING TO THE PROSPECT AGREEMENT BETWEEN KENSU AND A PROSPECT GIVING RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY LAW, EXCEPT FOR THE PARTIES' INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, UNDER NO CIRCUMSTANCE SHALL EITHER PARTY, ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND AGENTS, BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6 TERM AND TERMINATION.

6.1 **Term.** This Agreement shall start on the Effective Date and for one (1) year, unless earlier terminated pursuant to Section 6.2 ("Initial Term"). This Agreement will automatically renew for additional one (1) year renewal terms unless either party notifies the other party of its desire to not renew at least thirty (30) days prior to the date of renewal.

6.2 This Agreement shall only renew upon the mutual written agreement of the parties ("Renewal Term"). The Initial Term and the Renewal Term are collectively, the Term.

6.3 **Termination by Either Party.** Either party may terminate this Agreement immediately upon written notice to the other:

6.3.1 At any point for convenience, starting sixty (60) days after the Effective Date;

6.3.2 If the other party breaches any obligation under this Agreement and fails to cure such breach within thirty (30) days after notice of such breach from the non-breaching party; and

6.3.3 If the other party ceases to conduct business in the normal course, becomes insolvent, enters into suspension of payments, moratorium, reorganization or bankruptcy, makes a general assignment for the benefit of creditors, admits in writing its inability to pay debts as they mature, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any other judicial or administrative proceeding that relates to insolvency or protection of creditors' rights.

6.3 **Terminations Rights and Obligations.** Upon the expiration or termination of this Agreement for any reason, Consulting Partner will not deliver additional referrals to Kensu, and will cease to act as a referral source of Kensu under this Agreement, promptly cease using and return to Kensu all Materials. Kensu will pay the Consulting Partner all outstanding Fees due the Consulting Partner pursuant to Section 2 through the Term. The provisions of Sections 3, 4, 5, 6.3, 7 and 8 shall survive termination of this Agreement.

7 INDEMNITY.

The Consulting Partner will defend, indemnify and hold Kensu, its directors, shareholders, officers, agents, employees, successors, and assigns harmless for all damages, liabilities and expenses (including reasonable attorneys' fees) arising out of any representation (other than representations made in Kensu's then-current Materials) or misrepresentation with respect to Kensu's Products made by the Consulting Partner to any Prospect or third party.

8 MISCELLANEOUS.

8.1 **Governing Laws.** The internal laws of the State of California (irrespective of its choice of law principles) shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties. Any legal action or proceeding relating to this Agreement shall be instituted in the courts in San Francisco County. Consulting Partner and Kensu agree to submit to the jurisdiction of, and agree that venue shall be held in, these courts in any such legal action or proceeding.

8.2 **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and, supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto.

8.3 **Amendment and Waivers.** Any term of this Agreement may be amended, and the observance of any term of this Agreement may be waived only by a writing signed by the party to be bound thereby. The waiver

by a party of any breach of this Agreement or default in the performance hereof shall not be deemed to constitute a waiver of any other default or succeeding breach or default. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

8.4 **Independent Contractor.** Each party hereto agrees that it is an independent contractor to the other party hereto and, as such, it is not an employee or principal of such other party. Each party will not act for or in the place of the other in relations with third parties. Each party is not responsible for withholding or deducting from the compensation of the other party's employees, agents and contractors, any sums for federal or state income taxes, social security, unemployment compensation, medical, dental, workers' compensation or disability insurance coverage, pension or retirement plans or the like. Consulting Partner specifically agrees to pay any and all federal and state taxes and other payments lawfully due in connection with the compensation received under this Agreement.

8.5 **Assignment.** Consulting Partner shall not have any right or ability to assign, transfer, or sublicense any obligations or benefit under this Agreement. Any such attempt shall be void.

8.6 **Notices.** Any notice, demand or request with respect to this Agreement shall be in writing and shall be effective on the date received (unless the notice specifies a later date) only if it is sent by a courier service that confirms delivery in writing, or sent by certified or registered mail, postage prepaid, return receipt requested to the appropriate party at its address set forth on page 1. Notice to Kensu shall be addressed to the "Chief Executive Officer". Any party may change its address for such communications by giving notice thereof to the other party in conformity with this section.

8.7 **Severability.** If any provision of this Agreement shall be deemed invalid or unenforceable, this Agreement shall be amended to delete or modify, as necessary, the invalid or unenforceable provision to render the Agreement enforceable, and, insofar as possible, consistent with the original intent of the parties.

IN WITNESS WHEREOF, Consulting Partner and Kensu have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

Consulting Partner

Kensu, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____