

RESELLER AGREEMENT

This Reseller Agreement is made as of \_\_\_\_\_, 2023 ("Effective Date") by and between Kensu, Inc., a Delaware corporation, located at 353 Kearny Street, San Francisco, CA 94108 ("Kensu"), and \_\_\_\_\_ ("Reseller"), having its principal place of business at \_\_\_\_\_.

Reseller's use of the Products are subject to all terms and conditions in this agreement, including all documents referenced herein (collectively, "Agreement").

KENSU, INC.

RESELLER

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

TERMS AND CONDITIONS

1. DEFINITIONS

"Confidential Information" has the meaning set forth in Section 10.

"Customer" means a customer who purchases Products licenses from Reseller.

"Customer Agreement" means an agreement between Customer and Reseller with terms that have no less legal meaning and effect than those contained at https://www.kensu.io/legal or as otherwise provided by Kensu.

"Documentation" means the description of the Products contained in the applicable specification sheet, available on Kensu's website and purchased by Customer.

"Effective Date" means the date Reseller executes this Agreement.

"Marks" means Kensu's trademarks, service marks, trade names, service names, logos and designations in or associated with the Products or services.

"Order Form" means the ordering document under which Reseller orders Products from Kensu and Kensu accepts such order.

"Ordering Information" means the following information that will be included with each Reseller purchase order: (i) a reference to this Agreement; (ii) the Customer name and contact information; (iii) a description of the Products licenses purchased; and (iv) the names of Customer Support contacts.

"Products" mean the Software and the Service.

"Service" means the cloud based software products owned and hosted by Kensu under an Order Form, including any Updates thereto.

"Software" means the on-premise software products owned and hosted by Kensu under an Order Form, including any Updates thereto.

"Support" means Kensu's standard Products support provided to Customers.

"Updates" means all Products updates and enhancements that Kensu generally makes available at no additional charge to its customers of the Products listed in an Order Form (as applicable) who are current in payment of applicable fees.

2. APPOINTMENT AND GRANT OF LICENSE

2.1 Appointment. Kensu hereby appoints Reseller as its non-exclusive reseller of the Products. Reseller hereby accepts such appointment and agrees to resell Product licenses in accordance with the terms and conditions of this Agreement. Kensu reserves the right to market the Products, directly or indirectly, to any end user or customer worldwide, including through other resellers and other distribution channels.

2.2 Grant of License. Subject to all the terms of this Agreement and compliance therewith, Kensu grants Reseller a non-sublicensable, non-transferable, non-exclusive, right to: (i) market, distribute access to, demonstrate (subject to Section 3.7), and use the Products under the terms of this Agreement; and (ii) resell Products licenses to Customers for such Customers' internal use.

2.3 License Restrictions. Except as otherwise permitted under this Agreement, Reseller will not and will not allow any third party to: (i) reverse engineer or otherwise attempt to discover any source code or underlying ideas or algorithms of the Products, except to the extent permitted by applicable law, (ii) modify, translate, or otherwise create derivative works of the Products; (iii) copy any Products, in whole or in part, or distribute or transfer the Products except as provided herein; (iv) rent, lease, provide or make the functionality of the Products available to third parties by means of hosting, application services provider, service bureau, time sharing or any other type of services without Kensu's express prior written consent; (v) allow the removal, alteration, covering or obscuring of any notice or Mark that appears on the Products or on any copies or media; (vi) propagate any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; (vii) promote, market, or sell any products or services that are competitive with the Products; or (viii) appoint third parties to market, sublicense or otherwise distribute the Products except as otherwise expressly permitted herein.

2.4 Trademark License. Subject to Reseller's compliance with the terms and conditions of this Agreement, Kensu grants to Reseller a non-exclusive, non-transferable license to use the Marks, during the term of this Agreement, solely in connection with marketing, promotion, and distribution of the Products. Any such use of a Mark by Reseller must correctly attribute ownership of such Mark to Kensu or its suppliers and licensors and must be in accordance with applicable law and Kensu's then current Mark usage guidelines. Upon Kensu's request, Reseller's advertising, marketing or promotional materials in which a Mark is used will be submitted to Kensu for its prior written approval, which will not be unreasonably withheld. Reseller will not remove or obscure any Marks on or in the Products as delivered to Reseller, and will not attach any additional Marks, logos or trade designations on or to the Products. Reseller acknowledges and agrees that Kensu owns the Marks and that any and all goodwill and other proprietary rights that are created by or that result from Reseller's use of a Mark hereunder inure solely to the benefit of Kensu. Reseller will at no time apply to register any Mark, trade name or other designation that is confusingly similar to any Mark.

2.5 Ownership. As between the parties, Kensu will retain all ownership rights in the Products, Updates, and Documentation, and all modifications, enhancements and derivative works of same.

### 3. OBLIGATIONS OF RESELLER

3.1 Customer Agreements. Reseller will resell Products licenses only to Customers that (i) have agreed to be bound by an agreement between Customer and Reseller with no less legal meaning and effect than the Customer Agreement, copies of which shall be provided to Kensu upon request; and (ii) subject to Section 5.4. Reseller will notify Kensu promptly of any known or suspected breach by a Customer of a Customer Agreement. For the purposes of clarity, Kensu shall not be a party to and shall have no liability to Customer under the Customer Agreement.

3.2 Training and Personnel Resource Requirements. Reseller will maintain sufficient sales engineers and sales staff that have been successfully trained in Kensu's standard reseller training ("Training") in order to have the knowledge and skills necessary to inform prospective customers about the features and capabilities of the Products and, to the extent necessary, competitive products. From time to time, Kensu will revise and enhance its product offering and Reseller agrees to participate in continuing training as necessary to maintain proficiency with Kensu's current product release version.

3.3 Marketing Practices. Reseller agrees that it will not make any representations, warranties, or guarantees related to the Products other than those contained in the Documentation or otherwise authorized in advance in writing by Kensu.

3.4 Reseller's Business Practices. Reseller will (i) comply with all applicable laws and regulations; (ii) avoid deceptive, misleading or unethical practices; and (iii) conduct business in a manner that reflects favorably on the Products and Kensu's goodwill and reputation.

3.5 Promotion. Reseller will use its best efforts to assure that the territorial restrictions of the license set forth herein are honored.

3.6 Marketing Obligations. Reseller will use its best efforts to market, advertise and otherwise promote the Products as its preferred data observability cloud-based and on-premise software solution. Reseller will not participate with industry analysts to perform reviews of the Products without Kensu's prior written authorization.

3.7 Products for Proof of Concept Purposes. Reseller may request that Reseller can provide a Proof of Concept of the Products to a specific Customer for a limited period of time. Kensu may grant or withhold the right to provide such Proof of Concept of the Products in its sole discretion. If approved by Kensu, such Proof of Concept License of the Products are provided as-is and Reseller shall enter into a license agreement with Customer on an as-is basis if required.

### 4. OBLIGATIONS OF KENSU

4.1 Delivery. Provided Kensu has received all ordering documents required under this Agreement, Kensu will use commercially reasonable efforts to deliver to the Products according to a mutually agreed upon delivery date.

4.2 Updates. Provided the applicable Support Fees have been paid, Kensu will make available to Customers Updates through electronic download or feed.

4.3 Marketing and Technical Material. Kensu will make available to Reseller reasonable electronic copies of marketing and technical materials. Only upon prior written approval from Kensu, Reseller may then modify the contents of the marketing literature provided by Kensu.

4.4 Technical Training. Kensu may provide Training to Reseller on the features, functions, and operation of the Products in accordance with Kensu's standard partner training.

4.5 Sales and Pre-Sales Training. Kensu may provide sales and pre-sales training to Reseller on the features, functions, and value to prospective customers.

### 5. FEES, PAYMENT, TAXES, AND ORDERS

5.1 Fees. The prices for the Products licenses and Support sold by Reseller under this Agreement, including the discounts (described in Exhibit A) will be as set forth in the applicable Order Form. All such prices are stated in U.S. dollars. Kensu may change prices at any time, in its sole discretion, for future orders or Customers.

5.2 Payment Terms. All fees due hereunder are payable thirty (30) days from the date of Kensu's invoice, which shall be the date the applicable Order Form is signed. Reseller will provide any credit information reasonably required by Kensu prior to Kensu delivering the Products to a Customer. Reseller will be responsible for invoicing and collecting fees for the Products and Support from Customers. All fees are non-cancelable, and upon payment, all fees are non-refundable. Reseller will not be relieved of its obligations to pay fees owed to Kensu hereunder by the nonpayment of such fees by a Customer.

5.3 Taxes and Costs. All amounts payable hereunder are exclusive of all sales, use, value-added, withholding, and other taxes and duties except any tax on Kensu's net income. Reseller will pay all taxes, duties and other fees imposed on sales hereunder and will not deduct any such taxes from the fees due hereunder. In the event Kensu pays any such amounts, Reseller will reimburse Kensu therefore promptly upon Kensu's request.

5.4 Orders and Acceptance. For each Customer transaction in which Reseller desires to license the Products to a Customer, Reseller will submit a proposed Order Form or otherwise generally present the opportunity to Kensu and Kensu will determine whether it wants to proceed with entering into an Order Form and the corresponding Products and fees provided by Kensu, in its sole discretion. Each Order Form executed by Kensu including the pricing contained therein shall be valid for three (3) months from the date Kensu executes it. Except for Ordering Information, any terms and conditions in any purchase order that are inconsistent with or in addition to the terms and conditions of this Agreement and the Order Form are hereby rejected by Kensu and will be deemed null and of no effect.

### 6. CONFIGURATION, MAINTENANCE AND SUPPORT

6.1 Configuration by Reseller. Configuration of the Products and related professional services shall be performed by Kensu. Kensu may require Reseller to successfully complete Kensu's standard reseller configuration training prior to being permitted to perform such services. Configuration of the Products and related professional services by Kensu will only be performed by Kensu if and as stated in an Order Form.

6.2 Customer Support. Kensu will provide Support to all Customers under its standard support policy. Any direct requests for Support of the Products received by Reseller will be referred to Kensu. Kensu will have no obligation to support the combination, operation or use of the Products with any product not furnished by Kensu. Kensu will not have any Support obligations with respect to errors caused by any customized or modified Products if such errors would not have resulted from the unmodified, stand-alone Products.

### 7. WARRANTIES

7.1 Mutual Warranties. Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it will comply with all other applicable laws in its performance hereunder.

7.2 Limited Products Warranty. Kensu warrants the Products to Reseller in accordance with the Customer Agreement. The Products are warranted only to Reseller, and Reseller will not extend any warranties for or on behalf of Kensu or Kensu suppliers or licensors to Customers or any other third parties. Any warranties provided to Customers are solely between Reseller and the applicable Customer.

7.3 Warranty Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, KENSU AND KENSU SUPPLIERS AND LICENSORS DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES

OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. KENSU SHALL HAVE NO LIABILITY TO CUSTOMER UNDER A CUSTOMER AGREEMENT.

## 8. CONFIDENTIALITY

8.1 Confidential Information. As used herein, "Confidential Information" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected herein), the Products, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information will not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

8.2 Obligations of Receiving Party. Receiving Party will not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party will protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Receiving Party will promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

8.3 Legal Obligation to Disclose. If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it will provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

8.4 Injunctive Relief. If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of confidentiality protections hereunder, Disclosing Party will have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.

8.5. Effect of Termination. Upon any termination of this Agreement, the Receiving Party will continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request, return to the Disclosing Party or destroy (at the Disclosing Party's election) all materials containing such Confidential Information

8.6 Ownership. No rights or licenses under patents, Marks or copyrights are granted or implied by any disclosure of Confidential Information. Confidential Information and any and all authorized copies thereof will remain the property of the disclosing party and will be destroyed or returned if requested by the disclosing party.

## 9. INDEMNIFICATION

9.1 Intellectual Property Infringement. Kensu will defend, indemnify and hold Reseller harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Reseller by a third party alleging that the use of the Products infringes the U.S. and European intellectual property rights of such third party, provided, that Reseller (a) promptly gives written notice of the Claim to Kensu; (b) gives Kensu sole control of the defense and settlement of the Claim (provided that Kensu may not settle or defend any Claim unless it unconditionally releases Reseller of all liability); and (c) provides to Kensu, at Kensu's cost, all reasonable assistance. Kensu may, at its sole option and expense: (i) procure for Reseller the right to continue using the

Products under the terms of this Agreement; (ii) replace or modify the Products to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the license for the infringing Products and refund Reseller the pro-rata portion of the fees paid for the applicable Products.

9.1.1 Exclusions. Kensu will have no liability for any Claim if (i) the Claim is based upon the use of the Products in combination with any other product, service or device not furnished or recommended by Kensu, if such Claim would have been avoided by the use of the Products, without such product, service or device, (ii) the Products has been modified by a party other than Kensu, if a Claim would not have occurred but for such modifications; (iii) Reseller's failure to use updated or modified Products provided by Kensu at no cost to Reseller to avoid a Claim; or (iv) Reseller's use of the Products other than in accordance with this Agreement and the Documentation.

9.1.2 THE PROVISIONS OF THIS SECTION 9 SET FORTH KENSU'S SOLE AND EXCLUSIVE OBLIGATIONS, AND RESELLER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

9.2 Reseller Indemnity. Reseller agrees to defend indemnify and hold Kensu and its directors, employees, and agents harmless from and against all liabilities, damages, costs, fees and expenses, including reasonable attorney's fees, incurred as a result of: (i) any representations, warranties, guarantees, or other written or oral statements made by or on behalf of Reseller relating to the Products other than those specified in the Documentation or as expressly authorized by Kensu in writing; or (ii) the failure of Reseller to resell the Products licenses in accordance with this Agreement.

## 10. LIMITATION OF LIABILITY.

10.1 Limitation on Direct Damages. EXCEPT AS PROVIDED IN SECTION 9.2, (ii) FOR RESELLER'S FAILURE TO PAY ANY FEES DUE UNDER THIS AGREEMENT, (iii) IN THE EVENT OF EITHER PARTY'S UNAUTHORIZED USE, DISTRIBUTION OR DISCLOSURE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, OR (iv) EITHER PARTY'S MATERIAL BREACH OF SECTION 8 (COLLECTIVELY, CARVE OUTS"), EACH PARTY'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNTS PAID BY RESELLER TO KENSU IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE CLAIM ACCRUED. EACH PARTY'S LIABILITY FOR THE CARVE OUTS UNDER THIS AGREEMENT WILL IN NO EVENT EXCEED THREE TIMES THE TOTAL AMOUNTS PAID BY RESELLER TO KENSU IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE CLAIM ACCRUED

10.2 Disclaimer of Indirect Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 11. TERM AND TERMINATION

11.1 Term. Unless otherwise terminated in accordance with the terms of this Section 11, upon expiration of the initial one (1) year term of this Agreement, 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.

11.2 Termination for Cause. Either party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy,

insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; or (iii) as otherwise provided herein.

11.3 Effect of Termination or Expiration. Reseller's right to resell Products licenses to Customers will terminate immediately upon the effective date of termination or expiration of this Agreement. Upon termination of this Agreement any Products sold by Reseller in accordance with this Agreement prior to date of termination will continue in accordance with the terms of the Customer Agreement. Upon termination or expiration of this Agreement for any reason: (i) Reseller will immediately cease using and will deliver to Kensu, the Documentation, as well as any unused sales literature and other written information and materials supplied by Kensu pursuant to this Agreement or that contain Kensu's Marks; (ii) Reseller will immediately cease to identify itself as a provider of the Products or otherwise affiliated in any manner with Kensu; and (iii) Reseller will immediately cease using and will deliver to Kensu or destroy, all copies of the Products (if applicable), the Documentation, and any Confidential Information.

11.4 Obligations on Termination. Termination of this Agreement will not relieve the obligation of Reseller to pay any balances due hereunder. The provisions of Sections 5.1 - 5.4, 7.3, 8, 9, 10, 11.4, and 12 will survive any termination of this Agreement, and all other rights and obligations will terminate.

## 12. MISCELLANEOUS

12.1 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, Kensu may (i) use subcontractors in the ordinary course of its business and (ii) assign this Agreement in its entirety, without consent of Customer, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity.

12.2 Independent Contractors. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

12.3 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes any prior and contemporaneous oral or written understanding as to the subject matter hereof.

12.4 Amendments; Waivers. No amendment or waiver of any provision of this Agreement will be effective unless in writing and

signed by the party against whom the amendment or waiver is to be asserted. To the extent of any conflict between this Agreement and any other schedule or attachment, this Agreement will prevail unless expressly stated otherwise. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than an Exhibit or other mutually executed order document expressly incorporated herein) will be incorporated into this Agreement, and all such terms will be void.

12.5 Force Majeure. Neither party will be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, and software or power systems not within such party's possession or reasonable control.

12.6 Export Controls and Compliance with Laws. Reseller agrees to comply fully with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Products. Reseller will take all reasonable actions and precautions to ensure that its Customers do not contravene such laws or regulations.

12.7 Publicity. Either party may include the other's name and logo in customer or vendor lists and otherwise publicize the existence of this Agreement.

12.8 Notices. Notices shall be in writing, sent using a recognized private mail carrier or the United States Postal Products and effective on proof of delivery.

12.9 Governing Law. This Agreement will be governed exclusively by the internal laws of the state of California, without regard to its conflicts of laws rules. Any dispute arising out of this Agreement shall be solely settled in the State or Federal Courts located in San Francisco County, California. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

12.10 Waiver; Severability. No failure or delay in exercising any right hereunder will constitute a waiver of such right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions will remain in effect.

**Exhibit A**  
**Eligible Company Products, Implementation Support and Associated Reseller Discount**

Kensu will work with Reseller Partner as listed below to provide the necessary training and implementation support for the Reseller to implement Kensu successfully and ensure associated license discounts and implementation fees.

<b>Implementation Delivery</b>	<b>Support Delivery</b>	<b>Implementation Discount</b>	<b>Partner License Discount</b>
Kensu delivers with guidance from Reseller	Kensu Tier 1-3	20%	10%
Kensu delivers in conjunction with Reseller	Kensu Tier 1-3	40%	10%
Reseller delivers with support from Kensu	Partner Tier 1, Kensu Tier 2-3	60%	10%
Reseller delivers with guidance from Kensu	Partner Tier 1-2, Kensu Tier 3	80%	10%
Reseller delivers	Partner Tier 1-3	N/A	10%