



## Nondisclosure Agreement Between

**Pivotal Commware, Inc.**, a Delaware corporation  
("Discloser"), and \_\_\_\_\_  
("Recipient") with an address of \_\_\_\_\_.

1. Discloser and Recipient wish to explore a possible business opportunity of mutual interest (the "Relationship") in connection with which Discloser has disclosed and/or may further disclose its Confidential Information (as defined below) to Recipient. This Agreement is intended to allow the parties to continue to discuss and evaluate the Relationship while protecting Discloser's Confidential Information (including Confidential Information previously disclosed to Recipient) against unauthorized use or disclosure.

2. "Confidential Information" means any Discloser service offerings, methodologies, software programs (if any), related product documentation, data, legal strategies and work product, and any other business, financial or technical information that is marked or otherwise identified as confidential or proprietary, or that Recipient knows or should reasonably know is confidential or proprietary. Confidential Information may be conveyed in written, electronic or graphic form or disclosed orally. Notwithstanding any failure to so identify it, Discloser's product information, plans and pricing, financials, marketing plans, business strategies, customer information, data, research and development, software and hardware, APIs, specifications, designs, proprietary formulae and proprietary algorithms shall be Confidential Information.

3. Recipient agrees:

(a) To use the highest degree of care to protect the Confidential Information from disclosure to third parties that it uses to protect its own confidential information of a similar nature (but in no event less than a reasonable degree of care);

(b) To not distribute to third parties, publicly display, or perform any such Confidential Information;

(c) To not reverse engineer, disassemble or de-compile any prototypes, software or other tangible objects that embody the Confidential Information unless written consent for such actions is received from Discloser, provided, however, that if such a prohibition is not permitted pursuant to applicable law, Recipient shall provide Discloser written notice prior to undertaking any such reverse engineering, and shall give Discloser a reasonable amount of time to provide any interface information required by law prior to commencing such reverse engineering;

(d) To limit the internal disclosure of the Confidential Information to those employees, contractors, agents, and representatives having a need to know such information in connection with the Relationship and have agreed to abide by non-disclosure terms at least as protective of the Confidential Information as those set forth herein; and

(e) To use the Confidential Information solely to carry out discussions concerning, and the undertaking of, the Relationship.

4. Notwithstanding the above, Recipient shall not have liability to Discloser with regard to any Confidential Information which Recipient can prove:

(a) was in the public domain at the time it was disclosed by Discloser or has entered the public domain through no fault of Recipient;

(b) was known to Recipient, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;

(c) is disclosed with the prior written approval of Discloser;

(d) becomes known to Recipient, without restriction, from a source other than Discloser without breach of this Agreement by Recipient and otherwise not in violation of Discloser's rights; or

(e) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that Recipient shall provide prompt notice of such court order or requirement to Discloser to enable Discloser to seek a protective order or otherwise prevent or restrict such disclosure.

5. Upon request of Discloser at any time, Recipient must return to Discloser all Confidential Information in tangible form provided by the other, including any copies made by Recipient, and must delete or erase all intangible Confidential Information of Discloser in its possession. If requested by Discloser, an officer of Recipient will certify in writing that all such Confidential Information of the other was returned, erased or deleted.

6. The foregoing commitments of each party shall survive any termination of the Relationship between the parties, and shall continue for a period ending five (5) years from the date on which Confidential Information is last disclosed under this Agreement.

7. Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of Discloser, nor shall this Agreement grant Recipient any rights in or to Discloser's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Relationship. Recipient understands that nothing in this Agreement (a) requires the disclosure of any Confidential Information, which shall be disclosed, if at all, solely at Discloser's option, or (b) requires Discloser to proceed with the Relationship or any transaction in connection with which the Confidential Information may be disclosed.

8. Discloser and Recipient each expressly agree that due to the unique nature of Discloser's Confidential Information, monetary damages would be inadequate to compensate Discloser for any breach by Recipient of its covenants and agreements set forth in this Agreement. Each party acknowledges that Discloser may take all reasonable steps to protect its Confidential Information, including, but not limited to, seeking injunctive relief and any other remedies available at law or in equity in the event Recipient breaches this Agreement. The burden of

proof for all allegations of breach will remain with the party claiming breach.

9. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that Discloser's Confidential Information may not be assigned without Discloser's prior written consent. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under this Agreement, except as expressly provided in this Agreement. All additions and modifications to this Agreement must be made in writing referencing this Agreement and must be signed by both parties. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement with respect to the subject matter thereof. This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington, excluding its choice of law rules. The parties agree to submit to the exclusive jurisdiction and venue of the appropriate state or federal court residing in King County, Washington.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives.

**PIVOTAL COMMWARE, INC.**

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Signature

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Name

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Title

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Date

**RECIPIENT:**

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Signature

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Name

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Title

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Date