

This Professional Services Agreement ("PSA") is effective as of _____, 20____ (the "Effective Date") between:

PIVOTAL SOFTWARE, INC. ("Pivotal")	and	_____ ("Customer")
Address: 3495 Deer Creek Road, Palo Alto, CA 94304 (United States)		Address:
Email for Legal Notices: legal@pivotal.io		Email for Legal Notices:
Fax for Legal Notices:		Fax for Legal Notices:
		Contact for Invoices/Billing:
		Email for Invoices:

This PSA sets forth the general terms and conditions under which Customer may periodically engage Pivotal and/or its Affiliates to provide Pivotal customized professional services ("Services") on a project basis pursuant to a Statement of Work that will be entered into between Pivotal and Customer ("SOW") for each engagement. "Affiliate" means a legal entity that is controlled by, controls, or is under common "control" of Pivotal, and any reference to "control" means possession of more than 50% of the voting stock or ownership interests. This PSA excludes (a) any of Pivotal's generally available products which are licensed via separate ordering agreement and (b) pre-release products, which may be licensed under a separate testing agreement.

GENERAL TERMS AND CONDITIONS

1. SERVICES.

Pivotal shall provide Services described in an SOW that details the relationship of the parties with regard to a specific project. Each SOW shall (a) be signed by the parties; (b) incorporate by reference this PSA; and (c) state the pertinent business parameters, including, but not limited to, pricing, payment, expense reimbursement, and a detailed description of the Services or Work Product to be provided.

2. TERM AND TERMINATION.

A. Term; Survival. The term of this PSA commences on its Effective Date and shall remain in effect unless terminated as provided below. Upon any termination of this PSA, Sections 2 through 5, 6(B), and 8 through 11 hereof shall survive in accordance with their terms. Termination of this PSA or any SOW shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer of its obligation to pay all fees and expenses for all Services performed, including any Work Product associated with such Services, as of the date of termination.

B. Termination for Convenience. Either party may terminate this PSA for convenience by providing the other with written notice, which termination shall become effective upon the later of (1) 14 days after receipt of such notice by such other party or (2) completion and payment for the Services set forth in any SOW(s) effective on the date of receipt of such notice. In addition, Customer may terminate any SOW hereunder 14 days after Pivotal's receipt of Customer's written notice and Customer shall pay Pivotal for the Services performed through the date of termination.

C. Termination for Breach. Either party may notify the other in writing in case of the other's alleged breach of a material provision of this PSA and/or an applicable SOW. The recipient shall have 30 days from the date of receipt of such notice to effect a cure. If the recipient of the notice fails to effect a cure within such period, then the sender of the notice shall have the option of sending a written notice of termination of the applicable SOW(s), or the PSA if the breach affects multiple SOWs, which notice shall take effect upon receipt, completion, and payment for the Services set forth in any SOW(s). Notwithstanding the foregoing, Pivotal may suspend its services or terminate this PSA if Customer fails to pay an invoice in accordance with the SOW, and if such non-conformance is not cured within 10 days following receipt of notice from Pivotal.

3. PROPRIETARY RIGHTS.

A. Ownership. Other than the excluded materials set forth in Sections 3B, 3C, and 3D, Customer shall own all intellectual property rights associated with works of authorship or other products developed or created and delivered by Pivotal to Customer in the course of performing Services (the "Work Product"), as well as Customer's derivative works thereof, subject to Customer's payment in full under such SOW and subject to Pivotal's rights in the underlying intellectual property embodied therein or used by Pivotal to perform the Services. Pivotal is not being engaged to perform any investigation of third party intellectual property rights including any searches of patents, copyrights, or trademarks related to the Work Product.

B. Pivotal Materials Exclusion. "Pivotal Materials" means any: (1) materials developed by Pivotal prior to the Effective Date; (2) materials developed by Pivotal other than in performance of this PSA; (3) materials that are generally applicable to Pivotal's products and services and are not unique to the business of Customer or the SOW; or (4) any improvements Pivotal may make to its own proprietary software or any of its internal processes as a result of any SOW, provided that such improvements or use thereof do not infringe on Customer's proprietary rights. Pivotal Materials may be included in, or necessary for Customer to use, the Work Product but are excluded from Customer's ownership rights set forth in Section 3A. Customer agrees that Pivotal Materials are the sole property of Pivotal. Pivotal hereby grants to Customer a worldwide, perpetual, royalty-free license to use Pivotal Materials solely as necessary for use as part of the Work Product. No other grants of licenses or rights to Customer will be implied from the provisions stated in this PSA. Customer shall not obliterate or remove and will reproduce Pivotal's intellectual property notices contained in the Pivotal Materials. Customer shall not reverse engineer, decompile, or otherwise attempt to derive source code from any portions of the Pivotal Materials delivered in object code form.

C. Open Source Materials Exclusion. Open source software referenced in the applicable SOW or subsequently agreed to in writing by the parties ("Open Source Software") may be included in, or necessary for Customer to use, the Work Product but are excluded from Customer's ownership rights set forth in Section 3A. Pivotal may (1) obtain such Open Source Software on Customer's behalf, (2) incorporate such Open Source Software into the Work Product, and (3) submit back to open source libraries any improvements made to the Open Source Software during the course of performing the Services, to the extent such submissions do not violate the confidentiality obligations set forth herein. Other than the Open Source Software referenced in the applicable SOW, Pivotal will not include Open Source Software in the Work Product without obtaining Customer's written permission. Upon reasonable request during the term, or earlier termination, of this PSA, Pivotal will provide a list of such Open Source Software used in the Work Product.

D. Third Party Materials Exclusion. Materials that are not owned or created by Pivotal (other than Open Source Software) ("Third Party Materials"), may be included in, or necessary for Customer to use, the Work Product but are excluded from Customer's ownership rights set forth in Section 3A, and Customer will be solely responsible for obtaining necessary licenses to Third Party Materials.

E. Reservation of Rights. Pivotal reserves all rights not expressly granted to Customer in this PSA. Except as expressly stated, nothing herein shall be construed to (1) directly or indirectly grant to a receiving party any title to or ownership of a providing party's intellectual property rights in services or materials furnished by such providing party hereunder, or (2) preclude such providing party from developing, marketing, using, licensing, modifying or otherwise freely exploiting services or materials that are similar to or related to the Services or materials provided hereunder.

F. Customer's Underlying Rights. Customer represents and warrants to Pivotal that (1) Customer owns or controls all rights in and to all Customer information and materials provided by or on behalf of Customer to Pivotal pursuant to this PSA, including without limitation all rights to exploit all such Customer information and materials worldwide in all media and languages in perpetuity without encumbrance or restriction, and (2) Customer grants to Pivotal a nonexclusive, nontransferable, worldwide paid-up license to make, use, modify, reproduce, and prepare derivative works of Customer information and materials, solely for the purpose of performing Services, with no right to grant sublicenses.

4. CONFIDENTIALITY.

A. Confidential Information. "Confidential Information" means the terms of this PSA (including the terms of each SOW) and all confidential and proprietary information of Pivotal or Customer, including without limitation all business plans, product plans, financial information, software, designs, formulas, methods, know how, processes, materials disclosed by either party to the other in the course of performing Services, technical, business and financial data of any nature whatsoever (including, without limitation, any marketing, pricing and other information regarding the Services, and projects for other companies that may be occurring concurrently in Pivotal's offices while Pivotal is performing the Services), or information which is of a nature that a reasonable person would recognize it as confidential. Confidential Information does not include information that is (1) rightfully in the receiving party's possession without obligation of confidentiality prior to receipt from the disclosing party; (2) a matter of public knowledge through no fault of the receiving party; (3) rightfully furnished to the receiving party by a third party without restriction on disclosure or use; or (4) independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information. Each party shall (1) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this PSA or any SOW hereunder, and (2) use at least reasonable care to protect from disclosure to any third parties any Confidential Information disclosed by the other party for a period from the date hereof until 3 years following the later of (a) the termination date of this PSA or (b) the last date of the completion or other termination of Services under each SOW entered into hereunder. Notwithstanding the foregoing, a receiving party may disclose Confidential Information (1) to any legal entity that is controlled by, controls, or is under common control with the receiving party (with "Control" meaning more than fifty percent (50%) of the voting power or ownership interests) ("Affiliate") for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the requirements of this Section 4A, and (2) pursuant to a valid order of a court or authorized government agency provided that the receiving party has given the disclosing party prompt notice so that the disclosing party will have an opportunity to defend, limit or protect against such disclosure. Upon written request by the disclosing party, the receiving party shall: (1) cease using the Confidential Information, (2) return or destroy the Confidential Information and all copies, notes or extracts thereof to the disclosing party within 7 business days of receipt of request, and (3) upon request of the disclosing party, confirm in writing that the receiving party has complied fully with these obligations.

B. Publicity. Customer agrees to cooperate with Pivotal in marketing efforts by permitting Pivotal to post Customer's name and logo on the customer page of Pivotal's website and other published Pivotal client lists, and use Customer's name and logo in non-public portfolio materials.

5. PAYMENT TERMS.

Pivotal shall submit invoices for fees and reimbursable costs and expenses and Customer shall pay each invoice in the manner specified in the applicable SOW. Customer will also pay all related taxes and withholdings, except for those based on Pivotal's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to Pivotal at accounting@pivotal.io. Subject to Pivotal's credit approval, all amounts are due in the currency stated on the invoice and in full 15 days after the date of Pivotal's invoice, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate. If all or a portion of any invoice is determined to be incorrect, the Parties will promptly investigate and correct or confirm the dispute. Pivotal is not obligated to perform its services unless Customer is current in payment of all fees and charges set forth in the SOW.

6. WARRANTY.

A. Warranty. Pivotal shall perform Services in a workmanlike manner in accordance with generally accepted industry standards.

B. Disclaimer and Exclusions. Except as otherwise provided in this PSA, Pivotal (including its suppliers, subcontractors, employees and agents) provides Services "AS IS" and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

7. IP INDEMNITY. Pivotal shall (a) defend Customer against any third party claim that the Services and Work Product (excluding any Pivotal Materials, Open Source Software and/or Third Party Materials) infringe a trade secret, or a copyright enforceable in a country that is a signatory to the Berne Convention, and (b) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement signed by Pivotal. Customer shall (a) defend Pivotal against any third party claim that the materials provided by Customer or its agents for use by Pivotal infringe a trade secret, or a copyright enforceable in a country that is a signatory to the Berne Convention and (b) pay the resulting costs and damages finally awarded against Pivotal by a court of competent jurisdiction or the amounts stated in a written settlement signed by Customer. The foregoing obligations are subject to the following: the indemnitee (a) notifies the indemnitor promptly in writing of such claim, (b) grants the indemnitor sole control over the defense and settlement thereof, (c) reasonably cooperates in response to an indemnitor request for assistance, and (d) is not in material breach of this PSA. Should such a claim be made, or in the indemnitor's opinion be likely to be made, the indemnitor may, at its option and expense, (a) procure for the indemnitee the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, (c) request return of the subject material, or (d) discontinue the Services and refund the portion of any pre-paid Services fee that corresponds to the period of Services discontinuation. THIS SECTION STATES THE INDEMNITEE'S SOLE AND EXCLUSIVE REMEDY AND THE INDEMNITOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

8. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. TO THE EXTENT NOT PROHIBITED BY LAW, AND EXCEPT FOR LOSSES OR LIABILITIES DIRECTLY RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION 7 ABOVE, PIVOTAL'S TOTAL LIABILITY (INCLUDING THE LIABILITY OF ANY SUPPLIER, SUBCONTRACTOR, EMPLOYEE OR AGENT OF PIVOTAL), AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY PIVOTAL'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED US \$1,000,000.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF PIVOTAL PROPRIETARY RIGHTS (INCLUDING ANY LICENSE GRANTED THEREUNDER) OR CLAIMS FOR INDEMNITY ARISING UNDER SECTION 7 (IP INDEMNITY), NEITHER CUSTOMER NOR PIVOTAL (INCLUDING PIVOTAL'S SUPPLIERS, SUBCONTRACTORS, EMPLOYEES AND AGENTS) SHALL (1) HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (2) BRING ANY CLAIM BASED ON ANY SERVICE PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

9. GOVERNMENT REGULATIONS. The Services and any technology delivered in connection therewith pursuant to this PSA and/or any SOW entered into hereunder may be subject to governmental restrictions on exports from the U.S., restrictions on exports from other countries in which such Services and technology may be provided or located, disclosures of technology to foreign persons, exports from abroad of derivative products thereof, and the importation and/or use of such technology included therein outside of the United States (collectively, "Export Laws"). Diversion contrary to U.S. law is expressly

prohibited. Customer shall, at its sole expense, comply with all Export Laws and Pivotal export policies made available to Customer by Pivotal. Customer represents that it is not a Restricted Person, which shall be deemed to include any person or entity: (a) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (b) on any restricted person or entity list maintained by any U.S. governmental agency. Certain information, Services or technology may be subject to the International Traffic in Arms Regulations and shall only be exported, transferred or released to foreign nationals inside or outside the United States in compliance with such regulations.

10. NOTICES. Any notices permitted or required under this PSA and/or any SOW entered into hereunder shall be in writing, and shall be deemed given when delivered (a) in person; (b) by overnight courier, upon written confirmation of receipt; (c) by certified or registered mail, with proof of delivery; (d) by facsimile transmission with confirmation of receipt; or (e) by email, with confirmation of receipt. Notices shall be sent to the address, facsimile number or email address set forth above, or at such other address, facsimile number or email address as provided to the other party in writing.

11. INDEPENDENT CONTRACTORS. The parties shall act as independent contractors for all purposes under this PSA. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other party, and neither party will have authority to speak for, represent or obligate the other party in any way without the prior written approval of the other party. Pivotal shall determine, and shall be solely responsible for, the method, details, and means of performing its services. Pivotal may select one or more of its Pivotal-trained subcontractors to assist Pivotal in the performance of its services ("**Subcontractors**"), and agrees to (a) impose written obligations consistent with the terms of this PSA on Subcontractors, and (b) require that Subcontractors comply with the terms of this PSA. Pivotal has the sole and exclusive right to supervise and control Subcontractors.

12. RESIDUAL RIGHTS. The terms of confidentiality under this PSA shall not be construed to limit either party's right to independently develop or acquire products or services without use of the other party's Confidential Information. Pivotal and its personnel on one hand, and Customer on the other, shall be free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as they maintain the confidentiality of the Confidential Information as provided herein. Neither Party shall have any obligation to limit or restrict the assignment of persons performing work hereunder. However, the foregoing shall not be deemed to grant to either party a license under the other party's copyrights, patents or other intellectual property rights.

13. MISCELLANEOUS. This PSA and any SOW(s) entered into hereunder (a) shall constitute the complete statement of the agreement of the parties with regard to the subject matter hereof and supersedes all previous

communications, agreements, promises, representations, understandings, and negotiations, whether written or oral, between the parties with respect to the subject matter of this PSA, including with respect to confidentiality and any applicable non-disclosure agreement, and (b) other than amendments, modifications, or supplements to the description of services in the applicable SOW, may be modified only by a writing signed by authorized representatives of both parties. In the event of a conflict between the provisions of this PSA and the specific provisions set forth in a SOW, the provisions of this PSA shall control unless the provisions of the SOW specifically reference the provisions of this PSA that are inconsistent therewith, in which case the SOW shall control for that engagement only. Except for the payment of fees, neither party shall be liable under this PSA or any SOW because of a failure or delay in performing its obligations hereunder on account of any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party. Pivotal shall not be liable under this PSA or any SOW because of failure or delay in performing its obligations hereunder on account of Customer's failure to provide timely access to facilities, space, power, documentation, networks, files, software, and Customer personnel that are reasonably necessary for Pivotal to perform its obligations. Neither party may assign this PSA to a separate legal entity, without the other party's written consent. Neither party shall unreasonably withhold or delay such consent; provided, however, that such written consent shall not be required if either party assigns this PSA to a separate entity in connection with a merger, acquisition, or sale of all or substantially all of its assets with or to such other separate entity, unless the surviving entity of the merger, acquisition, or sale of assets is a direct competitor of the other party. Nothing herein shall limit Pivotal's right to assign its right to receive and collect payments hereunder. This PSA (including any SOW entered into hereunder) is governed by the domestic laws of the State of California, excluding its conflict of law rules. Each Party hereby expressly consents to the personal jurisdiction of either the California courts or the United States District Courts located in the State of California and agrees that any action relating to or arising out of this PSA shall be instituted and prosecuted only in the Superior Court of the County of San Francisco or the United States District Court for the Northern District of California, except that actions to enforce any judgment or writ of attachment shall be prosecuted through the courts of the state in which the assets subject to such enforcement action are located. Each Party waives any right to a change of the aforesaid venue and any and all objections to the jurisdiction of the California courts or the federal courts over the Parties. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent, add to, or conflict with this PSA and/or an SOW, shall be null and void and of no legal force or effect. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. If any part of this PSA and/or any SOW entered into hereunder is held unenforceable, the validity of the remaining provisions shall not be affected. This PSA may be executed in counterparts with the same force and effect as if executed in one complete document by the parties. Executed copies and signatures transmitted by electronic means shall be deemed enforceable and binding.

IN WITNESS WHEREOF, the parties hereto have caused this PSA to be executed by their duly authorized representatives as of the Effective Date.

PIVOTAL SOFTWARE, INC. ("Pivotal")		____ ("CUSTOMER")	
By (Sign):		By (Sign):	
Name (Print):		Name (Print):	
Title:		Title:	
Date		Date:	