

## PIVOTLINK SOFTWARE, INC.

### SERVICE SUBSCRIPTION AGREEMENT / Terms of Use

This Service Subscription Agreement ("Agreement") is a legal agreement between PivotLink Corp, ("PivotLink") and the subscriber ("Subscriber") identified on a Sales Order signed by Subscriber and PivotLink (each, a "Sales Order") governing Subscriber's use of PivotLink's hosted Business Intelligence Services ("Services"). The parties agree as follows:

#### 1. USE OF BUSINESS INTELLIGENCE SERVICES

1.1 Use. Subject to the terms and conditions of this Agreement, PivotLink grants to Subscriber a limited, worldwide, non-exclusive, non-transferable (except as permitted in Section 9.2) right during the term of this Agreement to use the Services solely in connection with its internal business operations. Subscriber's right to use the Services is subject to the scope limitations set forth in the Sales Order (if any) and contingent upon Subscriber's compliance with the scope limitations.

1.2 Use Restrictions. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Subscriber will not, and will not permit or authorize third parties to: (a) rent, lease, or otherwise permit third parties to use the Services; (b) use the Services to provide services to third parties; nor (c) circumvent or disable any security or other technological features or measures of the Services. Notwithstanding the foregoing, Subscriber may allow its customers to access and use the Services in connection with Subscriber's customers' data, provided that Subscriber is solely responsible for any such use by its customers. Subscriber will not access the Services if Subscriber is a direct competitor of PivotLink, nor will Subscriber access or use the Services to monitor their availability, performance or functionality, or for any other benchmarking or competitive purposes.

1.3 Compliance with Laws. Subscriber will use the Services in compliance with all applicable laws and regulations, and refrain from any unethical conduct or any other conduct that tends to damage the reputation of PivotLink or the Services.

1.4 Protection against Unauthorized Use. Subscriber will use its best efforts to prevent any unauthorized use of the Services and documentation and immediately notify PivotLink in writing of any unauthorized use that comes to Subscriber's attention. If there is unauthorized use by anyone who obtained access to the Services directly or indirectly through Subscriber, Subscriber will take all steps reasonably necessary to terminate the unauthorized use. Subscriber will cooperate and assist with any actions taken by PivotLink to prevent or terminate unauthorized use of the Services.

1.5 Reservation of Rights. PivotLink grants to Subscriber a limited right to use the Services and documentation under this Agreement. Subscriber will not have any rights to the Services except as expressly granted in this Agreement. PivotLink reserves to itself all rights to the Services not expressly granted to Subscriber in accordance with this Agreement.

1.6 Account Information and Use. Subscriber is solely responsible for all activity occurring under Subscriber's user accounts and will abide by all applicable local, state, national, and foreign laws, treaties and regulations in connection with Subscriber's use of the Services, including those related to data privacy, international communications and the transmission of technical or personal data. Subscriber will: (a) notify PivotLink immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) not impersonate another PivotLink user or provide false identity information to gain access to or use the Services; and (c) be solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership and right to use all data submitted by Subscriber in the course of receiving the Services.

#### 2. FEES AND PAYMENT

##### 2.1 Fees and Payment Terms

(a) Subscriber will pay PivotLink the fees and any other amounts owing under this Agreement, plus any applicable sales, use, excise, or other taxes, as specified in a PivotLink Sales Order. All amounts will be paid in US dollars.

(b) Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Subscriber will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by PivotLink to collect any amount that is not paid when due. Amounts due from Subscriber under this Agreement may not be withheld or offset by Subscriber against amounts due to Subscriber for any reason. All amounts payable under this Agreement are denominated in United States dollars, and Subscriber will pay all such amounts in United States dollars.

2.2 Taxes. Other than net income taxes imposed on PivotLink, Subscriber will bear all taxes, duties, and other governmental charges (collectively, "taxes") resulting from this Agreement. Subscriber will pay any additional taxes as are necessary to ensure that the net amounts received by PivotLink after all such taxes are paid are equal to the amounts that PivotLink would have been entitled to in accordance with this Agreement as if the taxes did not exist.

### 3. TERM AND TERMINATION

3.1 Term. This Agreement will commence upon the effective date specified in the Sales Order and continue for the initial term specified in the Sales Order unless this Agreement is terminated earlier in accordance with the terms of this Agreement. The continuation by the parties of this Agreement after the expiration of the initial term and without having entered into a written agreement or extension shall be construed as an implied extension of this Agreement for renewal periods of the same length, and each term extension thereafter, as the initial term. Added services shall be coterminous with the initial or renewal term and shall be billed from the first day of the month added in accordance with the billing period.

3.2 Notice of Material Breach or Default. If either party commits a material breach or default in the performance of any of its obligations under this Agreement, then the other party may give the defaulting party written notice of the material breach or default (including a statement of the facts relating to the material breach or default, the provisions of this Agreement that are in material breach or default, the action required to cure the material breach or default), and of the non-defaulting party's intention to terminate the Agreement pursuant to Section 3.3 if the material breach or default is not cured within 30 days after the defaulting party's receipt of such notice (or such later date as may be specified in such notice). Without limiting the foregoing, any failure by Subscriber to timely pay to PivotLink any amounts owing under this Agreement will constitute a material breach of this Agreement.

3.3 Notice of Termination. If the defaulting party fails to cure a material breach or default specified in any notice under Section 3.2 within 30 days after receipt of such notice (or such later date as may be specified in such notice), then the non-defaulting party may terminate this Agreement by giving the defaulting party written notice of termination. If Subscriber fails to timely pay any fees, PivotLink may, without limitation to any of its other rights or remedies, suspend performance of Services until it receives all amounts due.

3.4 Post-Termination Obligations. If this Agreement or any licenses in this Agreement are terminated for any reason, (a) Subscriber will pay to PivotLink any fees, reimbursable expenses, compensation, or other amounts that have accrued prior to the effective date of the termination, (b) any and all liabilities accrued prior to the effective date of the termination will survive, and (c) Subscriber will provide PivotLink with a written certification signed by an authorized Subscriber representative certifying that all use by Subscriber of the Services has been discontinued.

3.5 Service Renewal. This Agreement will be automatically renewed at the price list in effect at the end of the initial term, and each term extension thereafter, unless either party delivers to the other party a written termination notice at least sixty (60) days prior to the end of the then current term or term extension. Failure to provide termination notification shall not be considered grounds for non-payment.

### 4. WARRANTIES AND DISCLAIMER

4.1 Mutual Warranties. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

4.2 Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 4, PIVOTLINK MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. PIVOTLINK EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. PIVOTLINK DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICES OR AGAINST INFRINGEMENT. PIVOTLINK DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. PIVOTLINK EXERCISES NO CONTROL

OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE SUBSCRIBER'S USE OF THE SERVICES.

## 5. SUBSCRIBER INDEMNIFICATION

5.1 Defense. Subscriber will defend PivotLink from any actual or threatened third party claim arising out of or based upon the Subscriber's use of the Services or Subscriber's breach of any of the provisions of this Agreement. PivotLink will: (a) give Subscriber prompt written notice of the claim; (b) grant Subscriber full and complete control over the defense and settlement of the claim; (c) assist Subscriber with the defense and settlement of the claim as Subscriber may reasonably request and at Subscriber's expense; and (d) comply with any settlement or court order made in connection with the claim.

5.2 Indemnification. Subscriber will indemnify PivotLink against: (a) all damages, costs, and attorneys' fees finally awarded against PivotLink in any proceeding under Section 5.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by PivotLink in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without Subscriber's consent after Subscriber has accepted defense of such claim); and (c) if any proceeding arising under Section 5.1 is settled, Subscriber will pay any amounts to any third party agreed to by Subscriber in settlement of any such claims

## 6. INTELLECTUAL PROPERTY INFRINGEMENT

6.1 Infringement Defense. PivotLink will defend Subscriber from any actual or threatened third party claim that the PivotLink Services infringe or misappropriate any U.S. patent issued as of the effective date specified in the Sales Order or any copyright or trade secret of any third party during the term of this Agreement if: (a) Subscriber gives PivotLink prompt written notice of the claim; (b) PivotLink has full and complete control over the defense and settlement of the claim; (c) Subscriber provides assistance in connection with the defense and settlement of the claim as PivotLink may reasonably request; and (d) Subscriber complies with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).

6.2 Infringement Indemnification. PivotLink will indemnify Subscriber against: (a) all damages, costs, and attorneys' fees finally awarded against Subscriber in any proceeding under Section 6.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Subscriber in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without PivotLink's consent after PivotLink has accepted defense of such claim); and (c) if any proceeding arising under Section 6.1 is settled, all amounts paid to any third party as agreed to by PivotLink in settlement of any such claims.

6.3 Mitigation of Infringement Action. If Subscriber's use of the Services is, or in PivotLink's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 6.1, then PivotLink will either: (a) procure the continuing right of Subscriber to use the Services; (b) replace or modify the Services in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, PivotLink is unable to do either (a) or (b), PivotLink will (c) terminate the licenses with respect to the Services subject to the infringement claim and refund to Subscriber all unused Subscription Fees pre-paid by Subscriber.

6.4 Exclusions. PivotLink will have no obligation under this Section 6 for any infringement to the extent that it arises out of or is based upon: (a) the combination, operation, or use of the Services if such infringement would have been avoided but for such combination, operation, or use; (b) designs, requirements, or specifications for the Services required by or provided by Subscriber, if the alleged infringement would not have occurred but for such designs, requirements, or specifications; (c) use of the Services outside of the scope of the license granted to the Subscriber; (d) Subscriber's failure to use the latest release of the Services or to comply with instructions provided by PivotLink, if the alleged infringement would not have occurred but for such failure; (e) any modification of the Services not made by PivotLink where such infringement would not have occurred absent such modification; or (f) unauthorized use of the Services. Subscriber will reimburse PivotLink for any costs or damages that result from these actions.

6.5 Exclusive Remedy. This Section 6 states PivotLink's sole and exclusive liability, and Subscriber's sole and exclusive remedy, for the actual or alleged infringement of any third party intellectual property right by the Services.

## 7. LIMITATIONS OF LIABILITY

7.1 Disclaimer of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PIVOTLINK WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SUBSCRIBER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR

LOSS OF BUSINESS, EVEN IF PIVOTLINK IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

7.2 Cap on Liability. UNDER NO CIRCUMSTANCES WILL PIVOTLINK'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY SUBSCRIBER TO PIVOTLINK DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).

7.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY PIVOTLINK TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 7 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

## 8. CONFIDENTIALITY

8.1 Definition. "**Confidential Information**" means any trade secrets or other information of a party, whether of a technical, business, or other nature (including, without limitation, information relating to a party's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects, or other affairs), that is disclosed to a party during the term of this Agreement and that such party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party. Confidential Information does not include any information that: (a) was known to the receiving party prior to receiving the same from the disclosing party in connection with this Agreement; (b) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party; (c) is acquired by the receiving party from another source without restriction as to use or disclosure; or (d) is or becomes part of the public domain through no fault or action of the receiving party.

8.2 Restricted Use and Nondisclosure. During and after the term of this Agreement, each party will: (a) use the other party's Confidential Information solely for the purpose for which it is provided; (b) not disclose the other party's Confidential Information to a third party unless the third party must access the Confidential Information to perform in accordance with this Agreement, and the third party has executed a written agreement that contains terms that are substantially similar to the terms contained in this Section 8; and (c) maintain the secrecy of, and protect from unauthorized use and disclosure, the other party's Confidential Information to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

8.3 Required Disclosure. If either party is required by law to disclose the Confidential Information or the terms of this Agreement, the disclosing party must give prompt written notice of such requirement before such disclosure, to the extent permitted by law, and assist the non-disclosing party in obtaining an order protecting the Confidential Information from public disclosure.

8.4 Return of Materials. Upon the termination or expiration of this Agreement, or upon earlier request, each party will deliver to the other all Confidential Information that it may have in its possession or control. Notwithstanding the foregoing, neither party will be required to return materials that it must retain in order to receive the benefits of this Agreement or properly perform in accordance with this Agreement.

## 9. GENERAL

9.1 Relationship. PivotLink will be and act as an independent contractor (and not as the agent or representative of Subscriber) in the performance of this Agreement. This Agreement will not be interpreted or construed as: (a) creating or evidencing any association, joint venture, partnership, or franchise between the parties; (b) imposing any partnership or franchise obligation or liability on either party; or (c) prohibiting or restricting PivotLink's performance of any services for any third party or the provision of products to any third party. Subscriber must not represent to anyone that Subscriber is an agent of PivotLink or is otherwise authorized to bind or commit PivotLink in any way without PivotLink's prior authorization.

9.2 Assignability. Subscriber may not assign its right, duties, or obligations under this Agreement without PivotLink's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Subscriber shall be entitled to assign this agreement to a related entity or an entity which acquires all or substantially all of Subscriber's assets without consent from PivotLink unless acquirer is deemed by

PivotLink to be competitive. If consent is given, this Agreement will bind Subscriber's successors and assigns. Any attempt by Subscriber to transfer its rights, duties, or obligations under this Agreement except as expressly provided in this Agreement is void.

9.3 Subcontractors. PivotLink may utilize a subcontractor or other third party to perform its duties under this Agreement so long as PivotLink remains responsible for all of its obligations under this Agreement.

9.4 Reference. Subject to Section 8 regarding confidentiality, Subscriber will: (a) make one or more representatives reasonably available for reference inquiries from potential PivotLink customers, partners, and investors; (b) allow Subscriber's name and logo to be posted on PivotLink's web site and in marketing and advertising materials, subject to compliance with Subscriber's brand guidelines or other specifications regarding logo usage.

9.5 Nonsolicitation. During the term of this Agreement and for a period of one year thereafter, Subscriber will not, directly or indirectly, employ or solicit the employment or services of a PivotLink employee or independent contractor without the prior written consent of PivotLink.

9.6 Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the address set forth on the Sales Order and with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier.

9.7 Force Majeure. PivotLink will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond PivotLink's reasonable control, so long as PivotLink uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

9.8 Governing Law. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Washington, U.S.A., without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in King County, Washington, in connection with any action arising out of or in connection with this Agreement.

9.9 Commencing Legal Action. An action for breach of this Agreement or any other action otherwise arising out of this Agreement must be commenced within one year from the date the right, claim, demand, or cause of action first occurs or be barred forever.

9.10 Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

9.11 Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. If any material limitation or restriction on the use of the Services under this Agreement is found to be illegal, unenforceable, or invalid, Subscriber's right to use the Services will immediately terminate.

9.12 Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts will be construed as and constitute the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery will have the same force and effect of an original document with original signatures.

9.13 Entire Agreement. This Agreement, including all exhibits, is the final and complete expression of the agreement between these parties regarding the licensing of the Services. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. No employee, agent, or other representative of PivotLink has any authority to bind PivotLink with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought. PivotLink will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this

Agreement (whether or not it would materially alter this Agreement) that is proffered by Subscriber in any receipt, acceptance, confirmation, correspondence, or otherwise, unless PivotLink specifically agrees to such provision in writing and signed by an authorized agent of PivotLink.