

PIVOTAL SYSTEMS CORPORATION

ELEVENTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Pivotal Systems Corporation, a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**DGCL**”), does hereby certify as follows:

- A. The name of this corporation is Pivotal Systems Corporation. This corporation was originally incorporated pursuant to the DGCL on October 28, 2003 under the name Pivotal Systems Corporation.
- B. The Board of Directors (the “**Board**”) of this corporation duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation to read as set forth on Exhibit A attached hereto, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor.
- C. This Eleventh Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the DGCL.
- D. This Eleventh Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation’s Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the DGCL.

IN WITNESS WHEREOF, this Eleventh Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation’s Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the DGCL.

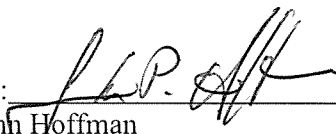
By: 
John Hoffman
Chief Executive Officer

EXHIBIT A

PIVOTAL SYSTEMS CORPORATION

**ELEVENTH AMENDED AND RESTATED CERTIFICATE OF
INCORPORATION**

ARTICLE I: NAME.

The name of this corporation is Pivotal Systems Corporation (the “*Corporation*”).

ARTICLE II: REGISTERED OFFICE.

The address of the registered office of the Corporation in the State of Delaware is 3500 South Dupont Highway, City of Dover, County of Kent, Delaware 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III: PURPOSE.

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as the same may be amended and supplemented from time to time (the “*DGCL*”).

ARTICLE IV: AUTHORIZED SHARES.

The Corporation is authorized to issue two classes of stock, one of which shall be designated Common Stock (“*Common Stock*”) and one of which shall be designated Common Prime Stock (“*Common Prime Stock*”). The total number of shares of all classes of stock which the Corporation shall have authority to issue is (a) 250,000,000 shares of Common Stock, \$0.00001 par value per share (including each previously authorized share of Class B Common Stock, which is, as of the date of filing of this Certificate of Incorporation, deemed one share of Common Stock), and (b) 120,000,000 shares of Common Prime Stock, \$0.00001 par value per share.

The following is a statement of the designations and the rights, powers, preferences and privileges, and the qualifications, limitations or restrictions thereof, in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. **Voting.** The holders of Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings), and shall be entitled to notice of any stockholders’ meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes

represented by all outstanding shares of Common Stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

2. Dividend Rights. The holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board, out of any assets of this corporation legally available therefor, any dividends as may be declared from time to time by the Board.

3. Redemption. The Common Stock is not redeemable.

4. Liquidation Rights. In the event of any liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction (as defined below), the assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Common Stock and Common Prime Stock pro rata based on the number of shares of Common Stock or Common Prime Stock held by each. For purposes of this Section 4, a "Liquidation Transaction" shall be deemed to occur if the Corporation shall (a) sell, convey, exclusively license or otherwise dispose of all or substantially all of its assets, property or business, (b) merge with or into or consolidate with any other corporation, limited liability company or other entity (other than a wholly-owned subsidiary of the Corporation), or (c) effect a liquidation, dissolution or winding up of the Corporation pursuant to the applicable provisions of Section 275 of the DGCL; provided, however that none of the following shall be considered a Liquidation Transaction: (i) a merger effected exclusively for the purpose of changing the domicile of the Corporation, (ii) a bona fide equity financing in which the Corporation is the surviving corporation or (iii) a transaction in which the stockholders of the Corporation immediately prior to the transaction have sufficient rights (by law or contract) to elect or designate 50% or more of the directors of the surviving or acquiring entity following the transaction (as appropriately adjusted for any disparate director voting rights). Nothing in this Section 4 shall require the distribution to stockholders of anything other than proceeds of such transaction in the event of a merger or consolidation of the Corporation.

B. COMMON PRIME STOCK

1. Voting Rights. Except as otherwise required by law, the holders of Common Prime Stock shall not be entitled to any voting rights or powers. The number of authorized shares of Common Prime Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

2. Dividend Rights. The holders of Common Prime Stock shall not be entitled to share in any dividends or other distributions of cash, property or shares of the Corporation as may be declared by the Board on the Common Stock.

3. Redemption. The Common Prime Stock is not redeemable.

4. Liquidation Rights. In the event of any liquidation, dissolution or winding

up of the Corporation, or the occurrence of a Deemed Liquidation Event, the assets of the Corporation shall be distributed as provided in Article IV(A)(4) above.

5. If the Corporation shall in any manner split, subdivide, or combine the outstanding shares of Common Stock, the outstanding shares of Common Prime Stock shall be proportionately split, subdivided, or combined in the same manner and on the same basis.

6. In the event of any merger or consolidation to which the Corporation is a party (whether or not the Corporation is a surviving entity), the holders of Common Prime Stock shall be entitled to receive, on a per-share basis, the same amount and form of stock and other securities, property, and cash as the holders of Common Stock.

ARTICLE V: CONVERSION OF COMMON STOCK

1. **Mandatory Conversion.** In connection with the Corporation's initial public offering (the "***Offering***") of CHES Depository Interests ("***CDIs***") (with each CDI representing an interest in one share of Common Stock), certain stockholders entered into an escrow agreement (each an "***Escrow Agreement***") with the Corporation under which the stockholder agreed, among other things, to certain restrictions and prohibitions from engaging in transactions in the shares of Common Stock (including Common Stock in the form of CDIs) held or acquired by the stockholder (including shares of Common Stock that may be acquired upon exercise of a stock option, warrant or other right) or shares of Common Stock which attach to or arise from such Common Stock (collectively, the "***Restricted Securities***") for a period of time identified in the Escrow Agreement (the "***Lock-up Period***"). The Restricted Securities shall automatically and without further action be converted into shares of Common Prime Stock, on a one-for-one basis, if the Corporation determines, in its sole discretion, that the stockholder breached or violated any term of such stockholder's Escrow Agreement, or breached the Official Listing Rules of the Australian Securities Exchange relating to the Restricted Securities (the "***Listing Rules***"). Any shares of Common Stock converted to Common Prime Stock pursuant to this Article V shall automatically and without further action be converted back into shares of Common Stock, on a one-for-one basis, upon the earlier to occur of (i) the expiration of the Lock-Up Period in the applicable Escrow Agreement pursuant to which the shares of Common Stock were originally converted to Common Prime Stock or (ii) the breach of the Listing Rules being remedied, as applicable.

ARTICLE VI: AMENDMENTS TO BYLAWS.

In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

ARTICLE VII: NUMBER OF DIRECTORS.

The number of directors which shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws of the Corporation.

ARTICLE VIII: CLASSIFIED BOARD.

The directors shall be divided, with respect to the time for which they severally hold office, into three classes designated as Class I, Class II and Class III, respectively (the “*Classified Board*”). The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes of the Classified Board, which assignments shall become effective at the same time the Classified Board becomes effective. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board, with the number of directors in each class to be divided as nearly equal as reasonably possible. The initial term of office of the Class I directors shall expire at the Corporation’s first annual meeting of stockholders following the closing of the Offering (the “*Offering Closing*”), the initial term of office of the Class II directors shall expire at the Corporation’s second annual meeting of stockholders following the Offering Closing, and the initial term of office of the Class III directors shall expire at the Corporation’s third annual meeting of stockholders following the Offering Closing. At each annual meeting of stockholders following the Offering Closing, directors elected to succeed those directors of the class whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. In the event of any increase or decrease in the authorized number of directors (a) each director then serving as such shall nevertheless continue as a director of the class of which he or she is a member and (b) the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board among the three classes of directors so as to ensure that no one class has more than one director more than any other class.

ARTICLE IX: TERM AND REMOVAL.

Each director shall hold office until the annual meeting at which such director’s term expires and until such director’s successor is elected and qualified, or until such director’s earlier death, resignation, disqualification or removal. Any director may resign at any time upon notice to the Corporation given in writing or by any electronic transmission permitted by the Bylaws. No director may be removed from the Board except for cause and only by the affirmative vote of the holders of at least two-thirds (2/3) of the voting power of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. In the event of any increase or decrease in the authorized number of directors, (a) each director then serving as such shall nevertheless continue as a director of the class of which he or she is a member and (b) the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board among the classes of directors so as to ensure that no one class has more than one director more than any other class. To the extent possible, consistent with the foregoing rule, any newly created directorships shall be added to those classes whose terms of office are to expire at the latest dates following such allocation, and any newly eliminated directorships shall be subtracted from those classes whose terms of office are to expire at the earliest dates following such allocation, unless otherwise provided from time to time by resolution adopted by the Board. No decrease in the authorized number of directors constituting the Board shall shorten the term of any incumbent director.

ARTICLE X: VACANCIES AND NEWLY CREATED DIRECTORSHIPS.

Any vacancy occurring in the Board for any cause, and any newly created directorship resulting from any increase in the authorized number of directors, shall, unless (a) the Board determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders or (b) as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which the director has been assigned expires or until such director's successor shall have been duly elected and qualified.

ARTICLE XI: BALLOT.

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE XII: MEETINGS AND BOOKS.

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the Corporation.

ARTICLE XIII: DIRECTOR LIABILITY.

1. Indemnification of Directors. To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL or any other law of the State of Delaware is amended after approval by the stockholders of this ARTICLE XIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

2. Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "***Indemnified Person***") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***Proceeding***"), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Indemnified Person in such Proceeding.

3. Prepayment of Expenses of Directors and Officers. The Corporation shall pay the

expenses (including attorneys' fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition; *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this ARTICLE XIII or otherwise.

4. Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this ARTICLE XIII is not paid in full within thirty (30) days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

5. Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board.

6. Advancement of Expenses of Employees and Agents. The Corporation may pay the expenses (including attorneys' fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board; *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the employee or agent to repay all amounts advanced if it should be ultimately determined that the employee or agent is not entitled to be indemnified under this ARTICLE XIII or otherwise.

7. Non-Exclusivity of Rights. The rights conferred on any person by this ARTICLE XIII shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of this Eleventh Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, agreement, vote of stockholders or disinterested directors or otherwise.

8. Insurance. The Board may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer

or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this ARTICLE XIII; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this ARTICLE XIII.

9. Repeal or Modification. Any repeal or modification of this ARTICLE XIII shall not adversely affect any right or protection hereunder of any person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such person occurring prior to, such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person's heirs, executors and administrators.

ARTICLE XIV: FORUM SELECTION.

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any stockholder, director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (c) any action or proceeding asserting a claim against the Corporation arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or Bylaws, or (d) any action or proceeding asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

ARTICLE XV: CONFLICTS OF INTEREST.

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "*Excluded Opportunity*" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries (collectively, "*Covered Persons*"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly in connection with such Covered Person's capacity as a director of the Corporation.