

Non-Disclosure Agreement

THIS AGREEMENT is made as of the 28 of September, 2004 by and between Telco Solutions III, LLC, a corporation organized under the laws of \_\_\_\_\_ (“TELCO”), and Comverge, Inc., a corporation organized under the laws of Delaware (“COMVERGE”), collectively referred to as “Parties”.

WHEREAS, COMVERGE and TELCO have entered into an agreement whereby Telco will supply certain products to Comverge (the “Supply Agreement”); and

WHEREAS, the Parties and their affiliates will provide confidential and proprietary information and materials to each other which the Parties seek to keep confidential.

NOW THEREFORE, the Parties agree as follows:

1. Project Defined. The Parties may be receiving from each other information of a non-public nature for use by the Parties in the course of carrying out their respective duties under the Supply Agreement relating to the manufacture, assemble, test and supply certain products for Comverge (the “Project”).

2. Confidential Information Defined. The Parties acknowledge that, in the course of the Project, each of the Parties will receive certain non-public and confidential information, from or about each other, including but not limited to technical, financial and business information and models, names of existing or potential suppliers, customers or partners, proposed business deals, reports, plans, market projections, products, services, software programs, data or any other confidential and proprietary information relating to the Project. All such technical, financial or other business information supplied by either of the Parties or their representatives is hereinafter called the “Confidential Information” provided that it is identified and clearly marked as such. The term “Confidential Information” as used herein also includes the Project itself and any information, work papers, analyses, compilations, projections, studies, documents, terms, conditions, correspondence, facts or other materials derived or produced by either of the Parties or their representatives for each other which contain or otherwise reflect confidential or proprietary information provided by either of the Parties in connection with the Project provided that all such information is identified and clearly marked “Confidential”. Any Confidential Information supplied in connection with the Project by either of the Parties prior to the execution of this Agreement shall be considered in the same manner and be subject to the same treatment as the Confidential Information made available hereunder after the execution of this Agreement.

3. Exclusions from Definition. The term “Confidential Information” as used herein does not include any data or information which: (a) is already known to the receiving party on a nonproprietary basis at the time it is disclosed to the receiving party; (b) is or becomes generally known to the public through no wrongful act of the receiving party or its representatives; (c) has been rightfully received by the receiving party from a third party without restriction on disclosure and without a breach of an obligation of confidentiality running directly to the providing party; or (d) has been approved for release by written authorization by the originating party.

4. Non-disclosure Obligation. The receiving party shall keep the Confidential Information confidential and shall not disclose such Confidential Information, in whole or in part, to any person other than its agents, representatives and employees who need to know such Confidential Information in connection with the receiving party’s performance of services in connection with the Project, except with the prior written consent of the originating party or as otherwise permitted hereunder. The Confidential Information shall be used by the receiving party solely for the purpose of performing services in connection with the Project, and shall not be

otherwise used without the originating party's prior written consent. The receiving party agrees that it may disclose the Confidential Information only to those of their agents and representatives who have been identified to the originating party in writing and whom the originating party has agreed in writing need to know the Confidential Information for the purpose of assisting the Parties in connection with the Project. Prior to disseminating any of the Confidential Information to any agent and/or representative permitted herein, the receiving party shall advise recipients of such information of its confidential nature, and shall require such agent and/or representative to agree, in writing, to maintain the confidentiality of the Confidential Information and to be bound by all the terms, conditions and restrictions of this Agreement. The Parties may add agents and/or representatives to the list previously identified herein by giving each other prior written notice and by complying with the remaining provisions of this Paragraph 4. The Confidential Information shall be used by the receiving party solely in connection with the Project, and shall not be otherwise used by the receiving party for its own benefit or for any purpose detrimental to the interest of the originating party.

5. Standard of Protection. For the purpose of complying with the obligations set forth herein, the receiving party shall use a high standard of care, no less than efforts commensurate with those that it employs for the protection of its own confidential and sensitive information.

6. Compliance with Legal Process. In the event that the receiving party is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process or, in the opinion of counsel for the receiving party, by applicable statutes, regulations or laws) to disclose any Confidential Information, the receiving party shall promptly notify the originating party of such request or requirement prior to disclosure so that the originating party may seek an appropriate protective order and/or waive compliance with the terms of this Agreement.

7. Ownership; Return of Information. Except as otherwise set forth in the Supply Agreement, all Confidential Information (including tangible copies and computerized or electronic versions thereof and also all Confidential Information contained in all deliverables and work papers), including all intellectual property rights pertaining thereto, shall be the property of the originating party. No later than ten (10) days following the receipt of a written request from the originating party, the receiving party shall deliver to the originating party all Confidential Information, together with a certificate executed by the agent and/or representative or principal of the receiving party certifying that all such materials in the receiving party possession or control have been delivered to the originating party or destroyed. The receiving party shall not directly or indirectly assert any right with respect to any of the Confidential Information that may impair or be adverse to the originating party's ownership thereof.

8. Remedies for Breach. The Parties understand and agree that money damages may not be a sufficient remedy for any breach of this Agreement and that the originating party shall be entitled, without posting bond or other security, to seek injunctive or other equitable relief to remedy or forestall any such breach or threatened breach. Such remedy shall not be deemed to be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

9. Term, Termination. This Agreement shall be in effect as of the date first set forth above, and shall continue in full force and effect for and during the term of the Agreement. However, the obligations of the receiving party to maintain the confidentiality of the Confidential Information it has received under this Agreement and its restriction on the use of such Confidential Information shall continue for a period of five years after the expiration or termination of the Supply Agreement Notwithstanding the previous sentence, Confidential Information relating to TELCO's customer information shall be subject to a perpetual obligation of confidentiality.

10. No Waiver. No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

11. Amendment. This Agreement may not be modified, supplemented or amended orally, but only by a written document signed by both Parties hereto.

12 Applicability to Affiliated Parties. Any information disclosed to the receiving party by any of the originating party's affiliates or by any company, person or other entity participating with the originating party, in any consortium, partnership, joint venture or similar business combination in direct connection with the Project, which would otherwise constitute Confidential Information hereunder if disclosed by the originating party, shall be deemed to constitute Confidential Information under this Agreement, and the rights of the originating party under this Agreement may be enforced by any such affiliate or other entity in addition to the originating party with respect to any violation relating to such Confidential Information disclosed by such affiliate or other entity, as if such entity were also a party to this Agreement. For purposes of this agreement, an "affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such entity.

13. Attorneys' Fees. Should the originating party or any beneficiary of this Agreement find it necessary to employ legal counsel and bring an action at law or in equity to enforce any of the terms or conditions of this Agreement caused by the breach or default by the receiving party, and prevails in such action, the receiving party shall reimburse the impaired party or any such beneficiary for all reasonable attorneys' fees and costs incurred pursuing such proceeding.

14. Governing Law. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties have executed and delivered this Non-Disclosure Agreement effective as of the date first above written.

**Comverge, Inc.**

**Telco Solutions III, LLC**

By: /s/ Wayne Wren  
Name: Wayne Wren  
Title: EVP

By: /s/ Timothy J. Knox  
Name: Timothy J. Knox  
Title: President & CEO

Date: 9.28.04

Date: September 29, 2004