Master Services Agreement

This Master Services Agreement, (“**Agreement**” or "**MSA**") is entered into as of **■, 202■** (the **"Effective Date"**) by and between **[INSERT COMPANY’S FULL LEGAL NAME- *INCLUDING THE LEGAL ENDING – INC., LTD., CORPORATION ETC.]* (“Customer”)** a [***insert jurisdiction of incorporation, e.g. “Delaware”***] company with its principal place of business at **[ADDRESS]**, and **Pythian** (as defined in section 1.1 below). This MSA governs (a) each party's rights and obligations relating to Pythian's provision of services to Customer (the “**Services**”) described in each Statement of Work (each, including all attachments thereto, a "**SOW**") entered into hereunder

1. **SERVICES; Statement of Work**
   1. Pythian Entity party to this MSA. **“Pythian”** in this MSA means:

**a.** **Pythian Services USA Inc.,** a Delaware company with a place of business at 106 W 32nd St., Suite 168, New York, NY 10001, if Customer is located in the United States of America; or

**b.** **Pythian Services Inc.,** a British Columbia company with a principal place of business at 319 McRae Ave., Suite 700, Ottawa, Ontario, Canada K1Z 0B9, if Customer is located anywhere in the world **except for the United States of America and Australia.**

* 1. Execution of SOW. The parties intend that all Services provided by Pythian to Customer hereunder be implemented through mutually agreed upon SOWs duly executed by authorized representatives of each party, which SOW(s) will be deemed to incorporate the terms and conditions of this MSA. In the event of a conflict between the terms of this MSA and the terms of any SOW, the terms of this MSA will control; provided, however, that the parties may in any SOW specifically (*i.e.* with reference to this MSA) agree to: (a) exclude or except an otherwise controlling provision of this MSA; or (b) adopt a clause or provision to apply in lieu of an otherwise controlling provision of this MSA.
  2. Content of SOW. Each individual SOW will reference this MSA and contain such additional information and provisions as the parties deem necessary, including a description of the Services to be provided under the SOW and, as appropriate, names, addresses, e-mail addresses, telephone and fax numbers of the parties' project managers; a description of the parties' responsibilities; and description of payments, including amount, method of calculation, schedule of payments, and address to which such payments are to be made.
  3. Fundamental Assumptions in SOW. The description of the Services in each SOW, including, without limitation, the estimates of hours of work, the schedule, and the compensation amount set forth therein, will be based upon information Customer provides to Pythian and upon any assumptions set forth in the SOW. Customer acknowledges that if the information provided by Customer is materially incomplete or incorrect, or if the stated assumptions are materially incorrect, then the parties may modify the SOW pursuant to subsection 1.4, below. Alternatively, if the parties are unable to agree on such a modification, then either party may terminate the SOW with 30 days’ written notice.
  4. Changes to SOW. Either party may, at any time, request changes within any particular SOW (**“Change Request”**) in accordance with the change request process contemplated in the applicable SOW. Any requested change or adjustment to the SOW must be agreed to in writing by both parties via a formal amendment or a Change Request signed by both parties, as applicable (“**SOW Amendment**”). Pythian will continue performing the Services in accordance with the applicable SOW until the parties agree in writing on any SOW Amendment.
  5. Pythian Personnel. In the performance of Services under any SOW, Pythian may use any of **“Pythian Personnel”,** which includes (a) employees of Pythian, (b) individuals under a contract of service and who are subject to the same policies, procedures and supervision as the employees of Pythian (**“In-House Contractors”**) and (c) employees and In-House Contractors of Pythian’s Affiliates. For the purposes of this Agreement, **“Affiliate”** of a party means any corporation, partnership or legal entity that controls, is controlled by, or is under common control with, such party.
  6. Support Software Tools. In the performance of the Services, Pythian may use various support and remote assist tools (all such tools and each of their respective enhancements, modifications, derivative works, copies and/or translations, “**Support Software Tools**”), as may be appropriate to the Services set out in the SOW. The Support Software Tools are used for analyzing, diagnosing, resolving and documenting problems and/or providing system optimization functions, and may record or generate work logs and work reports. The Support Software Tools are owned by and will remain at all times the sole property of Pythian or its third party licensors and suppliers. Except as may be authorized by Pythian, Customer will not receive access to, use, copy, modify, or reverse engineer the Support Software Tools. The Support Software Tools include, but are not limited to, Pythian’s proprietary or third party web-based applications to document Customer’s requests for Services, and track time and work performed by Pythian in response to such requests (Customer Portal), and Pythian’s monitoring software to perform health checks on Customer’s computer systems and receive alerts of any critical performance issues detected (Avail). Pythian may install Avail on Customer’s computer systems if required for the Services, and will remove Avail upon termination of this Agreement or when no longer needed for the Services.
  7. Remote Connectivity. In order to deliver Services remotely, Pythian requires a secure method of connectivity. Customer may elect in the applicable SOW whether it will provide its own method of connectivity (**“Customer-provided Connection”**) or use a connectivity method offered or suggested by Pythian (**“Third Party Connection”**). Pythian is not responsible for the security of any method of connectivity, whether it is the Customer-provided Connection or a Third-Party Connection. A Third Party Connection may be subject to separate terms and conditions from the third party provider.
  8. Security of the Services. Taking into account the nature of Pythian Services and Pythian’s remote service delivery model, Pythian has implemented appropriate technical, organizational and administrative security safeguards reasonably designed, in accordance with industry standards, to prevent unauthorized access to Customer Systems (**“Pythian Security Program”**). Pythian will notify Customer without undue delay if it becomes aware of any breach to Pythian Security Program that has a material adverse impact on the security and integrity of Customer Systems, or the data stored in such systems (**“Security Breach”**). Pythian will produce an incident report detailing the timeline and scope of the Security Breach, including a root cause analysis, and recommended corrective actions to prevent similar incidents from reoccurring in the future. For greater certainty, a Security Breach does not include security incidents in the nature of pings and other broadcast attacks on Pythian’s firewall, port scans, unsuccessful log-on attempts, denials of service attacks and any combination of the above, so long as no such incident results in a successful compromise of the security and integrity of the Customer Systems.

1. **COMPENSATION & PAYMENT TERMS.**
   1. Compensation for Services; Expenses. Customer will pay to Pythian all the amounts specified in the relevant SOW, including, without limitation, compensation for Services. Additionally, Customer will reimburse Pythian for all expenses incurred in the performance of the Services, provided they are pre-approved in writing by Customer.
   2. Invoices. Pythian will invoice Customer in accordance with the payment schedule set forth in the relevant SOW or, if a SOW does not specify a payment schedule, Pythian will invoice Customer on a monthly basis. Unless otherwise specified in the SOW, all payments will be due 30 days after receipt of invoice. The provision of the Services to Customer is subject to Customer’s payment of all invoiced amounts when due. In addition, except for amounts disputed by Customer in good faith as set out below, if any payment is not made when due, Pythian will be entitled on 5 days' notice to suspend the performance of the Services and, at its option, to terminate the relevant SOW in accordance with its terms. All monetary amounts will be due in the currency specified in the SOW, or if not so specified, in $US. Should Customer, in good faith, dispute any of the charges set out on an invoice, it will notify Pythian in writing within 30 days of its receipt of such an invoice. Customer’s notice will set out in sufficient detail the basis for its dispute. Pythian will have 30 days from the date of such a notice of dispute to reply. Customer will be obligated to pay all amounts not in dispute.

**2.3** Taxes. All payments under this Agreement and any SOW are exclusive of, and Customer is liable for, any and all goods and services, harmonized sale, sales, service, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by any federal, provincial/state, territorial or local government entity or regulatory entity on any amounts payable by Customer under this Agreement; provided that in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Pythian’s income, revenues, personnel or real or personal property or assets.

1. **CUSTOMER OBLIGATIONS.**
   1. Customer Cooperation. Customer agrees that it will cooperate with and assist Pythian in the performance of the Services, and will make available the resources necessary for Pythian's performance hereunder as specified in the relevant SOW or as otherwise required by the nature of the Services set out in the SOW.
   2. Protection of Customer System. In no event shall Pythian be responsible for backing up Customer’s computer system, programs, data and files (**“Customer Systems”**). Customer shall be responsible for backing up its Customer Systems and maintaining appropriate backup processes as well as for taking such other measures and actions as may be necessary or appropriate to protect Customer Systems, including, without limitation, installing up-to-date anti-virus software.
   3. Safe Work Environment. If and while any personnel, agents or subcontractors of Pythian are on the Customer’s premises (“**On-site Representatives**”), Customer will be responsible to ensure that those health and safety precautions required by law and in accordance with good industry practice are in place and fully operational to protect such persons.
2. **IP RIGHTS.**
   1. Pythian Properties. Customer acknowledges that in the course of providing the Services, Pythian may use and develop its Support Software Tools, as well as certain expertise, know-how, skills, ideas, designs, methodologies, techniques, software, software libraries, tools, scripts, algorithms, solutions, materials, and products, and may provide to Customer reports, recommendations, or other written documents based on or incorporating the foregoing (collectively and together with all intellectual property rights therein, “**Pythian Properties**”). Nothing in this Agreement or any SOW will restrict or limit Pythian from exploiting or otherwise using the Pythian Properties in any manner whatsoever. Pythian hereby grants to Customer a perpetual, world-wide, royalty-free, non-exclusive, non-transferable, license to use the Pythian Properties (with the exception of the Support Software Tools, which may only be used during the term of the applicable SOW as authorized by Pythian) solely for the purpose of and to the extent required to enable Customer to obtain the benefit of the Services in accordance with the applicable SOW and to exercise its rights in any Custom Works and Customer Properties (defined below) in which the Pythian Properties have been incorporated. The license granted to Customer hereunder shall be irrevocable so long as Customer is not in default under this Agreement or any SOW.
   2. Custom Works. In the event that Customer specifically commissions Pythian in a SOW to create any original software program, data model, or other specific tangible work (together with all intellectual property rights therein, a “**Custom Work**”), such Custom Work will be identified in the applicable SOW and shall be deemed excluded from the definition of Pythian Properties above. Customer will be the exclusive owner of such Custom Work; to the extent applicable, Custom Work will be considered a work made for hire for Customer within the meaning of Title 17 of the United States Code, and Pythian hereby assigns any ownership rights it may have in any Custom Works to Customer, effective immediately upon Customer’s payment for same in accordance with the applicable SOW.
   3. Pythian acknowledges that in the course of providing the Services, Pythian may have access to systems, databases, software, software libraries, tools, algorithms, materials, products, documents, and other works (including all intellectual property rights thereto) that are owned by Customer, or licensed to Customer from third parties (“**Customer Background Properties**”). Except as may be necessary to provide the Services, Pythian shall not have any rights in or to the Customer Background Properties. In addition, Customer is and will be the exclusive owner of any improved or modified versions, and of derivative works, of Customer Background Properties that are made by Pythian in the performance of the Services (collectively with the Customer Background Properties, “**Customer Properties**”).
3. **INDEMNIFICATION**.
   1. General Indemnification.Each party (**“Indemnitor”**) agrees to defend the other party (**“Indemnitee”**) against any third party claim (a **“Claim”**) and pay any damages finally awarded to such third party by a court of competent jurisdiction, and any costs of a settlement to which the Indemnitee expressly agrees in writing, arising out of the negligence or wilful misconduct of Indemnitor, its employees, agents or contractors resulting in bodily injury or death.
   2. IP Indemnification.

**5.2.1** Subject always to the limitations in this MSA, Pythian agrees to defend, at its cost, Customer against any third party claim that any Custom Work supplied by Pythian under this MSA infringes any intellectual property right of any third party (**“IP Claim”**) and to pay any damages finally awarded to such third party against Customer by a court of competent jurisdiction, and any costs of a settlement to which Pythian expressly agrees in writing.

**5.2.2** Should any Custom Work provided by Pythian under this MSA become, or in Pythian's opinion is likely to become, the subject of a claim of infringement of any copyright or patent, Pythian will, at its option and expense, either procure for Customer the right to continue using the Custom Work, replace or modify the Custom Work so that it becomes non-infringing (while substantially preserving its utility or functionality), or grant Customer a refund of the amounts paid by Customer under this MSA for the Custom Work and accept its return.

**5.2.3** Notwithstanding the foregoing, Pythian will have no obligation under this section 5 to the extent that the claimed infringement is caused by (a) an alteration, modification or combination (by Customer or by a third party not hired or retained by Pythian) of the Custom Work with third party products or services; (b) Customer’s continued use of the Custom Work after having been notified by Pythian to discontinue its use due to an actual or threatened claim of infringement, or (c) such infringement is the result of information, data, or intellectual property provided by Customer to Pythian.

**5.3** Conditions. The defence and indemnification obligations under sections 5.1 and 5.2 above will not arise unless: (a) Customer promptly notifies Pythian in writing of the initial Claim or IP Claim; and (b) Pythian will have the sole control of the defence of any action and all negotiations for settlement and compromise.

**5.4** The provisions of this section 5 represent Pythian’s exclusive liability and Customer's exclusive remedies with respect to any Claim, including any IP Claim.

1. **LIMITED WARRANTY.**
   1. Warranty for Services. Pythian warrants that the Services will be done in a workmanlike manner and using the degree of skill, care, prudence and foresight and operating practice that would reasonably and ordinarily be expected from time to time of a skilled and experienced provider of services similar to those provided by Pythian pursuant to this MSA under the same or similar circumstances (the “**Standards**”) and any Custom Works will materially conform to the specifications agreed upon in the relevant SOW (the “**Specifications**”). In the event of any non-conformity with the applicable Standards or Specifications, Customer must notify Pythian in writing within 30 days following delivery of the non-conforming Services or Custom Works, as applicable, and Pythian will use reasonable commercial efforts to bring the Services or Custom Works into conformity with the Standards or Specifications. If Pythian is unable to do so within a reasonable period of time, Customer’s sole and entire remedy for such failure, is termination of the relevant SOW in exchange for a refund of the amount paid by Customer to Pythian for the non-conforming Services or Custom Works. This warranty specifically excludes non-performance issues caused by a malfunction of or defect in Customer or third party hardware or firmware, or by incorrect data or incorrect procedures used or provided by Customer or a third party. With respect to Custom Work, this warranty will immediately cease if Customer or any third party modifies any portion of a Custom Work, and/or modifies any Customer system or assets so that a Custom Work is no longer functional or appropriate.
   2. **Disclaimer of warranties.** **Except as expressly set forth in this section 6, Pythian makes no warranty or representations regarding any software, deliverables (including any Custom Work), information or Services provided under this MSA. Except as expressly set forth in this section 6, Pythian disclaims and excludes any and all other express, implied and statutory warranties, including, without limitation, warranties of good title, warranties against infringement, and the implied warranties of merchantability and fitness for a particular purpose. Pythian does not warrant that any software, deliverables (including Custom Works), information or Services provided will satisfy Customer's requirements or are without defect or error or that the operation of any software provided under this MSA will be uninterrupted. Pythian does not assume any liability with respect to any third party hardware, firmware, software or services.**
2. **LIMITATION OF LIABILITY.**
   1. **To the extent allowed by applicable law, neither party nor its Affiliates and their respective directors, officers, personnel and subcontractors will be liable to the other** **for damages in the nature of expectation losses, indirect, special, reliance, incidental or consequential losses, or any loss of business profits, loss of data or other expected benefit or losses of any kind of any third party.**
   2. **Notwithstanding any other provision contained herein or in any applicable SOW or elsewhere, the total aggregate liability of** **Pythian, its Affiliates, their respective directors and officers, and Pythian Personnel and subcontractors for any reason and upon any cause of action, whether in tort (including negligence), contract, or any other legal theory (“Pythian’s Total Aggregate Liability”), will at all times be limited to the fees actually paid by Customer to Pythian for Services under the applicable SOW(s) in the 12 months preceding the incident giving rise to a claim.**
   3. **Nothing in this Agreement is intended to exclude or limit in any way the liability of a party for its negligence or willful misconduct resulting in bodily injury or death.**
   4. **Multiple claims will not expand these limitations.**
   5. **Each party acknowledges that the other has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties set forth herein and that the same form an essential basis of the bargain between the parties.**
   6. **This section 7 will be given full effect even if any remedy specified in this Agreement is deemed to have failed in its essential purpose.**
3. **CONFIDENTIAL INFORMATION.**
   1. Pythian and Customer acknowledge that Confidential Information may be disclosed to each other throughout the term of this MSA. For purposes of this MSA, and except as otherwise expressly provided in this MSA, **"Confidential Information"** means all non-public business, technical and financial information of the parties, and all other information clearly marked "confidential," or if disclosed orally, all information that is designated orally as "confidential," or is otherwise treated as confidential, at the time of disclosure or within a reasonable period of time thereafter. For purposes of this section 8, **"Discloser"** means the party disclosing Confidential Information, and **"Recipient"** means the party receiving the Discloser's Confidential Information.
   2. The Recipient agrees that it will hold in confidence the Confidential Information disclosed by the Discloser. The Recipient will exercise reasonable care to protect the Discloser’s Confidential Information from unauthorized disclosure, which standard of care will in no event be less than the Recipient takes to protect its own Confidential Information of a like nature. The Recipient may disclose Confidential Information only to its employees, contractors or agents (**“Recipient Representatives”**) who need to know such information for purposes of this MSA, and will inform such Recipient Representatives, by way of policy and agreement, that they are bound by obligations of confidentiality in this Agreement.
   3. The Recipient's duty to hold Confidential Information in confidence expires five years after the date of disclosure. The expiration of the duty of confidentiality will not modify other restrictions on the Recipient, including, for example, any restrictions under patent or copyright laws.
   4. Confidential Information will not include information that:
      1. was rightfully in the Recipient's possession before receipt from the Discloser;
      2. is or becomes a matter of public knowledge through no wrongful act of the Recipient;
      3. is disclosed by the Discloser to a third party without a duty of confidentiality on the third party; or
      4. is independently developed by the Recipient.
   5. The Recipient is permitted to disclose Confidential Information under operation of law or court order, provided that before disclosing any Confidential Information under a court order or operation of law, the Recipient will provide the Discloser, where practicable and permitted by law, reasonable notice of such order or law as to provide the Discloser an opportunity to object to or limit such disclosure.
   6. At any time upon written request from the Discloser, the Recipient will destroy or return, at Discloser’s option, any Confidential Information of the Discloser in the Recipient’s possession.
4. **TERM AND TERMINATION.**
   1. Term. This MSA will become effective upon the Effective Date and will continue in force for a term of five years (the “**Initial** **Term**”) and will automatically renew for additional one-year periods (**“Renewal Term(s)”**), provided either party may terminate the MSA prior to the expiration of the Initial Term or any Renewal Term in accordance with one of the following provisions.
   2. Termination for Convenience. The Customer or Pythian may terminate this MSA for any or no reason, upon prior written notice, with the effective date of termination being:

**a.** 30 days following receipt of the notice, if there are no SOWs in effect at the time of receipt of the notice; or

**b.** on the effective date of termination of the SOW as determined in accordance with the termination for convenience provisions of the SOW; provided, however, that if there are multiple SOWs in effect, the termination of the MSA will be effective on the effective date of termination of the last of the SOWs.

**9.3** Termination for Cause. Either party may terminate this MSA effective upon written notice to the other party (the **“Defaulting Party”**) if the Defaulting Party materially breaches any term or condition under this MSA or any SOW and such breach is incapable of cure, or if being capable of cure the Defaulting Party does not cure, or commences to cure (if a cure cannot be performed within the time period set forth below) within 10 business days after receipt of written notice.

**9.4** Consequences of Expiration or Termination.

**9.4.1** Consequences of Expiration. Upon expiration of this MSA, all SOWs then in effect hereunder will continue in accordance with their terms, in which case this MSA will continue in effect with respect to such pending SOWs until completion or express termination of such SOWs.

**9.4.2** Consequences of Termination.

**a.** Termination Payment. If a SOW is, or a SOW and this MSA are, terminated, Customer will pay Pythian the amounts specified in the applicable SOW for the Services performed by Pythian prior to and including the date of termination, as well as any pre-approved expenses that Pythian has incurred or contracted for with respect to the Services and is unable to avoid. Subject to payment, Customer may keep any incomplete Custom Works; however, they will be deemed to have been provided on an “as is” basis, and section 6 (Limited Warranty) will not apply to them. In the event Customer fails to timely make the payment(s) due under this subsection and such failure continues for a period of 10 days after notice from Pythian to Customer, then Customer's license to use Pythian Properties, including those incorporated in any Custom Work, shall terminate.

**b.** Survival of Obligations. Termination of this MSA and/or any SOW will not discharge or otherwise affect any pre-termination obligations of either party existing under the MSA or such SOW at the time of termination.

**10 GENERAL PROVISIONS.**

* 1. **High Risk Activities. Customer acknowledges that the Services (including Custom Works) are not intended for configuring, supporting or otherwise servicing on-line control equipment in hazardous environments requiring fail-safe performance, such as, but not limited to, nuclear facilities, aircraft navigation, aircraft communications systems, air traffic control, direct life support machines or weapons systems, in which failure of the products could lead directly to death, personal injury, or severe physical or environmental damage.**
  2. Force Majeure. If either party will be prevented from performing any portion of this MSA by causes beyond its control, including labor disputes, civil commotion, war, governmental regulations or controls, casualty, inability to obtain materials or services or acts of God, such defaulting party will be excused from performance for the period of the delay and for a reasonable time thereafter; provided, however, that this subsection shall not relieve or limit Customer's obligation to all payments due to Pythian under this MSA or any SOW.
  3. Jurisdiction & Dispute Resolution.

**10.3.1** Governing Law & Venue.

**a.** For Customers located in the United States of America, the parties agree to the laws of the State of New York to govern, interpret and enforce each party’s respective rights and obligations arising out from or relating in any manner to, the subject matter of this MSA, without regard to conflict of law principles. Any action in connection with a dispute arising out of this MSA will be brought in the courts of competent jurisdiction, located in Syracuse, New York.

**b.** For Customers located elsewhere (except for Australia), the parties agree to the laws of Ontario, Canada, to govern interpret and enforce each party’s respective rights and obligations arising out from or relating in any manner to, the subject matter of this MSA, without regard to its choice of law provisions. Any action in connection with a dispute arising out of this MSA will be brought in the courts of competent jurisdiction located in Ottawa, Ontario.

**d.** The language to be used in any proceedings will be English.

**e.** To the extent their exclusion is permissible, the terms of the United Nations Convention on the International Sale of Goods will not apply to this MSA, even where they have been adopted as part of the domestic law of the country whose law governs the MSA.

**10.3.2** Dispute Resolution. Prior to the commencement of any litigation, upon receipt of a notice of dispute, the parties will make reasonable efforts to resolve any disputes that arise hereunder by good faith negotiations. If such good faith negotiations between the parties’ initial representatives do not resolve the dispute after 10 business days, it shall be escalated to senior executives for further good faith negotiations. If the senior executives are unable to resolve the dispute within 10 business days, then either party may initiate litigation.  Notwithstanding the foregoing or any other provision in this MSA or elsewhere, either party may seek a preliminary injunction, attachment or other judicial relief, if such action is necessary to avoid irreparable harm, preserve the *status quo* or preserve and protect the subject matter of the dispute.  Despite such action, the parties will continue to participate in good faith dispute resolution negotiations as set out herein.

**10.3.3** Continued Performance. So long as the parties are seeking dispute resolution, each party shall during the dispute resolution periods provided in subsection 10.3.2, continue to perform its obligations under this MSA and any applicable SOW pending final resolution of any dispute arising out of or relating to it.

**10.3.4** Costs. If either party initiates legal proceedings to enforce a term of the MSA or any SOW, the prevailing party will be entitled to recover reasonable lawyers’ fees and disbursements and reasonable experts’ and other witness costs.

* 1. Survival of Terms. The provisions of this MSA which by their nature extend beyond the termination of the MSA will survive, including, but not limited to, sections 4, 5, 6, 7, 8, and 10 (except for subsections 10.2 and 10.7).
  2. Waiver. No waiver of any right or remedy on one occasion by either party will be deemed a waiver of such right or remedy on any other occasion.
  3. Integration. This MSA, together with any schedules, exhibits, addenda or any other attachments that the parties may enter and incorporate into this MSA, and the SOWs entered into pursuant to this MSA, set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. This MSA will not be supplemented or modified by any course of dealing or trade usage. Neither of the parties will be bound by any conditions, definitions, warranties, understandings, representations, stipulations or other terms with respect to the subject matter other than as expressly provided in this MSA and applicable SOWs hereunder. Any such terms contained or referenced in any purchase order or other written notification or documentation, from Customer or otherwise, will be of no effect. This MSA may only be modified by a written document signed by duly authorized representatives of the parties.
  4. Assignment. Neither party may assign or delegate any or all of its rights (other than the right to receive payments) or its duties or obligations hereunder without the consent of the other party, which consent will not be unreasonably withheld; provided, however, that either party may assign this Agreement, without the need to obtain consent of the other party, to an Affiliate or to a successor in interest to substantially all of the business to which this Agreement relates. An assignee of either party authorized hereunder will be bound by the terms of this Agreement and will have all of the rights and obligations of the assigning party set forth in this Agreement, as confirmed by the relevant parties in writing.

**10.8** Notice. Unless otherwise agreed to by the parties, all notices required under this MSA will be deemed effective when received (a) at the address specified by the parties in the signature block by either (i) registered mail; (ii) certified mail, return receipt requested; or (iii) overnight or other expedited delivery service such as FedEx, UPS, or DHL, or (b) by email to [legal@pythian.com](mailto:legal@pythian.com), for Pythian, and for Customer, to the email address as designated by Customer from time to time, provided that notice by this method will be deemed effective upon acknowledgement of receipt (not including an automated “read receipt”) by the party to which the notice was given or on the fifth day following delivery of the notice, whichever occurs first.

**10.9** Severability. If any term or provision of this MSA is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this MSA is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision which will be severed from this MSA and will not affect or render invalid or unenforceable any other provision of this MSA.

**10.10** Independent Contractor. The parties acknowledge that Pythian is an independent contractor to Customer.

**10.11** Subcontracting. Except for Pythian Personnel under subsections 1.6(b) and 1.6(c) of this Agreement, Pythian will not subcontract its obligations under this Agreement or any SOW to any third party without the prior written consent of Customer.

**10.12** Compliance with Laws. Each party agrees to comply with the laws to which it is subject in the performance of its obligations under this MSA. .

**10.13** Non–solicitation of Personnel**.** During the period beginning with the commencement date for Services under a particular SOW and ending one year after the completion or termination of the SOW, each party for and on behalf of itself and its Affiliates agree not to offer employment or hire any employee or contractor of the other party or its Affiliates who are directly involved in the Services being performed under the SOW, except with the written consent of the other party.For purposes of this subsection 10.13, the terms "**employment**" and “**employs**” will include any form of employment, consulting, contract relationship, or other arrangement pursuant to which such individual will, directly or indirectly, perform services for the new employer. This Section shall not apply to general job postings or advertisements, without further pro-active solicitation.

**10.14** Insurance. Pythian will insure against losses and damages which are the result of the fault or negligence of Pythian and which relate to this MSA, including professional liability, general liability, personal injury, and property damage.

**10.15** No Third Party Rights. This MSA is made solely for the benefit of the parties to the MSA and their respective permitted successors and assigns, and no other person or entity will have or acquire any right by virtue of this MSA unless otherwise agreed to by the parties hereto.

**10.16** Headings. The headings of sections and subsections in this Agreement are included for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of the Agreement.

**10.17** Counterparts. This Agreement may be executed in any number of counterparts, and all of such counterparts taken together will be deemed to constitute one and the same document.

**10.18** Facsimile or Electronic Transmission. This Agreement and/or any counterparts hereof may be transmitted by facsimile, in PDF format by email or a similar device, and the preproduction of signatures by such means will be treated as binding as original. The parties acknowledge and agree that neither will contest the validity or enforceability of this MSA and related documents, including under any applicable statute of frauds, because they were accepted and/or signed in electronic form. The parties further acknowledge and agree that neither will contest the validity or enforceability of a signed facsimile copy of this MSA and related documents on the basis that it lacks an original handwritten signature. Facsimile signatures shall be considered valid signatures as of the date hereof. Computer maintained records of a party when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records. Customer agrees that use of Pythian’s designated electronic signature service provider, currently DocuSign, shall be deemed a valid, enforceable, and incontestable means of executing this Agreement, and other related documents hereunder.

|  |  |
| --- | --- |
| **PYTHIAN:**  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: Ian Cascagnette  Title: CFO  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_   |  | | --- | | **CUSTOMER**  Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title:  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_  Address: |   **Address for Notices for any Pythian entity:**  700-319 McRae Ave.  Ottawa, Ontario K1Z 0B9  Canada |

## By signing in the space provided, the parties agree to the terms and conditions stated here as of the Effective Date indicated above.