

Master Services Agreement

This Master Services Agreement (“MSA”) is agreed between RAYLYTIC Software GmbH (“RAYLYTIC”) and [name] (“Customer”) with effect as of the last signature below.

1. **SCOPE.** This MSA provides a legal framework for future SoWs for use of the Subscription Service and / or the provision of Professional Services. All provisions of this MSA shall be incorporated into, and apply to, all SoWs concluded during the term of this MSA, even if such SoWs do not make any express reference to this MSA. In the event of a conflict, the provisions of the applicable SoW shall prevail over the provisions of this MSA, provided, however, that terms or conditions unilaterally referenced by a party in the applicable SoW document or other correspondence, such as general conditions, shall not become part of the SoW even if the respective other party does not expressly object to them.
2. **DEFINITIONS.** For purposes of this MSA, the following terms shall have the following meanings:
 - 2.1 **“Affiliate”** means a company controlling, controlled by, or under common control with a party, whether such control is exercised through the ownership of a majority of shares or voting rights, by contract or otherwise.
 - 2.2 **“Authorized User(s)”** means Customer’s employees, contractors, as well as Stakeholders and their respective employees and contractors, each as authorized by Customer to use the Subscription Service solely for the internal use of Customer and its Affiliates (which internal purposes shall also include use for the conduct of clinical studies on behalf of third-party sponsors), subject to the terms and conditions of this MSA.
 - 2.3 **“Deliverable(s)”** means the results or work product of Professional Services which RAYLYTIC has expressly undertaken to provide under the terms of the applicable SoW.
 - 2.4 **“Documentation”** means the user guides, security documentation, and specifications for the Subscription Service that are made available from time to time by RAYLYTIC in electronic or tangible form, but excluding any sales or marketing materials.
 - 2.5 **“Effective Date”** means the date a Subscription Service commences as listed on the SoW.

- 2.6 **“Good Industry Practice”** means, in relation to any activity, exercising the same skill, expertise and judgement and using facilities and resources of a similar or superior quality as would be expected from a person who: (a) is skilled and experienced in providing the services or conducting the activities in question, seeking in good faith to comply with his contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply; (b) takes all proper and reasonable care and is diligent in performing his obligations; and (c) complies with all applicable legislation.
- 2.7 **“IPR”** stands for Intellectual Property Rights and covers all intellectual property rights worldwide, whether registered or not.
- 2.8 **“Non-Conformity”** means any non-conformity of the Subscription Service or a Deliverable with the requirements of the SoW, such as failure of the Subscription Service to operate in accordance with the Documentation or other agreed specifications, defects in title, as well as deviations in quantity or type, provided that insignificant disparities or impairments that do not appreciably affect the functional capability and / or use, are not considered Non-Conformities.
- 2.9 **“PHI”** means protected health information.
- 2.10 **“Privacy Law(s)”** means all statutes on the protection of personal data, PHI and e-Privacy applicable to the RAYLYTIC Services.
- 2.11 **“Professional Service(s)”** means consultancy, configuration, customization and similar services to be provided by RAYLYTIC as specified in the applicable SoW.
- 2.12 **“Project”** means collectively all Services and Deliverables under an applicable SoW for a specific project such as set-up, configuration and implementation of the Subscription Service.
- 2.13 **“RAYLYTIC Services”** means collectively the Subscription Service and all Professional Services.
- 2.14 **“Site”** means the Website accessible at <https://www.raylytic.com/en/> (or any successor thereto).
- 2.15 **“SoW”** means RAYLYTIC’s quote accepted by Customer via an ordering document submitted to RAYLYTIC, for use of the Subscription Service and /

or the provision of Professional Services specifying pricing, payment terms, service parameters, contract term and other terms as applicable. SoWs will generally be agreed based on the template enclosed in **Exhibit A**.

- 2.16 **“Stakeholder(s)”** means sponsors, doctors or patients involved in the clinical studies or other projects conducted by Customer on its own behalf or on behalf of third-party sponsors.
- 2.17 **“Subscription Service”** means the software-as-a-service product(s) specified in the SoW as further described in the Documentation (including any updates and upgrades to the Subscription Service provided by RAYLYTIC in its sole discretion).
- 2.18 **“Subscription Term”** means the period of time during which Customer is subscribed to the Subscription Service, as specified in the applicable SoW.
- 2.19 **“Subscription”** means the Customer’s right to use the Subscription Service during the Subscription Term as specified in the applicable SoW.

3. **SUBSCRIPTION SERVICE**

- 3.1 **Access.** RAYLYTIC will, during the Subscription Term, operate the Subscription Service in accordance with the Documentation and with the warranties and service levels agreed in Sec. 10.2 below. Subject to payment of all applicable fees set forth in the SoW and this MSA, RAYLYTIC grants Customer, during the Subscription Term, a non-exclusive, non-transferable right to access and use (and permit Authorized Users to access and use) the Subscription Service solely for Customer's and its Affiliates' internal business purposes in accordance with the Documentation and in accordance with the parameters specified in the applicable SoW.
- 3.2 **Authorized Users.** Customer is solely responsible for ensuring: (i) that only appropriate Authorized Users have access to the Subscription Service, (ii) that such Authorized Users have been trained in proper use of the Subscription Service, and (iii) confidentiality and proper usage of passwords and access procedures with respect to logging into the Subscription Service. Customer shall be responsible for the acts and omissions of its Authorized Users.
- 3.3 **Changes to Subscription Service.** The Subscription Service is made available to a large number of users and, for this purpose, the Subscription Service is

continuously further developed by RAYLYTIC in accordance with new technical developments and market requirements. Within the scope of this further development, RAYLYTIC may, at its reasonable discretion (e.g. for performance optimization), introduce new functionalities, but also change, replace or discontinue existing functionalities. Such changes do not constitute a contractual amendment and do not require the Customer's consent, provided that, in the event such modification materially reduces the functionality of the Subscription Service, Customer may terminate the affected SoW by written notice to RAYLYTIC, and RAYLYTIC shall provide Customer with a pro-rated refund of any Subscription Service fees pre-paid for the remaining Subscription Term.

- 3.4 Subscription Service Support. RAYLYTIC will provide Customer with support for Customer's use of the Subscription Service in accordance with RAYLYTIC's then applicable support policy as described on the Site, or as otherwise specified in the SoW. Customer agrees that RAYLYTIC is not responsible to provide support for any issues resulting from problems, errors or inquiries related to Customer's systems or hardware or Customer Content (as defined below).
- 3.5 Content. As used herein, the term "**Content**" includes information, data, text, images, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through, or used with, the Subscription Service. All Content submitted to the Subscription Service by Customer ("**Customer Content**") is the sole responsibility of Customer. Customer acknowledges and agrees that RAYLYTIC will not assume any, and hereby disclaims all, responsibility and liability for Customer Content and any modifications thereto. RAYLYTIC may use, reproduce, perform, display, modify, and distribute the Customer Content solely in connection with providing the Subscription Service to Customer hereunder.
- 3.6 Use Restrictions. Except as expressly permitted in this MSA, Customer shall not directly or indirectly: (i) remove any notice of proprietary rights from the Subscription Service; (ii) decompile, reverse engineer, or attempt to derive the source code or underlying ideas or algorithms of any part of the Subscription Service (except to the limited extent applicable laws specifically prohibit such restriction); (iii) copy, modify, translate or otherwise create derivative works of any part of the Subscription Service; (iv) sell, resell, encumber, rent, lease, time-share, distribute, transfer or otherwise use or exploit or make available any of the Subscription Service to or for the benefit of any third party; (v) use the Subscription Service to violate any laws or infringe on the intellectual property rights, publicity rights, or privacy rights of any third party, or to store defamatory, trade

libelous, or otherwise unlawful data; (vi) send, store or process in the Subscription Service any personal health data, credit card data, personal financial data or other such sensitive or personal data; (vii) use any of RAYLYTIC's Confidential Information (defined below) to create any service, software, documentation or data that is similar or competitive to any aspect of the Subscription Service, (viii) use or allow the transmission, transfer, export, re-export or other transfer of any technology, material or information it obtains or learns pursuant to this MSA (or any direct product thereof) in violation of any export control or other laws and regulations of any relevant jurisdiction, (ix) interfere or attempt to interfere with the proper working of the Subscription Service or any activities conducted on the Subscription Service, or modify another website so as to falsely imply that it is associated with the Subscription Service; or (x) permit any third party to engage in any of the foregoing proscribed acts (with subclauses (i) through (x) hereof, collectively, referred to as the "**Use Restrictions**").

4. PROFESSIONAL SERVICES

- 4.1 RAYLYTIC will perform all Professional Services through qualified personnel in accordance with Good Industry Practice. RAYLYTIC will provide all Deliverables in conformity with the Documentation and other agreed specifications.
- 4.2 Unless otherwise agreed in the SoW, Deliverables shall not require formal acceptance. The Customer shall promptly examine all Deliverables and loses the right to rely on a Non-Conformity if the Customer does not give notice specifying the nature of the Non-Conformity promptly after it has been discovered or ought to have been discovered.
- 4.3 Where acceptance of a Deliverable or Project is required under the terms of the applicable SoW, Customer shall confirm acceptance within not more than two weeks from completion of the Deliverable or Project. Prior to express acceptance, Customer shall refrain from using the Deliverable(s) requiring acceptance. In the event that Customer does use such Deliverables, such use shall be regarded as acceptance. If the Customer refuses to confirm acceptance RAYLYTIC may revoke any license granted to use the Deliverable(s) and require the Customer to refrain from any use of thereof pending acceptance. Where Non-Conformities prevent acceptance Customer may exercise the remedies under Sec. 10.3.2 below as its sole remedy.

5. CUSTOMER OBLIGATIONS AND RESPONSIBILITIES

- 5.1 It shall be Customer's responsibility, at its own cost and risk, to (a) provide and maintain all infrastructure, software, data or information which RAYLYTIC has not expressly undertaken to provide in the SoW and which are reasonably required for accessing and using the RAYLYTIC Services; (b) comply with the technical guidelines in the Documentation with respect to accessing and using the RAYLYTIC Services, and (c) support RAYLYTIC's performance of the RAYLYTIC Services by providing such information, assistance, cooperation and contributions in a timely manner as RAYLYTIC may reasonably require.
- 5.2 If the provision of a RAYLYTIC Service should be prevented, delayed or inhibited by Customer's failure to contribute or cooperate, or by other circumstances beyond the reasonable control of RAYLYTIC, RAYLYTIC may, in addition to its other remedies, request that any deadlines or service levels are adjusted accordingly and that all extra effort and cost expended by RAYLYTIC are separately remunerated.

6. PROPRIETARY RIGHTS

- 6.1 Subscription Service. Subject to the rights and licenses expressly granted hereunder, as between the parties, Customer shall retain all rights, title and interest (including all IPR) in and to the Customer Content. Subject to the limited rights and licenses expressly granted hereunder, as between the parties, RAYLYTIC shall retain all rights, title and interest (including all IPR) in and to the Subscription Service, including all software, technology and other materials associated therewith, all Documentation and Content (excluding the Customer Content), all RAYLYTIC trademarks, names, logos, all copies, modifications and derivative works thereof, and all rights to patent, copyright, trade secret and other proprietary or intellectual property rights therein.
- 6.2 Improvement of Subscription Service. RAYLYTIC shall be entitled to use aggregated or derived data created based on (a) Customer's feedback, (b) Customer's usage of the Subscription Service, and (c) any data transmitted to or generated by the Subscription Service in connection with such usage, for the improvement and / or (further) development of its own products or services, if and to the extent such use does not (i) lead to a disclosure of Customer Content or information identifying Customer or its Authorized Users, or (ii) infringe Customer's intellectual property rights.

- 6.3 Professional Services. Subject to the limited rights and licenses expressly granted hereunder, as between the parties, RAYLYTIC shall retain all rights, title and interest (including all IPR) in and to all Deliverables, as well as any other development or discovery RAYLYTIC may make in connection with consummation of this MSA and all SoWs. Unless expressly otherwise agreed in the applicable SoW, all Deliverables are provided only to facilitate Customer's use of the Subscription Service and Customer shall only have a non-exclusive right to use such Deliverables in connection with the Subscription Service subject to the license terms of the Subscription Service.

7. CONFIDENTIALITY

- 7.1 Definition. For purposes hereof, "Confidential Information" means all nonpublic information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as "confidential" or that, given the nature of the information or circumstances surrounding its disclosure, should reasonably be understood to be confidential. Customer's Confidential Information shall consist of the Customer Content. RAYLYTIC's Confidential Information includes: (i) any nonpublic information relating to the Subscription Service or the software or technology underlying the Subscription Service, or relating to any other of RAYLYTIC or its Affiliates' or business partners' products or services (including any beta version of a service), software, technology, customers, business plans, and other business affairs; (ii) any Content (other than Customer Content); and (iii) third-party information that RAYLYTIC is obligated to keep confidential. Notwithstanding the foregoing, "**Confidential Information**" does not include any information that: (1) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (2) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (3) is received from a third party without breach of any obligation owed to the Disclosing Party, or (4) was independently developed by the Receiving Party.
- 7.2 Confidentiality. Except for the specific rights granted by this MSA, the Receiving Party shall not access, use or disclose any of the Disclosing Party's Confidential Information without its written consent, and shall use at least the standard of care used to protect its own Confidential Information, but not less than reasonable care to protect the Disclosing Party's Confidential Information, including ensuring that its employees and contractors with access to such Confidential Information (a) have a need to know for the purposes of this MSA and (b) have been apprised of and are subject to

restrictions at least as protective of the Disclosing Party's Confidential Information as this MSA. Each party shall be responsible for any breach of confidentiality by its employees and contractors.

- 7.3 Required Disclosure. Nothing herein shall prevent a Receiving Party from disclosing any Confidential Information as necessary pursuant to any applicable court order, law, rule or regulation; provided that prior to any such disclosure, the Receiving Party shall use reasonable efforts to (a) promptly notify the Disclosing Party (to the extent legally permitted) in writing of such requirement to disclose and (b) cooperate with the Disclosing Party in protecting against or minimizing any such disclosure or obtaining a protective order.

8. COMPLIANCE

- 8.1 As between RAYLYTIC and Customer, Customer is solely responsible for (i) ensuring Customer has a valid legal basis for sharing Customer Content with RAYLYTIC (to the extent required), and (ii) ensuring that the Customer Content as made available by Customer complies with Privacy Laws and other applicable laws and regulations. Customer shall take reasonable steps to avoid transmitting to the Subscription Service any PHI or personal data which has not first been anonymized, or at least pseudonymized.
- 8.2 RAYLYTIC expressly acknowledges that any Customer Content containing PHI is subject to enhanced secrecy requirements under Privacy Laws, that it may be processed strictly only under the authority of Customer and that breach of secrecy requirements may expose RAYLYTIC and its staff to criminal prosecution.
- 8.3 To the extent legally required for compliance with Privacy Laws the Parties will enter into a separate Data Processing Agreement governing the processing of Customer Content by RAYLYTIC on behalf of Customer in the context of the RAYLYTIC Services. The terms of such Data Processing Agreement shall prevail over any conflicting terms of this MSA.
- 8.4 RAYLYTIC shall (i) ensure that it has in place reasonably appropriate administrative, physical and technical measures designed to protect the security and confidentiality of Customer Content against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties; and (ii) access and use the Customer Content solely to perform its obligations in accordance with the terms of this MSA, and as otherwise expressly permitted in this MSA.

9. **PAYMENTS; TAXES**

- 9.1 **Fees.** Customer shall pay to RAYLYTIC fees as set forth in an applicable SoW in accordance with the terms thereof. Without prejudice to Customer's rights set out elsewhere in this MSA, all Subscription Service fees are non-refundable and payable in advance unless otherwise set forth in the SoW.
- 9.2 **Disputed Fees.** In the event that the Customer reasonably and in good faith disputes an invoiced amount, RAYLYTIC may not suspend access to the Subscription Service or terminate the SoW for as long as the parties are negotiating to settle the dispute provided that (a) this shall apply only as long as Customer promptly pays all undisputed amounts and (b) either party may declare negotiations failed and exercise all contractual rights and remedies if the parties have failed to come to an agreement within 60 days of the due date of the original invoice.
- 9.3 **Taxes.** The fees for the Subscription Service are exclusive of any excise, sales, use, gross-turnover, value added, goods and services tax or other similar types of indirect taxes, duties or tariffs (however designated, levied or based and whether foreign or domestic) imposed or levied, currently or in the future, on the Subscription Service. Customer will be liable for payment of such taxes. If Customer is required under applicable law to make any tax withholding from fees, payment by the Customer will be grossed up with an additional amount to cover such withholding as may be necessary in order to ensure that the net amount received by RAYLYTIC is equal to the total amount that RAYLYTIC would have received if such withholding had not been applied.

10. **WARRANTY**

- 10.1 **General.** Each party represents and warrants that: (a) it has full power and authority to enter into this MSA and to perform its obligations hereunder; (b) this MSA is legally binding upon it and enforceable in accordance with its terms; and (c) the execution, delivery and performance of this MSA does not and will not conflict with any agreement, instrument, judgment or understanding to which it is a party or by which it may be bound.
- 10.2 **Subscription Service.** With respect to the Subscription Service, RAYLYTIC represents and warrants as follows:

- 10.2.1 RAYLYTIC does not warrant that access to, and / or use of, the Subscription Service will be uninterrupted or error-free. RAYLYTIC represents and warrants that (a) in providing the Subscription Service, RAYLYTIC shall comply with all applicable laws; (b) to the best of RAYLYTIC's knowledge as of the Effective Date, Customer's use of the Subscription Service will not infringe the intellectual property rights of any third party; and (c) the Subscription Service shall materially conform to the Documentation and other agreed specifications during the Subscription Term and the functionality, security and performance of the Subscription Service shall not materially decrease during the Subscription Term.
- 10.2.2 RAYLYTIC will, during the Subscription Term monitor the operation of the Subscription Service and promptly correct any Non-Conformity by installing patches or new releases or providing workarounds, in order to achieve the Average Availability specified below. Critical Non-Conformities will be promptly remedied, all other Non-Conformities may be corrected in the context of regular updates.
- 10.2.3 The obligations under Sec. 10.2.1 and 10.2.2 above do not include the adaptation of the Subscription Service to changed operating conditions and technical and functional developments, such as changes to the IT environment, adaptation to the functional scope of competing products or the creation of compatibility with new data formats or supplementary products.
- 10.2.4 RAYLYTIC's obligations with respect to availability of the Subscription Service are limited to a service level equal to 99% Average Availability. **"Average Availability"** means average availability of the Subscription Service for any full calendar year of the Subscription Term calculated as follows:

$$\% \text{ Average Availability} = (([\text{TH}] - [\text{DT}]) / [\text{TH}]) * 100$$

TH = Total Hours

DT = cumulative Downtimes

"Downtime(s)" shall include only times during which Critical Non-Conformities of the Subscription Service persist during the Total Hours. Downtimes imputable to public communication or data lines or networks shall not be considered Downtimes as used

herein. “Critical Non-Conformity” as used herein shall exclusively comprise Non-Conformities which effect that the Subscription Service cannot be productively used at all. “Total Hours” means the cumulative measurement period in hours, excluding regular maintenance windows specified in the Documentation or otherwise published or announced by RAYLYTIC.

If Average Availability should be less than agreed hereinbefore for reasons imputable to RAYLYTIC, RAYLYTIC will, on Customer’s request to be made within 3 months of the end of the respective calendar year, offer a credit calculated in accordance with the table below, which, during the Subscription Term, shall be offset against future recurring fees.

The credit shall apply from the first full calendar year of the Subscription Term and shall be calculated as follows:

<i>Average Availability in calendar year</i>		<i>Credit equal to % of annual fees</i>
Less than	But not less than	
99.0%	98.5%	2.5%
98.5%	98.0%	5%
98.0%		7.5%

The foregoing shall not be deemed an express warranty, guarantee or guarantee of properties.

- 10.2.5 If a Subscription Service, or any component thereof is found to be infringing of any intellectual property rights of a third party, or if any use of the Subscription Service or any component thereof is enjoined, RAYLYTIC shall, at RAYLYTIC’s sole cost and expense: (a) procure for Customer the right to continue to access and use the Subscription Service to the full extent contemplated by this MSA; or (b) modify or replace all components, features and operations of the Subscription Service that actually, or are likely or alleged to, infringe or otherwise violate the rights of any third party (“**Allegedly Infringing Features**”) to end and avoid such infringement, misappropriation or violation while providing equally or more suitable features and functionality, which modified and replacement services shall constitute the Subscription Service and

be subject to the terms and conditions of this MSA. If the foregoing remedies are not reasonably available with respect to the Allegedly Infringing Features, then RAYLYTIC may direct Customer to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that RAYLYTIC shall refund to Customer any fees prepaid for the remaining Subscription Term.

10.2.6 Only Non-Conformities which have been present for such a considerable period of time as to make it unreasonable to expect Customer to continue use of the Subscription Service may justify termination of the SoW and only Non-Conformities which have been present for a considerable period of time shall justify a reduction of applicable fees, and any such reduction shall be proportionate to the duration, scope and severity of the Non-Conformities. Customer may avail itself of the remedy of termination only if the underlying issue persists after expiry of an appropriate grace period of not less than three (3) months set by the Customer. Customer shall regularly inspect the work product of the Subscription Service and shall promptly notify RAYLYTIC of any Non-Conformity, describing the time of occurrence and the detailed circumstances of occurrence. Customer may reduce applicable fees only for the time period from Customer's written notice to the time the Non-Conformity is cured.

10.2.7 The remedies stated in this Sec. 10.2, and the indemnity under Sec. 11 below shall be the Customer's sole and exclusive remedies for a breach of RAYLYTIC's representations and warranties in this Sec. 10.2.

10.3 Professional Services. With respect to the Professional Services, RAYLYTIC represents and warrants as follows:

10.3.1 RAYLYTIC will perform all Professional Services in conformity with Sec. 4.1 above. In the event of a Non-Conformity of any Professional Services, RAYLYTIC will re-perform the Professional Services affected to the extent necessary and possible.

10.3.2 In the event of a Non-Conformity of a Deliverable, RAYLYTIC shall, promptly after receipt of Customer's timely notice, arrange, at its option, for the re-working or replacement of such Deliverable ("**Remedial Action**"). Where two attempts at Remedial Action have

failed to remedy the Non-Conformity within a reasonable grace period, Customer may withdraw from the SoW or demand a reduction in the agreed fees. Customer's remedies under this Sec. 10.3.2 shall lapse, at the latest, upon expiry of a warranty period of 90 days commencing with Customer's receipt of the Deliverable. Furthermore any remedies under this Sec. 10.3.2 shall be excluded to the extent that Customer (a) fails to comply with Sec. 4.2 above, (b) uses the Deliverable for any purpose other than the contractual purpose or in violation of the relevant statutory requirements and / or any guidelines issued by the RAYLYTIC or the third party provider of the Deliverable; or (c) either (i) modifies the Deliverable or (ii) uses the Deliverable in connection with any hardware or software not approved by the RAYLYTIC or the third party provider of the Deliverable for such purpose, unless, in each case, the Customer has obtained RAYLYTIC's prior written consent, and, with respect to item (b) and (c), except where the foregoing circumstances did not cause the Non-Conformity.

- 10.4 EXCEPT AS PROVIDED IN SECTIONS 4.3 AND 10.1 THROUGH 10.3 HEREINABOVE, TO THE FULLEST EXTENT PERMITTED BY LAW, RAYLYTIC HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE RAYLYTIC SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, RELIABILITY, OR THAT THE SUBSCRIPTION SERVICE'S OR DELIVERABLES' OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. RAYLYTIC WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY FAILURE IN THE RAYLYTIC SERVICES RESULTING FROM OR ATTRIBUTABLE TO (A) CUSTOMER USE OF THE RAYLYTIC SERVICES NOT IN ACCORDANCE WITH A SOW, THIS MSA OR ANY DOCUMENTATION, (B) FAILURES IN ANY TELECOMMUNICATIONS, NETWORK OR OTHER SERVICE OR EQUIPMENT OUTSIDE OF RAYLYTIC'S FACILITIES, (C) CUSTOMER'S OR ANY THIRD PARTY'S CONTENT, PRODUCTS, SERVICES, NEGLIGENCE, ACTS OR OMISSIONS, (D) ANY FORCE MAJEURE OR OTHER CAUSE BEYOND RAYLYTIC'S REASONABLE CONTROL, OR (E) UNAUTHORIZED ACCESS, BREACH OF FIREWALLS OR OTHER HACKING BY THIRD PARTIES.
- 10.5 Customer. Customer represents and warrants that (a) Customer has all rights to grant the licenses to RAYLYTIC set forth herein, including to Customer Content, without infringement or violation of any applicable laws or third party rights, including any privacy rights, publicity rights, copyrights,

trademarks, contract rights, or any other intellectual property or proprietary rights, and (b) Customer shall not make available through the Subscription Service any Content that is disparaging, obscene, offensive, or otherwise inappropriate or that contains any viruses or any other harmful code.

11. **INDEMNIFICATION**

- 11.1 Customer shall defend, indemnify and hold harmless RAYLYTIC, its Affiliates, and its and their respective directors, officers, managers, employees, and permitted assigns from and against any damages, liabilities, losses, and costs, including reasonable attorney's fees, arising from or relating to any third-party claim alleging that Customer Content or RAYLYTIC's use thereof, infringes or misappropriates a third party's patent, copyright, trademark or trade secret.
- 11.2 RAYLYTIC shall defend, indemnify and hold harmless Customer, its Affiliates, and its and their respective directors, officers, managers, employees, and permitted assigns from and against any damages incurred in connection with any third-party claim alleging that Customer's use of a Subscription Service in accordance with the SoW infringes or misappropriates a third party's patent, copyright, trademark or trade secret.

12. **LIMITATION OF LIABILITY**

- 12.1 IN NO EVENT WILL THE AGGREGATE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO A SOW OR THIS MSA EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER THEREUNDER FOR THE RAYLYTIC SERVICE GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT EITHER PARTY'S LIABILITY WITH RESPECT TO (i) BREACH OF THE OTHER PARTY'S PROPRIETARY RIGHTS HEREUNDER; (ii) BREACH OF CONFIDENTIALITY OBLIGATIONS (SECTION 7); (iii) INDEMNITY OBLIGATIONS (SECTION 11); AND (iv) WILFUL MISCONDUCT OF SUCH PARTY'S STATUTORY OFFICERS.
- 12.2 IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO A SOW OR THIS MSA FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER THE ACTION

IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION WILL NOT APPLY TO AMOUNTS PAYABLE PURSUANT TO INDEMNIFICATION OBLIGATIONS UNDER SEC. 11 ABOVE OR TO DAMAGES ARISING OUT OF CUSTOMER'S BREACH OF RAYLYTIC'S PROPRIETARY RIGHTS HEREUNDER.

13. TERM AND TERMINATION

- 13.1 Term of this MSA. This MSA will be effective upon the Effective Date and shall remain in force unless or until terminated by either party for convenience observing a notice period of three months with effect on the end of a calendar month, but not in any event prior to the day preceding the first anniversary of the Effective Date. Termination or expiry of this MSA shall not affect the validity of the SoWs concluded during its term.
- 13.2 Term of SoWs. Each SoW will be valid, and shall remain in force, for the term stated therein. The Subscription Term will commence upon the date stated in the SoW and the Subscription will, unless otherwise agreed in the SoW, remain valid for a 12-month minimum term (the "**Initial Term**") and thereafter renew for additional 12-month renewal terms (each a "**Renewal Term**") unless terminated by either Party in writing observing a notice period of three (3) months effective on the end of the minimum term or any later renewal terms (each a "**Renewal Date**").
- 13.3 Amendments. RAYLYTIC may notify Customer of its intention to amend terms and / or agreed fee rates of one or more SoWs with effect on a Renewal Date, giving Customer at least one month to terminate the SoW with effect on the Renewal Date. If Customer, after receipt of such notice, fails to terminate the SoW, such amended terms or rates shall then become effective for the respective SoW as of the Renewal Date.
- 13.4 Termination. This MSA or an individual SoW may be terminated by either party for reasons other than Non-Conformities if the other party materially breaches a provision thereof (other than the Use Restrictions) and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party (ten (10) days in the case of non-payment). This MSA or an individual SoW may be terminated by either party immediately upon written notice to the other party if the other party: (a) becomes insolvent, (b) voluntarily commences any proceeding or files any petition under applicable bankruptcy laws, (c) becomes subject to any

involuntary bankruptcy or insolvency proceedings under applicable laws, which proceedings are not dismissed within thirty (30) days, (d) makes an assignment for the benefit of its creditors, or (e) appoints a receiver, trustee, custodian or liquidator for a substantial portion of its property, assets or business. RAYLYTIC may terminate this MSA or an individual SoW immediately with or without notice if Customer violates any of the Use Restrictions. In addition, RAYLYTIC may terminate this MSA and all individual SoWs, in whole or in part, or cease provision of Subscription Service if required to comply with applicable law or regulation, in which case Sec. 14.3 below shall apply accordingly. In any circumstances where a party is entitled to terminate this MSA and also one or more individual SoWs, it may elect to limit termination to this MSA and / or to individual SoWs.

- 13.5 Effects of Termination. Upon termination or expiration of the applicable SoW: (i) Customer will have no further right to access or use the Subscription Service; and (ii) any Customer Content contained on the Subscription Service may be deleted by RAYLYTIC. Customer acknowledges that it is responsible for exporting any Customer Content to which Customer desires continued access after termination / expiration, and RAYLYTIC shall have no liability for any failure of Customer to retrieve such Customer Content and no obligation to store or retain any such Customer Content after termination or expiration. Following termination of the Subscription Service, RAYLYTIC may immediately deactivate Customer's account. Any accrued rights and obligations will survive termination.

14. GENERAL PROVISIONS

- 14.1 Entire Agreement. This MSA including its Exhibit(s) constitutes the entire agreement, and supersedes all prior negotiations or agreements (oral or written), between the parties regarding the subject matter hereof. When used in this MSA, the term "including" or "includes" means "including but not limited to".
- 14.2 Publicity. RAYLYTIC may identify Customer as a customer in its public relations communications online and offline and for this purpose include Customer's name and logo in client lists and marketing materials etc. that may be published as part of RAYLYTIC's marketing and promotional efforts.
- 14.3 Modification. This MSA or any SoW shall not be modified except by a written instrument signed by both parties. Notwithstanding the foregoing, if RAYLYTIC is required to change terms of this MSA or any SoW in order to

remain compliant with applicable law, and Customer does not agree to such change, RAYLYTIC may terminate this MSA and all SoWs with thirty days' prior written notice, in which case RAYLYTIC shall provide Customer with a pro-rated refund of any fees prepaid for the remaining Subscription Term as of the effective date of termination.

- 14.4 Severability. If any provision of this MSA or any SoW is determined to be illegal, invalid or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this MSA or the respective SoW will otherwise remain in full force and effect and enforceable.
- 14.5 Governing Law and Jurisdiction. This MSA and each SoW shall be governed by and construed under the laws of Delaware, U.S.A., without regard to the conflicts of laws provisions thereof. Exclusive jurisdiction and venue for actions related to this MSA and each SoW will be the courts located in Delaware, and both parties consent to the jurisdiction of such courts with respect to any such actions. To the extent not prohibited by law, each of the parties hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this MSA or any SoW.
- 14.6 Remedies. Except as specifically provided otherwise herein, each right and remedy in this MSA or any SoW is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of a party's confidentiality obligations or proprietary rights hereunder, the non-breaching party may suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to seek injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.
- 14.7 Notices. All notices under this MSA or any SoW will be in writing and delivered to the parties at the address set forth on the SoW, or at such other address designated by a party to the other by written notice. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email or facsimile; the day after being sent, if sent for next day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested.
- 14.8 Assignment. Each party may assign this MSA and individual SoWs to its Affiliates or to any purchaser of all, or substantially all, of such party's assets or to any successor corporation resulting from any merger or consolidation

of such party, provided that such party shall following such assignment remain liable for performance of the assigned agreement jointly together with the assignee through to the next date on which the assigned agreement could have been terminated for convenience. Except as provided hereinbefore, this MSA, each SoW and the rights and obligations thereunder may not be assigned, in whole or in part, without the respective other party's written consent. The foregoing shall not apply to the subcontracting of obligations hereunder, which shall be admissible in RAYLYTIC's discretion, provided that the subcontracting party shall remain fully liable to the respective other party for the fulfillment of the respective obligation by the subcontractor. This MSA and each SoW shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

- 14.9 Independent Contractors. The parties shall be independent contractors under this MSA, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

RAYLYTIC, by:

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

Customer, by:

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

Exhibit A SoW Form

SoW Form # _____

MSA Ref # _____

This SoW is entered into between RAYLYTIC Software GmbH ("**RAYLYTIC**") and the customer set out below ("**Customer**") and is governed by the terms and conditions of the applicable Master Agreement executed by the parties ("**MSA**").

Capitalized terms not otherwise defined in this SoW will have the same meaning as set out in the MSA.

1. Professional Services

[...]

2. Subscription Services

Subscription Parameters

[...]

Subscription Term

Start Date: _____ End Date: _____

The Subscription Term will renew in accordance with the terms of the MSA.

This SoW and the MSA conclusively stipulate the terms and conditions applicable to the RAYLYTIC Services ordered. Neither Party's general terms and conditions apply.

RAYLYTIC, by:

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

Customer, by:

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____