



## **Claravine Master Services Agreement**

**IF YOU (“CUSTOMER”) HAVE PURCHASED THE RIGHT TO ACCESS AND USE CLARAVINE’S SOFTWARE SERVICES, PLEASE READ THE MASTER SERVICES AGREEMENT (“AGREEMENT”) SET FORTH BELOW BEFORE ACCESSING AND USING SUCH SERVICES. CUSTOMER’S AGREEMENT TO THE TERMS OF THIS AGREEMENT IS REQUIRED PRIOR TO ANY SUCH USE.**

**BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, OR (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.**

**YOU MAY NOT ACCESS THE SERVICES IF YOU ARE OUR DIRECT COMPETITOR, EXCEPT WITH OUR PRIOR WRITTEN CONSENT. IN ADDITION, YOU MAY NOT ACCESS THE SERVICES FOR PURPOSES OF**

**MONITORING ITS AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.**

**IF YOU HAVE ENTERED INTO A SEPARATE MASTER SERVICES AGREEMENT WITH CLARAVINE, THAT DOCUMENT SUPERSEDES THIS AGREEMENT, AND THIS AGREEMENT WILL BE OF NO FORCE AND EFFECT.**

This Master Services Agreement (“**Agreement**”) between Claravine, Inc., a Delaware corporation (“**Claravine**” or the “**Company**”) and the customer identified on the customer account profile (“**Customer**”) is effective as of the date of acceptance of this Agreement by Customer or, if so stipulated, the effective date indicated on the customer account page (the “**Effective Date**”). Both the Company and Customer are individually referred to as a “**Party**” and collectively as “**Parties.**”

**Whereas**, Claravine is in the business of providing hosted business solutions in the form of software that provide Claravine’s customers with remotely-accessible applications, tools, processes or similar services, and in connection with the provision of such software services, offers its customers implementation, training and consulting services’.

**Whereas**, Customer desires to acquire certain of such services from Claravine, and Claravine has agreed to provide services on the terms and conditions set forth in this Agreement.

**Now, therefore**, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt of which is hereby

acknowledged, and intending to be legally bound, the Parties agree as follows:

## **Services**

*1.1 Service Order.* Claravine shall provide services to Customer that include without limitation, access to certain hosted business solutions, which includes remote access to certain Claravine software, third party software, web portals, applications and tools (“**Services**”) as specified in (i) the initial Service Order submitted by Customer and any subsequent Services Orders issued under this Agreement and signed by both parties, (ii) the Service Level Agreement incorporated into the Service Order and (iii) the applicable documentation provided by Claravine in written or electronic form relating to the provision of Services. Services may also include without limit any implementation, training, configuration, consulting and other professional services, and products as set forth in a Service Order or a statement of work executed in connection with and incorporated into a Service Order. Claravine shall inform Customer of (and reasonably assist Customer in connection with) any specifications for hardware, software protocols, IP addresses, configurations, telecommunications equipment and other items or procedures necessary to access or use the Services.

*1.2 Service Order Changes.* Should the scope of any Service Order change, the parties shall document those changes and the impact thereof in a written amendment or change order (“**Change Order**”) to the applicable Service Order (for example and without limit, changes to fees, scheduling, term, requirements, acceptance criteria and so forth). No changes to any Service Order will be effective unless and until a Change Order is executed by both parties, and

Customer shall not be responsible to pay for any additional Services performed prior to the execution of an applicable Change Order.

*1.3 Personnel.* In the event that the Services include any professional services to be performed on site at the property of Customer, Claravine will ensure each of its employees, contractors, subcontractors, agents and any other third parties engaged by Claravine or acting on Claravine's behalf (individually and collectively, "**Personnel**") is bound by a written agreement with Claravine that substantially comply with the terms of this Agreement, and all requirements of the relevant Service Order applies to such Personnel; (ii) Claravine agrees that it shall be fully responsible and liable to Customer for all acts, omissions and breaches by its Personnel as if the same were undertaken directly by Claravine; and (iii) Claravine will at all times ensure that its Personnel observe Customer's work rules, policies and procedures while performing any Services on Customer premises.

*1.4 Access Rights; Customer Covenants.* Subject to any limitations on use identified in a Service Order, Customer may access and make use of the Services in any location worldwide via a web browser with internet connectivity. Customer may permit its affiliates, third party contractors, agents and outsourcers to use and access the Services solely on behalf of and for the benefit of Customer, in accordance with this Agreement. Customer may not (i) attempt to obtain a copy of any element of the Services or the platform accessed at [www.claravine.com](http://www.claravine.com) (the "**Site**"), (ii) reverse compile, reverse engineer, reverse assemble or otherwise attempt, directly or indirectly, to obtain or create source code for any element of the Services or the Site, (iii) modify or create derivative works of any element of the Services or the Site, (iv) sub-license, transfer, distribute, sell or resell any Services provided by Claravine hereunder, (v) permit

access to the Services to any person or entity that provides software services similar to the Services offered by the Company, or (vi) access the Services for the purpose of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purpose. In addition, Customer will not use the Services or Site for any purpose that is unlawful or prohibited by this Agreement or the Terms of Service that govern the use of the Services and the Site and to which Customer's authorized users will agree prior to using the Services, which terms are located at <https://www.claravine.com/terms-conditions/> ("**Terms of Service**"). Customer shall not use the Services or Site in any manner that could damage, disable, overburden, or impair it or interfere with any other party's use and enjoyment of the Services or Site. Customer shall not attempt to gain unauthorized access to the Services or Site, or any part of the Site, other accounts, computer systems or networks connected to the Services or Site, or any part of them, through hacking, password mining, or any other means or interfere or attempt to interfere with the proper working of the Services or Site or any activities conducted on the Site. Customer shall not remove, circumvent, disable, damage or otherwise interfere with security-related features of the Services or Site, any features that prevent or restrict use or copying of any content accessible through the Services or Site, or any features that enforce limitations on the use of the Services or Site or the content therein. Customer shall not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services or Site. Customer agrees that it will not use any robot, spider, scraper, or other automated means to access the Services or Site for any purpose without Claravine's express written permission or bypass any robot exclusion headers or other measures used to prevent or restrict access to the Services or Site. Any violation of the covenants set forth herein or of any provision of the Terms of

Service by any of Customer's authorized users shall constitute a breach by Customer of this Agreement.

*1.5 Support.* Maintenance and support services ("**Support**") are included in the Services and will be provided as set forth in the Service Level Agreement referenced in the Service Order.

*1.6 Linked Sites.* The Services may include links or access to other web sites or services ("Linked Sites") solely as a convenience to Customer and its authorized users. In addition, with Customer's authorization, and at its direction, Claravine may access third-party sites on behalf of Customer, using Customer's credentials for the third-party sites that Customers authorized users enter into the Services. Entering credentials for such third-party sites into the Services constitutes Customer's authorization for Claravine to access such third-party sites on Customer's behalf. Claravine does not endorse any Linked Sites or third-party sites or the information, material, products, or services contained on Linked Sites or accessible through Linked Sites or third-party sites. Furthermore, Claravine makes no express or implied warranties (including warranties of fitness for a particular purpose and warranties of merchantability) with regard to the information, material, products, or services that are contained on or accessible through Linked Sites or third-party sites. ACCESS AND USE OF LINKED SITES AND THIRD-PARTY SITES, INCLUDING THE INFORMATION, MATERIAL, PRODUCTS, AND SERVICES ON LINKED SITES AND THIRD-PARTY SITES OR AVAILABLE THROUGH LINKED SITES AND THIRD-PARTY SITES, IS SOLELY AT CUSTOMER'S OWN RISK.

## **Deliverables and Intellectual Property Rights**

*2.1 Provision of Deliverables.* Any tangible deliverables that are identified in a Service Order relating to consulting services to be provided by Claravine (“**Deliverables**”) will be specified in the applicable Service Order associated with the procurement of such consulting services.

*2.2 Acceptance of Deliverables.* Subject to the provisions of this Agreement, Claravine hereby grants to Customer a worldwide, transferable, sublicensable, non-exclusive, royalty-free, full paid-up license to use, modify install, perform, and display any Deliverables for Customer’s internal business purposes. Unless otherwise specified in the applicable Service Order, all Deliverables will be deemed accepted upon delivery to Customer.

*2.3 Ownership of Deliverables.* Unless specified in the applicable Service Order, all Deliverables created or developed by Claravine or its Personnel, together with any associated copyright and other intellectual property rights, shall be the sole and exclusive property of Claravine. Subject to Customer’s rights in Customer Data as set forth in Section 2.4 below, Claravine retains all right, title and interest in and to such Deliverables, together with any associated copyright and other intellectual property rights, whether or not such Deliverables are deemed “works made for hire” under the U.S. Copyright Act of 1976.

*2.4 Customer Data.* “Customer Data” means (i) any and all data and information that are provided by Customer (including its agents, contractors, or subcontractors) to Claravine in connection with this Agreement; (ii) any and all reports, analyses, compilations, studies, or other documents which contain or otherwise reflect any of the data or information in (i) above, including, without limitation, any reports produced by Customer pursuant to this Agreement. Customer shall own all right, title and interest in and to the Customer Data, as

well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services. Subject to compliance with applicable laws, Claravine shall be permitted to utilize all data generated by (or on behalf of) it in connection with the Services (including without limitation, to improve and enhance the Services) and to provide such data to third parties, so long as such data is presented in aggregate (with a sufficient amount of other customer data) and anonymized form (“Anonymized Usage Data”). Anonymized Usage Data will not include identifying information about Customer, its authorized users, affiliates or its customers such that the Anonymized Usage Data can be identified with or linked in any way to Customer, its authorized users, affiliates or its customers. No rights or licenses are granted by Customer to Claravine with respect to Customer Data except as expressly set forth herein.

*2.5 Claravine’s Proprietary Software and Intellectual Property.* Claravine and its licensors own and shall continue to own the software, products, inventions and methods provided or otherwise made available to Customer in connection with the Services (“**Claravine Technology**”). To the extent that any Claravine Technology is incorporated or contained in Services or Deliverables, the rights granted to Customer hereunder with respect to the Services include a non-exclusive, royalty free, fully paid up, license to use, install, perform, and display such Claravine Technology in connection with the Services or Deliverables in which they are incorporated or embedded for all purposes.

*2.6 Reservation of Rights.* Claravine hereby reserves all intellectual property rights not explicitly granted to Customer in this Agreement. As between Claravine and Customer, Claravine owns all intellectual property rights in and to the Services and all websites used for the delivery thereof, and to all related documentation and copies thereof, including without limitation all copyrights,



trademarks, patents, trade secrets and other intellectual property (the “**Proprietary Rights**”), including goodwill or reputation that accrues to Claravine’s intellectual property. To the extent that any Proprietary Rights are invented, created, developed, or first reduced to practice under this Agreement, jointly by the parties or in connection with Claravine’s provision of Services, including by incorporating Customer’s comments, feedback or suggestions, Claravine will own all right, title, and interest in and to such Proprietary Rights, with no duty to account to Customer or compensate Customer with respect to the use and exploitation of the Proprietary Rights.

*2.7 Third Party Components.* Claravine shall specify in the applicable Service Order, any third-party software, tools, products or materials required for performing the Services or incorporated into or provided in connection with a Deliverable. Unless otherwise specified in the applicable Service Order, Claravine shall be responsible for securing all licenses required from third parties for Customer’s use of any such third-party software or components.

## **Warranties and Warranty Disclaimer**

*3.1* Claravine hereby represents and warrants that it shall provide the Services and perform its obligations under this Agreement in compliance with all applicable laws, that it has all authority, licenses, permits, consents and legal documentation necessary to enter into and perform under this Agreement, and that it will perform its obligations under this Agreement in a professional, workmanlike manner pursuant to the currently prevailing industry standards.

3.2 CLARAVINE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. CLARAVINE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, NON-INFRINGEMENT, AND TITLE. CLARAVINE DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICES. CLARAVINE DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR THAT OPERATION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. CLARAVINE DOES NOT WARRANT THAT USE OF THE SERVICES WILL RESULT IN ANY SPECIFIC LEVEL OF INCREASED BUSINESS.

### **Customer Property and License Grant.**

4.1 All Customer Property is and shall remain the sole and exclusive property of Customer and/or its suppliers of such items, data and information. Customer licenses Claravine to use Customer Property solely for the purposes of performing Services under this Agreement. Claravine's rights therein are and shall be limited solely to the extent necessary for Claravine to perform the applicable Services hereunder. **"Customer Property"** means all products, technology, software, access rights, content, materials, equipment, data, information and all other items and information provided by or on behalf of Customer in connection with this Agreement (including without limit all data and information as input, stored, handled, processed and output by any software used as part of or in connection with the Services).

4.2 Customer agrees that it will not at any time use the Services to process the personal data of any individual. The phrase “personal data” and the word “process” for purposes of this Agreement mean “personal data” and “process,” respectively, as defined by the General Data Protection Regulation adopted by the European Union and made effective May 25, 2018.

## **Service Fees; Taxes.**

*5.1 Invoicing and Payment.* Customer will pay for the Services as specified in each Service Order. Claravine shall invoice Customer as specified in the applicable Service Order. Payment of all fees shall be due thirty (30) days after Customer’s receipt of such invoice. In the event Customer disputes an invoice in good faith, Customer may withhold payment of the disputed amounts until the dispute is resolved, but Customer shall under all circumstances be required to pay all undisputed amounts in accordance with the terms set forth herein.

*5.2 Expenses.* Customer shall only reimburse Claravine for reasonable expenses as specified in the Service Order which comply with any applicable Customer travel and expense policy provided in writing to Claravine.

*5.3 Taxes.* All fees for Services and Support and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Claravine’s income.

## **Term and Termination.**

*6.1 Term.* The term of this Agreement will begin on the Effective Date and will continue until terminated as specified herein.

*6.2 Termination.*

(a) This Agreement may be terminated at any time upon the mutual written consent of Customer and Claravine.

(b) Claravine may terminate this Agreement if Customer materially breaches this Agreement or if any individual who uses the Services under the license granted to Customer hereunder fails to comply with the Terms of Service and Customer does not take such measures as may be reasonably required by Claravine to suspend such individual's access to the Services.

(c) Customer may terminate any Service Order (or portion thereof) and/or this Agreement in its entirety if Claravine materially breaches this Agreement and does not cure such breach within 30 days after receipt of written notice specifying the nature of such breach; provided, however, that if such breach cannot be reasonably cured within such 30 day period, Claravine shall have such longer period as may be reasonable to cure such breach before Customer may exercise its termination rights hereunder.

(d) This Agreement shall terminate automatically without the necessity of notice to either party in the event that Claravine is not providing any Services to Customer for a period of 12 consecutive months and there are no outstanding Service Orders pursuant to which Services have been ordered by Customer.

(e) Termination of this Agreement by either party shall result in termination of all Service Orders issued under this Agreement. Termination of any Service Order will not terminate this Agreement or any other Service Order issued under this Agreement.

*6.3 Effect of Termination.* Upon termination of this Agreement or of any Service Order (other than for Claravine's breach), Claravine shall be entitled to payment for Services provided up to the date of such termination, not to exceed the rates or fees specified in the applicable Service Order. Claravine shall have no obligation to refund any amounts paid to Claravine prior to the effective date of such termination. In the event that this Agreement is terminated by Claravine pursuant to Section 6.2(b) above, Claravine shall be entitled to seek such remedies as may be available pursuant to applicable law, including payment of all amounts that would have become due and payable for the remainder of the term of this Agreement but for Customer's breach of the terms hereof and Claravine's election to terminate this Agreement on account thereof. Except in the event of termination by Claravine pursuant to Section 6.2(b), upon termination of this Agreement, Claravine shall use commercially reasonable efforts to comply with all termination procedures set forth at [www.claravine.com/termination](http://www.claravine.com/termination) (**Termination and Transition Procedures**).

### **Confidential Information.**

*7.1* If the parties have previously executed a written non-disclosure, confidentiality or similar agreement relating to the exchange of confidential information between them ( ("NDA") such NDA shall remain in effect in accordance with its terms and such terms are hereby incorporated herein. Where there is any conflict between the NDA and this Agreement, the terms of this Agreement shall control.

7.2 “**Confidential Information**” means all non-public information provided or revealed by one Party (“**Discloser**”) to the other Party (“**Recipient**”) or otherwise learned by a Party during the course of performance under this Agreement, including without limitation software, programs, prices, processes, requirements, documentation, developments, and bank account, credit card, financial, marketing and other business information, and any other material or information identified at the time of disclosure as confidential or proprietary, or which otherwise one would reasonably expect to be confidential or proprietary. , Recipient’s obligations of confidentiality hereunder shall not apply to information that: (a) is or becomes public through no fault or breach by Recipient, (b) is or becomes known to Recipient directly or rightfully through a third party without an obligation of confidentiality, (c) is independently developed by Recipient without use of or access or reference to Discloser’s Confidential Information or (d) is disclosed with the prior written approval of Discloser on a case-by-case basis. Recipient may disclose Discloser’s Confidential Information as required by law or court order provided: (1) Recipient promptly notifies Discloser in writing of the requirement for disclosure; and (2) discloses only that specific portion of the Confidential Information which Recipient is required to produce by such law or court order.

Recipient will not disseminate or disclose Confidential Information to any third party, and will protect Discloser’s Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Recipient will use Discloser’s Confidential Information solely to the extent necessary to exercise its rights and obligations under this Agreement and will ensure that Confidential Information is disclosed only to its Personnel with a bona fide need to know and who are under binding written obligations of confidentiality with Recipient to protect Discloser’s

Confidential Information. All Confidential Information is and shall remain the sole property of Discloser, and Recipient shall not acquire any rights or licenses therein except as expressly set forth in this Agreement. Recipient will within ten (10) days of receipt of Discloser's written request, and at Discloser's option, either return all Confidential Information including all copies in any form or certify in writing that all such Confidential Information has been destroyed. Recipient agrees that any actual or threatened violations of this section 7 may result in irreparable harm to Discloser for which monetary damages may not be sufficient and that Discloser may be entitled to seek a temporary restraining order and a preliminary or permanent injunction without posting bond against recipient in addition to any other rights or remedies the Discloser may have at law or in equity. The prevailing Party shall be entitled to recover from the other Party its legal fees and expenses, including reasonable attorney's fees, incurred in enforcing this section.

### **Information Security.**

8.1 Claravine represents that it has and will maintain, at a minimum, the technical and organizational measures and controls as specified at [www.claravine.com/DSA](http://www.claravine.com/DSA) (Data Security Addendum), and Claravine will update those with equivalent or more protective measures and controls as needed to remain compliant at all times with then-current industry standard practices.

8.2 Customer acknowledges and agrees that the Services provided under this Agreement do not require the collection and/or processing of Personal Information on behalf of Customer. In the event that Customer requests that Claravine process Personal Information of Customer, Claravine agrees that it: (i) shall comply with all applicable regulations, directives, federal and state privacy and data protection laws in its collection, access, use, storage, disposal and

disclosure of Personally Information; (ii) shall implement and maintain a written information security program including appropriate policies and procedures that are reviewed for new risk assessments at least annually; (iii) shall implement administrative, physical and technical safeguards to protect Personal Information from unauthorized access, acquisition or disclosure, destruction, alteration, accidental loss, misuse or damage that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement; (iv) shall process Personal Information at the locations agreed upon in the Service Order and shall not transfer Personal Information across country borders unless expressly authorized in writing by Customer; and (v) shall comply with the terms of the Data Security Addendum. “Personal Information” means: (1) any information relating to an identified or identifiable natural person, device, or household, and (2) any information defined as “personally identifiable information,” “personal information,” “personal data” or similar terms as such terms are defined under applicable data security or privacy laws.

8.3 Claravine agrees that it shall at all times comply with its privacy policy located at <https://www.claravine.com/privacy-policy/> (“**Privacy Policy**”) and with all applicable privacy laws.

### **Relationship of the Parties.**

9.1 Claravine is and shall at all times be deemed to be an independent contractor to Customer and nothing in this Agreement is intended to or shall be construed to establish between the parties any relationship of partnership, joint venture, joint employment, employment, franchise, or agency between the parties. Neither party has any authority, and shall not represent that it has authority, to assume or create any obligation, express or implied, on behalf of the other party.



9.2 As an independent contractor, Claravine shall be solely responsible for determining the means and methods for performing the Services.

### **Insurance Requirements.**

10.1 Claravine shall maintain during the term of this Agreement, at its sole cost and expense, with insurance companies rated A-VII or better by A.M. Best, licensed in the state in which the Services are being provided, at least the following insurance, covering the Services and Claravine's contractual obligations under this Agreement:

Commercial general liability insurance (including contractual liability coverage) on an occurrence basis for bodily injury, death, "broad form" property damage, and personal injury, with coverage limits of not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) general aggregate for bodily injury and property damage;

Auto liability insurance covering all owned, non-owned and hired vehicles, with coverage limits of not less than two million dollars (\$2,000,000) per occurrence for bodily injury and property damage; and

Worker's compensation insurance as required by law in the state where the Services will be performed, including employer's liability coverage for injury, disease and death, with coverage limits of not less than one million dollars (\$1,000,000) per accident and employee.

Technology Errors & Omissions and Cyber-risk insurance covering first-party and third party losses resulting or arising from acts, errors or omissions in the rendering of Services under this Agreement, or from data damage / destruction / corruption, including without limitation, unauthorized access, unauthorized use, virus transmission, denial of service, violation of privacy, and loss of income from network security failures in connection with the Services provided under this Agreement, with coverage limits of at least \$5,000,000 per occurrence/\$10,000,000 aggregate.

10.2. In no event will the foregoing coverage limits affect or limit in any manner Claravine's contractual liability for indemnification or any other liability of Claravine under this Agreement.

*10.3. Cancellation or Lapse of Insurance.* Claravine will give thirty (30) days written notice to Customer prior to cancellation, non-renewal, or material change in coverage, scope, or amount of any policy except in the event of non-payment, which will require at least ten (10) days' notice to Customer.

## **Indemnification.**

*11.1 General Indemnification.* Claravine shall indemnify, hold harmless and, at Customer's request, defend Customer and its officers, directors, employees, successors and assigns, from all losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including court costs and reasonable legal fees) arising from any personal injury, including death and disease, or damage to property caused by or resulting from the acts or omissions of Claravine's Personnel.

*11.2 Intellectual Property.* Claravine shall indemnify, hold harmless and defend Customer and its officers, directors, employees, partners and clients from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including court costs and reasonable legal fees) arising from any claims that the Services or any portion thereof, infringe any U.S. patent issued as of the Effective Date of this Agreement. Notwithstanding the foregoing, Claravine shall have no liability with respect to any claim that arises from (x) the use, operation, or combination of the Services with programs, data, equipment, or materials not approved for use with the Services if such infringement would have been avoided by the use of the Services without such other programs, data, equipment, or materials; (y) Customer's modification of the Services; or (z) Customer's use or distribution of any release of the Services for which infringement could have been avoided by Customer's use of a superseding version of the Services provided or made available by Claravine at no additional

cost to Customer. If Customer's use of the Services is, or in either parties' reasonable opinion is likely to be, enjoined due to an infringement claim, Claravine shall at its election and expense promptly take at least one of the following actions: (i) procure for Customer the right to continue using the infringing Services under the terms of this Agreement; (ii) replace or modify the infringing Services so that they are non-infringing and substantially equivalent in function and performance to the enjoined Services; or (iii) if options (i) and (ii) above cannot be accomplished despite Claravine's reasonable efforts, then Claravine may terminate the Service Order relating to the infringing Services and Claravine will refund to Customer the unused portion of any prepaid amounts paid by Customer in connection therewith. The foregoing shall be the exclusive remedy of Customer for a breach of the warranty of non-infringement.

*11.3 Customer Content.* Customer shall defend, indemnify and hold Claravine harmless from and against any loss, damage or costs (including reasonable attorneys' fees, court costs, and witness fees) incurred in connection with any third-party claim made or brought against Claravine arising out of or related to (i) any images, video, data and other information provided to Claravine or uploaded or imported into the Services ("Customer Content"), (ii) Customer's use of the Services (except for infringement claims addressed above) and the results obtained therefrom, (iii) the use of the Services or the data or results therefrom by any third party on behalf of Customer; and/or (iv) Customer's violation of any applicable laws.

*11.4 Indemnification Procedure.* In the event of any claim for indemnification hereunder, the party seeking indemnification (the "Indemnified Party") will notify the party with an indemnification obligation hereunder (the "Indemnifying Party") in a timely manner after the Indemnified Party becomes aware of such claim, will

grant the Indemnifying Party control of the defense and settlement of the claim and will provide Indemnifying Party with reasonable assistance, information and authority required for Indemnified Party to meet its obligations hereunder. An Indemnifying Party may not enter into any settlement without the express written consent of the Indemnified Party (which shall not be unreasonably withheld), unless such settlement (i) releases Indemnified Party in full for all claims, (ii) does not impose any obligation on Indemnified Party, other than ceasing use of the infringing Services and (iii) includes no admission of any kind by or on behalf of Indemnified Party.

### **Limitation of Liability.**

12.1. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST PROFITS INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN ACTION, CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2. EXCEPT WITH REGARD TO CLARAVINE'S WILLFUL MISCONDUCT, NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, AND IN CONSIDERATION OF THE RELATIVE RISKS AND REWARDS, CLARAVINE'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT PAYABLE BY CUSTOMER TO CLARAVINE FOR THE SERVICES DURING THE TWELVE MONTHS PRECEDING THE ACT OR OMISSION THAT PRECIPITATED THE CLAIM.

12.3. NOTWITHSTANDING THE FOREGOING, NO LIMITATIONS OF LIABILITY SHALL APPLY TO ANY DAMAGES RELATED TO A BREACH OF SECTION 7 (CONFIDENTIAL INFORMATION) OR SERVE TO LIMIT A PARTY'S OBLIGATIONS PURSUANT TO SECTION 11 (INDEMNIFICATION).

**Notices.** All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly received when (i) delivered personally to the recipient, (ii) one (1) business day after it is sent to the recipient by reputable express courier service (charges prepaid) or (iii) delivered to the recipient through other electronic means (including by e-mail) (provided, that receipt is confirmed promptly thereafter), and addressed to the intended recipient as set forth below:

If to Customer: At the address provided in the customer account setup page

If to Claravine:

Claravine Inc.

770 East Main St. #360

Lehi, Utah 84043

Attention: Verl Allen

Email: [support@claravine.com](mailto:support@claravine.com)

**Business Continuity.** Claravine shall at all times during the term of this Agreement and in the course of performing hereunder comply with its Business Continuity Plan, which Plan may be amended by Claravine from time to time; provided, however, that no change or series of changes may result in a material degradation of business continuity assurance. Claravine shall routinely (and at least annually) review, update and test the Plan to ensure it is functional,

sufficient and comprehensive for purposes of business continuity assurance. Claravine shall take prompt, reasonable and appropriate actions to remedy any failures or deficiencies and to address any concerns Customer may have regarding the Plan or any test thereof. **“Business Continuity Plan” or “Plan”** means Claravine’s documented plans and preparations necessary to enable continued business operation in the event of any business or service interruption. Such plan shall include, but not be limited to, Claravine’s plans and proposals for: (i) activities related to the avoidance of interruptions that may affect service; (ii) actions to be implemented after any interruption to restore service; (iii) measures to be taken due to failure or malfunction of equipment; (iv) alternate measures to be taken in the event of interruption; (v) moving personnel, departments or business units to ensure the same level of service in the event of an interruption; and (vi) ensuring a seamless transition given any significant personnel changes directly affecting this Agreement.

**Publicity.** Claravine shall have no right to use Customer’s name, logos or trademarks or otherwise make any direct, indirect or implied reference to Customer, its relationship with Claravine or any benefits Customer has or may derive from the Services or its relationship with Claravine, without obtaining prior express written consent from Customer or as may be otherwise specified in a Service Order.

**Survival.** The rights and obligations set forth in Sections 3 (Warranties and Disclaimers), 4 (Customer Property and License Grant), 5 (Service Fees), 6.3 (Effect of Termination), 7 (Confidential Information), 8 (Information Security Data), 9 (Relationship of the Parties), 10 (Insurance Requirements), 11 (Indemnification), 12 (Limit of Liability), 15 (Publicity), 16 (Survival), and 17 (General) shall survive expiration or termination of this Agreement.

**General.**

*17.1 Governing Law; Venue.* This Agreement will be governed by and construed exclusively in accordance with the laws of Utah without regard to principles of conflicts of law. Any legal action or proceeding arising under this Agreement shall be brought exclusively in the state or federal courts in the State of Utah, and the Parties hereby consent to personal jurisdiction and venue therein.

*17.2 Severability.* If any provision of this Agreement is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement shall remain in full force and effect.

*17.3 No Waiver.* The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. All of the remedies provided for in this Agreement are non-exclusive and without prejudice to any other rights a party may have at law or in equity.

*17.4 Assignment.* Neither party may assign this Agreement (whether by operation of law, change of control, or otherwise) without the other party's prior written consent; except that Claravine may assign this Agreement as part of a merger, consolidation, reorganization, change of control or transfer of all or substantially all of its assets. Any attempt or purported assignment in violation of the foregoing shall be void.

*17.5 Entire Agreement and Amendments.* This Agreement (including all referenced exhibits, amendments, attachments, Service Orders and documents incorporated by reference) contains the entire Agreement between the parties related to this subject matter and no alteration or variation of the terms of this Agreement shall be valid unless made in a writing signed by both parties. This

Agreement replaces all prior agreements, presentations, proposals, letters of intent, memoranda of understandings or similar documents relating to the subject matter hereof, except for the NDA referenced in Section 7.1 above, and Customer hereby acknowledges that it has not relied on any representations or warranties in any such document in electing to execute this Agreement. Notwithstanding the foregoing, the Terms of Service and Privacy Policy may be updated by Claravine from time to time without prior notice to Customer and such updated versions are incorporated herein by reference as of the date of publication of such updated versions on the Site. No terms issued by Customer or appearing on any other document provided by Customer including without limit any order or purchase order acknowledgment form will have any force or effect or otherwise be binding on the parties. In the event any conflict or inconsistencies arise between the terms of this Agreement and the terms of any Service Order issued hereunder, the terms of the Service Order shall govern with respect to the Services provided under that Service Order only.

*17.6 Subject Headings.* The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

*17.7 Additional Documents Incorporated.* The following documents are incorporated by reference to the extent applicable: (a) Initial Service Order(s) (b) Support Policies and Service Level Requirements; (c) Termination Procedures; (d) Data Security Addendum; and (e) any other exhibits, attachments or schedules identified in a Service Order executed pursuant to this Agreement.