

# Master Service Agreement

This Master Service Agreement ("**Agreement**"), is made effective this, 2017 April 1 by and between Clarizen Inc. ("**We**" or "**Us**"), and The County of Monterey on behalf of Natividad Medical Center with an address at 1441 Constitution Blvd., Salinas CA 93906 ("**You**").

**WHEREAS** We are the owner of an online project management software platform and service available at <http://www.clarizen.com> ("**Site**") that We market directly and indirectly to end users; and

**WHEREAS** You wish to utilize Our Service and We wish to provide You with the Service pursuant to the terms and conditions set forth in this Agreement;

**NOW THEREFORE**, in consideration of the mutual undertakings herein contained, the parties hereby agree as follows:

If You are entering this Agreement on behalf of a company or another legal entity, You represent that You have the authority to bind such entity and its Affiliates to these terms and conditions, in which case the terms "You" or "Your" shall refer to such entity and its Affiliates.

The following terms and conditions shall govern use of the Service by Your Users and that with respect to the Services, this Agreement shall supersede the Online Agreement that has been, or may be, agreed to by Your Users in connection with their use of the Service.

## 1. DEFINITIONS

1.1. "Account" means the account opened within the Service under Your subscribed name.

1.2. "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.3 [RESERVED]

1.4. "Malicious Code" means viruses, worms, time bombs, trojan horses and other harmful or malicious code, files, scripts, agents or programs.

1.5. "Purchase Order" means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Purchase

Orders shall become effective when agreed to by both You and Us or when submitted using the standard form through Our Site. All Purchase Orders shall be deemed incorporated herein by reference.

1.6. "Our Basic Support" means the support services We provide You at no extra charge which includes using Our commercially reasonable efforts to promptly address and resolve Service Errors.

1.7. "Service or Services" means the online, Web-based applications and platform that We provide via the Site, including associated offline components, but excluding Third Party Applications.

1.8. "Service Errors" means any interruption in the availability of the Service caused by factors under Our direct control.

1.9. "Third-Party Applications" means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications.

1.10. "Users" means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents; or third parties with which You transact business.

1.11. "E-mail User Only" means individuals who are not Users, whose e-mails can be read and downloaded in the Service by any of Your Users.

1.12. "We," "Us" or "Our" means Clarizen directly or through any of its Affiliates.

1.13. "You" or "Your" means the company or other legal entity for which You are accepting this Agreement and Affiliates of that company or entity.

1.14. "Your Data" means all electronic data or information submitted by You to the Services, including all text, photographs, caricatures, illustrations, designs, charts, graphs, icons, articles, audio clips, video clips, and other materials posted, emailed, transmitted, created, or otherwise utilized by You or Your Users while interacting with the Service.

## **2.[RESERVED]3. THE SERVICES**

3.1. **Provision of Services.** We shall make the Services available to You non-exclusively pursuant to this Agreement and the relevant Purchase Order during a subscription term, by opening an Account with Us and purchasing User subscriptions as provided in Section 3.2 below. Except as may be otherwise agreed in writing, You agree that Your purchases

hereunder are neither contingent on the delivery of any future features and enhancement nor dependent on any oral or written public comments made by Us regarding future features and enhancement. You can utilize the Services as long as You abide by the terms of this Agreement and as long as Your Account is not terminated by either party hereto.

We hereby grant to You and to your Affiliates, the non-exclusive, non-transferable, fully-paid licenses to electronically access and use the Site and the Services in accordance with the terms of this Agreement.

All travel and expenses will be paid per the Monterey County Travel Policy.

[https://www.co.monterey.ca.us/auditor/pdfs/County\\_Travel\\_Business\\_Expense\\_Policy\\_12-5-12.pdf](https://www.co.monterey.ca.us/auditor/pdfs/County_Travel_Business_Expense_Policy_12-5-12.pdf)

**3.2. User Subscriptions.** Unless otherwise specified in the applicable Purchase Order, (i) The Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users. Additional User subscriptions may be added at any time by executing another Purchase Order. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

#### **4. USE OF THE SERVICES**

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**4.1 Our Responsibilities.** We shall: (i) provide to You Our Basic Support for the Services at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week except for: (a) planned downtime (of which We shall give You a prior notice via the Site). We shall ensure that such downtime interference to the Services will be as minimal as possible, or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, or Customer's Internet Service Provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.

**4.2. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be and remain solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iv) be responsible for maintaining the security of the User names and passwords of Your Users using the Service and notify Us promptly of any other breach of security known or suspected by You, (v) use the Services only in accordance with applicable laws and government regulations, and (vi) be responsible for all activity under Your Account, including the activity of other Users who have been added to Your Account by You or by another User of the Account. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit

infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights (including any materials which are illegal, obscene, indecent, defamatory, incites racial or ethnic hatred, violates the rights of others, harms or threatens the safety of Users or others or may otherwise constitute a breach of any applicable law), (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks .

**4.3. Protection of Your Data.** Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data unless otherwise required in order to provide the Services, (b) disclose Your Data except as compelled by law in accordance with Section 8.4 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.

**4.4 Deletion of Your Data.**

If You become aware that any portion of Your Data or User activity violates this Agreement, You shall take all necessary action to prevent such activity and remove such Data from the Services. To the extent We become aware that Your Data, in Our reasonable discretion, is in violation of this Agreement or any applicable law, We may immediately block access to the Services, suspend or terminate Your use of the Services. We reserve the right to terminate or suspend Your use of the Services if the continued provision of Services would violate law or otherwise harm Us or our Services. We also reserve the right to cooperate with legal authorities and third parties in the investigation of alleged wrongdoing. We will endeavor to provide notice to You prior to suspension or termination of Your use of the Services, but may immediately suspend or terminate them in instances where Your continued use of the Services would have a material adverse effect on Us.

**4.5 Usage Limitations.** The storage space and functionality available for Your Account will be determined by multiplying the number of Users Subscriptions purchased by You by the following:

<b>Professional Edition</b>	<b>Enterprise Edition</b>	<b>Unlimited Edition</b>
100 megabytes per User	500 megabytes per User	Unlimited per User

Services may be subject to other usage and functionality limitations as may be set forth in the Site (under the "help files"). The Services provide real-time information to enable You to monitor Your compliance with such limitations.

**4.6 Non Material Modifications.** Without limiting any other terms herein contained, We reserve the right in Our sole discretion to add, change, discontinue or otherwise modify non material elements and features to the Services at any time. We will post notifications regarding such changes on Our Site.

**4.7 Customizations of the Services.** The Services may offer interactive features that allow You to submit new specific customization and/or materials to the Services, accessible and viewable by You including any customization to the Service or any custom code which interacts with the Service during the subscription term ("**New Customization**"). You agree that any use by You of such New Customizations, including any materials submitted by You to the Services, shall be Your sole responsibility, shall not infringe or violate the rights of any other party or violate any laws, contribute to or encourage infringing or otherwise unlawful conduct, or otherwise be obscene, objectionable, or in poor taste. You also agree that You have obtained all necessary rights and licenses. You agree to provide accurate and complete information in connection with Your submission of any New Customization or materials on the Services. You hereby grant Us a worldwide, royalty-free, nonexclusive license to use such New Customization as part of the Services, and in relation to the Service, without any compensation or obligation to You. We reserve the right to not post or publish any New Customization and/or materials, and to remove or edit any New Customization and/or material, at any time in our sole discretion with 3 business day's notice.

We have the right, but not the obligation, to monitor any New Customization and/or materials submitted by You or otherwise available on the Services, to investigate any reported or apparent violation of this Agreement, and to take any action that We in our sole discretion deem appropriate, including, without limitation, termination hereunder.

**Your Applications and Code.** If You, a third party acting on Your behalf, or a User creates applications or program code using the Services, You authorize Us to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Us to provide the Services in accordance with this Agreement. Subject to the above, We acquire no right, title or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein

**4.8 Non-GA Services.** From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers ("**Non-GA Services**"). You may accept or decline any such trial in Your sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Non-GA Services at any time in Our sole discretion and may never make them generally available.

## 5. FEES AND PAYMENT FOR SERVICES

5.1. **User Fees.** You shall pay all fees specified in all Purchase Orders hereunder. Except as otherwise specified herein or in a Purchase Order, (i) fees are quoted and payable in United States dollars (ii) fees are based on Services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Purchase Order. User subscription fees are based on such periods as shall be specified in the Purchase Order.

5.2. **Invoicing and Payment.** Invoices for the Services shall be billed directly to Your ordering department. You shall certify the invoice, either in the requested amount or in such other amount as You approve in conformity with this Agreement, and shall promptly submit such invoice to the Your Count Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

5.3. [RESERVED].

5.4. [RESERVED]

5.5. [RESERVED]

5.6. [RESERVED]

5.7. **Taxes.** Sales tax (collectively, "**Taxes**") will be included in the Services fees.

## 6. THIRD-PARTY PROVIDERS

6.1. **Acquisition of Third-Party Products and Services.** We may offer Third-Party Applications for sale under Purchase Orders. Any other acquisition by You of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We do not warrant or support third-party products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in the Purchase Order. Subject to Section 6.3 below (Integration with Third Party Services), no purchase of third-party products or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection.

6.2. **Third-Party Applications and Your Data.** If You install or enable Third-Party Applications for use with Services, You acknowledge that We may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-

Party Application providers. The Services shall allow You to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Services.

**6.3 Integration with Third-Party Applications.** The Services may contain features designed to interoperate with Third-Party Applications (e.g., Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Third-Party Applications from such third parties. If such third party ceases to make the Third-Party Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

You hereby acknowledge and confirm that We may work with a third-party application provider to enable You to view certain electronic files in their native format while using the Services. You further acknowledge that any such third party provider that provides such third-party application may have access to files You choose to upload and view while using the Services and that such files will be stored on a public storage service maintained by Us and such third party vendor. We do not warrant or support this third party application service and reserve the right to remove this functionality from the Services at any time.

**6.4 E-mail Users' Data.** If You enable access to e-mails of E-Mail Users within Services, You acknowledge that We may allow such E-Mail Users with access to the Services as required for the interoperation of such E-mail Users' e-mails with the Services. We shall not be responsible for any activity of the E-mail Users and the content of the e-mails of any such E-mail Users. You shall remain at all times responsible for any Data created or otherwise transferred to the Services by such E-mail Users. The Services shall allow You to restrict such access by restricting E-mail Users from sending e-mails to the Services.

## **7. PROPRIETARY RIGHTS**

**7.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services and the Site and all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**7.2. Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein or in a Purchase Order, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes during the subscription term and for the exclusive use of Your Users, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

**7.3. Ownership of Your Data.** As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data.

**7.4. Third Party Data.** All title and intellectual property rights in and to any data of any third party which may be linked to or viewed in connection with the Service is the property of the respective data owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement does not grant You any right to use such data except as allowed by such third party.

**7.5. Suggestions.** We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

## **8. CONFIDENTIALITY AND PRIVACY POLICY**

**8.1.** This Agreement is subject to Our Privacy Policy, which can be found on Exhibit A attached hereto, and constitutes an integral part of this Agreement.

**8.2 Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or written, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Purchase Orders, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**8.3. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall protect the Disclosing Party's Confidential Information by using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), and shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the

Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**8.4. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

**8.5. No Implied Rights.** Except as expressly set forth herein, no license or other rights to Confidential Information are granted or implied hereby by either party.

## **9. [RESERVED]**

## **10. WARRANTIES AND DISCLAIMERS**

**10.1. Our Warranties.** We warrant that (i) to the best of Our knowledge, the Services and the Site do not, and during the term of any Purchase Order, will not, infringe, violate or misappropriate any third party's intellectual property (including copyrights, patents, trademarks, and trade secrets), privacy, moral, or other personal or proprietary rights and (ii) the Services shall perform materially in accordance with the features and functionalities, as set forth in the Site (iii) Subject to Section 6.3 (Integration with Third Party Services), the functionality of the Services will not be materially decreased during a subscription term, and (iv) We will not transmit Malicious Code. For any breach of either such warranty, Your exclusive remedy shall be as provided in Section 11.1 (Indemnification by Us), Section 13.3 (Termination for Cause) and Section 13.4 (Refund or Payment upon Termination) below.

**10.2. Mutual Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement.

**10.3. Disclaimer.** EXCEPT AS OTHERWISE PROVIDED HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS.

WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

EXCEPT AS OTHERWISE PROVIDED HEREIN, WE MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR NEEDS OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR BE FREE FROM SOFTWARE ERRORS, NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR THE ACCURACY OF ANY OTHER INFORMATION OBTAINED THROUGH THE SERVICES OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED.

## **11. MUTUAL INDEMNIFICATION**

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**11.1. Indemnification by Us.** In the event of any claim by a third party against You (the "Claim"), alleging that the use of the Services infringes upon any intellectual property rights of such third party, You will promptly notify Us, and We will defend You and Your officers, agents, and employees against such Claim in Your name but at Our expense, and will indemnify and hold You harmless against any liability paid by You, including but not limited to attorneys' fees and disbursements, arising out of such Claim. In the event such an infringement is found and We cannot either procure the right to continued use of the Services, or, within forty-five (45) days of such finding, and, if We have a right to appeal, the exhaustion of those rights by You, unless such period is extended by You, replace or modify the Services with a non-infringing program of comparable quality and functionality, then We shall terminate the license of the Services and will refund to You all Services fees paid by You, pursuant to this Agreement, reduced by the Fees for each full month from the date of first use of the Services, until the date of termination.

**11.2. [RESERVED]**

**11.3. Exclusive Remedy.** This Section 11 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## **12. LIMITATION OF LIABILITY**

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**12.1. Limitation of Liability.** With respect to Clarizen's and NMC's rights and obligations with respect to indemnification under Section 11, Clarizen's liability to NMC or NMC's liability to Clarizen under this Agreement shall not exceed the limit of their then current applicable insurance coverage, provided that Clarizen's insurance is at all times maintained in accordance with Section 14.13. IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL FEES PAID TO US BY YOU FOR USE OF THE SERVICES DURING THE PRECEDING TWELVE MONTH PERIOD. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR SERVICES).

**12.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

### **13. TERM AND TERMINATION**

**13.1. Term of Agreement.** This Agreement commences on April 1, 2017 and continues until April 1, 2020.

**13.2. Term of Purchased User Subscriptions.** User subscriptions purchased by You commence on the start date specified in the applicable Purchase Order and continue for the subscription term specified therein.

#### **13.3. Termination**

(a) Termination for Breach. If YOU commit a material breach of this Agreement and persists in such failure for a period of thirty (30) days after receiving written notice thereof from We, We may terminate this Agreement upon written notice to YOU and YOU shall pay all remaining Fees from the date of termination to the end of the current subscription term. If We commit a material breach of this Agreement and persists in such failure for a period of thirty (30) days after receiving written notice thereof from YOU, YOU may terminate this Agreement upon written notice to We and We shall return all YOU data pursuant to the provisions of this Agreement. If We commits a material breach, We will reimburse to YOU all fees paid to Us by YOU from the date of the breach to the date of termination.

(b) Termination in Response to Non-Appropriation of County Funding. Notwithstanding any other provision of this Agreement, YOU shall not be obligated for payment performance hereunder during any of YOUR future fiscal years unless and until the Monterey County Board of Supervisors appropriates funds for this Agreement in YOUR Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. YOU shall notify Us in writing of any such non-allocation of funds at the earliest possible date.

#### **13.4. [RESERVED]**

**13.5. Effect of Termination.** Termination of this Agreement will result in the immediate deactivation or deletion of Your Account or Your and Your Users access to the Account. Upon termination, all Your access to the Service will be disabled and all of Your Data will be stored in the Site's database for a period of 90 days following the termination of Your Account (the "Storage Period"). During the Storage Period you shall be able to retrieve the data in xml format along with attachments in their native format. Upon the end of the Storage Period all Your Data will be permanently deleted from the Site's servers. Once deleted, this information cannot be recovered. After such 90-day period, We shall have no obligation to maintain or provide any of Your Data and may thereafter, unless

legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

**13.6. Surviving Provisions.** Section 5 (Fees and Payment for Services), 7 (Proprietary Rights), 8 (Confidentiality), 10.3 (Disclaimer), 11 (Mutual Indemnification), 12 (Limitation of Liability), 13.5 (Effect of Termination), and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

## **14. GENERAL PROVISIONS**

**14.1. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You. Notices to us shall be to one of the addresses detailed in the "contact us" section on our web site.

**14.2. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**14.3. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction countries (currently Cuba, Iran, North Korea, Sudan or Syria).

**14.4. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**14.5. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**14.6. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**14.7. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and

interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**14.8. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Purchase Orders), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.10. Governing Law & Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding that body of California law concerning conflicts of law. The parties further submit to the exclusive jurisdiction of the state and federal courts located in Monterey County, for any litigation arising out of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this agreement.

**14.11 Compliance with Treasury Department Office of Foreign Assets Control Regulations.** Both Parties are currently in compliance with and will at all times during the Term remain in compliance with the regulations of the Office of Foreign Asset Control of the Department of the Treasury regarding the Iran Sanctions and the Counter Terrorism Sanctions, as provided in its office website: <http://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx>, and <http://www.treasury.gov/resource-center/sanctions/Programs/pages/terror.aspx>, or at any replacement website or other replacement official publication, and with any statute, executive order or other governmental action relating thereto.

**14.12 Anti-Corruption.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our team at [SUPPORT@CLARIZEN.COM](mailto:SUPPORT@CLARIZEN.COM).

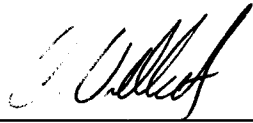
**14.13. Insurance. INSURANCE: Evidence of Coverage: We shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. This evidence of coverage shall be sent to YOU (Natividad Medical Center's Contracts Department), unless otherwise directed. QUALIFYING INSURERS: All coverage except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company**

**of equal financial stability that is approved by YOU. INSURANCE COVERAGE REQUIREMENTS: We shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following limits of liability: Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence. Business Automobile Liability Insurance covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence. Workers' Compensation Insurance, in accordance with applicable statutory limits. OTHER INSURANCE REQUIREMENTS: All insurance required by this Agreement shall be an admitted insurer authorized transact insurance business in the State of California. Commercial General Liability and Automobiles Liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of US's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance of self-insurance maintained by the YOU (County) and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by US's insurance.**

This Agreement, including all exhibits and addendum hereto and all Purchase Orders, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Purchase Order, the terms of such exhibit, addendum or Purchase Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your Purchase Order or other order documentation (excluding Purchase Orders) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

QUESTIONS ABOUT THIS AGREEMENT SHOULD BE SENT TO [SUPPORT@CLARIZEN.COM](mailto:SUPPORT@CLARIZEN.COM).

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as witnessed by the signatures of their duly authorized representatives:



**Clarizen Inc.**


Name: Cisco Villalaz  
Title: GC & VP Corp Dev  
Date: 1/17/17


**Natividad Medical Center**

Name: \_\_\_\_\_  
Gary Gray, DO, CEO

Date: \_\_\_\_\_

Reviewed as to fiscal provisions

 2/14/17  
Auditor-Controller  
County of Monterey

  
AB Brereton  
Dep Colo  
2-9-17

## Exhibit A - Privacy Policy

Effective date: 3/6/2016

This privacy policy has been created to better serve those who are concerned with how their 'Personally identifiable information' (PII) is being used by Clarizen's services, which include its site at clarizen.com as well as its applications for mobile devices and social networks (collectively, the "Site" or "Services"). PII, as used in US privacy law and information security, is information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context.

Please read our privacy policy carefully to get a clear understanding of how we collect, use, protect or otherwise handle your Personally Identifiable Information that is voluntarily submitted or collected automatically when accessing the Services.

This Privacy Policy was last updated on the "Effective date" noted above. Clarizen reserves the right to change, modify or amend this Privacy Policy from time to time to reflect changes in our privacy practices. You are encouraged to review this Privacy Policy periodically and to check the "Effective date" at the top of this Privacy Policy for the most recent version, to inform yourself about how your PII is collected, used and shared when you use the Services.

If you do not agree with these terms, please do not access or use the Services.

### What personal information do we collect?

In order to enable visitors of our Services to see certain pages, when specifically requested by such visitors, we may require the user to provide contact information, (including but not limited to name and e-mail address). The information collected shall be used for the purposes providing you with email support and in order to allow Clarizen to contact you, from time to time, via email communication, with news and updates about services, products and offerings (such as: a newsletter, new releases, new features, special offers etc.).

If you wish, at any time, to remove your email address from any of the above mentioned email mailing lists and stop receiving future email communications from us, other than the emails directly related to the Service functionality, you may unsubscribe by sending an email to: [info@clarizen.com](mailto:info@clarizen.com). For your convenience, email communication from us contains instructions regarding how to unsubscribe from our e-mail mailing lists.

Contact information is information such as your name or mailing address that can be used to uniquely identify you. In order to use certain Services and/or receive newsletters or commercial offers, you must provide contact information.

### When do we collect information?

We collect information from you when you register on our site, access our services, subscribe to a newsletter, fill out a form, or enter information on our site.

### How do we use your information?

We may use the information we collect from you when you register, sign up for newsletters, respond to surveys or marketing communications, or use certain other site features, in the following ways:

- To personalize user's experience and to allow us to deliver the type of content and product offerings in which you are most interested or have directly requested from us.
- To improve our Services in order to better serve you.
- To allow us to better service you in responding to your customer service requests.
- To administer surveys or other site features.
- To quickly process your transactions.
- To send periodic emails regarding your products and services.

How do we protect visitor information?

Clarizen employs a dedicated security team that utilizes industry best practices and best of breed technology to manage security of our infrastructure and your data.

All your contact information, including, but not limited to, your name, address, telephone number, email address, is held in strict confidence. This information is collected for the primarily purposes of enabling you to receive the Services requested by you.

Security scanning

Your personal information is encrypted and stored behind secured networks and is only accessible by a limited number of persons who have special access rights to such systems, and are required to keep the information confidential. In addition, all sensitive information you supply is encrypted "in transit," and "at rest."

We implement a variety of security measures when a user enters, submits, or accesses their information to maintain the safety of your personal information.

Although we take every possible measure to provide secure Services we cannot fully control and therefore cannot be liable for service interruptions, intrusions, errors, loss of data, or any other interference with the use of the Services as a result of security related incidents.

Do we use cookies?

Yes. Cookies are small files that a site or its service provider transfers to your computer's hard drive through your Web browser (with your permission) that enables the site's or service provider's systems to recognize your browser and remember certain information. Cookies are also used to help us understand your preferences based on previous or current Site activity, which enables us to provide you with improved services. We also use cookies to help us compile aggregate data about Site traffic and Site interaction so that we can better tailor your site experience while improving functionality in the future.

We use cookies to:

Understand and save user's preferences for future visits.

Compile aggregate data about site traffic and site interactions in order to offer better site experiences and tools in the future. We may also use trusted third party services that track this information on our behalf.

You can choose to have your computer warn you each time a cookie is being sent, or you can choose to turn off all cookies. You do this through your browser (like Internet Explorer) settings. Each browser is a little different, so look at your browser's Help menu to learn the correct way to modify your cookies.

If you disable cookies, you will still be able to access our site, but some features may be disabled and some of our services may not function properly.

#### Third party disclosure

We do not sell, trade, or otherwise transfer to outside parties your personally identifiable information (PII) unless we provide you with advance notice. This does not include website hosting partners and other parties who assist us in operating our Services, conducting our business, or servicing you, so long as those parties agree to keep this information confidential. We may also release your information when we believe release is appropriate to protect ourselves from liability, or to comply with law, enforce our site policies, or protect ours or others' rights, property, or safety. We may also disclose your personal information to the extent necessary in connection with a merger, acquisition, liquidation or bankruptcy of the company.

However, non-personally identifiable visitor information may be provided to other parties for marketing, advertising, or other uses.

#### Third party links

Links to third party websites are provided as a convenience to you. Such linked sites are outside of our control and responsibility and are not covered by this policy. If you use any such linked sites, you should consult the privacy policies posted on those websites.

#### Do-Not-Track signals

Because there is not yet a consensus on how companies should respond to web browser-based or other "Do Not Track" ("DNT") mechanisms, we currently do not respond to web browser DNT signals that provide a method to opt out of the collection of information about online activities over time and across third-party websites or online services. We may revisit our policy on responding to these signals, in which case we will post a revised privacy policy on this site.

#### California Online Privacy Protection Act

CalOPPA is the first state law in the nation to require commercial websites and online services to post a privacy policy. The law's reach stretches well beyond California to require a person or company in the United States (and conceivably the world) that operates websites or mobile applications collecting personally identifiable information from California consumers to post a conspicuous privacy policy on its website stating exactly the

information being collected and those individuals with whom it is being shared, and to comply with this policy.

See more at: [//consumercal.org/california-online-privacy-protection-act-caloppa/#sthash.0FdRbT51.dpuf](https://consumercal.org/california-online-privacy-protection-act-caloppa/#sthash.0FdRbT51.dpuf)

According to CalOPPA we agree to the following:

Users can visit our site anonymously, but this will limit our ability to deliver the type of content and product offerings in which you are most interested, or for which you have paid and subscribed to.

Once this privacy policy is created, we will add a link to it on our home page, or as a minimum on the first significant page after entering our website.

Our Privacy Policy link includes the word 'Privacy', and can be easily be found on the page specified above.

Users will be notified of any privacy policy changes:

On our Privacy Policy page

Users are able to change their personal information:

- By emailing us
- By calling us
- By contacting their account representatives

#### Fair Information Practices

The Fair Information Practices Principles form the backbone of privacy law in the United States and the concepts they include have played a significant role in the development of data protection laws around the globe. Understanding the Fair Information Practice Principles and how they should be implemented is critical to comply with the various privacy laws that protect personal information.

In order to be in line with Fair Information Practices we will take the following responsive action, should a data breach occur:

We will notify the users via email, or preferred method of communication.

We will notify the users via in-site notification.

#### Notice to California residents re: direct marketing

Pursuant to California Civil Code Section 1798.83, residents of the State of California have the right to request from companies conducting business in California certain information regarding disclosure within the immediately preceding calendar year of that California resident's personal information to third parties (and in some cases affiliates) for their direct marketing purposes. Alternatively, the law provides that a company may comply, as Clarizen

does, by disclosing in its privacy policy that it provides consumers with a choice (opt-out or opt-in) regarding sharing personal information with third parties and affiliates for those third parties' and affiliates' direct marketing purposes, and information on how to exercise that choice. At this time, we do not share personally identifiable information with third parties or affiliates for those third parties' or affiliates' direct marketing purposes. If we do so in the future, Clarizen will provide you with a choice prior to sharing your personally identifiable information with third parties and affiliates for their direct marketing purposes. If you do not opt-in or if you choose to opt-out at the time Clarizen offers that choice, we will not share your information with that identified third party or affiliate for its direct marketing purposes.

If you are a California resident and you have questions about our practices with respect to sharing information with third parties for their direct marketing purposes and your ability to exercise choice, please send your request to the following email address: [info@clarizen.com](mailto:info@clarizen.com) or write to us at the following mailing address. You must put the statement "Your California Privacy Rights" in the subject field of your e-mail or include it in your writing if you choose to write to us at the designated mailing address. You must include your name, street address, city, state and zip code. We are not responsible for notices that are not labeled or sent properly, or do not have complete information. Please note that we are only required to respond to one request per customer each year.

Clarizen  
2755 Campus Drive, Suite 300  
San Mateo, CA 94403  
USA  
Children

We do not knowingly collect personal information from children under 13. No-one under age 13 may provide any information to or on the Site. If you are under the age of 13, do not register on the Site or use or provide any personal information on or through the Site, including your name, email address or any screen name or user name you may use.

Contact us

If there are any questions regarding this privacy policy, you may contact us using the information below.

Clarizen  
2755 Campus Drive, Suite 300  
San Mateo, CA 94403  
USA  
[info@clarizen.com](mailto:info@clarizen.com)

# Natividad Medical Center

## Order Form

**clarizen**

Company Name: Natividad Medical Center	Proposal Date:	1/18/17
Customer Contact: Kathy Robinson	Valid Through:	3/30/17
Clarizen Phone: (650) 544 2929	Payment Terms:	NET30

Products	Unit	Term (Mo.s)	Unit Price	Cost
<b>YEAR 1 COST</b>				
<b>Licenses</b>				
Enterprise - Full Licenses	147	36	\$27.00	\$47,628.00
<b>Professional Services</b>				
Enhanced Onboarding Package	1		\$12,000.00	\$12,000.00
<b>YEAR 2 COST</b>				
<b>Licenses</b>				
Enterprise - Full Licenses	147	36	\$27.00	\$47,628.00
<b>YEAR 3 COST</b>				
<b>Licenses</b>				
Enterprise - Full Licenses	147	36	\$27.00	\$47,628.00

**Comments:**

1	Terms are based on a 36 month contract; Duration: April 1, 2017 - April, 1 2020.
2	Enterprise Full License price discounted to \$27/user
3	Price hold per user set @ \$27/month for duration of contract
4	Billing will occur on an annual cycle
6	Contract and license activation to begin 4/1/17
5	Natividad Medical Center reserves right to purchase blocks of 10 hours for \$2,500 (\$250 per hour)

Approved By (Customer Signature)

Date