



**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH SYSTEM MEDICAL CENTER GOVERNING BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 15.2  
(ID # 12589)

**MEETING DATE:**  
Tuesday, June 30, 2020

**FROM:** RUHS-MEDICAL CENTER:

**SUBJECT:** RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Ratification and Approval of a Professional Service Agreement with Vizient, Inc., without securing competitive bids for Clinical Data Base Product Services effective January 1, 2020 through December 31, 2022; All Districts. [Total Cost \$705,900 – 100% Hospital Enterprise Fund - 40050]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Ratify and Approve a Professional Service Agreement with Vizient, Inc., without seeking competitive bids for Clinical Data Base Product Services effective January 1, 2020 through December 31, 2022 for a total amount not to exceed \$705,900, and authorize the Chairman of the Board to sign said Amendment on behalf of the County; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459 and based on the availability of funding and as approved by County Counsel, to sign amendments that do not change the substantive terms of the Agreement.


**ACTION:** Policy

  
 Jennifer Cruikshank, Chief Executive Officer – Health System 6/11/2020

**MINUTES OF THE GOVERNING BOARD**

On motion of Supervisor Jeffries, seconded by Supervisor Hewitt and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
 Nays: None  
 Absent: None  
 Date: June 30, 2020  
 xc: RUHS

Kecia R. Harper  
 Clerk of the Board  
 By:   
 Deputy

**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH  
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 114,190	\$ 231,806	\$ 705,900	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS: 100% Hospital Enterprise Fund - 40050</b>			<b>Budget Adjustment: No</b>	
			<b>For Fiscal Year: 19/20-22/23</b>	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

Vizient, Inc. (formerly UHC/Novation, LLC) is the Group Purchasing Organization (GPO) currently under contract with Riverside University Health System-Medical Center (RUHS-MC). In addition to the discounts and competitively bid opportunities available to the County through the Vizient Group Purchasing Master Agreement, Vizient also offers other additional services such as those covered in the proposed Agreement.

To qualify for certain types of reimbursement RUHS-MC is required to report data on an ongoing basis in accordance with the standards of The Joint Commission and Centers for Medicare and Medicaid Services (CMS). A subscription agreement to Vizient's Clinical Data Base (CDB) product allows subscribing organizations like RUHS-MC to compare and analyze comprehensive clinical, supply spend, and resource utilization data across service lines and expedite data collection to fulfill agency reporting requirements. Specifically, CDB leverages patient charge detail, supply spend, and resource utilization data for transparent and comprehensive comparative analysis so subscribers can compare internal trends and performance with other peer organizations and identify clinical practice variation, assess resource need, optimize utilization to reduce costs, and identify opportunities for clinical, operational, and financial improvement. While using the service, RUHS-MC will have rights to access the website or storage media, and user manuals. The use of Protected Health Information (PHI) will likely be visible, therefore, the parties have agreed to a Business Associate Agreement. This Agreement with Vizient, Inc., for Clinical Data Base Product Services will be effective January 1, 2020 through December 31, 2022 for a total amount not to exceed \$705,900.

Use of CDB is independent of Vizient's status as a Group Purchasing Organization for the County, however, RUHS-MC has negotiated an option for early termination of this agreement if Vizient is not the successful bidder in the upcoming Request for Proposals for GPO services.

**Impact on Citizens and Businesses**



**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH  
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Riverside University Health System-Medical Center (RUHS-MC) will have access to clinical benchmarking tools such as dashboards, simulation calculators, and templated and customizable reports. This allows RUHS-MC to generate reports to assist with evaluating and improving performance in order to provide efficient and effective patient care to the community.

**Additional Fiscal Information**

FY2019/2020	FY2020/2021	FY2021/2022	FY2022/2023	TOTAL
\$114,190	\$231,806	\$238,760	\$121,144	\$705,900

**Contract History and Price Reasonableness**

On September 23, 2014, Agenda item #3-59, the Board of Supervisors approved the Group Purchasing Master Agreement with University Health Services Consortium/Novation effective upon signature with options to renew for four additional years thereafter. The Agreement was a result of a Request for Proposal (RFP) in which UHC/Novation was found to offer the best pricing, best coverage and most comprehensive value-added programs of the GPOs then competing. On September 17, 2019, Agenda Item #15.2, the Board of Supervisors approved an Amendment extending that Master Agreement through June 20, 2021. The Amendment included acknowledgement of payment for certain Vizient services, including those involved in this subscription Agreement through December 31, 2019.

As RUHS-MC continues to utilize the GPO services through Vizient, this is a new participation enrollment and license agreement for clinical data base (CDB) services with Vizient effective January 1, 2020 through December 31, 2022. Although the previous Vizient GPO arrangement included payment for last year's (2019) CDB service, it was agreed when an "add on service" such as this CDB service is needed from Vizient, the parties would establish a separate agreement. Switching to another vendor would result in an installation of a totally new system, not just a change in the software management. Vizient's clinical database system has been favorable to RUHS-Medical Center's Quality Management team and meets RUHS's present needs.

The annual payment due is by calendar year from January to December, as follows:

- Calendar Year 2020 - \$228,380
- Calendar Year 2021 - \$235,231
- Calendar Year 2022 - \$242,288

unless the option for early termination at the end of Calendar Year 2021 is exercised.

**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH  
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**ATTACHMENTS:**

**Attachment A: PROFESSIONAL SERVICE AGREEMENT BETWEEN COUNTY OF RIVERSIDE AND VIZIENT, INC. (CLINICAL DATA BASE SERVICES)**

**Attachment B: SSJ #20-128 VIZIENT CLINICAL DATA BASE**

  
Teresa Summers, Director of Purchasing 6/15/2020

  
Brianna Lentajo, Management Analyst 6/23/2020

  
Gregory L. Priarios, Director County Counsel 6/18/2020



**PROFESSIONAL SERVICE AGREEMENT**

**For**

**CLINICAL DATA BASE SERVICES**

**between**

**COUNTY OF RIVERSIDE**

**And**

**VIZIENT, INC.**



**TABLE OF CONTENTS**

<b><u>SECTION HEADING</u></b>	<b><u>PAGE NUMBER</u></b>
1. Description of Services.....	3
2. Period of Performance.....	3
3. Compensation.....	3
4. Alteration or Changes to the Agreement .....	4
5. Termination .....	5
6. Ownership/Use of Contract Materials and Products .....	6
7. Conduct of Contractor .....	6
8. Inspection of Service: Quality Control/Assurance .....	6
9. Independent Contractor/Employment Eligibility .....	7
10. Subcontract for Work or Services .....	8
11. Disputes .....	8
12. Licensing and Permits .....	9
13. Use by Other Political Entities .....	9
14. Non-Discrimination .....	9
15. Records and Documents .....	9
16. Confidentiality .....	10
17. Administration/Contract Liaison.....	11
18. Notices.....	11
19. Force Majeure.....	11
20. EDD Reporting Requirements.....	11
21. Hold Harmless/Indemnification .....	12
22. Insurance .....	13
23. General .....	16
Exhibit A-Statement of Work.....	20
Attachment I-Covered Facilities.....	26
Attachment II-Medisolv, Inc .....	27



This Agreement, made and entered into this 1st day of January, 2020, by and between **Vizient, Inc.**, a Delaware company, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE (herein referred to as "COUNTY"), a political subdivision of the State of California on behalf of Riverside University Health System, (herein referred to as "RUHS"), sometimes collectively referred to as the "Parties" or individually referred to as a "Party". The Parties agree as follows:

**1. Description of Services**

**1.1** CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services. The Parties agree that the services provided herein are covered under the existing Business Associate Agreement between them dated April 8, 2014. In order to subscribe to optional Core Measure Services, COUNTY and Medisolv, Inc. has previously executed, a mutually agreeable: i) Medisolv Product Subscription Agreement; ii) Data Authorization Form; and iii) Business Associate Agreement ("collectively, the "Medisolv Agreements") attached and incorporated hereto as Exhibit B.

**1.2** CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

**1.3** CONTRACTOR affirms it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit A. CONTRACTOR is not to perform services or provide products outside of the Agreement.

**1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** This Agreement shall be effective January 1, 2020 and continues in effect through, December 31, 2022, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both Parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

**3. Compensation**

**3.1** The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit A, Statement of Work. Maximum payments by COUNTY to CONTRACTOR shall not exceed:

- (1) two hundred twenty-eight thousand three hundred eighty dollars (\$228,380) for calendar year 2020,
- (2) two hundred thirty-five thousand two hundred thirty-one dollars (\$235,231) for calendar year 2021, and
- (3) two hundred forty-two thousand two hundred eighty-eight dollars (\$242,288) for calendar year 2022.

The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit A, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

**3.2** Intentionally Omitted.

**3.3** Intentionally Omitted.

**3.4** The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered "monthly" in arrears. In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Codes, Section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

#### **4. Alteration or Changes to the Agreement**

**4.1** The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

**4.2** Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section



shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

**5. Termination**

**5.1.** If CONTRACTOR is no longer contracted with COUNTY as a Group Purchasing Organization (GPO) as of December 1, 2021 COUNTY may terminate this Agreement without cause as of December 31, 2021 by written notice served upon the CONTRACTOR stating the effective date of termination.

**5.2** COUNTY may, upon thirty (30) days written notice terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

**5.3** After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

**5.4** After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

**5.5** CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

**5.6** CONTRACTOR is not debarred from the System for Award Management (SAM). If the Agreement is federally or State funded, CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR

Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.7 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

**6. Ownership/Use of Contract Reports**

The CONTRACTOR agrees that all reports in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY. The reports may be used by the COUNTY for any purpose that the COUNTY deems to be appropriate, including, but not limited to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such reports without prior written authorization of the COUNTY.

**7. Conduct of Contractor**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall



have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected; the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided upon mutual agreement. The COUNTY may also terminate this Agreement for default and agrees to accept as liquidated damages a pro-rated refund of Service Fees because of the CONTRACTOR's failure to perform.

**8.2** CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement.

**9. Independent Contractor/Employment Eligibility**

**9.1** The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the Parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the Parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**9.2** CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

**9.3** Ineligible Person shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a



criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

**9.4** CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

**9.5** CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

**9.6** CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

## **10. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other Party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for Parties named in the proposal and agreed to under this Agreement.

## **11. Disputes**

**11.1** The Parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the Parties. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.



11.2 Prior to the filing of any legal action related to this Agreement, the Parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The Parties shall share the cost of the mediations.

**12. Licensing and Permits**

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

**13. Use By Other Political Entities**

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

**14. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination



of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**16. Confidentiality**

**16.1** The CONTRACTOR and COUNTY shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY and CONTRACTOR information or data which is not subject to public disclosure; COUNTY and CONTRACTOR operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

**16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph. This obligation of confidentiality shall not apply to information that: (a) is published by the disclosing party or otherwise becomes available to the public other than by a breach of this Agreement, (b) is rightfully received by the recipient from a third party not under an obligation of confidentiality, (c) is known by or independently developed by the recipient prior to disclosure by the disclosing party, or (d) is required to be disclosed pursuant to law a lawful subpoena from a court of competent jurisdiction or in response to a valid request by a governmental agency. In the event of any required disclosure under 16.2(d), the party requesting to disclose the Confidential Information shall provide reasonable advance written notice to the other party to provide the other party an opportunity to assert whatever exclusions or exemptions may be available to it under such law or regulation and object or respond to the subpoena or governmental agency to protect against the disclosure of the Confidential Information

**16.3** The CONTRACTOR is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public



Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto. Please refer to Attachment 1 of this agreement.

**16.4** Except as expressly stated in this Agreement, (i) this Agreement does not confer any right, license, interest or title in, to or under the Confidential Information, and (ii) no license is granted to the receiving party, by estoppels or otherwise under any patent, trademark, copyright, trade secret or other proprietary rights

**16.5** Each party acknowledges that monetary damages will not be a sufficient remedy for any breach of the confidentiality provisions of this Agreement. The non-breaching party may seek specific performance or injunctive relief, in addition to any other remedies available at law or in equity, upon the breach or threatened breach of this Section of the Agreement without posting bond and without proof of actual damages.

**17. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**18. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective Parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Riverside University Health System  
26520 Cactus Avenue  
Moreno Valley, CA 92555

**CONTRACTOR**

Vizient, Inc.  
290 E. John Carpenter Freeway  
Irving, TX 75062

**19. Force Majeure**

If either Party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such Party shall not be held liable for such failure to comply.

**20. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the

EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

**21. Hold Harmless/Indemnification**

**21.1** To the extent permitted by law, CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any third party liability, action, claim or damage whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature but only to the extent such Claims are based upon the act or omission of CONTRACTOR. CONTRACTOR shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions. Neither party is responsible for losses incurred by reason of the other party's willful misconduct.

**21.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

**21.3** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.



21.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

21.5 IN NO EVENT WILL CONTRACTOR BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING STRICT LIABILITY AND NEGLIGENCE), FOR LOST PROFITS OR REVENUES, LOSS OR INTERRUPTION OF USE, LOST OR DAMAGED DATA, REPORTS, DOCUMENTATION, OR SECURITY, OR SIMILAR ECONOMIC LOSS, OR FOR ANY INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR SIMILAR DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; for an amount greater than three (3) times the SERVICE FEES AND Reimbursable Expenses of this Agreement. THIS LIMITATION OF LIABILITY IS FUNDAMENTAL TO THIS AGREEMENT. THE PARTIES REVIEWED AND BARGAINED FOR THESE TERMS AND NEITHER PARTY WOULD BE WILLING TO ENTER INTO THIS AGREEMENT WITHOUT THIS LIMITATION.

## 22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

### **A. Workers' Compensation:**

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

### **B. Commercial General Liability:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations



hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

**C. Vehicle Liability:**

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit which may be satisfied through a combination of excess and/or umbrella insurance policies. Policy shall name the COUNTY as Additional Insureds. Policy shall name the COUNTY as Additional Insureds.

**D. Professional Liability:**

Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

**E. Cyber Liability Insurance**

CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents representatives, or employees. CONTRACTOR shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release



of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expense with limits sufficient to respond to these obligations.

If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the COUNTY requires and shall be entitled to the broader coverage and/or higher limits maintain by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

**F. General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) CONTRACTOR agrees to use admitted carriers in the State of California or alternatively, surplus lines carriers on the approved LASLI list.

3) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

4) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto



evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the Parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

## **23. General**

**23.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Such consent may not be unreasonably withheld, delayed, or conditioned. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**23.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.



**23.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR unless such amounts are in dispute by the Parties.

**23.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**23.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

**23.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest so long as such products or services do not unreasonably interfere with CONTRACTOR'S ability to perform its obligation under this Agreement. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**23.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**23.8** CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

**23.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

**23.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**23.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the Parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of

competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**23.12** This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the Parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both Parties.

**23.13** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: V. M. Perez

Name: V. MANUEL PEREZ

Title: CHAIRMAN, BOARD OF SUPERVISORS

Date: JUN 30 2020

VIZIENT, INC., a Delaware company

By: Tony Romano

Name: Tony Romano

Title: VP, Product Delivery

Date: 4/30/2020

ATTEST:  
Kecia R. Harper  
Clerk of the Board

By: Priscilla Kassar  
Deputy

APPROVED AS TO FORM:

Gregory P. Priamos  
County Counsel

By: Martha Ann Knutson

Name: Martha Ann Knutson

Title: Deputy County Counsel

Date: 5/8/2020

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

VIZIENT, INC., a Delaware company

By:  \_\_\_\_\_

Name: Tony Romano

Title: VP, Product Delivery

Date: 4/30/2020

**ATTEST:**

Kecia R. Harper  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

Gregory P. Priamos  
County Counsel

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



## Exhibit A

### **Clinical Data Base Services Statement of Work (SOW)**

This SOW is effective as of January 1, 2020 (the "Effective Date"). As of the Effective Date, this SOW will supersede that **Participant Enrollment and License Agreement for the Clinical Data Base ("CDB"), Resource Manager ("RM"), and Core Measures Reporting** between **University Health System Consortium** and **Riverside County Regional Medical Center** dated September 30, 2008. Vizient and Member are sometimes referred to herein individually as a "Party" and collectively as the "Parties." Any reference to, or description of any right or obligation of, "Member" in this SOW shall also include Covered Facilities unless specifically delineated.

1. **Services.** Vizient will provide a subscription to Vizient's Clinical Data Base ("CDB") which allows subscribing members to compare and analyze comprehensive clinical, supply spend, and resource utilization data across service lines and expedite data collection to fulfill agency reporting requirements. Specifically, CDB leverages patient charge detail, supply spend, and resource utilization data for transparent and comprehensive comparative analysis so members can compare internal trends and performance with other member peer organizations and identify clinical practice variation, assess resource need, optimize utilization to reduce costs, and identify opportunities for clinical, operational, and financial improvement. Member will have access to clinical benchmarking tools such as dashboards, simulation calculators, and templated and customizable reports, which allow members to generate customized analytical reports to evaluate performance across Member's organization and for specific categories for in depth review of Member's supply spend and utilization performance for high-cost categories such as pharmaceuticals, imaging, and medical-surgical supplies (collectively, the "Services"). Services also include:
  - 1.1 **Support Services.** Ongoing support services to assist Member with data submission and other technical support needs. Support services also include access to training (self-service and web-based training) and educational resources. Requests for on-site training may increase Service Fees.
  - 1.2 **Core Measures Reporting Optional Services.** In addition to the Services, Vizient will provide Member access to optional core measure reporting services ("CM Services") delivered by a third party vendor, Medisolv, Inc. ("Medisolv"), for no additional fee. Continued participation in CM Services is contingent on the continued effectiveness of the Medisolv Agreements. CM Services will be discontinued upon the expiration or termination of any of the Medisolv Agreements, this SOW, or upon 90 days' notice from either Party to the other Party. Member acknowledges and agrees that the CM Services are provided subject solely to the terms, conditions, and obligations set forth in the Medisolv Agreements and Vizient disclaims any liability with respect to the CM Services or the Medisolv Agreements.
  - 1.3 **Protected Health Information.** The Parties acknowledge and agree that the Services include the use of Protected Health Information ("PHI") and thus, any PHI disclosed hereunder will be subject to the Parties' Business Associate Agreement ("BAA") dated April 8, 2014.
  - 1.4 **Member Data.** Member acknowledges Services rely solely on timely receipt of complete, accurate, and relevant Member data, including clinical data, operational data, and provide spend-related data, including, but not limited to, purchase orders, item master information, vendor master information, receipts, invoices, and utilization data (collectively, "Member Data") and Member will submit all required Member Data on a monthly basis and as may otherwise be requested by Vizient from time to time. If Member subscribes to CM Services, Member Data also includes the data file Member submits to Medisolv for CM Services ("CM Data"). Vizient has the right to use Member Data submitted in connection with any other Vizient services to which Member subscribes. Member's failure to provide Member Data may limit Vizient's ability to provide all or part of the Services. Vizient reserves the right to terminate this Agreement immediately if Member fails to provide Member Data for more than 30 days after it is requested in writing by Vizient.

2. **Materials, Licenses, and Member Obligations.**



2.1 "**Materials**" means all data or property owned, licensed, leased, or developed by, or on behalf of, Vizient and provided to or accessed by Member pursuant to the terms of this SOW, including, without limitation, Program Data, Program Content, and Derivative Works (as defined below).

- A. "**Program Data**" means all data and property loaded into, or located in, all programs and databases, including all subsequent copies, reproductions, modifications, and updates and the various reports generated thereunder including, but not limited to, clinical and operational databases, clinical performance data, resource utilization data, and Spend Data.
- B. "**Program Content**" means all Services components, including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, design or submission specifications, or any other web-based application or platform or technical information made available to Member in providing access to Services, including usage data reflecting access to or use of the Services and information contained in websites that are accessed as part of the Services.
- C. "**Derivative Works**" means all deliverables created by Vizient from or with the use of Member Data and available by other Services subscribers in connection with Services.

## 2.2 Licenses.

- A. **Ownership.** Vizient owns all Materials, Program Data, Derivative Works, and all other documentation and materials not specifically granted to Member hereunder. Member owns all Member Data and is subject to the license and right of use expressly granted to Vizient.
- B. **Member License.** Member hereby grants Vizient a royalty-free, non-exclusive, perpetual license to access, incorporate, display, transmit, reproduce, and otherwise use such Member Data in a deidentified (in accordance with 45 CFR Part 164.514(b), as amended) form to create or modify Materials, Program Data, and Derivative Works as necessary to provide Services and used by other Vizient or other subscribing members as part of the Services. Vizient will aggregate Member Data and apply any Services specific processing, which may include, but is not limited to, application of risk and cost adjustment modifiers; to make the Program Data and Derivative Works available pursuant to Vizient's standards, processes, schedules, data privacy and security, and internet security policies.
- C. **Vizient License.** Vizient hereby grants Member the non-exclusive right to access and use Services, including, but not limited to, website or storage media, user manuals, or Materials, solely for Member's own internal purposes, during the Term and in accordance with the terms and conditions of this SOW.
- D. **License Reservations.** Vizient reserves all rights not specifically granted to Member hereunder, including all rights, title and interest, and all derivative works thereof, including all related intellectual property rights. Except as expressly provided herein or otherwise upon Vizient's express written consent, Member will not, nor will it permit, any third party to use, receive, copy, market, sell, distribute, license, sublicense, lease, timeshare, rent, transfer, disclose, display, view, translate, modify, improve, adapt, disassemble, decompile, or reverse engineer Materials, Derivative Works, or Program Data, or any portions thereof; nor will Member create, use, or permit third parties to create or use, without Vizient's express written consent, derivative works, improvements, products, or other documentation based upon the Materials or any portion thereof.
- E. **License Limitations.** Member acknowledges and agrees that access to Services is subject to the express condition that Member will: i) treat all Materials, as defined in this SOW, as Vizient's intellectual property and confidential information; ii) use such information for Member's internal use only; and iii) immediately notify Vizient of any unauthorized use, or suspected unauthorized use of Services.

## 2.3 Member Obligations.

- A. **General.** Member will: i) comply with the terms and conditions of this SOW, including all data submission requirements; ii) comply with the terms and conditions under this SOW; iii) complete all applicable Services survey or



intake tools; iv) submit complete, accurate, and relevant Member Data through appropriate and secure data feeds in accordance with Vizient's data submission standards, processes, schedules, data security, and internet security policies for all Services; and v) comply with Vizient's security/privacy procedures and maintain associated physical, technical, and administrative safeguards as needed to ensure Materials are accessed by authorized personnel only and will remain de-identified in accordance with 45 CFR Part 164.514(b), as amended.

- B. Access.** Member will not alter, modify, remove, obscure, or cover any trademark, copyright notices, or other legends or proprietary notices placed on or embedded by Vizient in the Materials, Program Data, Derivative Works, or other documentation or modify or copy any of the foregoing in any digital or electronic form without the express written permission of Vizient. Member will reproduce all such notices and legends on and in any and all backup copies of the Materials created by Member as permitted herein. In addition, the Member will not attempt, nor allow or request others to attempt, to circumvent any technological measures implemented by Vizient to protect its Materials and copyrightable property. Furthermore, Member will not permit access to the software or data contained therein to anyone other than through i) terminals located on Member's business premises, or ii) through a Member owned virtual private network ("VPN") accessed with Member-owned and secured equipment.
- C. Internal Use Only.** Member will not, nor will it permit any other person or entity to: i) identify or re-identify, or attempt to identify or re-identify, any specific institution, physician, patient, or individual in the Materials; or ii) link any other data elements to de-identified data sets within Program Data without obtaining an expert determination that all such data sets have been statistically de-identified and will remain de-identified pursuant to 45 CFR Part 164.514(b), as amended. Notwithstanding the foregoing, Member will not use any Program Data or Confidential Information in any form outside Member's institution, unless it meets all requirements in this SOW and is masked, blinded, or otherwise protected to preclude the identification of all institutions, providers, and patients. Member understands that Vizient shares non-PHI Program Data among other database and subscription Members, and may do so on a hospital-specific basis in accordance with the database or subscription standards and guidelines, and subject to contractual obligations of confidentiality with the other database Members (see also Publication Rights below).
- D. Data Sharing Among Covered Affiliates.** Member may use, present and share the Materials with other Covered Facilities of Member that subscribe to the Services, subject to the terms and conditions of this SOW, including the obligations to comply with HIPAA described above.
- E. External Third-Party Disclosure; Provision of Reports to Third Parties.** Member may disclose the Program Data in reports or documents created or developed by Member using the Materials, if the Program Data relates to Member, based on information contained in the Vizient databases (but may not grant access to the actual databases) on a need-to-know basis with certain unrelated third-party *financial, legal and operational advisors, including consultants, provided that such third parties have executed an agreement that requires them to comply with restrictions as to use, confidentiality and ownership of the Materials.* Specifically, Member agrees that with respect to Program Data (other than Member's own data): all personnel and external third parties to whom they provide access to Vizient's Program Data, which includes expert determination de-identified data sets will be properly informed of the data use conditions set forth in this SOW.
- F. Publication Rights.** Member may publish a review, analysis, or conduct research based on Program Data ("Publication") subject to Member's compliance of the following restrictions: i) no institution or group of institutions may be identified or identifiable; ii) Member will not compare data or other performance information with any identifiable institution or identifiable group of institutions; iii) Member will, if applicable, only use Program Data, including data generated based on or with the use of Program Data or arising from the Services provided hereunder, by aggregating such data with at least 5 other institutions; and iv) Member will obtain Vizient's prior written consent for any Publication containing Materials, including Program Data, and such Publication will include the following statement: "***The information contained in this article was based in part on data accessed as part of Vizient's Clinical Data Base subscription services.***"



G. **Disclaimer.** MEMBER AGREES ALL SERVICES, MATERIALS, PROGRAM DATA, DERIVATIVE WORKS, OR ANY OTHER INFORMATION OR DATA PROVIDED HEREUNDER IS PROVIDED "AS IS" AND VIZIENT MAKES AND MEMBER RECEIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALIDITY OF ANY MATERIALS, DATA OR OTHER INFORMATION PROVIDED OR ACCESSED HEREUNDER, OR OF ITS APPROPRIATENESS FOR USE IN ANY MANNER, AND THE PARTIES EXPRESSLY EXCLUDE FROM THIS SOW ALL WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARISING BY LAW, STATUTE, USAGE OF TRADE, OR COURSE OF DEALING. MEMBER ACKNOWLEDGES AND AGREES ANY INFORMATION, MATERIALS, DATA, OR OTHER DOCUMENTATION AVAILABLE HEREUNDER IS NOT A SUBSTITUTE FOR MEMBER'S INDEPENDENT PROFESSIONAL JUDGMENT AND ANY AND ALL RISKS ASSOCIATED WITH THE ACCURACY, USE, AND RELIANCE ON THE SERVICES, MATERIALS, OR OTHER DOCUMENTATION IS ASSUMED BY MEMBER.

NEITHER PARTY SHALL BE LIABLE FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN ANY EVENT, THE PARTIES LIABILITY TO EACH OTHER SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY MEMBER TO VIZIENT DURING THE TERM IN WHICH THE DAMAGE ALLEGED OCCURRED.

H. **Covered Facilities.** Member may use Materials for internal purposes only, and may share with Covered Facilities for Covered Facilities internal purposes only. Member represents and warrants it has obtained all necessary and required consents and authorizations or approvals as dictated by applicable laws, rules, regulations, or policies necessary to share Materials, including Program Data, with Covered Facilities.

### 3. **Intentionally Omitted**

### 4. **Intentionally Omitted**

4.1 **Effect of Termination.** Upon any termination or expiration of this SOW: i) Member will return all Materials to Vizient; and ii) all rights and licenses granted to Member hereunder will immediately terminate, together with Member's access to Services. Member's obligations and any licenses granted to Vizient hereunder will survive any termination of this SOW indefinitely.

4.2 **Sunset.** Vizient reserves the right to sunset, discontinue, or outsource any element of the Services, as well as merge one or more elements of Services into another product upon reasonable notice to Member. In the event Vizient elects to sunset or discontinue any element of the Services, or merge into another product which would materially reduce the functionality of the Services provided by Vizient under this SOW, then Member may terminate this SOW upon thirty (30) days written notice to Vizient and Member shall be entitled to a pro-rated refund of Service Fees.

### 5. **Service Fees and Invoicing.**

5.1 **Service Fees.** Vizient will provide the Services described herein to Member for an annual service fee of **\$228,380** ("Service Fees") for calendar year 2020. Vizient will increase Service Fees by 3% on each anniversary of the Effective Date as described in Section 3 of the Agreement. Member acknowledges and agrees Service Fees are for the Covered Facilities set forth in **Attachment I** as of the Effective Date. Any requests to add additional facilities after the Effective Date will result in additional Service Fees as mutually agreed to by the Parties in an amendment to this SOW and Vizient has no obligation to provide Services to any facility not set forth in this SOW.

5.2 **Reimbursable Expenses.** Member acknowledges and agrees Services-related expenses for on-site services and support (e.g. additional training, member presentations, and data acquisition for added facilities) such as travel, meals, lodging, and other administrative costs, such as postage, copying, and overnight mailing, ("**Reimbursable Expenses**") are in addition to Service Fees. Travel or related expenses incurred by Vizient while performing functions on behalf of Member at the request of Member may be reimbursed in accordance with the procedures and standards set out in Board Policy D-1. The Board Policy D-1 can be found for public access on <http://www.rivcocob.org/boardpolicies/policy-d/POLICY-D01.pdf>. Any other fees or expenses for which Vizient seeks reimbursement must be quoted in advance and added to this Agreement in advance by written amendment.



**5.3 Invoicing and Payment.** Vizient will invoice annual Service Fees, in full, on each anniversary of the Effective Date. Member will pay all invoiced balances within 30 days of the invoice date.

Invoices will be addressed to:

<b>Name/Title/Dept.:</b>	Riverside University Health System-Medical Center (Accounts Payable Department)
<b>Address:</b>	<a href="mailto:AP@ruhealth.org">AP@ruhealth.org</a>
	14375 Nason Street, 2 <sup>nd</sup> Floor, Suite 209
	Moreno Valley, CA 92555
<b>Member Contact Information</b>	
<b>Name/Title:</b>	Angela Simpkins
<b>Phone:</b>	(951) 486-4684
<b>Email:</b>	<a href="mailto:a.simpkins@ruhealth.org">a.simpkins@ruhealth.org</a>

If Member requires specific information (i.e. purchase order number) to be included in each invoice, Member will select the appropriate box below and provide the required information, **at the time Member executes this SOW**, and annually (or as required) thereafter:

- Purchase Order Number \_\_\_\_\_
- Contract Identification Number \_\_\_\_\_
- Other Information \_\_\_\_\_

**6. Intentionally omitted.**

**7. Miscellaneous.**

**7.1** To the extent that 42 U.S.C. 1395x(v)(1)(I) is applicable, any regulations implementing such Section or any successor statutory provision or regulations (collectively called the "Provisions"), until the expiration of four (4) years after the furnishing of any service pursuant to this Agreement, Vizient will make available, upon written request of the Secretary of the Department of Health and Human Services or their duly authorized representative, copies of the SOW and any records of Vizient that are necessary to certify the nature and extent of costs incurred by Member for such services.

If Vizient carries out any of its duties under this SOW through a subcontract with a related organization involving a value or cost of \$10,000 or more over a twelve (12) month period, Vizient will cause such subcontract to contain a clause to the effect that, until the expiration of four (4) years after the furnishing of any service pursuant to said contract, the related organization will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, copies of records of said related organization that are necessary to certify the nature and extent of costs incurred for such service.

**Attachment I**  
**Covered Facilities**

Vizient MID	Covered Facility	Medicare ID	Core Measures Y/N	Joint Commission ID
797038	County of Riverside, Riverside University Health System-Medical Center	050292	Y	



## Medisolv Product Subscription Agreement

This Subscription Agreement (the "Agreement") is entered into by and between County of Riverside, a political subdivision of the state of California, on behalf of Riverside University Health System ("Client") and Medisolv, Inc. ("Medisolv") for the Medisolv ENCOR abstraction software ("Medisolv Software") as of 11/19/2019 ("Effective Date").

### 1. SOFTWARE SUBSCRIPTION.

1.1. *Definitions.* Capitalized terms used in this Section 1 but not otherwise defined shall have the following meanings:

- (a) "*Documentation*" means the user guides, operating manuals, and specifications, whether in print or machine readable media, and all materials supplied by Medisolv or its agents to Client or otherwise made generally available to clients regarding the Medisolv Software or the provision of services. Documentation specifically includes all technical information and responses prepared by Medisolv to any request for information or request for proposals issued by Client. Documentation shall be updated and provided to Client at such time as such updates are generally made available to Medisolv's clients.
- (b) "*Third Party Product*" means application software products provided by third party vendors, including operating system and application software to which the Medisolv Software interfaces and which provides certain functionality essential to the operation of the Medisolv Software.
- (c) "*Intellectual Property Rights*" means all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights and other intellectual property and proprietary rights.

"*Medisolv Software*" means the ENCOR abstraction software, related implementation, and data transmission/submission services. Medisolv Software may include Third Party Products that are licensed to Medisolv and sub-licensed to Client hereunder. Medisolv Software shall also include any fixes, patches, modifications, enhancements or upgrades to such software that are made generally available to subscribers to the Medisolv ENCOR abstraction software. All such fixes, patches, modifications, enhancements or upgrades will be provided by Medisolv to Client as part of its subscription for the Medisolv Software at no additional charge.

(d) "*Support Services*" means the services described on Exhibit 2 (Support Service Terms).

(e) "*Vizient Demographic Data Files Format*" means patient data files submitted by clients to Medisolv according to the required Vizient file format specifications, specifically the inpatient demographic data (Base Data) format in the Vizient IPPS Upload Utility Manual Version 1.1 and the Outpatient demographic data (Base Data) in the Vizient OPDS Upload Utility Manual Version 11.0a updated by Medisolv as needed, at mutually agreed upon regular intervals for the proper functioning of the Medisolv Software.

1.2. *Provision of Software and Services.* Medisolv hereby grants Client the right to access and use the Medisolv Software and Documentation during the Term of this Agreement. Medisolv will make the Medisolv Software and Documentation available to and provide the Medisolv Software and Documentation to Client pursuant to this Agreement during the Term. As part of Client's subscription to the Medisolv Software, Medisolv will provide to Client at no additional charge, installation, training, implementation and/or any other services related to the Medisolv Software. Data extraction from client data systems by Medisolv for use in the Medisolv Software is not included under this agreement and Clients will be required to provide patient data files to Medisolv as specified in the formats of the Vizient Demographic Data Files.

1.3. *Restrictions on Use.* Client acknowledges that the Medisolv Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of Medisolv or third parties from whom Medisolv licenses Third Party Products that are included as part of the Medisolv Software. Accordingly, Client agrees not to (i) modify, adapt, alter, translate, or create derivative works from the Medisolv Software; (ii) merge the Medisolv Software with other software; (iii) sublicense, lease, rent, loan, or otherwise transfer the Medisolv Software to any third party, (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Medisolv Software; (v) use the Medisolv Software to provide services for third parties or to otherwise operate a service bureau; or (vi) otherwise use or copy the Medisolv Software except as expressly allowed hereunder. All rights in and to the Medisolv Software not expressly granted to Client in this Agreement are reserved by Medisolv or third parties from whom Medisolv licenses Third Party Products that are included as part of the Medisolv Software and all implied licenses are disclaimed.

Client will not remove, alter, or obscure any proprietary notices (including copyright notices) of Medisolv or third party vendors on the Medisolv Software or the Documentation.

1.4. *Third Party Products.* If any Medisolv Software contains embedded or installed proprietary software that is licensed to Medisolv by third parties, then during the Term of this Agreement, Medisolv grants to Client, effective upon completion



of installation of the Medisolv Software a non-exclusive, non-transferable, worldwide sublicense to use each item of third-party software.

## 2. IMPLEMENTATION OF MEDISOLV SOFTWARE; SUPPORT SERVICES.

2.1. Installation. Medisolv shall be responsible for implementing the Medisolv Software in accordance with the dates and/or time limits in this Agreement. A sample Standard implementation template is provided in Schedule 5 of this agreement.

2.2. Medisolv will provide the Support Services as part of Client's subscription to the Medisolv Software.

2.3. Service Availability. Medisolv software provided under this subscription agreement shall be available with a minimum uptime threshold of 95%, excluding scheduled maintenance windows. Uptime availability will be defined and measured by the ability of an end-user to login and perform essential application functions within the subscribed product(s). Scheduled maintenance is defined as any planned maintenance which is identified, communicated and planned prior to downtime, broken down into the following two categorizations:

*Normally Scheduled Maintenance:* To be communicated to end-users via any of: E-Mail, direct messaging, application notification, and/or written communication. Normally scheduled maintenance, to the best of Medisolv's ability, will occur during off-hours (evening and weekend hours). Such maintenance is anticipated to occur no more than once per month, for no longer than 4 hours per event.

*Emergency Scheduled Maintenance:* To be communicated to end-users via any of: E-Mail, direct messaging, and/or application notification. Emergency scheduled maintenance is an extremely rare occurrence and is only invoked in the case of a serious cyber-security incident which puts client, company and/or partner data, privacy, and/or security at significant risk. In such cases, Medisolv will immediately communicate the need for downtime, and will take systems down until the cyber-security incident or risk is completely alleviated and normal operations can resume.

### 2.4. Backup and Recovery of Data.

Medisolv will perform regular backups, for the purposes of disaster recovery, business continuity, and safety purposes. Backups will include full database backups, transaction log backups, and file-storage (e.g. BLOB) backups as necessary based on subscribed application(s). Backups and recovery are measured and enforced via RTO/RPO metrics, and Medisolv enforces the following minimum metric thresholds:

RPO (Recovery Point Objective): 24 hours (physical hours)

RTO (Recovery Time Objective): 40 hours (business hours)

Disaster recovery is tested on an annual basis and consists of the ability of Medisolv to restore client data (based on RPO) to a separate system (either new installation within existing infrastructure environment, or new installation within equivalent infrastructure environment in physically separate location) within the allotted time (based on RTO).

## 3. WARRANTIES.

3.1. Warranty of Title. Medisolv warrants that it owns and/or has the right to license the Medisolv Software and Documentation to Client as granted herein without the consent of any third party. Medisolv will not grant any rights or licenses to any intellectual property or technology that would conflict with Medisolv's obligations under this Agreement.

3.2. Warranty of Performance. Medisolv warrants and represents that (i) the Medisolv Software as delivered and accepted by Client will (a) perform in accordance with the Documentation, (b) will provide the data abstraction as described in Exhibit 1, and (c) will provide the data submission as described in Exhibit 1 and that meets the requirements established by CMS, TJC, Mass Health, and under Get With The Guidelines specifications, (ii) Medisolv will not reduce or eliminate functionality in the Medisolv Software, unless such functionality is considered redundant or obsolete by Medisolv and provided such changes would not interfere with successful abstraction and timely reporting of required quality measures data and (iii) the Medisolv Software shall be updated in a timely fashion for all future updates to measure specifications according to deadlines required by the respective measure stewards and/or program sponsors. Medisolv's liability for failure to perform in accordance with this warranty established requirements is limited to repairing or replacing the Medisolv Software and re- submission of data as required.

3.3. Illicit Code. Medisolv warrants and represents that: (i) unless authorized in writing by Client; or (ii) necessary to perform valid duties under this Agreement, any Medisolv Software provided to Client by Medisolv for use by Medisolv or Client shall:

- (a) not replicate, transmit or activate itself without control of a person operating computing equipment on which it resides;
- (b) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; or
- (c) contain no node lock, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data, based on, frequency or duration of use, or



other limiting criteria ("Illicit Code"). If any Medisolv Software contains Illicit Code, Medisolv shall, via a document specific to this provision, notify Client in writing and receive a signed acknowledgement of receipt from Client. Such notification shall specifically inform Client of the full extent and nature of the Illicit Code and provide Client with instructions for overriding such Illicit Code in emergencies or (d) any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (1) disrupting, disabling, deactivating, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device without the user's consent; or (2) modifying, damaging, deleting or destroying any data or file, or sending data or files to unauthorized parties, without the user's consent.

- 3.4. **Support Services.** Medisolv warrants and represents that Support Services for Medisolv Software shall be available from Medisolv for not less than five (5) years from the Effective Date as long as Vizient pays Medisolv for providing the Medisolv Software to Client pursuant to the agreement between Medisolv and Vizient dated April 1, 2019.
- 3.5. **Warranty of Services.** Medisolv warrants and represents that services performed by Medisolv or by a permitted subcontractor or agent of Medisolv shall be performed in a timely, professional manner, consistent with the highest practices in the industry and in a diligent and a workmanlike manner, and according to mutually agreed timelines.
- 3.6. **Additional Warranties.** Medisolv further represents, warrants and covenants that (i) it will at all times comply with applicable laws in providing the Medisolv Software (including the services provided as a part of the Medisolv Software solution) to Client including but not limited to Federal and state laws regulating the privacy and/or security of PI, PII, and PHI (under HIPAA), (ii) it has and will maintain in full force and effect all licenses required to provide the Medisolv Software to Client and for the Medisolv Software to perform the functions and Medisolv to provide the services as described in the Documentation and Exhibit 1, including Medisolv meeting and continuing to meet all requirements for measure collection and transmission of performance measures data to The Joint Commission as a listed ORYX Vendor, to CMS, and all necessary requirements to be qualified to submit measures under Get With The Guidelines and Mass Health (iii) it will maintain industry standard, HIPAA and state privacy/security law compliant security practices for all Client data whether in rest or in motion, with respect to the handling, receipt, use and transmission of Client data, and (iv) the Medisolv Software and Documentation does not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third party.
- 3.7. **Geographic Limitations on Data.** Medisolv warrants and represents that in its provision of Medisolv Software and Support Services to Client, Medisolv will limit the flow of Protected Health Information as such is defined in HIPAA and confidential information to the geographic limits of the United States of America. Client may authorize extraterritorial disclosure of such information by express written permission which must be specific as to the geographic area and specific entities to which the data will be provided.
- 3.8. **Client Reps.** Client represents and warrants to Medisolv that (i) it has all requisite power and authority to enter into and perform its obligations under this Agreement;  
  
(ii) the execution, delivery and performance of this Agreement is within its power and has been duly authorized by all necessary actions; (iii) to its best knowledge, Client will comply with all applicable laws, statutes, regulations, ordinances and other rules in using the Medisolv Software; and (iv) any and all information provided by Client to Medisolv is truthful and accurate.
- 3.9. **Disclaimer of Warranties.** MEDISOLV DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND; EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE WAIVER OR EXCLUSION OF SOME WARRANTIES SO THEY MAY NOT APPLY TO CLIENT. IF THIS EXCLUSION IS HELD TO BE UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, THEN ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES SHALL BE LIMITED IN DURATION TO A PERIOD OF THIRTY (30) DAYS FROM THE ACCEPTANCE DATE, AND NO SUCH WARRANTIES SHALL APPLY AFTER THAT PERIOD.

**INDEMNIFICATION.** Medisolv will defend Client, its Affiliates, and its and their end users (collectively, the "Indemnitees"), at Medisolv's expense, against any and all claims, demands, suits and proceedings ("Claims") made or brought against Client or other Indemnitee by a third party alleging: (i) that the Medisolv Software or Documentation, or the use of the Medisolv Software or Documentation, infringes any patent, copyright, or trademark of a third party or misappropriates such third party's trade secrets.; or (ii) bodily injury (including death) or damage to or loss of property resulting from or arising out of the intentional or negligent act or omission of Medisolv, its agents, subcontractors, or employees; or (iii) a breach by Medisolv of Sections 3.6 and 6. Further, Medisolv will indemnify and hold Client and the other Indemnitees harmless against and any all liabilities, losses, obligations, risks, damages, settlements, fines, penalties, awards, costs, and expenses (including reasonable attorneys' fees) incurred or suffered by Client in connection



with such Claims. Promptly upon receiving notice of a Claim, Client will (a) give Medisolv prompt written notice of the Claim; (b) give Medisolv sole control of the defense and settlement of the Claim, which Medisolv shall undertake using counsel reasonably acceptable to Customer (provided that Medisolv may not settle or defend any claim unless it unconditionally releases Client and the other Indemnitees of all liability); and (c) provide to Medisolv, at Medisolv's cost, all reasonable assistance in the defense or settlement of such Claim.

#### 4. LIMITATION OF LIABILITY.

- 4.1. EXCEPT FOR (A) MEDISOLV'S INDEMNIFICATION OBLIGATIONS OR (B) EITHER PARTY'S BREACH OF SECTION 5, OR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OF VIOLATION OF APPLICABLE LAW (INCLUDING BUT NOT LIMITED TO FEDERAL AND STATE LAWS REGULATING THE PRIVACY AND/OR SECURITY OF PI, PII, AND PHI (UNDER HIPAA)), IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR LOST PROFITS, LOSS OF BUSINESS, LOST SAVINGS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF ADVISED OF SUCH POSSIBILITY.
- 4.2. EXCEPT FOR (A) MEDISOLV'S INDEMNIFICATION OBLIGATIONS OR (B) EITHER PARTY'S BREACH OF SECTION 5, OR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OF VIOLATION OF APPLICABLE LAW (INCLUDING BUT NOT LIMITED TO FEDERAL AND STATE LAWS REGULATING THE PRIVACY AND/OR SECURITY OF PI, PII, AND PHI (UNDER HIPAA)), NEITHER PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING, WITHOUT LIMITATION, BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) SHALL NOT EXCEED THE TOTAL DOLLAR AMOUNTS PAID OR PAYABLE TO MEDISOLV UNDER THIS AGREEMENT OR BY VIZIENT TO MEDISOLV FOR PROVIDING THE MEDISOLV SOFTWARE TO CLIENT PURSUANT TO THE AGREEMENT BETWEEN MEDISOLV AND VIZIENT DATED APRIL 1, 2019.

#### 5. CONFIDENTIALITY; OWNERSHIP OF DATA; DATA BREACH.

- 5.1. Medisolv agrees that it shall not disclose or verify to any third party any Client data which it learned or had access to during the course of its performance of this Agreement, without the prior written consent of Client. This obligation shall survive the cancellation or other termination of this Agreement. The parties agree that any information furnished to one by the other that is marked "confidential" or "proprietary" or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, a party's initiatives, business plans or intellectual property, and employee and medical staff information, constitutes the sole and exclusive proprietary information of the providing party ("Confidential Information").

"Confidential Information" shall also include any information concerning a disclosing party (whether prepared by a disclosing party or its representatives or otherwise and irrespective of the form of communication (i.e., whether written or oral)) which is furnished to a receiving party or to its representatives now or in the future by or on behalf of a disclosing party that is marked "confidential" or "proprietary" or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure including, without limitation, any business, technical (including but not limited to patented or patent-pending information), marketing, financial, patient, Client, vendor, employee, manufacturing, marketing, sales, research and development, or other information which is communicated by or on behalf of a disclosing party to a receiving party orally, in writing or other physical form. "Confidential Information" shall also be deemed to include the existence of and content of this Agreement, as well as any notes, analyses, compilations, studies, forecasts, interpretations or other documents prepared by a receiving party or its representatives that contain, in whole or in part, the information furnished to such receiving party or its representatives pursuant hereto. Each party agrees:

- (i) not to disclose any such Confidential Information;
- (ii) not to use any such Confidential Information for the benefit of itself or any other person or entity except as expressly provided in this Agreement;
- (iii) to keep all Confidential Information in strict confidence; and (iv) to safeguard all Confidential Information with security measures at least equivalent to the measures that it uses to safeguard its own proprietary or Confidential Information. All Confidential Information obtained by the receiving party, directly or indirectly, from Client is the exclusive property of the disclosing party, and the receiving party agrees to promptly return or destroy all Confidential Information including any copies, notes or summaries made thereof which the receiving party may have made, may have access to, or may receive or possess to the disclosing party upon the earlier of a request by the disclosing party, the termination of the Agreement or the completion of the discussions and/or business relationship. The receiving party shall not retain any copies or summaries of the Confidential Information unless expressly approved in writing by Client.



- 5.2. The provisions of this Section 6.1 shall not apply with respect to any information the receiving party can prove (a) was rightfully in the receiving party's possession as a matter of record or known by it without restriction prior to disclosure, (b) is independently developed by those of the receiving party's personnel who did not have access to the Confidential Information as a matter of record, (c) is rightfully obtained from a third party who is not prohibited from transmitting the information by a contractual, legal or fiduciary obligation, or (d) is or (through no improper action or inaction by the receiving party or its employees, agents, officers, directors and/or subcontractors) becomes generally available to the public without license or other restrictions. Additionally, notwithstanding anything else in this Section 6, sharing with Vizient, Inc. including patient data shall be governed by Client's agreement with the Vizient. A party may make disclosures of Confidential Information required by statute, regulation, or court order, provided such party promptly notifies the other party of the disclosure requirement and cooperates efforts to resist or narrow the disclosure and to obtain an order or other reliable assurance that confidential treatment will be afforded such Confidential Information
- 5.3. Medisolv acknowledges that it will not acquire any rights in any of Client's data except for use by Medisolv in aggregate statistical analyses or use in "cleansed" or "de-identified" form, for the purpose of comparative benchmarking across its client base (Client data includes patient information or information that relates to patient information) and in accordance with the agreement between Vizient and Medisolv dated April 1, 2019.
- 5.4. In the event of an unauthorized use or disclosure by Medisolv, its employees, agents or subcontractors of individually identifiable information held by Client ("Personal Information"), Medisolv will immediately give written notice to Client and subject to consent of Client following such notice, Medisolv shall take the following action with respect to such unauthorized use or disclosure: (i) promptly communicate the nature of the unauthorized use or disclosure to those persons whose Personal Information was or likely was used or disclosed in an unauthorized fashion ("Affected Individuals") via written correspondence approved in advance by Client's General Counsel; (ii) if the unauthorized use or disclosure of Personal Information could lead to identity theft or related financial risk to the individual subject(s) of such Personal Information, purchase identity theft monitoring service from a major credit reporting service for each affected Individual offered such service by Client, for a period of time mutually agreed to by Client and Medisolv, but not less than one (1) year; (iii) comply with any and all laws, regulations, governmental orders or other governmental requirements applicable to such unauthorized use or disclosure of Personal Information; and (iv) take all action commercially reasonable to mitigate any damages realized by Client relating to the unauthorized use or disclosure of Personal Information.
6. INSURANCE. Throughout the Term of this Agreement Medisolv shall maintain in force, at a minimum, the insurance coverage described below:
- 6.1. Medisolv shall maintain, at its sole cost and expense, insurance coverage in accordance with this Section. Medisolv shall provide to Client's Risk Management department an ACORD insurance certificate prior to or as of the Effective Date and annually thereafter, and otherwise within ten (10) business days following Client's request, evidencing all required coverage, with coverage underwritten by a U.S. licensed insurance carrier with an A.M. Best Company rating of no less than "A-VII". The commercial general liability, data privacy and security insurance /cyber liability, commercial automobile liability and umbrella liability policies shall name Client, Client's subsidiaries and affiliates, as their interests may appear, as an additional insured. In addition, the commercial general liability, worker's compensation/employer's liability and commercial automobile liability policies shall include a waiver of subrogation in favor of Client, Client's subsidiaries and affiliates. The insurance required by this Section shall not be cancelled or materially amended without providing thirty (30) days prior written notice to Client. The insurance coverage required under this Section shall not limit Medisolv's liability under this Agreement, nor shall such requirements be considered the ultimate amount or types of insurance Medisolv should carry.
- 6.2. Basis of Coverage. Medisolv should endeavor to obtain insurance coverage on occurrence basis forms. Coverage may be provided on a claims-made basis, but Medisolv must (prior to the effective date of termination of Medisolv's then-current insurance coverage and at its sole expense) either: (a) procure replacement policies for the same coverage for at least three years past the expiration or earlier termination of this Agreement; or (b) purchase three years' extended reporting coverage in the amounts required in this Section for all claims arising during the Term.
- 6.3. Commercial General Liability Insurance. Medisolv shall maintain commercial general liability insurance for bodily injury and property damage to third parties, including premises/operations, products-completed operations, independent contractors, contractual liability and personal/advertising injury in the following minimum amounts:
- \$1 million each occurrence;
  - \$2 million general aggregate;
  - \$2 million products/completed operations aggregate; and
  - \$1 million personal and advertising injury.



This policy must be primary to any coverage maintained by Client, must be non-contributory, and must include Additional Insured Broad Form Vendors coverage pursuant to ISO Endorsement CG2015 or its equivalent.

- 6.4. Workers' Compensation/Employer's Liability Insurance. Medisolv shall maintain workers' compensation coverage as required by statute, which (unless otherwise agreed to in writing by Client) must be in the form of a workers' compensation insurance policy. Medisolv must maintain employer's liability insurance in an amount not less than: (i) \$1 million per accident; (ii) \$1 million for disease policy limit; and (iii) \$1 million disease coverage per employee.
  - 6.5. Commercial Automobile Liability Insurance. Medisolv shall maintain primary commercial automobile liability insurance for bodily injury and property damage to third parties arising from the ownership, maintenance, or use of an owned, non-owned, or hired vehicle in an amount not less than \$1 million combined single limit.
  - 6.6. Umbrella Liability Insurance. Medisolv shall maintain umbrella/excess coverages with excess limits of not less than \$2 million per occurrence, and \$2,000,000 in the aggregate, which such coverage is in addition to the coverages described in Sections 6.3 above.
  - 6.7. Data Privacy and Security Insurance / Cyber Liability Insurance. If, in connection with Medisolv's provision of products or services under this Agreement, Medisolv will be creating, receiving, maintaining, transmitting, analyzing or storing protected health information ("PHI"), employee records, personally identifiable information or confidential data, Medisolv agrees to maintain privacy and security liability insurance (or its equivalent, sometimes referred to as "Cyber/Data Network Security" insurance) covering liabilities resulting from or arising from acts, errors, or omissions, in connection with the products or services provided under this Agreement, which are associated with any breach or loss of any PHI or personally identifiable information. Such insurance shall provide coverage not less than \$10 million per claim and \$10 million aggregate.
  - 6.8. Professional Liability Insurance. If, in connection with Medisolv's provision of products or services under this Agreement, Medisolv provides or performs professional services, Medisolv shall maintain professional liability insurance covering negligent acts and errors and/or omissions arising out of the rendering of or failure to render professional services under this Agreement, whether committed or alleged to have been committed by Medisolv or by its employees, contractors or others for whom Medisolv is legally responsible, with minimum limits of \$5 million per claim and \$5 million aggregate. The professional liability insurance required by this paragraph may be satisfied pursuant to a blended Technology Errors & Omissions policy which may include data privacy and security insurance/cyber liability insurance.
  - 6.9. Subcontractor Insurance Coverage. Medisolv shall require all subcontractors it uses in connection with this Agreement to secure and maintain insurance in the amounts and types, and otherwise meeting all of the requirements, set forth in this Section, as if Medisolv performed the work or provided the service performed or provided by the subcontractor. Medisolv shall cause Subcontractor to provide to Client an ACORD insurance certificate prior to or as of the Effective Date and annually thereafter, and otherwise within ten (10) business days following Client's request.
  - 6.10. Self-Insurance. Medisolv may provide self-insurance meeting all of the minimum requirements and limits set forth in this Section; provided, however, that if Medisolv desires to provide self-insurance, Medisolv shall provide to Client, prior to or as of the Effective Date and annually thereafter, a letter of self-insurance reasonably satisfactory to Client and, if requested by Client, an independent, third party actuarial firm attestation report documenting the financial soundness and viability of Medisolv's self-insurance program. .
7. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of the other party, not to be unreasonably withheld; except that either party may assign this Agreement to any entity controlling, controlled by or under common control with that party, or to any successor to such party by reason of acquisition, merger or reorganization, provided that advance written notice has been given to the non-assigning party.
8. **GOVERNMENT REQUIREMENTS**
- 8.1. **Omnibus Reconciliation Act of 1980.** To the extent that Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act") and the regulations promulgated thereunder are applicable to this Agreement, Medisolv and the organizations related to it, if any, performing any of the duties pursuant to this Agreement valued at Ten Thousand Dollars (\$10,000) or more in any twelve (12)-month period shall, until four (4) years after the furnishing of Services pursuant to this Agreement, comply with requests by the Comptroller General, the Secretary of the Department of Health and Human Services, and their duly authorized representatives for access (in accordance with Section 952 of the Act) to any contract or agreement between Medisolv and Client for Services and to any contract or agreement between Medisolv and such related organizations, as well as the books, documents and records of Medisolv and its related organizations, if any, which are necessary to verify the cost of the Services provided. Medisolv shall promptly advise Client of such request, and shall promptly provide to Client copies of any documents so provided. Neither party shall be deemed to have waived any attorney-client or work-product privilege by virtue of this Section.



8.2. Exclusion from Federal Healthcare Programs. Medisolv represents and warrants that neither it, nor any of its employees or other contracted staff (collectively referred to in this paragraph as "employees") has been or is about to be excluded from participation in any Federal Health Care Program (as defined herein). Medisolv agrees to notify Client within five (5) business days of Medisolv's receipt of notice of intent to exclude or actual notice of exclusion from any such program. The listing of Medisolv or any of its employees on the Office of Inspector General's exclusion list (OIG website), the General Services Administration's Lists of Parties Excluded from Federal Procurement and Non-procurement Programs (GSA website) for excluded individuals or entities, any state Medicaid exclusion list, or the Office of Foreign Assets Control's (OFAC's) blocked list shall constitute "exclusion" for purposes of this paragraph. In the event that Medisolv or any of its employees is excluded from any Federal Health Care Program or placed on the OFAC's blocked list, it shall be a material breach and this Agreement shall immediately terminate without penalty to Client, unless Client elects in writing to continue this Agreement. For the purpose of this paragraph, the term "Federal Health Care Program" means the Medicare program, the Medicaid program, TRICARE, any health care program of the Department of Veterans Affairs, the Maternal and Child Health Services Block Grant program, any state social services block grant program, any state children's health insurance program, or any similar program.

9. TERM AND TERMINATION. The term of this Agreement shall commence on the Effective Date, and shall continue unless otherwise terminated in accordance with the terms and conditions herein (the "Term"). Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of thirty (30) days after written notice of such breach is sent to the other party. Client may terminate Support Services with or without cause upon ninety (90) days written notice to Medisolv. The rights and obligations of such provisions that by their nature survive termination shall continue to bind the parties after termination of this Agreement. If Client terminates its subscription for the Vizient Clinical DataBase, this Agreement will automatically terminate upon termination of the Vizient Clinical DataBase subscription. Upon any termination of this Agreement, Medisolv will continue to provide the Medisolv Software to Client for all reporting periods that relate to the periods up to and including the date of termination of this Agreement.

10. EXPORT RESTRICTIONS. This Agreement is expressly made subject to any applicable laws, regulations, orders, or other restrictions on the export of the technology or information about the Medisolv Software which may be imposed from time to time. Client shall not export the Medisolv Software, information about the Medisolv Software or any product containing the Medisolv Software without complying with such laws, regulations, orders, or other restrictions.

The Medisolv Software shall not be exported or re-exported (i) to Cuba, Iran, Iraq, North Korea, Rwanda, Sudan and Syria and any and all other persons and entities prohibited under the United States Export Administration Regulations, as amended from time to time, nor (ii) to any person or entity on the United States Department of the Treasury's Office of Foreign Asset Control's Sanctions Programs, including without limitation, the list of Specially Designated Nationals and Blocked Persons, as amended from time to time.

11. LICENSE TO U.S. GOVERNMENT. The Medisolv Software is a "commercial item" as that term is defined at 48 CFR §2.101 consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR §12.212 or 48 CFR §227.7202, as applicable; and the Medisolv Software is licensed to the United States Government end users only as a commercial item and with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

## 12. GENERAL PROVISIONS.

12.1. Complete Agreement. This Agreement, together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire agreement between the parties relating to the subject matter hereof. This Agreement supersedes all prior understandings, representations, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence. Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

12.2. Waiver and Severability. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

If any provision of this Agreement is held invalid, void or unenforceable under any applicable statute or rule of law, it shall to that extent be deemed omitted, and the balance of this Agreement shall be enforceable in accordance with its remaining terms.

12.3. Applicable Law. The laws of the State of Delaware, without respect to its rules on conflicts of laws and without application of the Uniform Computer Information Transactions Act, shall govern any dispute or controversy between the parties relating to or arising out of this Agreement or any amendment or modification thereof. All proceedings relating to



or arising out of the subject matter hereof shall be maintained exclusively in the courts situated in Wilmington, Delaware, and Medisolv hereby consents to personal jurisdiction and venue therein and hereby waives any right to object to personal jurisdiction or venue therein.

12.4. Notices. Notices hereunder shall be deemed effective at the following times when sent in writing to the address set forth above each party's respective signature: (i) one business day after being sent by Federal Express or other nationally recognized overnight delivery services, with fees prepaid, for next day delivery, or (ii) upon receipt if sent by any other means.

12.5. Independent Contractor. Medisolv and Client are independent contractors in all relationships and actions under and contemplated by this Agreement. Except as expressly set forth herein, this Agreement shall not be construed to create any employment, partnership, joint venture, or agency relationship between the parties or to authorize Medisolv to enter into any commitment or agreement binding Client, including, but not limited to, the offering or extension by Medisolv of any representation, warranty, guarantee, or other commitment on behalf of Client.

12.6. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Each person signing below represents and warrants that they are duly authorized to bind their respective entities by their signature below.

County of Riverside,  
a political subdivision of the state of California,  
on behalf of Riverside University Health System

26520 Cactus Avenue  
Moreno Valley, CA 92555

Medisolv, Inc.  
10440 Little Patuxent Pkwy, Suite 1000  
Columbia, MD 21044

Acceptance

Acceptance

BY: 

BY: 

PRINTED: Elita J. Pao

PRINTED: Ken McCormick

TITLE: Procurement Contract Specialist

TITLE: EVP

DATE: 12/31/19

DATE: 11/19/2019

APPROVED AS TO FORM:  
County Counsel

By:   
Susanna Oh  
Deputy County Counsel

Dated: 12/23/19



Exhibit 1  
To Medisolv Product Subscription Agreement

- ENCOR Abstraction software shall support case abstraction of the following supported measures:
  - CMS IQR Chart abstracted measures
  - CMS OQR Chart abstracted measures
  - TJC ORYX Chart abstracted measures
  - Get With The Guidelines Stroke Registry and Heart Failure abstracted measures
  - Mass Health quality reporting measure set
- Standard implementation includes receipt of a standard data file created by the client in a format specified by Medisolv and uploaded to the Medisolv secure data center in Microsoft Azure.
- Medisolv shall provide remote training via Web Ex session
  - Vizient Client agrees to notify CMS and/or The Joint Commission that it has terminated services with any existing core measure services provider and designate Medisolv as its new vendor. Vizient Client will require its existing service provider to complete all corrections prior to a date to be coordinated with Medisolv within 30 days of the effective date of this Agreement. Vizient Client will commence its use of ENCOR at the start of the identified quarter for all subscribed measures and will not be permitted to split the period between two vendors.
- Medisolv shall submit quarterly patient data for the required measures to CMS and/or TJC
- Medisolv shall submit quarterly patient data to Vizient Inc. for analytics and inclusion in the CDB product.
- Medisolv shall provide Vizient Client's with benchmarking from its client base for measures submitted under this Agreement.
- Any work performed by the Medisolv support organization as part of Work Orders not covered under standard implementation and submission services included in this Agreement shall be billed on a time and materials basis, at rates mutually agreed to in such Work Order. Medisolv shall obtain Client approval through Work Orders prior to commencement of such work. Medisolv shall invoice Client monthly for all services performed on a time and materials basis.
- On-site time presence of Medisolv staff is not anticipated and not included in the CDB subscription fee. On-site training is available only if requested by Client for specialized training or Work Orders will be charged a minimum of eight (8) hours per service call plus travel expenses, to be reasonable and within Medisolv's current travel policy guidelines and preapproved by the Client as detailed in Exhibit 2, Section 2.2.



Exhibit 2  
Support Service Terms  
To Medisolv Product Subscription Agreement

1. GENERAL SUPPORT SERVICES DESCRIPTION

The Support Services performed are subject to all terms and conditions of the Agreement unless otherwise set forth herein. Support Services include a two tier support process as follows:

1.1. *Tier 1 Support.* "Tier 1 Support" will be provided by Medisolv's designated technical support team ("Tier 1 Support Team"). Tier 1 Support is provided by the Medisolv Clinical Consultant assigned to the client. The Medisolv Clinical consultant will generally assist with questions regarding product functionality (including formalized training), product performance, issue resolution (excluding issues qualifying as "Tier 2" issue), abstraction guidelines and any regulatory requirements including submission deadlines.

- (a) *Communication Methods.* Tier 1 Support issues shall be reported to the Tier Support Team by the designated help desk contacts and shall be communicated by email at EncorSupport@medisolv.com, telephone (443.539.0505 x221) or via the following designated Medisolv websites [<http://help.medisolv.net/encor> ] & (<http://help.medisolv.net/support/tickets/>)].
- (b) *Availability.* The Tier 1 Support Team will be available during Normal Business Hours. For purposes of this agreement, "Normal Business Hours" shall mean Monday through Friday (excluding New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day), 8:00 am to 5:00 p.m. Eastern Time. A Medisolv technician is on call for emergency coverage outside Normal Business Hours. Medisolv shall provide a response time of 24 business hours from the time the issue is reported with contact via phone or e-mail. Medisolv Software shall have an uptime availability as outlined in Section 2.3 of the Medisolv product subscription agreement.

Tier 1 Support tickets can be opened with the following information: title, Medisolv product, ticket type (bug, enhancement, question), priority, description, optional upload of supporting attachment.

1.2. *Tier 2 Support.* "Tier 2 Support" will be provided by Medisolv's designated technical support team ("Tier 2 Support Team") and shall apply after Tier 1 Support has had the opportunity to resolve the pending issue. Tier 2 support is provided by the Medisolv Engineering department and typically includes worksheet logic and data issues.

- (a) *Communication Methods.* All Tier 2 Support issues shall be initiated by a Tier 2 Support Team member within 24 hours of a Tier 1 Support issue not being able to be resolved.
- (b) *Escalation to Tier 2 Support and Applicable Response Times.* The following escalation procedures shall apply to all Tier 2 Support issues:
  - (i) For change/new feature requests, the Tier 2 Support Team will log in such request for consideration in the next major release of the Medisolv Software.
  - (ii) For Tier 2 Support issues that do not stop the Client from using the Medisolv Software, the Tier 2 Support Team will record the issue and the Tier 2 Support Team will act as a resource for the Tier 2 Support Team until resolution is accomplished.
  - (iii) For issues that do stop the Client from using the Medisolv Software, the Tier 2 Support Team will record the issue, and such issue will obtain "priority" status by Engineering for its development tasks. Medisolv shall provide a response time of eight business hours from the time the issue is reported. For calls that occur before 8:00am or after 5:00 eastern standard time, an on-call customer support representative will be available to log or document calls for the Tier 1 and Tier 2 support team if they cannot be immediately resolved.

2. TERMS OF SUPPORT

2.1. Medisolv shall provide support for the Medisolv Software after implementation has been completed and accepted with the Documentation provided by Medisolv. Medisolv shall also provide Maintenance



Releases and Upgrade Releases for the Medisolv Software, along with updated Documentation, as appropriate. The following is relevant to the Support Services:

- (a) *Maintenance Releases* consists of multiple patches and includes minor enhancements and/or Error corrections to the Medisolv Software (i.e. 1.1).
  - (b) *Upgrade Releases* may consist of Maintenance Releases or minor enhancements and are based on subsequent versions of the Medisolv Software when and if generally available to Clients, but excludes major new functionality released in subsequent versions, and excludes new modules, utilities, or other add-on software products.
  - (c) *Error* means any failure of the Medisolv Software to conform in any material respect to the then current functional specifications for the Medisolv Software, which Medisolv agrees to resolve within 24 hours to the best of its ability. However, any nonconformity resulting from a Client's alteration, or damage of the Medisolv Software, or the Client's integrating the Medisolv Software with any other software not supplied or identified as compatible by Medisolv, will not be considered an Error.
  - (d) *Current versions* are the most recently released versions of the Medisolv Software.
  - (e) *Supported Versions* are subject to all the services described in this Agreement for a period of 24 months after they are released. Supported Versions are at least one earlier release from the current version of the Medisolv Software.
  - (f) *Sunset Versions* are not subject to all the services described in these Support Services terms and are considered as no longer supported. Sunset Versions includes any versions of the Medisolv Software that are not Support Versions or Current Versions. Technical support for Sunset Versions can be extended on either a 1 or 2 year basis, pricing of which will be determined by mutual consent between the client and Medisolv.
- 2.2. End user personnel training for the Medisolv Software, inclusive of training materials and web-enabled training sessions are included in this agreement. Onsite member training as needed/requested by member, is not included in this agreement but will be provided for an extra fee of \$5000 per eight hour day training session (each eight hour session is comprised of two Medisolv trainers) plus standard travel and accommodation reimbursement. Through a separate Work Order, Client can request services or software provided by Medisolv, which services or software are outside the scope of this Agreement or not included in the Support Fees. These services or software will be provided upon mutual written agreement of the parties and may include:
- (a) Custom programming for Ad hoc reports used in the Medisolv Software.
  - (b) Support services requested beyond the support hours as described in these Support Services terms.
- 2.3. Medisolv reserves the right to immediately terminate Support Services if any of the following occur:
- (a) The Medisolv Software are not used in accordance with the Documentation.
  - (b) The Medisolv Software have been subject to any alteration or modification made by Client or a third party that is not authorized by Medisolv, except to the extent such modification or alteration is contemplated by the Documentation or the Agreement.
  - (c) Changes made by the Client or a third party to the Medisolv Software in its operating environment that are not supported by the Medisolv Software as outlined in the functional specifications for the Medisolv Software.
  - (d) Client's misuse or damage of Medisolv Software, or Client's combination or merging of the Medisolv Software with any software not supplied or identified as compatible by Medisolv.
  - (e) Termination of services both with and without cause between Client and Medisolv
- 2.4. Support Services to be provided by Medisolv do not include:
- (a) repair, replacement, correction or adjustment of any malfunction caused by: (i) modification of the Medisolv Software by anyone other than Medisolv or a party authorized by Medisolv;



- (b) New Medisolv products providing functionality beyond ENCOR Abstraction measures and related services are not covered under this agreement;
  - (c) system administration services including: (i) network and Client hardware maintenance; (ii) Windows Server operating system and Unix System Administration;
3. Remote Access. Remote access to any of Client's systems for maintenance and support of Medisolv Software and for any other purpose allowed by this Agreement is subject to compliance with the Client's remote access and other security requirements. Medisolv's access may require prior certification by Client that Medisolv complies with Client's security policies and standards. Client may modify these security requirements and Medisolv must comply with the most recent version of Client's security requirements. Medisolv must ensure that each of its personnel having access to any part of Client's computer system: (i) is assigned a separate log-in ID by Client and uses only that ID when logging on Client's system; (ii) logs-off Client's system immediately upon completion of each session of service; (iii) does not allow other individuals to access Client's computer system; and (iv) keeps strictly confidential the log-in ID and all other information that enables access. Medisolv must promptly notify Client upon termination of employment or reassignment of any of its personnel with access to Client's computer system.

If Client revises the requirements for access to its computer system, then Client must notify Medisolv of the changed or additional requirements and Medisolv must comply with them as a prerequisite to further access. Client may require each individual who is to be allowed access to Client's computer system to acknowledge the individual's responsibilities in connection with the access.



## Data Authorization

### Permission to Access Hospital Data

We, County of Riverside, a political subdivision of the state of California, on behalf of Riverside University Health System ("Participant"), give Vizient, Inc. ("Vizient") permission to receive from Medisolv, Inc. ("Medisolv"), and for Medisolv to transmit to Vizient, our hospital data utilized in Medisolv's ENCOR-A hospital quality measures abstraction solution products ("Medisolv Products") in which we participate, conduct additional analyses on the data, and use our data in Vizient programs ("Vizient Products") in which we participate. We understand that the reports generated become the sole property of Vizient. This permission covers any patient-level, patient-identified hospital data collected since (DATE OF AGREED UPON REPORTING PERIOD WITH MEDISOLV) and going forward. Any Protected Health Information, as defined under the rules promulgated under the Health Insurance and Accountability Act of 1996, as amended ("HIPAA"), that is provided to Vizient is subject to the existing Business Associate Agreement between us and Vizient. This permission extends so long as Participant is participating in Vizient Products.

Authorized signature:



Elita Dao

12/31/19

Name printed

Date

Procurement Contract Specialist

Title

Riverside University Health System

Organization Name

Email or fax to \_\_\_\_\_, or scan and email form with signature to  
\_\_\_\_\_, phone \_\_\_\_\_



**Attachment I**HIPAA Business Associate Agreement  
Agreement to Contract

Between the County of Riverside and Medisolv, Inc.

This HIPAA Business Associate Agreement (the "Agreement") supplements, and is made part of the Underlying Agreement between the County of Riverside ("County") and Contractor and shall be effective as of the date the Underlying Agreement approved by both Parties (the "Effective Date").

## RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor is a business associate, as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

WHEREAS, the parties intend to enter into this Agreement to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing functions, services and activities on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- I. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
  - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.
    - (1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:



- (a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
  - (b) The unauthorized person who used the PHI or to whom the disclosure was made;
  - (c) Whether the PHI was actually acquired or viewed; and
  - (d) The extent to which the risk to the PHI has been mitigated.
- (2) Breach excludes:
- (a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
  - (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
  - (c) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.
- C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.
- D. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- F. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- G. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- I. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").



- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

2. **Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.**

- A. Except as otherwise provided in this Agreement, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Agreement, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Agreement or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
- 1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
  - 2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
    - a) The disclosure is required by law; or,
    - b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
      - i. Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
      - ii. Notify County of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
  - 3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
  - 4) De-identify all PHI and/or ePHI of County received by Contractor under this Agreement provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

**3. Prohibited Uses and Disclosures.**

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Agreement without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Agreement, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:
  - 1) Not to use or disclose PHI for fundraising, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
  - 2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
  - 3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
  - 4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

**4. Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Agreement.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Agreement.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Agreement and/or Underlying Agreement.

**5. Obligations of Contractor. In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:**

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.



- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Agreement or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
  - C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Agreement.
  - D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Agreement.
  - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Agreement or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410.
  - F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Agreement.
  - G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
  - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
  - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
  - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
  - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
  - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
  - M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.
  - N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.



- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
- 1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
  - 2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
  - 3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:
- A. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;
  - B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
  - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
  - D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
  - E. Ensure compliance with the Security Rule by Contractor's workforce;
  - F. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Agreement and comply with the applicable requirements of the Security Rule;
  - G. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
  - H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.



- 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
- 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
  - a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
  - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
  - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
  - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
  - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
  - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Agreement and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Agreement.
- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.



- G. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).
- 1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
  - 2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.
9. **Hold Harmless/Indemnification.**
- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Agreement. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
  - B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
  - C. The specified insurance limits required in the Underlying Agreement of this Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Agreement.
  - D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
  - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Agreement, this indemnification shall only apply to the subject issues included within this Agreement.



10. **Term.** This Agreement shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Agreement.
11. **Termination.**
- A. **Termination for Breach of Contract.** A breach of any provision of this Agreement by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Agreement and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:
- 1) Terminate the Underlying Agreement and this Agreement, effective immediately, if the other party breaches a material provision of this Agreement.
  - 2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Agreement.
  - 3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.
- B. **Effect of Termination.**
- 1) Upon termination of this Agreement, for any reason, Contractor shall return or, if agreed to in writing by County, destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
  - 2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Agreement to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.
12. **General Provisions.**
- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Agreement, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Agreement shall survive the termination or expiration of this Agreement.
- D. **Regulatory and Statutory References.** A reference in this Agreement to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Agreement shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Agreement.
- F. **Interpretation of Agreement.**



- 1) This Agreement shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
- 2) Any ambiguity between this Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

G. **Notices to County.** All notifications required to be given by Contractor to County pursuant to the terms of this Agreement shall be made in writing and delivered to the County both by fax and to both of the addresses listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

County HIPAA Privacy Officer: HIPAA Privacy Manager

County HIPAA Privacy Officer Address: 26520 Cactus Avenue,  
Moreno Valley, CA 92555

County HIPAA Privacy Officer Phone Number: (951) 486-6471

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

**COUNTY OF RIVERSIDE**, a political  
subdivision of the State of California

APPROVED AS TO FORM:  
Susannah Oh  
County Counsel

By: *[Signature]*, PCS

Dated: 1/6/2020

**MEDISOLV, INC.**

By: *[Signature]*  
Name: Robert Lee  
Title: Security and Privacy Officer

Dated: 9/5/19