



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No. A-14455

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Chris Lopez to:

- a. Authorize the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute a master services agreement with Vizient, Inc. for participation in its no cost group purchasing program with a retroactive agreement term of July 1, 2019 through June 30, 2022.

PASSED AND ADOPTED on this 23rd day of July 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

NOES: None

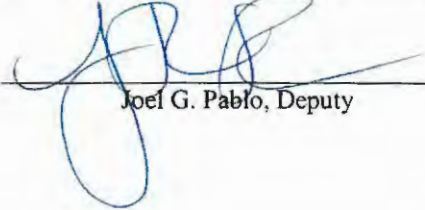
ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting July 23, 2019.

Dated: July 23, 2019

File ID: A 19-286

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California



Joel G. Pablo, Deputy

Natividad Medical Center – Master Services Agreement



Master Services Agreement

This Master Services Agreement (this "Master Agreement") is entered into on July 1, 2019 (the "Effective Date"), by and between **Vizient, Inc.** ("Vizient"), a Delaware corporation, and the County of Monterey, a political subdivision of the State of California, on behalf of **Natividad Medical Center** ("Member"), an acute care hospital, for itself and on behalf of its covered facilities ("Covered Facilities"), as specifically set forth in an applicable SOW (as defined below). As of the Effective Date, this Master Agreement shall supersede the Agreement between Accuro Healthcare Solutions, Inc. and Natividad Medical Center dated June 1, 2008; the Agreement between MedAssets Net Revenue Systems, LLC and Natividad Medical Center/Monterey County dated December 1, 2011 and the Master Agreement between County of Monterey on behalf of Natividad Medical Center and MedAssets performance Management Solutions, Inc. dated July 1, 2014, as amended, including all statements of work attached thereto. For the avoidance of doubt, this Master Agreement shall govern the period commencing on the Effective Date. Vizient and Member are sometimes referred to herein individually as a "Party" and collectively, as the "Parties."

1. **Statement of Work.** For all services provided by Vizient under this Master Agreement (collectively, the "Services"), Vizient will issue a statement of work or order form (each, an "SOW") containing relevant terms and provisions which are fully incorporated herein, as an attachment to this Master Agreement, and made a part hereof. If applicable, the SOW will identify the Vizient subsidiary, if any, providing Services and any Covered Facilities receiving such Services. In the event of conflicting terms between this Master Agreement and any SOW executed hereunder, the terms set forth in the respective SOW will control.
2. **Service Fees and Invoicing.** Service fees for all Services ("Service Fees") will be specifically set forth in each SOW. Any obligation to reimburse Vizient for Services-related expenses, including, but not limited to, travel, meals, lodging, and other administrative costs, such as postage, copying, and overnight mailing (collectively, "Reimbursable Expenses"), are in addition to Service Fees and will be indicated in each applicable SOW. All travel expenses shall be reimbursed in accordance with the County of Monterey Travel and Business Expense Reimbursement Policy, which is attached hereto as Exhibit A. Except as otherwise set forth in an SOW, i) Vizient will invoice Service Fees and, if applicable, Reimbursable Expenses on a monthly basis; and ii) Member will remit payment net thirty (30) days from receipt of a certified invoice by the County of Monterey Auditor-Controller.
3. **Taxes.** Member hereby acknowledges and agrees Service Fees do not include foreign, federal, state, or local sales, use, or other similar taxes, however designated, levied on the Services, and Member will be responsible for such taxes. If Member is a tax exempt organization, Member will provide Vizient with Member's current tax exemption certificate or a direct pay permit ("Certificate") and any updated Certificate, as may be requested by Vizient from time to time during the Term. The Parties presume all sales of tangible personal property or services are subject to tax unless Member provides a Certificate. **IF MEMBER FAILS TO PROVIDE A CERTIFICATE: i) MEMBER IS RESPONSIBLE FOR ALL TAXES CHARGED OR PAID EVEN IF LEGALLY EXEMPT FROM SUCH TAXES; ii) VIZIENT WILL REMIT ANY TAXES CHARGED AND COLLECTED TO THE TAXING AUTHORITIES AS IF A TAX WAS DUE; AND iii) VIZIENT WILL NOT RETURN OR REFUND SUCH TAXES TO MEMBER.**
4. **Data.** In order for Vizient to provide Services, Member will provide spend-related data to Vizient, including, but not limited to, purchase orders, item master information, vendor master information, receipts, invoices, and utilization data (individually and collectively referred to herein as "Spend Data"), in accordance with the submission requirements for requested Services.
 - 4.1. **Data Consent.** Vizient may use Spend Data provided by Member before the Effective Date and during the Term in de-identified form to populate benchmarking databases ("Databases") and to generate reports from such Databases ("Reports"), which Vizient solely owns and may use for any purpose. Vizient may also use Spend Data in de-identified form for any other purpose, including, but not limited to, contract development, research information, and for comparative analysis use for Vizient's customers. Vizient may disclose Spend

Natividad Medical Center – Master Services Agreement

Data on a line-item, identified basis to Vizient subsidiaries, for internal use only, and to subcontractors and consultants that assist Vizient in providing services and are under confidentiality agreements with Vizient. Member represents it has the right to provide Vizient with Spend Data for the uses described in this provision.

4.2. Databases and Reports. Vizient makes no warranties or representations with regard to the Databases and Reports, and Member is solely responsible for the results of its operational use of such Databases and Reports. Databases and Reports may sometimes include portions of Vizient's, Vizient subsidiaries', and their suppliers' confidential data, such as Vizient's group purchasing ("GPO") Member pricing data supplier pricing data, and contract terms and conditions. Member must perpetually treat the Databases and Reports as confidential information of Vizient, Vizient subsidiaries, and their respective suppliers, and will not disclose such Databases or Reports to any third party or use them for any purpose other than Member's own internal use; provided, however, Member may disclose Databases and Reports to its consultants under confidentiality agreements with Member that i) restrict the consultant's use of such Databases and Reports to the sole purpose of providing services to Member; ii) prohibit the use of or disclosure of such Databases and Reports for benchmarking purposes for other clients; and iii) prohibit permanent storage of Databases and Reports in the consultant's database, document management, or network systems and require consultant to permanently delete Databases and Reports from consultant's internal systems upon termination or completion of such consulting services.

5. Term and Termination.

5.1. Term. The initial term of this Master Agreement will commence on the Effective Date and continue for a period of (36) months ("Initial Term") and will have an option to renew for additional 3 year terms (each, a "Renewal Term") by providing at least 90 days prior to the expiration of the then current Term (the Initial Term and any Renewal Terms are collectively referred to herein as the "Term") written notice. In the event the term of any SOW extends beyond the Term of this Master Agreement, the Term of this Master Agreement will automatically extend to the latest expiration or termination date of such SOW.

5.2. Termination for Cause. Either Party may terminate this Master Agreement or SOW effective immediately upon written notice to the other Party if the other Party is under default or breach of this Master Agreement or SOW and the breaching Party has not remedied such default or breach within 30 days after receipt of written notice from the non-breaching Party specifying the default or breach.

5.3. Termination for Insolvency. Either Party may terminate this Master Agreement and all attached SOWs immediately upon written notice to the other Party if the other party is adjudged insolvent or bankrupt; or upon the institution of any proceeding against the other Party seeking relief, reorganization, or arrangement under any laws relating to insolvency; or for the making of any assignment for the benefit of creditors; or upon the appointment of a receiver, liquidator, or trustee of any of the other Party's property or assets; or upon liquidation, dissolution, or winding up of the other Party's business.

6. Grant of Limited Rights. Vizient solely owns all work product, including, but not limited to, all materials, programs, documentation, concepts, methodologies, and aids related to the Services. Vizient grants to Member the limited right to use the Services for its internal use only during the Term of this Master Agreement or applicable SOW. Member will not, without Vizient's prior written consent, reproduce any of the materials, programs, documentation, or aids related to the Services for the purpose of disclosure or distribution to any other party other than its legal, financial, and consulting advisors i) who have a need to access the information for purposes of fulfilling Member's obligations under this Master Agreement and ii) are under confidentiality obligations substantially similar to those set forth in this Master Agreement.

7. Intellectual Property. Except as otherwise provided for in this Master Agreement or an applicable SOW, Member will not permit a third-party to: i) use any Vizient Database, Report, or Services, or any portion of the Vizient deliverables or work product, including, without limitation, information, design, specification, instruction, software, data, or material (collectively referred to as the "Vizient IP") for any unlawful purpose; ii) market, sublicense,

Natividad Medical Center – Master Services Agreement

publish, distribute, lend, transfer, or otherwise make Vizient IP, or any components or output therefrom, available to a third party; iii) alter, maintain, enhance, modify, or create derivatives of the Vizient IP; iv) remove any trademark, copyright, or proprietary notices; v) copy, decompile, disassemble, or otherwise reverse engineer the Vizient IP or perform any similar means or actions to discover the source code or trade secrets in the Vizient IP; vi) use the Vizient IP to provide service bureau, time sharing, or other computer services to third parties; vii) circumvent any technological measures that control access to the Vizient IP; viii) use the Vizient IP in any nuclear, aviation, mass transit, life support, or any other inherently dangerous manner; or ix) use the Vizient IP to benefit any party other than Member.

8. Confidentiality.

8.1. General. Except as provided herein or in an applicable SOW, during the Term and for a period of 3 years after its expiration or termination, neither Party may publish, disseminate, or disclose to any third party any Confidential Information, as defined below, provided to it by the other Party. A Party may disclose Confidential Information to its employees or representatives who: i) have a need to access the Confidential Information for purposes of fulfilling the Party's obligations under this Master Agreement and ii) are bound by written nondisclosure terms or obligations at least as restrictive as those set forth in this Master Agreement.

8.2. Confidential Information. For purposes of this Master Agreement, "Confidential Information" includes: i) any information which refers or relates to this Master Agreement or any Vizient supplier agreement, including, but not limited to, any information relating to supplier pricing, supply contract terms, member data, customer lists, financial analyses, benchmarking and comparative reports of any kind prepared by the other Party, business processes or plans, sourcing and contracting methods, and "know-how"; ii) any information a Party marks as "Confidential," "Proprietary," or with a similar legend prior to disclosure; iii) any information which is orally identified as confidential at the time of disclosure and confirmed as confidential in writing within 10 business days following such disclosure; iv) any information which by its nature should reasonably be considered as confidential or proprietary; and v) all information generated by a Party that contains, reflects, or is derived from Confidential Information.

8.3. Exclusions. Confidentiality obligations will not apply to information that: i) is published by the disclosing Party or otherwise becomes available to the public other than by a breach of this Master Agreement; ii) is rightfully received by the recipient from a third party not under an obligation of confidentiality; iii) is known by or independently developed by the recipient prior to disclosure by the disclosing Party; or iv) is required to be disclosed pursuant to a lawful subpoena from a court of competent jurisdiction or in response to a valid request by a federal or state governmental agency. In the event of any required disclosure under law, the Party requesting disclosure of such Confidential Information will provide reasonable advance written notice to the non-disclosing Party so the non-disclosing Party may have an opportunity to object or seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information.

8.4. Rights in the Confidential Information. Except as expressly stated in this Master Agreement or an SOW, i) this Master 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 estoppel or otherwise, under any patent, trademark, copyright, trade secret, or other proprietary rights.

8.5. Equitable Relief. The Parties acknowledge and agree that monetary damages are insufficient for any breach of the confidentiality provisions of this Master Agreement. Any actual or threatened breach of this section may cause immediate irreparable harm without adequate remedy at law. If a party breaches or threatens to breach this section, then the either party may seek specific performance or injunctive relief in addition to any other remedy available in law or in equity without posting bond and without proof of actual damages to prevent the other party from beginning or continuing the breach. This section does not limit any other remedy available to either party.

Natividad Medical Center – Master Services Agreement

9. **Non-solicitation.** Neither Party may hire, directly or indirectly, any employee of the other Party assigned to or involved with fulfillment of an SOW for 12 months after the termination or expiration of such SOW. The preceding sentence does not prohibit either Party from: i) soliciting employment by placement of general advertisements for employees on any internet site, in newspapers, or via other media of general circulation not specifically directed at the employees of the other Party; ii) soliciting persons identified through employment search firms not specifically directed at the employees of the other Party; or iii) soliciting or hiring any person who contacts the hiring Party on his or her own initiative without any prior solicitation or recruitment (other than advertisements of the type contemplated by the preceding clauses).
10. **Compliance.**
 - 10.1. **Compliance with Applicable Laws.** The Parties agree to comply with all applicable federal, state, and local laws, including, but not limited to, the requirements of the federal fraud and abuse statute, codified at 42 U.S.C. 1320a-7b, as amended, and relevant regulations thereto.
 - 10.2. **Discounts and Rebates.** To the extent Member receives discounts, rebates, distributions, or any other price reductions as a result of purchases or remuneration under this Master Agreement, an SOW, or any other group purchasing program agreement, Member may have an obligation under federal or state law to disclose such price reductions or remuneration to federal or state health care programs or other payors (as part of the cost reporting process or otherwise). Member and all Covered Facilities will comply with all such laws Member will provide each of its applicable Covered Facilities, if any, rebate or other information (if any) necessary for the Covered Facility to comply with its obligations under this Section.
 - 10.3. **Records.** Upon request of the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized representative, Vizient will make available the contracts, books, documents, and records necessary to certify the nature and extent of the cost of any Services in excess of ten thousand dollars (\$10,000) per year until the expiration of four (4) years from completion of any such Services provided under this Master Agreement.
11. **Professional Obligations.** Member acknowledges and agrees that the professional duty owed to patients seeking health care services lies solely with the health care professional providing health care services. As such, Member takes full responsibility for the use of information provided under this Master Agreement and all SOWs in patient care and acknowledges that the use of any and all Services is not intended to replace or substitute professional judgment. Vizient does not assume any responsibility for actions of Member that may result in liability or damages arising from malpractice, failure to warn, negligence, or any other basis, and Member agrees to indemnify, defend, and hold Vizient, the Vizient subsidiaries, and their respective employees, officers, and directors harmless from and against any and all liability or damages.
12. **Indemnification.**
 - 12.1. **General Indemnification.** Each Party agrees to indemnify, defend, and hold the other harmless against any and all claims, liability or losses (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) resulting from any action brought by a third party in connection with any negligent act or omission, under this Agreement by the indemnifying Party or by any of such Party's employees, officers, or agents. Neither Party shall be responsible for losses incurred to the extent such losses are caused by the other Party's negligence or willful misconduct.
 - 12.2. **Intellectual Property Indemnification.** Subject to the Indemnification Procedure Section below, Vizient will, at its sole expense, defend any third-party action brought against Member based on a claim that any Vizient IP that is proprietary to Vizient or licensed by Vizient and purchased pursuant to this Master Agreement infringes any United States copyright, patent, or trademark and will pay all reasonable costs and damages finally awarded against Member in any such action attributable to such claim.

Natividad Medical Center – Master Services Agreement

- 12.3. Limitation.** Vizient will have no liability to Member under Section 12.2 to the extent such infringement arises from the use of such: i) Vizient IP in combination with equipment, software, or services not supplied by Vizient; ii) Vizient IP in a manner other than in accordance with its product description and the terms of this Master Agreement, applicable SOW, or any end user license agreement that may be provided with such Vizient IP; or iii) modifications to Vizient IP made by persons other than Vizient personnel or Member's design or specifications.
- 12.4. Modification by Vizient.** If any allegation of infringement with respect to any Vizient IP is made, or, in Vizient's opinion is likely to be made, then Vizient may, at its sole option and expense: i) procure for Member the right to continue using the Vizient IP; ii) modify the Vizient IP so as to avoid the infringement; iii) replace the Vizient IP with a functionally similar version and require Member to cease use of the Vizient IP in question; or iv) refund Service Fees paid to Vizient by Member for the use of such Vizient IP, less an amount for amortization based on a five-year, straight-line amortization schedule, in which case the Member must cease using the Vizient IP and return it to Vizient.
- 12.5. Indemnification Procedure.** A Party's right to indemnification is conditioned upon the following: i) the indemnified Party must promptly notify the indemnifying Party of the claim (provided, however, that if the indemnified Party fails to provide prompt notice, the indemnifying Party will be relieved of its indemnification obligations only if and to the extent the indemnifying Party is materially prejudiced by such failure); ii) the indemnifying Party will have sole control of the defense and settlement of the claim (but the indemnifying Party must not agree to a consent decree or similar order binding the indemnified Party or to any settlement that specifically apportions fault or liability to the indemnified Party without the indemnified Party's prior written consent); iii) the indemnified Party will provide the indemnifying Party, at its expense, with assistance in the defense as the indemnifying Party may reasonably request; and iv) the indemnified Party must not incur any cost or expense for the indemnifying Party's account without its prior written consent.

THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THE FOREGOING STATES VIZIENT'S ENTIRE LIABILITY UNDER THIS MASTER AGREEMENT OR OTHERWISE WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

- 13. Limitation of Liability.** EXCEPT FOR EACH PARTY'S INDEMNITY OBLIGATIONS SET FORTH HEREIN : i) IN NO EVENT WILL EITHER PARTY 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 MASTER AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND ii) EXCEPT FOR MEMBER'S FAILURE TO PAY FOR THE SERVICES, EACH PARTY'S MAXIMUM LIABILITY IS LIMITED TO THE ANNUAL SERVICE FEES AND REIMBURSABLE EXPENSES IN THE APPLICABLE SOW. ***THIS LIMITATION OF LIABILITY IS FUNDAMENTAL TO THIS MASTER AGREEMENT. THE PARTIES REVIEWED AND BARGAINED FOR THESE TERMS AND NEITHER PARTY WOULD BE WILLING TO ENTER INTO THIS MASTER AGREEMENT WITHOUT THIS LIMITATION.***
- 14. Warranty and Remedies.**
- 14.1. Authority.** Each Party represents and warrants it is authorized to enter into and execute this Master Agreement and any and all applicable SOWs, if any, on behalf of itself and each of the applicable Vizient subsidiaries or Covered Facilities, respectively, as documented in any applicable SOW.
- 14.2. Vizient Warranty.** Vizient warrants it will perform the Services in a professional manner in accordance with the requirements in each SOW. **EXCEPT AS SET FORTH IN THIS SECTION, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MEMBER'S SOLE**

Natividad Medical Center – Master Services Agreement

AND EXCLUSIVE REMEDY, AND VIZIENT'S SOLE AND EXCLUSIVE LIABILITY, FOR A BREACH OF THE WARRANTY IN THIS SECTION ARE: i) THE SPECIFIC SUPPORT SERVICES IN THE APPLICABLE SOW; ii) REPEATING OR REPROCESSING OF THE SERVICE(S) (IF POSSIBLE) BY VIZIENT AT NO ADDITIONAL CHARGE; OR iii) TERMINATION OF THE APPLICABLE SOW UPON 30 DAYS' PRIOR WRITTEN NOTICE TO VIZIENT.

- 14.3. **Cooperation.** Each Party agrees to cooperate and respond to applicable requests for information in a timely manner. A Party's failure or delay is excused to the extent the other Party impedes or delays completion of the Services by: i) failing or delaying to provide necessary information, equipment, or access to facilities to Vizient; ii) failing to complete required tasks or perform its obligations under this Master Agreement or the applicable SOW for any reason; or iii) providing materially untrue or incorrect information.
15. **Protected Health Information.** One or more of the Services may involve the use and disclosure of Member's Protected Health Information ("PHI"). Each Party intends to protect the privacy, security, and integrity of any PHI exchanged under this Master Agreement in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, as each may be amended from time to time (collectively, "HIPAA"). The Parties further acknowledge Member is a Covered Entity (as defined under HIPAA) and Vizient may be a Business Associate (as defined under HIPAA) in the delivery of certain services through Member's participation in Vizient's national healthcare alliance. If Member engages Vizient to perform Services involving the use or disclosure of PHI, then the respective SOW will explicitly state the use or disclosure of PHI is required and Vizient and Member shall enter into a mutually agreeable business associate agreement for the protection of PHI in accordance with HIPAA requirements.
16. **Government Program Participation.** Each Party represents and warrants it has never been excluded from participation in any federal health care program (as such term is defined in 42 U.S.C. § 1320a-7b(f)) ("Federal Health Care Program"), or been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency. Each Party represents and warrants it has not been the subject of an actual, pending, or threatened formal adverse action, as that term is defined in 42 U.S.C. § 1320a-7e(g). Each Party will promptly notify the other Party in the event it is excluded from any Federal Health Care Program, or debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency, during the Term.
17. **General.**
 - 17.1. **Entire Agreement.** This Master Agreement, including all SOWs executed hereunder, amendments, and exhibits, constitutes the entire agreement between Vizient and Member relating to the subject matter of this Master Agreement, and supersedes all prior understandings, agreements, proposals, and documentation relating to the subject matter of this Master Agreement.
 - 17.2. **Amendment.** This Master Agreement may be amended only by a document signed by authorized representatives of both Parties.
 - 17.3. **Assignment.** Neither Party shall assign or transfer any rights or obligations under this Master Agreement or any SOW without the other Party's prior written consent. Such consent may not be unreasonably withheld, delayed or conditioned. This Master Agreement will inure to the benefit of and be binding on the Parties and their respective assigns.
 - 17.4. **Governing Law.** Intentionally Omitted.
 - 17.5. **Independent Entities.** None of the provisions of this Master Agreement or any SOW will create any relationship between the Parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Master Agreement. Neither of the Parties, nor any of their

Natividad Medical Center – Master Services Agreement

employees, will be construed to be the agent, employer, employee, or representative of the other.

- 17.6. Force Majeure.** The performance by either Party of any obligations to be performed under this Master Agreement or any SOW (other than the obligation to pay money or issue credit) is excused to the extent that performance is prevented by an act of God or the public enemy, terrorism, insurrections, riots, fire, explosion, flood, government order, or other reasonably unforeseeable causes beyond the control and without fault or negligence of the Party so affected and if, by the exercise of due diligence, the Party is unable to prevent or overcome the event. The Party so affected must give prompt written notice to the other Party of the cause and take whatever reasonable steps are necessary to relieve the effect of the cause as rapidly as possible.
- 17.7. Severability.** In the event that any provision of this Master Agreement shall be held to be illegal, or otherwise unenforceable, such provision shall be severed and the entire Master Agreement shall not fail on account thereof and the balance of the Master Agreement shall continue in full force and effect; provided, however, that if the severing of such provision results in a material alteration of this Master Agreement, the remaining provisions of this Master Agreement shall be adjusted equitably so that no Party benefits disproportionately and will be construed by limiting or invalidating such provision to the minimum extent necessary to make such provision valid, legal, and enforceable.
- 17.8. Waiver.** The waiver of any breach of any term or condition of this Master Agreement does not waive any other breach of that term or condition or of any other term or condition, unless agreed to in a writing signed by the Parties.
- 18. Notices.** All notices related to this Master Agreement shall be in writing and shall be deemed to have been given when delivered personally, or at the time sent, if sent by registered or certified United States mail, return receipt requested, postage prepaid, or by FedEx or similar delivery service for overnight delivery, and addressed to the other Party as follows or at such address as such Party from time to time may indicate by written notice to the other Party:
- If to Vizient:**
- Vizient, Inc.
Attn: Membership/Sales Operations
290 East John Carpenter Freeway
Irving, Texas 75062-2710
- With a copy to:**
- Vizient, Inc.
Attn: Legal Department
290 East John Carpenter Freeway, 7th Floor
Irving, Texas 75062-2710
- If to Member:**
- Natividad Medical Center
Attn: Contracts Division
1441 Constitution Blvd.
Salinas, CA 93906
- 19. Equal Opportunity and Affirmative Action.** Vizient is an equal opportunity and affirmative action employer. Vizient abides by the requirements of 41 C.F.R. 60-1.4(a) (Executive Order 11246 Equal Opportunity Clause); 41 C.F.R. 60-250.5(a) (Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, Recently

Natividad Medical Center – Master Services Agreement

Separated Veterans, and Other Protected Veterans); 41 C.F.R. 60-300.5(a) (Equal Opportunity for Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans); 41 C.F.R. 60-741.5 (a) (Equal Opportunity for Workers with Disabilities); FAR 52.222-21 (Prohibition of Segregated Facilities); and FAR 52.222-26 (Equal Opportunity). These regulations are incorporated herein by reference and prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.

20. **Counterparts.** All documents pertaining to this Master Agreement may be executed in two or more counterparts, but all of which, taken together, shall constitute one and the same instrument.
21. **Publicity/Use of Marks.** Except as otherwise agreed to by the Parties in writing, neither Party may: i) use each other's trademarks or service marks; or ii) make any press release or other public disclosure regarding the transactions contemplated by this Master Agreement without the other Party's prior written consent, except as required under applicable law or by any governmental agency, in which case the Party required to make the press release or public disclosure shall use commercially reasonable efforts to obtain the approval of the other Party as to the form, nature, and extent of the press release or public disclosure prior to issuing the press release or making the public disclosure.
22. **Survival.** The following provisions shall survive the expiration or any earlier termination of this Master Agreement for the number of years stated in the provision or, if none is stated, then perpetually: Grant of Limited Rights, Confidentiality, Non-solicitation, Discounts and Rebates, Records, Professional Obligations, Indemnification, the last sentence in Vizient Warranty regarding limitations of liability, General, and Notices.
23. **Insurance**
 - 23.1. **Evidence of Coverage.** Prior to commencement of this Master Agreement, the Vizient shall provide a "Certificate of Insurance" evidencing that coverage as required herein has been obtained. In addition, upon reasonable request Vizient shall provide a copy of the policy or policies.

This certificate of insurance shall be sent to Members's Contracts/Purchasing Department, unless otherwise directed. Vizient shall not receive a "Notice to Proceed" with the work under this Master Agreement until it has provided a certificate of insurance indicating evidence of insurance coverage. This approval of insurance shall neither relieve nor decrease the liability of Vizient.
 - 23.2. **Qualifying Insurers.** All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Members's Contracts/Purchasing Director.
 - 23.3. **Insurance Coverage Requirements.** Without limiting Vizient's duty to indemnify, Vizient shall maintain in effect throughout the term of this Master Agreement a policy or policies of insurance with the following minimum limits of liability:
 - 23.4. **Commercial general liability insurance.** Including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, , with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

Products liability (completed operations) insurance of not less than \$1,000,000 per claim and \$2,000,000 aggregate.
 - 23.5. **Commercial automobile liability insurance.** Covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Master Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Natividad Medical Center – Master Services Agreement

- 23.6. Workers' Compensation Insurance.** If Vizient employs others in the performance of this Master Agreement, in accordance with statutory requirements and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional Liability Insurance coverage to cover technology-related errors and omissions with minimum limits of \$1,000,000 per claim and \$3,000,000 aggregate. If any such insurance is written on a claims-made policy form, the policy shall have a retroactive date prior to or coinciding with the effective date of this Master Agreement and shall continue for three (3) years following termination of this Agreement. In the event that a claims-made policy is canceled, terminated or non-renewed, Vizient shall obtain an extended reporting period endorsement for the remainder of the three (3) year period as allowed by insurance policy language.

23.7. Other Requirements:

All insurance required by this Master Agreement shall be issued and executed by an admitted insurer authorized to transact insurance business in the State of California or alternatively an approved surplus lines insurer. Unless otherwise specified by this Master Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Vizient completes its performance of services under this Master Agreement.

Each liability policy shall provide that Member shall be given notice in writing at least ten days in advance of any, cancellation, or non-renewal thereof. Each policy shall provide coverage for Vizient and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Master Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall name the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of Vizient's work, including ongoing and completed operations.

Prior to the execution of this Master Agreement by Member, Vizient shall file certificates of insurance with Members's Contracts/Purchasing Department, showing that the Vizient has in effect the insurance required by this Master Agreement. Vizient shall file a new or amended certificate of insurance within thirty (30) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Master Agreement, which shall continue in full force and effect.

Vizient shall at all times during the Term maintain in force the insurance coverage required under this Master Agreement and shall send certificates of insurance to Members's Contracts/Purchasing Department upon written request. If the certificate is not received by the expiration date, Member shall notify Vizient and Vizient shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Vizient to maintain such insurance is a default of this Master Agreement, which entitles Member, at its sole discretion, to terminate the Master Agreement for breach pursuant to Section 5.

(MID# 83098)

Natividad Medical Center – Master Services Agreement

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be executed by their duly authorized representatives as of the Effective Date.

Vizient, Inc.

DocuSigned by:
By: Molly Matthews
08C0FBA5C034406...

Printed Name: Molly Matthews

Title: SVP/GM, Sales

Date: 8/7/2019 | 9:33:06 PM CDT

Natividad Medical Center

By: Kristen Aldrich for Gary R. Gray

Printed Name: Kristen Aldrich

Title: Purchasing Agent

Date: 8-7-19



Group Purchasing Program Statement of Work

Vizient, Inc., a Delaware corporation, ("**Vizient**"), will provide the services detailed in this **Group Purchasing Program Statement of Work ("SOW")** to the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("**Member**"), an acute care hospital, and Member's Covered Facilities (defined below), for the Service Fees indicated below. This SOW is made pursuant to the terms and conditions set forth in the Master Services Agreement dated July 1, 2019, and any amendments or addendums thereto (collectively, the "**Master Agreement**"). As such, all capitalized terms used herein and not otherwise defined in this SOW will have the meanings ascribed to such terms in the Master Agreement. As of the Effective Date, this SOW shall supersede that certain SOW for the Group Purchasing Services between County of Monterey on behalf of Natividad Medical Center dated July 1, 2014, as amended. For the avoidance of doubt, this Agreement shall govern the period commencing on the Effective Date. This SOW is effective as of July 1, 2019 ("**Effective Date**"). 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 will also include its Covered Facilities (as defined in Section 2) unless specifically delineated.

1. **Services**. Vizient will provide Group Purchasing Program services to Member (collectively, the "**Services**"). Specifically, the Services include:

- 1.1 **GPO Services and Agent Designation**. Vizient is a health care group purchasing organization ("**GPO**") that, on behalf of participating organizations, negotiates, directly and through its contracting subsidiaries, such as Vizient Supply, LLC ("**Vizient Supply**") and MedAssets Performance Management Solutions, Inc. ("**MedAssets**"), vendor and distributor ("**Suppliers**") agreements ("**Supplier Agreements**") for goods, services, or intangible items (collectively, "**Covered Items**") and offers related supply chain and clinical improvement services (collectively referred to as the "**Group Purchasing Program**"). Member designates, for itself and on behalf of its Covered Facilities, Vizient and its agents, including, but not limited to, Vizient Supply and MedAssets, to act as Member's primary GPO agent for purposes of negotiating and entering into Supplier Agreements under which Member may purchase as a third-party beneficiary; provided, however, Vizient shall remain Member's exclusive GPO for purposes of negotiating and entering into pharmaceutical and pharmacy-related Supplier Agreements.

- 1.2 **Ancillary Document Agent Designation**. Member appoints Vizient as its authorized agent for the limited purpose of entering into, executing, and submitting to Suppliers, on Member's behalf, purchase-level tier assignments, letters of participation, letters of commitment, or other relevant documentation, to the extent such documentation is required to provide Member with access to and benefit from Supplier Agreements.

- 1.3 **Vizient Catalog**. Vizient will provide Member with access to Vizient's electronic contract management and catalog database ("**Vizient Catalog**") which provides access to: i) Supplier Agreements; ii) information regarding Vizient's products and services; iii) Administrative Fees Database (as defined below); and iv) Annual Disclosure Reports (as defined below).

- 1.4 **Supplier Disputes**. Vizient will provide Member with reasonable assistance to resolve disputes with Suppliers related to Supplier Agreements; provided, however, Vizient will not provide legal analysis or legal counseling to Member or any dispute-resolution assistance requiring legal expertise.

2. **Covered Facilities**.

- 2.1 **Covered Facility**. A "**Covered Facility**," or collectively, "**Covered Facilities**," are individual sites or facilities whereby Member represents and warrants Member: i) has managerial or operational responsibilities including,

without limitation, primary control of each Covered Facility's procurement activities related to supply chain management; ii) has the authority to bind each Covered Facility to the terms and conditions of this SOW; and iii) is authorized to accept any applicable Fee Share, Discounts, or Rebates (as defined below) on behalf of Covered Facilities. The term "primary control" means Member has the power, directly or indirectly, whether through ownership or via a management agreement, to direct, oversee, manage, or implement policies as it relates to procurement activities or facility operations. Vizient reserves the right to require reasonable written documentation a Covered Facility meets the requirements of this section. Member agrees to indemnify Vizient against, and hold Vizient harmless from, any claim arising from the breach of this representation and warranty.

2.2 Covered Facility Addition Form. Upon execution of this SOW, Vizient will provide Member with an electronic form whereby Member can add Covered Facilities to Member's Group Purchasing Program membership ("Covered Facility Addition Form"). Thereafter, Member has 30 days to complete and return the Covered Facility Addition Form to Vizient at the email address described therein. Member may add a Covered Facility at any time by submitting a Covered Facility Addition Form which will take effect within 3 business days of receipt. Member may remove a Covered Facility by providing written notice to Vizient. Member is responsible for providing all information necessary to roster Covered Facilities under Member's Group Purchasing Program membership. Each Covered Facility must comply with the terms hereof and Vizient will have no obligation to provide Services or Fee Share to any site or facility not rostered as a Covered Facility in accordance with this SOW. Vizient reserves the right to, reasonably and in good faith, condition the addition of a Covered Facility on a mutually agreeable amendment to this SOW.

3. Term and Termination.

3.1 Term. The initial term of this SOW will commence on the Effective Date and continue for a period of (36) months ("Initial Term") and will have an option to renew for additional 3 year terms (each, a "Renewal Term") by providing at least 90 days prior to the expiration of the then current Term (the Initial Term and any Renewal Terms are collectively referred to herein as the "Term") written notice.

3.2 Termination for Convenience. This SOW may not be terminated for convenience. If the Master Agreement expires or is terminated for convenience prior to the expiration of this SOW, the applicable terms and conditions of the Master Agreement survive for the limited purpose of governing this SOW for its remaining Term.

3.3 Termination for Cause. The Parties may terminate this SOW for material breach in accordance with the terms of the Master Agreement. Notwithstanding the foregoing, all notices to or from a Covered Facility relating to any material breach will require a simultaneous notice to the Member.

3.4 Effect of Termination. The termination of this SOW relative to a Covered Facility will not automatically result in the termination of this SOW as between Vizient and Member; provided, however, termination of this SOW relative to the Member will result in the automatic termination of this SOW as between Vizient, Member, and all Covered Facilities.

4. Administrative Fees, Discounts and Rebates, and Supplier Agreement Obligations.

4.1 Administrative Fees. Member acknowledges and agrees that, pursuant to the terms of Supplier Agreements, Vizient i) will receive administrative fees from Suppliers based on Member's purchases ("Administrative Fees") and ii) may furnish certain administrative and promotional services to such Suppliers.

4.2 Administrative Fees Database. Except as otherwise provided for in a Supplier Agreement, each Supplier Agreement provides for a fixed Administrative Fee of 3% or less of the purchase price for Covered Item(s). For Supplier Agreements that provide for an Administrative Fee greater than 3%, Member can access such Administrative Fee amounts ("Administrative Fees Database") via Vizient Catalog, which Vizient will update as necessary, and is incorporated herein by reference. This section is intended to maintain the Parties'

compliance with the federal health care GPO anti-kickback statutory exception, 42 USC 1320a-7b(b)(3)(C), and regulatory safe harbor, 42 CFR 1001.952(j), as amended.

4.3 Discounts and Rebates. Member acknowledges and agrees that, in addition to any Fee Share, Member: i) may receive discounts ("Discounts") or rebates ("Rebates") from Suppliers or Vizient that may be subject to 42 USC 1320-7b and thus Member may have an obligation under federal or state law to disclose such Discounts or Rebates to federal or state health care programs or other payors part of the cost reporting process or otherwise; and ii) agrees to comply with all such laws. This section is intended to maintain the Parties' compliance with the federal health care GPO anti-kickback statutory exception, 42 USC 1320a-7b(b)(3)(C) and discount safe harbor, 42 CFR 1001.952(h)-(j), as amended.

4.4 Impact Standardization Program. Vizient's Impact Standardization Program ("Impact Program") provides quarterly Rebates to those members who enroll and comply with the Impact Program's standardization purchasing requirements. Upon successful enrollment and compliance with the Impact Program's requirements, Member will receive all Impact Program Rebates paid to Vizient, on behalf of Member, during each calendar quarter. Vizient will pay all Rebates to Member within 120 days following the end of each calendar quarter.

4.5 Annual Disclosure Report. Vizient will provide Member, no less than annually and via Vizient Catalog, an annual report listing Member's purchases and respective Administrative Fees, Rebates, or Discounts received by Vizient based on such purchases ("Annual Disclosure Report"). Member acknowledges and agrees Vizient has no obligation to provide an Annual Disclosure Report to Covered Facilities. As such, Member represents and warrants it will provide Covered Facilities with any information relating to Administrative Fees necessary for Covered Facilities to comply with all relevant state and federal cost reporting or other laws and regulations. Member agrees to indemnify Vizient against, and hold Vizient harmless from, any claim arising from breach of this representation and warrant.

4.6 Supplier Agreement Obligations. Member is bound to the terms and conditions of each Supplier Agreement if Member: i) purchases Covered Items under that agreement; or ii) agrees to be bound to that agreement in an ancillary document (such as a Letter of Commitment or Letter of Participation). Member warrants that any purchase made under any Supplier Agreement will not cause Member to breach any third-party agreement or obligation. Vizient has no responsibility for interpreting, negotiating, or managing ancillary agreements Member enters into with an individual Supplier. Notwithstanding the foregoing, Member determines, in its sole discretion, whether and how much to purchase through Supplier Agreements.

4.7 Own Use. Member represents and warrants that all Covered Items purchased will be for Member's "own use," within the meaning of the Nonprofit Institutions Act as interpreted by the U.S. Supreme Court in Abbott Laboratories v. Portland Retail Druggists Association Inc., 425 U.S. 1 (1976), and its successor line of cases, and will comply with the Prescription Drug Marketing Act of 1987, as applicable and amended. Member will indemnify and hold Vizient harmless from any and all manner of liability including, but not limited to, any and all costs of defense resulting from any breach by Member of this section. Vizient will have the right to immediately terminate this SOW should Member breach the foregoing representation and warranty.

5. Service Fees, Committed Purchases Requirement, and Fee Share

5.1 Service Fees. Vizient will provide the Services described herein to Member in consideration of the Administrative Fees retained by Vizient hereunder ("Service Fees"), and Member acknowledges and agrees the retained Administrative Fees represent the fair market value of such Services.

5.2 Committed Purchases Requirement. For each 12-month period, commencing on the Effective Date (each, a "Contract Year"), Member's aggregate purchases reported by Suppliers, not acting in the capacity of a distributor ("Manufacturer Purchases"), will equal or exceed the applicable spend amount (the "Committed Purchases Requirement" or "CPR"), as follows:

Contract Year	Committed Purchases Requirement
July 1, 2019 – June 30, 2020	\$19,436,000
July 1, 2020 – June 30, 2021	\$19,436,000
July 1, 2021 – June 30, 2022	\$19,436,000

In the event of a Renewal Term, the then-current CPR will increase by 3% for each Renewal Term.

5.3 Fee Share. Vizient will pay Member 30% of Administrative Fees reported by Suppliers, based on Member's purchases during the Term ("Fee Share"), within 120 days following the end of each calendar quarter.

5.4 Member Statement. After the end of each calendar quarter, Vizient will provide Member with a summary account statement ("Member Statement") showing total Fee Share earned, other cash payments, and any other fees offset for the respective calendar quarter. If the Member Statement reflects a total net due amount owed from Vizient to Member, Vizient will pay Member such amounts within 120 days after the last day of the applicable period. If the Member Statement reflects a total net amount due from Member to Vizient, Vizient will issue an invoice for such amounts and Member will pay all invoices within 30 days from receipt of a certified invoice by the County of Monterey Auditor-Controller. Vizient reserves the right to offset any Service Fees, Reimbursable Expenses, or any other amounts owed under the Master Agreement, past due 90 days, against amounts due to Member as reflected in the Member Statement. The Member Statement will provide a summary of any Service Fees, Reimbursable Expenses, and other amounts offset by Vizient.

5.5 No Obligation. Notwithstanding anything to the contrary stated herein, Vizient will not be obligated to pay Fee Share in the event: i) Member breaches a material term of the Master Agreement or this SOW that remains uncured; ii) Administrative Fees are received for which a Supplier has failed to provide sufficient detail to determine whether they are derived from purchases made by Member or a Covered Facility; iii) a change in law or regulation occurs which Vizient reasonably believes prohibits the sharing of such Administrative Fees with its members; or iv) a Supplier Agreement prohibits the sharing of Administrative Fees.

5.6 Term Expiration. Following the expiration of the Term, Vizient will pay Member Fee Share for purchases i) made prior to the Term expiration date; and ii) reported to Vizient by a Supplier within 90 days of the Term expiration date. For purposes of clarification, Vizient will have no obligation to pay Fee Share for any purchases made by Member following the expiration of the Term or reported by a Supplier more than 90 days after the expiration of the Term. An early termination of this SOW, for any reason, will terminate Vizient's obligation to pay any Fee Share to Member after the effective date of such termination.

5.7 Reimbursable Expenses. Omitted

[Signatures on next page]

Natividad Medical Center – Group Purchasing Program

(Member ID# 83098)

IN WITNESS WHEREOF, the Parties have caused this SOW to be executed by their duly authorized representatives as of the Effective Date.

Vizient, Inc.

DocuSigned by:
By: cathy denning
74DB841DAA76433...
Printed Name: Cathy Denning

Natividad Medical Center

By: [Signature]
Printed Name: Cathy Denning

Title: Group SVP, Sourcing Operations, Analytics & COE Title: CEO

Date: 8/5/2019 | 10:18:42 AM CDT Date: 8/1/19

Please sign, scan, and email to: executedagreements@vizientinc.com. Vizient will provide a fully executed electronic copy to Member.

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
Barron at Natividad 7-1-19

APB
ABreren
Dep. COO.
June 28, 2019

Natividad Medical Center – Group Purchasing Program

(Member ID# 83098)

IN WITNESS WHEREOF, the Parties have caused this SOW to be executed by their duly authorized representatives as of the Effective Date.

Vizient, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____

Natividad Medical Center

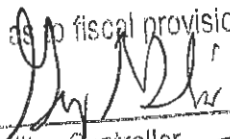
By: _____

Printed Name: _____

Title: _____

Date: _____

Please sign, scan, and email to: executedagreements@vizientinc.com. Vizient will provide a fully executed electronic copy to Member.

Reviewed as to fiscal provisions

Auditor-Controller
County of Monterey 7-1-19



A. Brereton
Dep. CO CO.
June 28, 2019

Exhibit A – Covered Facilities

	NAME	Vizient MID	Address	City	ST	ZIP