



2860 Michelle Drive, Suite 230  
Irvine, CA 92606  
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## **Marketing Services Agreement**

Date: January 14, 2019

“Client”:

Carolina Vein Specialists  
1130 New Garden Rd.  
Greensboro, NC 27410  
Phone: 336-258-4115  
Mark Featherston  
cvsdoc2@gmail.com

- and -

“ HS”:

Healthcare Success, LLC  
8961 Research Drive, Suite 200  
Irvine, CA 92618  
Phone: (800) 656-0907

### **Traditional Media Advertising**

The following is an outline of the online and offline media marketing services to be provide by Healthcare Success to Client under this agreement:

Note: Offline/Traditional Media totals subject to change, based on schedule.

### **Monthly Media Totals:**

#### **January 2019 Totals**

Offline (TV) – NBC, FOX, ABC	\$ 10,500.00
Online Media – Google Search & Facebook	3,500.00
<b>Sub-Total</b>	<b>\$ 14,000.00 PAID</b>

#### **February 2019 Totals**

Offline (TV) – NBC, FOX, ABC	\$ 11,000.00
Online Media – Google Search & Facebook	3,500.00
<b>Sub-Total</b>	<b>\$ 14,500.00</b>

#### **March 2019 Totals**

Offline (TV) – NBC, FOX, ABC	\$ 11,000.00
Online Media – Google Search & Facebook	3,500.00
<b>Sub-Total</b>	<b>\$ 14,500.00</b>

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April 2019 Totals

Offline (TV) – FOX, ABC, CBS	\$11,500.00
Online Media – Google Search & Facebook	<u>3,500.00</u>
<b>Sub-Total</b>	<b>\$ 15,000.00</b>

May 2019 Totals

Offline (TV) – FOX, ABC, CBS	\$ 11,500.00
Offline (Direct Mailer) – Mother's Day	3,750.00
Online Media – Google Search & Facebook	<u>3,500.00</u>
<b>Sub-Total</b>	<b>\$ 18,250.00</b>

June 2019 Totals

Offline (TV) – FOX, CBS	\$ 6,500.00
Online Media – Google Search & Facebook	<u>\$ 3,500.00</u>
<b>Sub-Total</b>	<b>\$ 10,000.00</b>

July 2019 Totals

Offline (TV) – FOX, CBS	\$ 6,500.00
Online Media – Google Search & Facebook	<u>\$ 3,500.00</u>
<b>Sub-Total</b>	<b>\$ 10,000.00</b>

August 2019 Totals

Offline (TV) – CBS	\$ 3,000.00
Online Media – Google Search & Facebook	<u>\$ 3,500.00</u>
<b>Sub-Total</b>	<b>\$ 6,500.00</b>

September 2019 Totals

Offline (TV) – FOX, ABC	\$ 6,000.00
Online Media – Google Search & Facebook	<u>\$ 3,500.00</u>
<b>Sub-Total</b>	<b>\$ 9,500.00</b>

October 2019 Totals

Offline (TV) – ABC	\$ 3,000.00
Offline (Direct Mailer) – Medicare	3,750.00
Online Media – Google Search & Facebook	<u>3,500.00</u>
<b>Sub-Total</b>	<b>\$ 10,250.00</b>

November 2019 Totals

Offline (TV) – FOX, ABC	\$ 6,000.00
Online Media – Google Search & Facebook	<u>3,500.00</u>
<b>Sub-Total</b>	<b>\$ 9,500.00</b>

December 2019 Totals

Offline (TV) – FOX	\$ 3,000.00
Online Media – Google Search & Facebook	<u>3,500.00</u>
<b>Sub-Total</b>	<b>\$ 6,500.00</b>

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**Total Media Budget Jan – Dec 2019: \$138,500.00**

**Agreement Term and Payments**

The initial term of this Agreement will be for 12 months following mutual execution of this Agreement (the "Initial Term"). Payments for media buying services are due monthly, the first being due on or before January 1, 2019 to begin.

**Payment schedule: Recurring marketing management charges processed on the 1<sup>st</sup> of each month.**

Payment Method: EFT on file

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### **Renewal Terms**

Following the Initial Term, the Digital Advertising portion of this Agreement will automatically renew for successive One Year "Renewal Terms," at the same monthly rate, unless either party provides written notice of its intent not to renew no more than ninety (90) days but no less than sixty (60) days in advance of the end of the term then in effect. Any notice received with less than 60 days' notice will result in auto renewal for an additional Renewal Term.

Billing name and address (if different)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

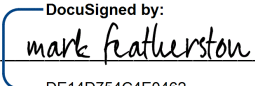
### **Miscellaneous**

The fees quoted in this Agreement are valid for thirty (30) days from the contract date set forth on the first page of this Agreement. The Terms and Conditions attached as Exhibit A is incorporated into this Agreement by this reference and made a part of this Agreement.

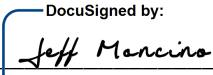
### **Authorization:**

I hereby authorize Healthcare Success to commence work on the services listed above. I agree to both the total fees and method of payment specified on this contract. I will fax this signed document to **800-656-0907**.

Client:

By:  Date 1/29/2019  
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Healthcare Success, LLC

By:  Date 1/29/2019  
Authorized Representative

Its: CFO

**EXHIBIT A****TERMS & CONDITIONS FOR  
MARKETING SERVICES AGREEMENT**

The Parties have executed this Marketing Services Agreement (the "**Agreement**"), subject to the following terms and conditions:

1. Authority; Designated Representative; Territory. Client represents that it has full corporate power and authority to execute, deliver and consummate the Agreements. Client will designate one representative ("**Designated Representative**") that is authorized to make decisions regarding the services provided by Healthcare Success, LLC (HS) under the Agreement. Client agrees that all decisions made by Client's Designated Representative will be binding upon Client. For purposes of the Agreement, the "**Territory**" is defined as the county or counties where the Client treats its patients.

2. Categories of HS Services.

a. Marketing Program Launch & Development. HS's services in this category are provided on a non-reoccurring basis, and are usually associated with the launch of a marketing program. HS will use its commercially reasonable efforts to speedily complete these services, which are usually completed within one to six months, assuming timely responses by Client to HS's inquiries. Irrespective of the payment schedule, creative projects in this category are deemed 20% earned upon completion of client interview, 50% earned upon shipment of first draft and 100% earned upon final (or third) draft. If HS is not engaged for Monthly Marketing Program Management, HS's obligation to Client for these services is deemed complete upon (i) Client acceptance, (ii) three rounds of revisions, or (iii) one year following commencement of this Agreement, whichever occurs soonest.

b. Monthly Marketing Program Management. HS provides services in this category on an ongoing basis. Like any marketing program, activities will be phased in over time according to priority, and specific deliverables may evolve over time. HS will provide client written 30-day advance notice of any noteworthy changes. Services in this category are deemed earned on a monthly basis.

c. Media Buying Services.

i. Exclusive Agent. Client hereby designates HS as the Client's exclusive agent to plan, negotiate, purchase and track various media schedules and contracts on behalf of the Client at the negotiated contract amount with each applicable media company.

ii. Media Authorization. HS will provide Client with specific details for each media contract, which may include the schedule and rates. Client will provide advance written approval for each media contract before being executed by HS on behalf of Client. At the date of the agreement, Client and HS estimate the annual spend for offline (traditional) and online media will total approximately \$ \$96,500. However, unless documented to the contrary on the face of this agreement, and subject to Section 2 c iii below, Client has complete control over the amount of the media spend budget including, without limitation, the option to increase the media budget and decrease the budget to the level of what HS, as Client's agent, has entered into non-cancellable contracts with media companies. Actual media costs will likely vary from the estimate. HS will regularly reconcile "actual spends" versus "estimated spends," and will either adjust the subsequent month's media invoice or (when amounts are material) create a special invoice or credit. Upon request, Client shall sign an Authorization Letter that document's HS's right to act as the Client's exclusive media buying agency.

iii. Payments. HS shall be solely liable for payment of all media invoices if HS has been paid for those invoices by the Client (advertiser). Prior to payment to HS, the Client shall be solely liable. Client will provide payment for approved media schedules in advance on a monthly basis. Monthly payments shall be due no later than the first day of each month for each approved media schedule. Should Client not provide any advance monthly payment as required, HS will not authorize the media schedule for the next month in question. In the event the Agreement terminates for any reason prior to the end of any previously approved media contracts, this provision will survive for the term of those contracts, and Client will advance any and all remaining amounts due under those contracts to HS during the remaining contract periods. HS shall be authorized to apply any deposit or unpaid balance that comes due under this Addendum, and shall remit the unused portion of the Deposit to Client at such time as all approved media contracts have been fully paid. In all cases, Client assumes ultimate and sole financial responsibility for all contracted media schedules that Client authorizes HS to contract for on its behalf.

iv. Offline Media. For Offline Media (includes but is not limited to, television, radio, newspaper, magazines, direct mail and outdoor), HS will disburse the contracted fee amount to the offline media companies, net of its agreed buyer discount (typically 15% of the cost for the media schedule which is awarded by media companies to qualified media buying agencies). Client agrees to pay all amounts due for Offline Media as set forth in the Agreement and this Addendum directly to HS. HS will retain its portion as a commission for acting as Client's exclusive and qualified media buying agency. HS will pay the balance directly to the media company pursuant to the applicable media contract.

v. Online Media. For Online Media (including but not limited to pay-per-click, display, retargeting, social media ads, etc.) HS will manage advertising, planning, purchasing, ad copy and tracking for of Client's approved online advertising budget. Client agrees to pay all amounts due for Online Media as set forth in the Agreement

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and this Addendum directly to HS. HS will retain a customary portion of online media as commission for acting as Client's exclusive and qualified media buying agency. HS will pay the balance directly to the media company pursuant to the applicable media contract. Because HS utilizes a proprietary process to purchase online media on behalf of its clients, specific campaign data (e.g., bid amounts, ad copy, keywords and related statistics) shall remain intellectual property of HS.

3. **Intellectual Property Rights in HS Works.** All works created by HS for client pursuant to this Agreement are alternately referred to herein as "Materials" or "HS Works."

**Exclusive License in Some HS Works:** In consideration of and contingent upon the payments to be made by Client to HS pursuant to this Agreement, unless otherwise noted on the face of the agreement, HS grants to Client an exclusive, perpetual license to use, duplicate, publish or print brochures, main website, logos and other custom print collateral materials it creates for the products and services of Client, within the Territory served by Client.

**Non-Exclusive License in Some HS Works:** HS grants a nonexclusive license to Client for Materials HS creates for Client's external advertising, including without limitation TV scripts or video spots, radio scripts or spots, newspaper advertisements, magazine advertisements, outdoor advertisements, or Internet advertisements or landing pages, which nonexclusive license shall be limited to the initial Term or Renewal Term(s).

**License Conditions and Revocation:** HS may revoke any license granted herein to Client upon a failure of Client to make timely required payment(s) during the initial or renewal terms, or upon the occasion of any other breach of the Agreement by Client. All licenses are non-transferrable by Client.

**Copyright in Materials/HS Works:** Client acknowledges that HS retains copyright in all HS Works, and therefore the right to license similar works or concepts for providers outside of Client territory (excluding any trademarks, copy, or images provided by Client, which are the intellectual property of Client).

**Use or Incorporation of Third Party Works:** HS may, on occasion, license materials from third parties ("Third Party Works") for inclusion in HS Works. In such circumstances, ownership of all intellectual property in such Third Party Works remains with the original owner/licensor of such Third Party Work. In such instances, Client agrees that it remains bound by the terms of any license(s) for a Third Party Work. HS will in its negotiations secure appropriate rights so that Client can continue using any Third Party Work in a manner consistent with its use, and will keep Client informed of any limitations on use.

4. **Client's Responsibilities.** HS will send the Materials, including documents, copy, and/or layouts to Client for its review and approval prior to execution or production. Client shall approve the Materials in writing prior to completion of execution or production by HS. Once approved by Client, any changes by Client will be at additional expense. Upon completion of the Materials, HS will deliver them directly to Client in accordance with its instructions, provided that the Client's account is in good standing. In no event will HS provide a refund to Client for marketing projects not completed within the estimated time frames mentioned in Section 2 (a) due to the failure of Client's timely response and cooperation. Client will be responsible for any increased fees, production costs, missed media placement deadlines or opportunities arising out of Client's failure to timely respond.

5. **Indemnification by HS.** HS shall indemnify, defend and hold harmless Client from and against any and all damages, costs and expenses (including reasonable attorneys' fees) arising out of any demand, action or claim alleging or related to: (a) any negligent act or omission, or more culpable conduct, of HS, its employees or agency; (b) HS acting outside of its express agency authority, or (c) the creative concepts and materials developed by HS infringing upon the intellectual property rights of a third party.

6. **Compliance with Applicable Laws.** Client is solely responsible to insure that all marketing materials created under the Agreement are in compliance with any and all laws, regulations and/or rules of professional conduct and/or ethics standards ("**Laws and Regulations**") governing or otherwise applicable to Client's profession, business and occupation and its professional employees. Client is further responsible for the accuracy and truthfulness of all product or service claims, documentation, or substantiation provided to HS for incorporation into any HS Work, and indemnifies and holds HS harmless from and against any claims or liabilities arising out of any untruthful, misleading, or inaccurate information. Client shall indemnify and hold HS harmless from and against any claims or liabilities regarding the non-compliance of its Materials with applicable Laws and Regulations, including reasonable attorneys' fees incurred by HS in defending against same. If Client approves materials that are later found to not be in compliance with applicable Laws and Regulations, HS may agree to modify the Materials, in which case additional fees or costs may apply and Client agrees to pay such fees and costs.

7. **Business Associate Agreement.** Depending on the scope of work performed by HS for Client, a Business Associate Agreement (BAA) between the parties may be required in order to comply with the Health Insurance Portability and Accountability Act (HIPAA) to ensure that any Protected Health Information (PHI) is properly safeguarded. In connection with and by agreeing to these Terms, Client and HS agree to be bound by the terms of a Business Associate Agreement, and to perform their respective obligations as enumerated therein.

8. **Work Flow; Change Orders.** Upon proper execution of the Agreement and receipt of the initial payment, HS will begin the project assignments. HS's fees for marketing Materials include the development of an initial concept draft of each marketing project plus up to a maximum of three (3) additional revisions based on Client feedback. If Client requests additional revisions of marketing Materials, HS reserves the right to charge Client for the time to complete the additional revisions on an hourly rate to be determined by HS at that time. Payment of the services for these additional revisions shall be invoiced to Client.

9. **Late Payments.** All payments made by Client under the Agreement are considered payment in advance for marketing services to be provided under the Agreement. Client understands and agrees that if any payment is not received within five (5) days after payment due date, the delinquent amount shall be subject to a late fee of 1.5% per month, and HS may immediately suspend all

work for Client and terminate Client's license to use HS copyrighted materials until payments are made current in accordance with the payment schedule set forth in this Agreement.

10. Early Termination; No Refunds. This agreement will end on the expiration date and it cannot be canceled prior to expiration. HS will not provide a refund should Client decide to stop using our services during the initial or renewal terms.

11. Photography. HS provides non-custom, non-rights-managed (stock) photography for marketing materials unless Client specifically contracts for custom photography for an additional fee. For Client-provided photography, Client will arrange for such photography at Client's expense and Client will be obligated to obtain all necessary releases and consents for the use and reproduction of client-supplied photographic images. All stock photography is a Third Party Work, subject to the licensing terms and conditions of the owner thereof, and all custom photography provided is a Third Party Work, subject to either licensing terms and conditions of the creator thereof, or subject to acquisition of ownership rights from the third party creator thereof on behalf of Client.

12. Printing Services. HS will determine all printing specifications and suggest appropriate paper stock in its professional opinion for Client to provide their print vendor.

13. Incidentals. Client may request HS to manage and purchase incidental marketing items including but not limited to printing, station produced spots, vanity phone numbers, research projects or "vinyls" for billboards. Client shall pay to HS the actual cost for such items, plus a minimum of 15% of the cost.

14. Trademarks. Client warrants and represents that any trademarks trade names, or service marks provided by or approved by Client for inclusion in the Materials will not infringe upon the trademarks or service marks or legal rights of other parties. Client acknowledges and agrees that HS does not provide legal services and, thus, will not perform trademark or service mark searches as part of its services under the Agreement. Accordingly, Client will have sole responsibility for same. Client shall indemnify and hold HS harmless from and against any and all trademark, trade name or service mark infringement actions or claims, including reasonable attorneys' fees incurred by HS in defending against same.

15. Client List. Client agrees that HS may, during and after the Term of this Agreement, include its name (including any applicable trade name, trademark, service mark or logo) on our client list and/or website.

16. Limitation of Liability. To the extent of claims of breach of warranty or breach of contract, and excluding indemnification obligations herein, neither party hereto shall be responsible for any consequential, incidental, special or exemplary damages which may be claimed by the other party, whether or not such party has been advised of the possibility of such damages. To the extent of claims of breach of warranty or breach of contract, and excluding indemnification obligations herein, neither party's total liability to the other party hereto for any claims for damages shall exceed the total amount of payment for the fees and commissions to be paid by Client under this Agreement. This amount does not include the amount of payments made by HS to media companies for Offline or Online media.

17. Warranty of Service/No Warranties Regarding Results & Products. HS represents and warrants that all services provided hereunder will be performed in a timely and professional manner, and in accordance with industry standards. HS makes no warranties or representations, express, implied or statutory, with regard to any marketing results which may be achieved by Client, or to any product, including, without limitation, any warranty of merchantability or fitness for a particular purpose.

18. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof, and supersedes any and all prior agreements, written or verbal, and understandings between them relating to its subject matter.

19. No Assignment. This Agreement may not be transferred or assigned without the prior written consent of the other party, which consent will not be unreasonably withheld, conditioned or delayed. The above notwithstanding, HS may enter into a merger or sale of substantially all its assets without prior consent of Client.

20. Governing Law and Venue. This Agreement shall be construed under and governed in accordance with, the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Agreement the Superior Court of Orange County, California, shall be the sole jurisdiction and venue for bringing the action.

21. Collection Fees and Costs. In the event HS takes legal action to collect any amounts that are due under the Agreement, Client will be liable for all of HS's collection costs, including reasonable attorneys' fees.

22. Attorneys' Fees. In the event of any dispute under the Agreements, the prevailing party will be entitled to an award of its reasonable attorneys' fees and costs.

23. Waiver. No waiver of any term, provision, or condition of this Agreement whether by conduct or otherwise, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

24. Captions. The captions of the articles, sections and paragraphs of this Agreement are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation.

25. Amendments. This Agreement shall not be modified or amended except by a writing signed by HS and the Designated Representative of Client.

26. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be found to be invalid, void or unenforceable, then, to the extent that the basic intentions of the parties remain unchanged, the remaining provisions and any application thereof shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

27. Notices. All notices, demands or other communications required or intended under this Agreement (collectively a "Notice") shall be in writing and be given by facsimile, email or overnight courier. If a Notice is sent by facsimile or email, it shall be deemed received 48 hours after the time the facsimile or email transmission is sent. If Notice is sent by overnight courier, it shall be deemed received 72 hours after receipt by the overnight courier service. All Notices shall be sent to the undersigned person to the address listed on the first page of this Agreement.