

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (“MSA”) GOVERNS TRIMED MEDIA GROUP, INC., DBA INNOVATE HEALTHCARE’S (“INNOVATE HEALTHCARE”) PROVISION OF CERTAIN DIGITAL ADVERTISING PACKAGES AND RELATED SERVICES, (COLLECTIVELY, THE “SERVICES”) AND CLIENT’S USE THEREOF, AS SET FORTH IN AN APPLICABLE CAMPAIGN SPECIFIC INSERTION ORDER (“INSERTION ORDER”) EXECUTED BETWEEN INNOVATE HEALTHCARE AND THE ENTITY PLACING AN ORDER FOR THE SERVICES (“CLIENT”) (COLLECTIVELY, THE “PARTIES”). BY EXECUTING AN INSERTION ORDER THAT INCORPORATES THIS MSA BY REFERENCE, CLIENT AGREES TO THE TERMS OF THIS MSA. TOGETHER, THE MSA AND ANY APPLICABLE INSERTION ORDER(S) CONSTITUTE THE “AGREEMENT.” IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS MSA AND THE TERMS OF ANY INSERTION ORDER, THE TERMS AND PROVISIONS OF THIS MSA SHALL CONTROL UNLESS AN INSERTION ORDER EXPRESSLY OVERRULES A SPECIFIED SECTION OF THIS MSA IN WHICH CASE THE EXCEPTION APPLIES SOLELY TO THAT INSERTION ORDER.

1) Fees; Late Payments.

- a) *Fees & Expenses.* As consideration for the Services to be performed by Innovate Healthcare hereunder, Client shall pay to Innovate Healthcare fees in the amounts and according to the payment schedule set forth in each applicable Insertion Order. Except as may be expressly provided in the Agreement, all payment obligations are non-cancelable, and all fees once paid are non-refundable.
- b) *Late Payments; Taxes.* Innovate Healthcare may suspend performance of the Services until all past due amounts and interest thereon have been paid. Client shall be responsible for and shall pay in a timely manner (i) all federal, state, or local taxes where applicable based on or arising from the Agreement (other than taxes based on Innovate Healthcare’s income), and (ii) all costs incurred by Innovate Healthcare in collecting any past-due payments, including, without limitation, attorneys’ fees, and costs.
- c) *Invoice Disputes.* Client shall notify Innovate Healthcare in writing of any dispute with an invoice (along with a reasonably detailed description of the dispute) within 10 days from Client’s receipt of such invoice. Client will be deemed to have accepted all invoices for which Innovate Healthcare does not receive, within such 10-day period notification of a dispute. The Parties shall seek to resolve any invoice dispute expeditiously and in good faith.

- 2) **Client Responsibilities.** In connection with Innovate Healthcare’s provision of the Services, Client shall: (i) reasonably cooperate with Innovate Healthcare in all matters relating to the performance of the Services; (ii) timely deliver the Client Content in the format required for display without further preparation or alteration; and (iii) secure all rights, licenses and approvals necessary to grant Innovate Healthcare access to or use of any personally identifiable information or any other third party data, software or other technology reasonably necessary for Innovate Healthcare’s performance of the Services (clauses (i) through (iii) collectively, the “Client Responsibilities”).

3) Term and Termination.

- a) *Term and Termination.* The Agreement shall commence as of the effective date set forth in the applicable Insertion Order (“Effective Date”) and shall continue in full force and effect thereafter until terminated in accordance with this Section 3(a) (the “*Term*”). This MSA may be terminated by either Party upon 30 days’ prior written notice in the event there are no outstanding Insertion Orders (i.e., all work under all Insertion Orders has been finally completed, accepted, and paid for by Client and all Insertion Orders have otherwise expired or been terminated in accordance with their terms). Additionally, this MSA or any Insertion Order may be terminated by either Party if the other Party: (i) materially breaches any of the terms or conditions of this MSA or an Insertion Order and such breach is either not capable of cure or, if capable of cure, is not cured within 30 days after notice of breach or (ii) becomes insolvent or involved in any bankruptcy or insolvency proceeding relating to its insolvency. Any termination of this MSA shall automatically terminate all of the Insertion Orders. The foregoing termination rights are in addition to, and not in lieu of, Innovate Healthcare’s right (in its sole discretion) to suspend performance of its Services, without any liability to Client, until any failure to pay fees or other material breach is cured, and Client shall remain

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responsible for all existing and continuing obligations (including the payment of fees) during such period.

- b. *Effect of Termination.* Upon the termination of this MSA or any Insertion Order, Client shall, without limiting any other rights or remedies that Innovate Healthcare may be entitled to, immediately pay to Innovate Healthcare all fees and/or other amounts that accrued prior to the date of such termination. Additionally, upon termination of this MSA or any Insertion Order by Innovate Healthcare as a result of Client's breach, all rights, licenses, and authorizations granted by Innovate Healthcare to Client hereunder will immediately terminate. Notwithstanding anything in the Agreement to the contrary, this Section 3(b) and Sections 4, 6, 7, 8 and 9 of this MSA shall survive any termination of the Agreement for any reason.

4) Ownership and Proprietary Rights.

- a. *Client Content.* As between Innovate Healthcare and Client, Client is, and shall remain, the sole and exclusive owner of all right, title and interest in and to all data, materials and other content provided by Client to Innovate Healthcare in connection with Innovate Healthcare's performance of the Services (collectively, the "Client Content"), subject only to the rights Client grants to Innovate Healthcare herein. Client hereby grants Innovate Healthcare, during the Term hereof, a nonexclusive, non-transferable (except as provided below in Section 9(d)) license to use, copy, modify, create derivative works of, distribute and display the Client Content solely as required to fulfill Innovate Healthcare's obligations under the Agreement.
- b. *Innovate Healthcare Proprietary Property.* Innovate Healthcare is, and shall remain, the sole and exclusive owner of all right, title and interest in and to all Innovate Healthcare Proprietary Property. To the extent Innovate Healthcare develops corrections, improvements, derivative works, or software relating to the Innovate Healthcare Proprietary Property based upon ideas, suggestions or joint contributions submitted by Client to Innovate Healthcare ("Contributions"), Client hereby irrevocably assigns its rights to such Contributions to Innovate Healthcare, together with all intellectual property rights in or relating thereto. Nothing in this Agreement grants to Client or any third party any license, right, title, or interest in or to any of the Innovate Healthcare Proprietary Property. For purposes hereof, "Innovate Healthcare Proprietary Property" means all intellectual property rights conceived, developed, or reduced to practice by Innovate Healthcare: (i) prior to the execution of this Agreement, or (ii) after execution of the Agreement to the extent conceived, developed, or reduced to practice by Innovate Healthcare outside the scope of the Services.

5) Representations, Warranties and Covenants.

- a. *Mutual Representations.* Each Party represents and warrants that: (i) the individual entering into the Agreement on its behalf has been duly authorized to do so; (ii) it has full and complete authority and right to enter into the Agreement and to perform its obligations hereunder; (iii) it is not under any obligation of a contractual or other nature to any third party that is inconsistent with the Agreement or that would prevent or impair in any way the performance of its obligations hereunder, and no approval or other action by any third party is required in connection herewith.
- b. *Client Representations.* Client represents, warrants, and covenants to Innovate Healthcare that:
 - i. Client shall perform the Client Responsibilities and Client's obligations hereunder in compliance with all applicable laws;
 - ii. at the time of Innovate Healthcare's dissemination of any Client Content, all statements and claims made in such Client Content will (1) be supported by competent and reliable prior substantiation in accordance with all applicable laws, and (2) comply with all other applicable laws regarding deceptive trade practices, fair competition, and consumer protection;
 - iii. nothing in the Client Content will (1) violate any criminal law, (2) advocate any illegal activity, or (3) be defamatory, libelous, slanderous, or otherwise unlawful;
 - iv. Client has and will retain all rights, licenses, and clearances necessary to lawfully use, and to provide to and authorize Innovate Healthcare to use, the Client Content and all information contained therein, including but not limited to any personal information, health-related data, software or other third-party materials;

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- v. Client shall be solely responsible for the accuracy, integrity, legality and appropriateness of any Client Content provided to Innovate Healthcare by or on behalf of Client for use in performance of the Services, including by ensuring that the use of any personal information as contemplated hereunder complies with Client's own privacy policy;
 - vi. to the extent that the Client Content is delivered to Innovate Healthcare in electronic form, it will not contain any viruses or other devices capable of disabling or interfering with any computer systems or software; and
 - vii. Client shall use any advertising space provided by Innovate Healthcare solely for its own benefit and not for the placement of any third-party advertising.
- c. *Right to Reject Client Content.* Without limiting the foregoing, Innovate Healthcare reserves the right to reject any Client Content for any reason (including, but not limited to, Innovate Healthcare's belief that the Client Content conflicts with Innovate Healthcare policy, competes with Innovate Healthcare's products or services, is false or misleading, may degrade the graphic quality of Innovate Healthcare's digital properties, or may subject Innovate Healthcare to criminal or civil liability).
- d. THE WARRANTIES IN THIS SECTION 5 ARE INNOVATE HEALTHCARE'S SOLE AND EXCLUSIVE WARRANTIES CONCERNING THE SERVICES, AND INNOVATE HEALTHCARE DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED. INNOVATE HEALTHCARE MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS OR ACHIEVE ANY INTENDED RESULT, INCLUDING WITH RESPECT TO USAGE, STATISTICS, OR LEVELS OF IMPRESSIONS FOR ANY ADVERTISING.
- 6) **Indemnification.** Client shall indemnify and hold harmless Innovate Healthcare and its affiliates, and their respective officers, directors, employees, agents, successors and assigns (each, including Innovate Healthcare, a "Innovate Healthcare Indemnitee"), from and against any and all claims, demands, actions, losses, damages, liabilities, penalties, taxes, costs and expenses (including attorneys' fees, settlement costs, arbitration costs and any other reasonable expenses for investigating or defending any action or threatened action) incurred by any of the Innovate Healthcare Indemnitees arising out of or resulting from (i) any breach of the Agreement by Client or (ii) the use of the Client Content.
- 7) **Confidentiality.** During the Term of the Agreement and for a period of five years thereafter, each receiving Party (each, a "Recipient") shall hold in strict confidence any proprietary or confidential information (collectively, "Confidential Information") of the other Party (the "Discloser") with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a reasonable degree of care, and shall not disclose Discloser's Confidential Information to any third party nor use the Discloser's Confidential Information for any purpose except for purposes expressly provided for in the Agreement; provided however, Discloser may disclose Recipient's Confidential Information when compelled to do so by law if it provides reasonable prior notice to Discloser. Confidential Information does not include information disclosed by one Party to the other that (i) is or becomes publicly known other than as a result of any act by the Recipient, (ii) is lawfully received by the Recipient from a third party not in a confidential relationship with the Discloser, (iii) was already rightfully known by the Recipient prior to receipt thereof from the Discloser, or (iv) was or is independently developed by the Recipient without reference to or use of, in whole or in part, any of the Discloser's Confidential Information. Notwithstanding the foregoing, each Party's confidentiality obligations set forth herein shall survive with respect to the other Party's Confidential Information that is a trade secret for so long as such Confidential Information continues to be a trade secret under applicable law. Each Party agrees that (i) a breach or threatened breach by such Party of any of its obligations under this **Section 7** would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy, and (ii) in the event of a breach or a threatened breach by such Party, the other Party shall be entitled to seek a temporary restraining order, an injunction, specific performance, and any other equitable relief that may be available from a court of competent jurisdiction.
- 8) **Limitation of Liability.** IN NO EVENT SHALL INNOVATE HEALTHCARE BE LIABLE TO CLIENT OR CLIENT'S AFFILIATES (OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, MEMBERS, MANAGERS, AGENTS AND ASSIGNS), AS APPLICABLE, FOR DAMAGES IN EXCESS OF THE LESSER OF \$25,000

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OR THE AMOUNT OF FEES PAID BY CLIENT TO INNOVATE HEALTHCARE UNDER THE AGREEMENT DURING THE THREE-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. UNDER NO CIRCUMSTANCES SHALL INNOVATE HEALTHCARE HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THE AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, OR CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF INNOVATE HEALTHCARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

9) Miscellaneous.

- a. *Non-Exclusivity.* Nothing herein shall create an exclusive arrangement between Innovate Healthcare and Client. This Agreement will not restrict (i) Client from advertising in other publications or media or (ii) Innovate Healthcare from providing advertising space or related services to any third parties.
- b. *Disclaimer of Partnership or Agency.* Innovate Healthcare is an independent contractor of Client. Nothing contained herein shall create any agency, employment, partnership, franchise, joint venture or other relationship between the Parties hereto, and neither Party shall have power or authority to bind the other Party in any manner whatsoever or create, in writing or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of such other Party.
- c. *Force Majeure.* Neither Party shall be liable for any delays or non-performance of any of its obligations (excluding the obligation to pay for the Services) arising out of causes not within such Party's reasonable control, including, without limitation, actions or decrees of governmental authorities, criminal acts of third parties, earthquakes, flood, and other natural disasters, war, terrorism, acts of God, or fire, except to the extent that the delay or non-performance was not reasonably safeguarded against (in accordance with industry standards) or the Party had notice.
- d. *Assignment.* Except in connection with a merger, consolidation, reorganization or sale of all or substantially all of Client's assets, Client shall not assign any of its rights or obligations under the Agreement without the prior written consent of Innovate Healthcare, which shall not be unreasonably withheld. Any purported assignment in violation of this Section 9(d) is void. Innovate Healthcare may assign any of its rights or obligations under the Agreement without Client's consent. All of the terms and conditions of the Agreement are binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- e. *Public Announcements.* Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to the Agreement or, unless expressly permitted under the Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld; provided, however, that Innovate Healthcare may (i) without Client's consent, include Client's name on Innovate Healthcare's website and/or in other sales and marketing materials in order to factually identify Client as a current or former client of Innovate Healthcare, and (ii) with the prior written consent of Client, include Client's trademarks and/or logos, or additional information regarding the Services provided to Client hereunder, in one or more press releases or case studies.
- f. *Governing Law.* The Agreement shall be governed by the laws of Rhode Island (without regard to its conflict of law's provisions). In the event that either Party commences a lawsuit or other proceeding relating to or arising out of the Agreement, the Parties agree that any such action shall be brought solely in the United States District Court for the District of Rhode Island or, if such court lacks federal subject matter jurisdiction, in the Rhode Island Superior Court.
- g. *Waiver of Jury Trial and Class Actions.* EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THE AGREEMENT IS LIKELY TO INVOLVE

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COMPLEX ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT. FURTHER, EACH PARTY AGREES THAT ANY CLAIMS ARISING OUT OF OR RELATING TO THE AGREEMENT MAY BE BROUGHT BY A PARTY ONLY IN SUCH PARTY'S INDIVIDUAL CAPACITY AND NOT AS A REPRESENTATIVE OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION.

- h. *Notices.* All notices and consents required hereunder shall be in writing and shall be either delivered in person or sent by a nationally recognized overnight courier, or first class registered or certified mail, return receipt requested, postage prepaid, to the other Party at the physical address set forth on the applicable Insertion Order. All notices and consents given hereunder shall be effective (i) if hand delivered, upon delivery, (ii) if mailed, on the third business day following deposit in the United States mail, and (iii) if delivered by overnight courier, one business day after delivery to such courier.
- i. *Other.* The Agreement may not be modified or amended, in whole or in part, except by an instrument in writing signed by authorized representatives of the Parties. No waiver by either Party of any default or breach by the other Party of any provision of the Agreement shall be deemed a waiver of any subsequent default or breach. The Agreement contains the entire understanding between the Parties relating to the subject matter contained herein and supersedes any and all prior agreements between Client and Innovate Healthcare as to the subject matter hereof.