



PESC Administrators

a division of the Professional Exchange Service Corporation

P.O. Box 1071 • Fresno, CA 93714

(559) 228-2461 • FAX: (559) 227-1463

PARTICIPATING PROVIDER AGREEMENT

THIS AGREEMENT is made and entered into by and between PESC Administrators (hereinafter referred to as “**PESC**”), a California corporation and third party administrator (TPA) and: _____ (hereinafter referred to as “**OPTOMETRIST**”)

SECTION 1. PARTICIPATION PROVIDER STATUS

- 1.1 Panel Participation.** PESC enters into contracts with self-funded employers and union trust funds to arrange for the delivery of optometric vision care by providing panels of participating optometric providers. Pursuant to the terms of these contracts, **OPTOMETRIST** shall provide optometric vision services in accordance with the requirements of the California Health and Safety Code Section 1340, et seq.; and any other applicable state or federal regulations.
- 1.2 PPO Panels.** **This Participating Provider Agreement is for PPO business only.** **OPTOMETRIST** agrees to participate in PPO plans as set forth in Exhibit I which is attached hereto and incorporated by reference herein.
- 1.3 Commitment To Participate.** **OPTOMETRIST** hereby authorizes **PESC** to use **OPTOMETRIST**'s name as a PPO participating provider on marketing materials for the PPO plans described in Paragraph 1.2. **OPTOMETRIST** further authorizes **PESC** to provide self-funded employers, union trust funds, and third party payors with any and all relevant information as may be necessary so that **OPTOMETRIST** is allowed to provide optometric vision services and participate on the PESC PPO panels as set forth in Paragraph 1.2 of this Agreement pursuant to the terms of **PESC** contracts with said self-funded employers, union trust funds, and third party payors.
- 1.4 Continued Participation.** During the term of this Agreement, **OPTOMETRIST** agrees to meet any and all qualifications and criteria for **PESC** participating providers as established and/or revised by **PESC**.

SECTION 2. OPTOMETRIC SERVICES AND LICENSURE

- 2.1 Optometric Services.** In accordance with generally accepted professional standards, **OPTOMETRIST** agrees to render appropriate and necessary optometric vision services to any person, hereinafter referred to as a “Patient”, who is covered under an applicable vision benefit plan with which **PESC** has contracted. **OPTOMETRIST** further agrees to abide by any and all provisions contained in any agreement or contract between **PESC** and third party payors for the purpose of contracting for optometric vision services with **PESC**'s panels of participating providers. **OPTOMETRIST** further agrees that an essential provision of this Agreement is **OPTOMETRIST**'s commitment and undertaking to provide cost effective optometric vision services to **PESC** patients.
- 2.2 Peer Review, Utilization Review, and Quality Assurance.** **OPTOMETRIST** agrees to participate in any peer review, utilization review, and/or quality assurance investigations, actions, programs, processes, or procedures that may be initiated by patients or third party payors with which **PESC** has entered into contracts. **OPTOMETRIST** shall abide by the decisions of the Peer Review or Quality Assurance Committees of the third party payors with which **PESC** contracts, or by Peer Review, Utilization Review, and Quality Assurance Committees that may be established by **PESC**.

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- 2.3 Licensure of Optometrist.** OPTOMETRIST shall at all times be duly licensed to practice optometry in the State of California. OPTOMETRIST shall maintain adequate education and appropriate credentials to meet the professional standard of care for optometry in the State of California.
- 2.4 Equality of Access.** OPTOMETRIST shall not discriminate in the treatment of patients who are entitled to optometric vision benefits pursuant to PESC contracts with self-funded employers, union trust funds, or third party payors. Except as otherwise provided herein, OPTOMETRIST shall make OPTOMETRIST's services available to patients in the same manner, in accordance with the same standards provided to OPTOMETRIST's other patients, and without regard for the type of reimbursement or the degree or frequency of utilization of covered services by patients.
- 2.5 Obligations To Patients.** OPTOMETRIST's obligation to patients and OPTOMETRIST's rights shall not be construed to be increased or decreased by this Agreement.

SECTION 3. COMPENSATION

- 3.1 Participating PPO Providers.** If optometric vision services are performed pursuant to a PESC PPO contract, OPTOMETRIST shall charge the fees set forth in Exhibit 1, which is attached hereto and incorporated by reference herein. OPTOMETRIST shall not balance bill patients for charges that exceed the fees set forth in Exhibit 1.
- 3.2 Financial Responsibility of Third Party Payors and/or Patients.** PESC shall not be financially responsible for any claims that self-funded employers, union trust funds, or third party payors fail or refuse to pay. PESC shall notify OPTOMETRIST if self-funded employers, union trust funds, or third party payors fall behind in payments to PESC within ten (10) working days of such occurrence. After receiving such notification, OPTOMETRIST may bill the patient for services rendered but not yet reimbursed.

SECTION 4. RECORDS

- 4.1 Access.** To the extent permitted by law, the parties agree to provide each other with reasonable access and other information as may be necessary for their respective performances hereunder. Neither party shall charge for copies of records or for the provision of additional information furnished to the other party.
- 4.2 Confidentiality of Patient Records.** To the extent required by law, PESC and OPTOMETRIST shall maintain confidentiality of patient records.

SECTION 5. TERM AND TERMINATION

- 5.1 Term.** The term of this Agreement shall commence on the date when this Agreement is signed and shall continue in effect until terminated by either party.
- 5.2 Termination.** This Agreement may be terminated without cause by either party only upon sixty (60) days written notice to the other party or upon ten (10) days written notice if the party to whom the notice is given has materially breached any provision hereof. In the event that OPTOMETRIST's name is included in a PESC directory, OPTOMETRIST shall advise prospective patients that OPTOMETRIST is no longer a PESC participating provider. Upon the next printing of the directory, PESC shall make its best effort to delete OPTOMETRIST's name.

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SECTION 6. INSURANCE

- 6.1 Professional Liability Insurance.** OPTOMETRIST shall secure and maintain at OPTOMETRIST's expense such policy or policies of professional liability insurance as shall be necessary to insure against any claim or claims for damages arising by reason of injury or death, occasioned directly or indirectly by the performance or nonperformance of any service by OPTOMETRIST, or by OPTOMETRIST's agents or employees. Professional liability insurance coverage shall be issued by a company licensed to conduct the business of insurance in the State of California. Such professional liability insurance shall be in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence per year and an aggregate annual total of Two Million Dollars (\$2,000,000). These policy limits may, from time to time, be adjusted to reflect changing requirements of third party payors, self-funded employers, or union trust funds that contract with PESC.
- 6.2 Verification of Professional Liability Insurance Coverage.** Upon request, OPTOMETRIST shall provide PESC with a copy of the certificate evidencing that OPTOMETRIST has complied with OPTOMETRIST's obligation to maintain professional liability insurance as set forth in Paragraph 6.1 of this Agreement. OPTOMETRIST hereby authorizes PESC to confirm that such professional liability insurance coverage is adequate and in force during the term of this Agreement. OPTOMETRIST hereby authorizes PESC to access information maintained by the Optometric Board of California and/or OPTOMETRIST's professional liability insurance carrier pertaining to OPTOMETRIST's malpractice history including the number, type, nature, and disposition of claims filed against OPTOMETRIST.
- 6.3 Notification of Actions Taken or Claims Filed Against OPTOMETRIST.** OPTOMETRIST shall notify PESC within ten (10) working days of the filing of a professional liability insurance claim or notice of intent to commence action against OPTOMETRIST.
- 6.4 Notification of Loss of Professional Liability Insurance.** OPTOMETRIST shall notify PESC within three (3) working days of the loss or revocation of OPTOMETRIST's professional liability insurance coverage.

SECTION 7. INDEMNIFICATION

- 7.1 Indemnification of PESC.** OPTOMETRIST agrees to indemnify and hold PESC harmless from and against all claims, losses, costs, damages, and expenses (including attorneys' fees) caused by or arising out of (i) a breach by OPTOMETRIST of any provision of this Agreement; (ii) OPTOMETRIST's gross negligence or willful misconduct; or (iii) claims by patients or other third parties against OPTOMETRIST.
- 7.2 Indemnification of Optometrist.** PESC agrees to indemnify and hold OPTOMETRIST harmless from and against all claims, losses, costs, damages, and expenses (including attorneys' fees) caused by or arising out of (i) a breach by PESC of any provision of this Agreement or (ii) PESC's gross negligence or willful misconduct. Except as stated above, PESC shall not be liable to OPTOMETRIST, or to anyone who may claim any right due to his or her relationship with OPTOMETRIST, for any third party claims based on the acts or omissions of PESC, its agents, or employees.

SECTION 8. NOTICES

- 8.1 Notices.** Any notices to be given by either party to the other shall be in writing and may be transmitted either by facsimile, courier, personal delivery, or by registered or certified mail (postage prepaid with return receipt requested). Mailed notices shall be addressed to the parties at the addresses appearing in this Section 8. Each party may change its address by written notice in accordance with this Section 8. Notices delivered personally shall be deemed communicated as of the date of actual receipt and mailed notices shall be deemed communicated two (2) days after the date of mailing.

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- 8.2 PESC Business Address.** Notices shall be mailed or delivered to **PESC** at P.O. Box 1071, Fresno, CA 93714; delivered to 4747 N. First Street, #140, Fresno, CA 93726 or FAXed to (559) 227-1463.
- 8.3 OPTOMETRIST's Business Address.** Notices shall be FAXed or mailed to **OPTOMETRIST** at the address and/or FAX number set forth below the **OPTOMETRIST's** signature on this Agreement.

SECTION 9. GENERAL PROVISIONS

- 9.1 Non-Exclusivity.** **OPTOMETRIST** is not obligated to participate solely on **PESC's** PPO participating provider panels. **OPTOMETRIST** may participate in other contracts and provide optometric vision services at **OPTOMETRIST's** sole discretion.
- 9.2 Modifications and Amendments.** The terms, covenants, and conditions of this Agreement may not be altered, changed, or modified except for modifications in writing signed by both parties.
- 9.3 Assignment.** Neither the rights nor obligations of either party to this Agreement maybe assigned or delegated without the prior written consent of the other party.
- 9.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement shall be interpreted according to its fair meaning and neither strictly for nor against either of the parties hereto.
- 9.6 Attorney's Fees.** If any action, arbitration, or other proceeding is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled. This provision for recovery of attorneys' fees shall be construed as applicable to the entire Agreement.
- 9.7 Partial Invalidity.** If any provision of this Agreement is adjudged unlawful by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
- 9.8 Independent Contractor Status.** It is the parties' intention that **OPTOMETRIST** is an independent contractor and not **PESC's** employee, partner, joint venturer, or agent. Nothing contained in this Agreement shall be construed as creating a relationship of employee and employer between **OPTOMETRIST** and **PESC**. **OPTOMETRIST** shall not make, nor be entitled to make, any claims for Worker's Compensation or any other fringe benefit against **PESC** by virtue of this Agreement.
- 9.9 Confidentiality.** All information relating to **PESC's** business and financial affairs shall be kept in strict confidence by **OPTOMETRIST**. The foregoing obligation, however, does not apply to any information that has become publicly available or that is rightfully obtained from or by third parties or disclosures required by State of federal law.
- 9.10 Binding Effect.** This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.
- 9.11 Waiver.** The waiver of any breach or condition of this Agreement by either party shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or another provision of this Agreement.
- 9.12 Headings.** The paragraph headings contained herein are for the purpose of convenience only and shall not be considered in construing this Agreement.

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9.13 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the right granted herein and the obligations assumed herein. Any oral representation or modifications concerning this Agreement shall be of no force or effect, except for subsequent modifications in writing signed by both parties as set forth in Paragraph 9.2 of this Agreement.

AS EVIDENCED BY SIGNATURE BELOW, PESC and OPTOMETRIST hereby agree to all of the terms and conditions of this Agreement.

OPTOMETRIST:

Optometrist Signature: _____ Signature Date: _____

Type Optometrist's name, as it should appear in directories: _____

Address to which notices shall be mailed: _____

City: _____ State: _____ Zip: _____

FAX number to which notices shall be FAXed: _____

PESC:

By: _____
Cynthia Downing, President and Chief Executive Officer

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EXHIBIT I

OPTOMETRIST agrees to be a Preferred Provider Organization (PPO) participating provider for the following optometric vision service plan:

Plan 1

- Eye examination (one per year): \$70 per exam to be paid by the plan
(**OPTOMETRIST** shall accept this fee as payment in full for eye examinations and shall not bill patients the difference between usual and customary fees and this agreed upon eye exam fee)
- Materials allowance (annual – excluding contact lenses): Up to \$150 per year towards glasses and/or contact lenses (glasses includes frames, lenses, tints, coatings, and any other materials requested by patients)
- Optical: **OPTOMETRIST** agrees to provide a 15% discount off usual and customary fees on all materials sold to patients covered by this plan
- Contact lenses: **OPTOMETRIST** agrees to provide contact lenses at his/her usual and customary fees and to apply a 15% discount towards the **OPTOMETRIST'S** usual and customary contact lens service fee
- Second pair of glasses (annual): **OPTOMETRIST** agrees to provide a 20% discount to patients covered by this plan who purchase a second pair of glasses

Plan 2

- Eye examination (one per year): \$70 per exam to be paid by the plan
(**OPTOMETRIST** shall accept this fee as payment in full for eye examinations and shall not bill patients the difference between usual and customary fees and this agreed upon eye exam fee)
- Materials allowance (annual – excluding contact lenses): Up to \$250 per year towards glasses and/or contact lenses (glasses includes frames, lenses, tints, coatings, and any other materials requested by patients)
- Optical: **OPTOMETRIST** agrees to provide a 15% discount off usual and customary fees on all materials sold to patients covered by this plan
- Contact lenses: **OPTOMETRIST** agrees to provide contact lenses at his/her usual and customary fees and to apply a 15% discount towards the **OPTOMETRIST'S** usual and customary contact lens service fee
- Second pair of glasses (annual): **OPTOMETRIST** agrees to provide a 20% discount to patients covered by this plan who purchase a second pair of glasses