

PROMOTIONAL TERMS AND CONDITIONS

1. Overview. The [Hoya Cares] (the “Promotion”) is sponsored by Hoya Optical Labs of America, Inc. (“Hoya Vision Care”). The Promotion is an industry trade promotional program pursuant to which professional eyecare practices, which meet the eligibility criteria set forth in Section 3 below and are properly enrolled in, and accepted into, the Promotion pursuant to the requirements of Section 5 below, may earn price reductions in the form of [invoice/shipping document discounts].
2. Terms and Conditions. These Promotional Terms and Conditions (“Terms and Conditions”) govern the operation of the Promotion, superseding any and all terms, conditions, or rules previously discussed or in effect with respect to the Promotion. In the event of a discrepancy between these Terms and Conditions and any advertising/collateral material, the Terms and Conditions shall apply. These Terms and Conditions will supplement the standard terms and conditions that appear on the back of the New Account Application or any applicable Lab Services Agreement. By participating in the Promotion, the professional eyecare practice is accepting these Terms and Conditions in addition to the terms and conditions on the back of the New Account Application form.
3. Eligibility. The Promotion is open only to professional eyecare practices that (a) are located in one of the fifty states in the United States or the District of Columbia, (b) are invited by Hoya Vision Care to participate in the Promotion, (c) must have an active account with Hoya Vision Care (as verified solely by Hoya Vision Care), and (d) *do not submit any orders to Hoya Vision Care for which whole or partial reimbursement may be made by a federal healthcare program as defined at 42 U.S.C. § 1320a-7b(b), including Medicaid, Medicare and Tricare among others, or any other reimbursement source prohibited by applicable State laws.* (“Eligible Practices”). Enrollment and participation are limited to Eligible Practices. If an Eligible Practice has more than one practice location, all practice locations will be treated separately and will need to be accepted into the Promotion as individual entities for purposes of this Promotion. If Eligible Practices need any further information about eligibility, they may contact Hoya Vision Care for clarification.
4. Promotion Period. The Promotion shall take effect on [June 22, 2020], or your Approval Date (defined below), whichever comes later, and expires on [September 31, 2020] (the “Promotion Period”). Each Eligible Practice will be able to participate in the Promotion for the duration of the promotion from the date that it is approved to participate by Hoya Vision Care (“Approval Date”). To be clear, Eligible Practices will be eligible to receive the benefits offered under this Promotion for Jobs (defined in Section 6 below) ordered from the Approval Date within the entire [70 days] of the Promotion duration.
5. Hoya Cares under the Promotion, the Eligible Practice is eligible to receive 50% off any Hoya branded lens design when the Hoya Cares coupon is presented to the participating eye care professional. Limit one coupon per customer. Eligible Practices will be solely responsible for the cost of non-qualified anti-reflective coatings, other lens designs, polarization, shipping and handling, or any other additions to a Job. No substitutions or replacements are allowed. This Promotion may not be combined with any other discount, rebate or promotion sponsored by Hoya Vision Care. Ineligible lenses and non-qualified jobs will be billed as noted in the then current Hoya Vision Care National Price List. Statements will be mailed to the Enrolled Practice (as defined in Section 7 below) on the first working day of each month for the previous month’s orders. Statements will be balance forward, and payments must be received by the 15th of the month to qualify for continued Promotion benefits. The

Enrolled Practice shall be considered in material default if it has past due amounts owed to Hoya Vision Care greater than 60 days past due. The Enrolled Practice must remain current with all payments to Hoya Vision Care in order to be eligible for the Promotion benefits referenced herein. Usual and customary shipping charges will be applied to each order. All sales are FOB Hoya Vision Care shipping dock. Hoya Vision Care reserves the right to charge 100% of the fuel surcharge applied by the National air-freight couriers based on national fuel rates and indexes.

6. Job. A “Job” is defined for purposes of this Promotion as the sale of a pair or lenses (if prescribed by the Eligible Practice for the patient's needs) to a patient under one prescription that is fulfilled by the Eligible Practice ONLY through an Eligible Lab. “Eligible Labs” include Hoya Laboratories of America based laboratories and the global Hoya laboratory network. Jobs include private pay purchases only and do not include any orders for which whole or partial reimbursement may be made by a federal healthcare program as defined at 42 U.S.C. § 1320a-7b(b), including Medicaid, Medicare and Tricare among others, or any other reimbursement source prohibited by applicable State Laws.

7. Participation. In order to participate in this Promotion, an owner, director, or officer of the Eligible Practice (“Practice Principal”) must enroll the Eligible Practice online. Only enrollments completed online, as set forth below, will be accepted. In order to complete enrollment online, the Eligible Practice must agree to these Terms and Conditions and certify that it will not submit any orders under this Promotion for which whole or partial reimbursement may be made by a federal healthcare program as defined at 42 U.S.C. § 1320a-7b(b), including Medicaid, Medicare and Tricare among others, or any other reimbursement source prohibited by applicable State Laws. The Practice Principal must also fill out an online document, the link to which will be provided by a Hoya Vision Care Territory Sales Manager to invited Eligible Practices, and provide the following information:

- a) Eligible Practice’s name;
- b) Eligible Practice’s complete address;
- c) Eligible Practice’s phone number;
- d) Eligible Practice’s email;
- e) Eligible Practice Principal’s name;
- f) Eligible Practice Principal’s phone number;
- g) Eligible Practice Principal’s email;
- h) Account number, New Account Application form, or Lab Services Agreement;
- i) Eligible Practice’s tax ID.

The Practice Principal must also enter his/her e-signature in a box indicating that the Eligible Practice understands, accepts, and agrees to abide by these Terms and Conditions. An Eligible Practice must complete its enrollment by [August 31, 2020].

After an Eligible Practice submits its enrollment it will receive confirmation of its acceptance or rejection to participate in the Program from Hoya Vision Care via email in approximately 5-10 business

days. Upon completion of the enrollment process and acceptance into the Promotion by Hoya Vision Care, each Eligible Practice or Eligible Practice location will be called an “Enrolled Practice.”

Enrolled Practices agree to the receipt of mail, faxes, phone calls and/or email at the numbers/emails provided in the enrollment form for all purposes relating to the Promotion.

8. **Participation Requirements.** By enrolling in the Promotion, the Eligible Practice and the Practice Principal warrant and represent that it will comply with these Terms and Conditions and all applicable laws and regulations. To be eligible for participation in the Promotion, the Enrolled Practice must currently be and remain in good standing with Hoya Vision Care, which means that the Enrolled Practice must be current on all payments due to Hoya Vision Care in accordance with the Hoya Vision Care's established payment terms.

9. **Compliance with Terms.** Enrolled Practices agree to comply with these Terms and Conditions, and understand and agree that the decisions of Hoya Vision Care with respect to all aspects of the Promotion, including the construction and meaning of the Terms and Conditions, are final in all respects.

10. **Compliance.** Enrolled Practice represents and warrants that it does not order any products from Hoya Vision Care that are reimbursed in whole or in part by any federal or state healthcare program. Each Party represents and warrants that it shall comply with all applicable federal and state laws and regulations, including, where applicable, the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, and all implementing regulations; as well as all comparable state and local laws and regulations relating to the Agreement. The federal anti-kickback statute provides for criminal and civil liability for payments made to induce any referral or order for an item or service for which whole or partial reimbursement may be made by a federal healthcare program as defined at 42 U.S.C. § 1320a-7b(b), including Medicaid, Medicare and Tricare among others (collectively, “Federally Funded Programs”). Some states have similar anti-kickback laws (the “State Laws”), which provide for criminal penalties for payments to induce referrals for items or services for which whole or partial reimbursement may be made by the state Medicaid program. The Parties acknowledge and agree that nothing contained in these Terms and Conditions shall require either Party to refer business to the other Party or take into account the volume or value of referrals, nor has any unlawful remuneration been solicited or received for the furnishing, arranging or recommending the purchase, lease or ordering of any goods or services reimbursable under any state or federal health care programs. Customer agrees to maintain appropriate documentation of all discounts received in connection with the promotion offered by Hoya Vision Care and to report such discounts to the Department of Health and Human Services (“HHS”) to the extent required by law, and to furnish such information upon request of the Secretary of HHS.

11. **Audits.** Hoya Vision Care reserves the right to audit an Enrolled Practice, including its books and records, and to perform relevant validation to ensure that Enrolled Practice is compliant with the eligibility requirements, including, but not limited to, the representation that the Enrolled Practice does not submit any orders to Hoya Vision Care for which whole or partial reimbursement may be made by a federal healthcare program as defined at 42 U.S.C. § 1320a-7b(b), including Medicaid, Medicare and Tricare among others, or any other reimbursement source prohibited by applicable State Laws. The Enrolled Practice will permit Hoya Vision Care to perform the audit and will cooperate and furnish all requested materials in a timely manner, within no more than ten business days. Alternatively, when requested, Enrolled Practice agrees to provide evidence of compliance, such as through an audit

commensurate with the requirements of these Terms and Conditions. This audit must be completed within a reasonable time frame specified by Hoya Vision Care in Hoya Vision Care's sole discretion. Reasonable costs associated with such an audit will be borne by Hoya Vision Care. Failure to comply with the requirements of this Section may result in termination of enrollment in the Promotion. If the results of the Audit indicate that the Enrolled Practice was in violation of the eligibility requirements, the Promotion will be automatically terminated, effective retroactively, such that the Enrolled Practice will be responsible for repaying all discounts, rebates and incentives received under the Promotion.

12. **Warranties.** All sales to Enrolled Practices will be covered by Hoya Vision Care's standard policies and warranties contained in the standard Terms and Conditions in the New Account Application or any applicable Lab Services Agreement unless otherwise noted herein.

13. **Taxes.** State and local taxes and use taxes are not included in the listed prices for the Promotion. However, taxes may apply to your purchases in various states, and will be added as a separate charge. If you are exempt from sales taxes, please submit documentation including a signed resale or exemption certificate. Failure to submit proper documentation may result in taxes charged to your order.

14. **Reservation of Rights.** Hoya Vision Care reserves the right:

- a) To terminate the participation of any Enrolled Practice in the Promotion.
- b) To correct or amend the Terms and Conditions retroactively in the event of an error in the drafting of these Terms and Conditions. (Hoya Vision Care reserves the right to correct such error(s) and to have such correction apply retroactively to the start of the Promotion Period.)
- c) To cancel the entire or part of the Promotion, or to modify the Promotion for any reason.

Such actions may be taken by Hoya Vision Care in its sole discretion and for any reason. Notice of any of these actions will be posted by Hoya Vision Care via email.

15. **Indemnity.** By entering the Promotion and/or accepting any of the benefits thereunder, each Enrolled Practice agrees to indemnify, release and hold harmless Hoya Vision Care, its respective parent companies, subsidiaries, affiliates, officers, directors, shareholders, employees, agents, representatives, successors and assigns (collectively the "Indemnitees") for any costs, penalties or other damages the Indemnitees may incur in association with any investigations, claims, suits, actions, proceedings, or liabilities of any kind (including reasonable attorney's fees and expenses associated therewith), which arise out of or are in any way connected to the Enrolled Practice's breach of its obligations under the Promotion or these Terms and Conditions or its compliance or non-compliance with any applicable laws or regulations.

16. **Limitation of Responsibility.** The Indemnitees are not responsible for: (a) lost, late, incomplete, inaccurate, undelivered, garbled, or lost enrollments or Job orders; (b) interrupted or unavailable network, server, Internet Service Provider (ISP), website or other connections; (c) other technical failures or difficulties experienced with respect to the Promotion; (d) other errors of any kind, whether human, mechanical, electronic, network, typographical, printing or otherwise, relating to or arising under the Promotion or the earning or receipt of the benefits thereunder; (e) any incorrect or inaccurate information, whether caused by site users, tampering, hacking, or by any equipment or programming associated with or utilized in the Promotion; or (f) injury or damage to any computer or network related

to or resulting from enrollment or participation in the Promotion.

17. **Dispute Resolution.** Except where prohibited by law, Eligible Practices and Enrolled Practices agree that any and all disputes, claims, and causes of action brought or otherwise asserted by them or on their behalf against any of the Indemnitees that relate to or arise under this Promotion shall be (a) resolved individually, without resort to any form of class action, and exclusively by an action in state or federal court located in the State of Texas, in Dallas or Denton Counties; and (b) limited to actual out-of-pocket costs incurred as described in Section 17 below, and in no event include attorneys' fees and costs. All disputes, including those that involve the construction, validity, interpretation and enforceability of these Terms and Conditions, shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflicts of law principles. In the event an action is brought to enforce Hoya Vision Care's rights under or arising from this Promotion, Hoya Vision Care shall be entitled to its actual attorney's fees and court costs, unless the law requires otherwise. The venue and forum in this dispute resolution clause shall supersede any venue and forum in the New Account Application or any applicable Lab Services Agreement.

18. **Disclaimer of Damages.** Eligible Practices and Enrolled Practices expressly waive any and all rights that they may have for punitive, incidental, and consequential damages or any damages other than actual out-of-pocket costs and expenses against any of the Indemnitees in any dispute that relates to or arises under this Promotion. Hoya Vision Care shall not be responsible for damage to its products, or damage caused by its products, resulting from improper use, maintenance, or unintended use. In no event will Hoya Vision Care be liable, whether arising under contract, tort (including negligence), strict liability, any statutory remedy, or any other cause of action whatsoever, for any special, incidental, or consequential loss or damage of any nature, arising at any time from any cause whatsoever. Hoya Vision Care's cumulative maximum liability under this agreement arising from any cause whatsoever may not exceed the price of the products sold.

19. **Force Majeure.** Hoya Vision Care shall not be liable for any expense, loss, or damage resulting from delay or prevention of performance caused by fires; floods; Acts of God; strikes; labor disputes; labor shortages; lack of or reasonable inability to obtain materials, fuel, supplies, or equipment; riots; thefts; accidents; transportation delays; an act or failure to act by the Government; a major equipment breakdown; a declared state of emergency or pandemic; or any other cause beyond the reasonable control of Hoya Vision Care. This force majeure clause shall supersede the force majeure clause in the New Account Application or any applicable Lab Services Agreement.

20. **Privacy.** By participating in the Promotion, Enrolled Practices authorize Hoya Vision Care to collect, maintain, use, process and share their information, including, without limitation, names, email addresses, physical addresses, account and other information in accordance with Hoya Vision Care's Privacy Policy. You can learn more about how Hoya Vision Care collects, maintains, uses, processes and shares your information in Hoya Vision Care's Privacy Policy, which may be viewed at <https://www.hoyavision.com/en-us/settings/data-privacy-policy/>. Hoya Vision Care's Privacy Policy is merely a statement of administrative protocol; it is not a contract, nor does it create any contractual or legal rights. Hoya Vision Care's Privacy Policy is not made, or intended to be made, a part of these Rules.

21. Severability. If any part of these Terms and Conditions is deemed unenforceable for any reason, the remainder of the Terms and Conditions shall remain in full force and effect.

22. ANY ATTEMPT BY ANY PERSON OR ENTITY TO DISRUPT OR DAMAGE THE LEGITIMATE OPERATION OF THE PROMOTION WILL BE PURSUED TO THE FULLEST EXTENT OF THE LAW.