

## Terms and Conditions

These terms and conditions set forth below shall constitute the agreement (the "Agreement") concerning the Services provided by Preferred Doctors Network, Inc. d/b/a Trusted LASIK Surgeons, Inc. ("TLS") to the Subscriber.

### 1. Definitions.

A. "Agreement" shall mean the terms and conditions set forth herein together with the Cover Page (as defined below)

B. "Content" means all text, graphics, images, and audio-visual material, including without limitation, files, forms, account information, database information, and links contained on the web pages of a website.

C. "Criteria" means the standards set by TLS that a Surgeon must meet in order to be qualified to subscribe to the Services and be listed in the Directory.

D. "Cover Page" shall mean an invoice sent by TLS to the Subscriber and, if applicable, any writing signed by the parties. The Cover Page includes any fees for the Services provided by TLS and other terms as the case may be.

E. "Directory" means the online directory of web pages of LASIK, cataract, and refractive surgeons provided at the Website.

F. "Listing" means the Local Listing providing information about the Practice and/or Surgeon(s) and a Profile Page that are included in the Directory.

G. "Local Listing" consists of the Practice or Surgeon's name on a TLS web page in the Surgeon's local area. A Local Listing may include additional information concerning the Surgeon(s) and/or the Practice in the sole and absolute direction of TLS.

H. "Practice" means the medical practice of the Surgeon(s). The Practice may also be the Subscriber...

I. A "Press Release" means a press release that may be provided in connection with the Set-Up Services or a Work Order, or otherwise provided to the Practice and/or Surgeon in connection with the Services by TLS in its sole and absolute discretion.

J. "Profile Information" means any information regarding the Practice or the Surgeon(s) provided by Subscriber to TLS or information that is available on any website maintained by the Subscriber or the Surgeon. Profile Information concerns information used by TLS (1) in connection with the application of the respective Surgeon for the Services, and/or (2) to provide the Services, including the Listings and Press Releases (as

applicable). Profile Information includes contact, biographical and descriptive information, professional qualifications and credentials, and the curriculum vitae of the Surgeon(s). A "Profile Page" means a single web page on the Website that contains Profile Information, which may include contact information, qualifications, descriptive and background information, and the curriculum vitae(s) of the Practice and/or Surgeon(s) (as applicable) for whom TLS provide the Services.

K. "Services" means any services provided by TLS pursuant to this Agreement, including Set-Up Services and Subscription Services.

L. "Service Providers" refer to third parties (excluding any other subscribers to the Services) who have licensed or otherwise provided Content, software, or other services to TLS in connection with the Website or the Services.

M. "Set-Up Services" include preparation and posting of Listings and, to the extent provided on the initial invoice sent to Subscriber or on the Cover Page, a Press Release announcing the inclusion of a Surgeon in the Directory or such other press release as mutually agreed between the parties. In the event Subscriber does not provide TLS with timely approval to issue a Press Release(s) within one (1) year from the Effective Date, TLS shall not be obligated to issue the Press Release.

N. "Subscriber" means the Practice or the entity with the legal authority to enter into this Agreement on behalf of the Practice set forth on the then current invoice or Cover Page, as applicable.

O. "Subscription Services" means the basic service whereby TLS provides Listing(s), access to Subscriber-only portions of the TLS website, as well as any materials, information, communications, and surveys that may be provided by TLS to Subscriber for an annual or quarterly subscription fee, as applicable.

P. "Surgeon(s)" shall mean each Surgeon of Subscriber named on then-current invoice or the Cover Page who: (i) meets the Criteria, (ii) who has been accepted by TLS to be included on the Website, (iii) has executed the "Representations" and (iv) that is a surgeon

the parties have agreed to provide the Services for.

Q. "Profile Information" means any information regarding the Practice and the Surgeon(s) provided by Subscriber to TLS or such information that is available on any website or webpage maintained by the Subscriber or the Surgeon. Profile Information concerns information used by TLS (1) in connection with the application of the respective Surgeon for the Services, and/or (2) to provide the Services, including the Listings and Press Releases (as applicable). Profile Information includes contact, biographical and descriptive information, professional qualifications and credentials, and the curriculum vitae(s) of the Surgeon(s).

R. The "Representations" means the "Warranty and Representations of the Surgeon's Qualifications" form submitted by Subscriber concerning the Surgeon(s) to TLS that is used by TLS for the purpose of determining whether such surgeon meets the Criteria.

S. The "Website" means the website located at [www.TrustedLASIKSurgeons.com](http://www.TrustedLASIKSurgeons.com) and any other website(s) or webpage(s) maintained by TLS for the purposes of providing the Services to Subscriber including any associated Content in connection with the foregoing.

## 2. **Services.**

A. TLS Discretion Regarding the Services. In providing the Services and maintaining the Website, TLS shall have sole and absolute control in all respects, except that the Subscriber shall have the right to approve any content related to the Practice or the Surgeon concerning any information related to the Practice or the Surgeon(s) contained on the Listings or in a Press Release (as the case may be) for accuracy purposes. TLS has the sole and absolute right to determine and modify the Criteria used by TLS for qualifying surgeons for the Services at any time.

B. Content Modifications on the Website. Except as otherwise expressly provided in this Agreement, TLS may revise, modify, delete, or reorganize any web pages or Content on the Website (including the Listings and Press Releases) in any way in its sole and absolute discretion. In the event that TLS reasonably believes such changes might affect the truth or accuracy of the Profile Information on the Website, TLS shall notify Subscriber via email

of its request for Subscriber's approval for the limited purpose of ensuring the truth and accuracy of the Profile Information modified or otherwise changed by TLS.

## 3. **Subscriber Obligations.**

A. Subscriber Account. In the event TLS provides tools on the Website for Subscriber to utilize the Services, Subscriber shall create an account using such tools as directed by TLS. It will be Subscriber's sole responsibility to maintain control of Subscriber's user name, password and any information supplied by Subscriber in connection with the foregoing. TLS shall have the right to store, transmit, and monitor any information Subscriber provides to TLS in connection with the foregoing.

B. Approvals. Subscriber shall review all Listings concerning the Practice and any Surgeon(s) of the Practice and shall approve all Profile Information with respect to the truth and accuracy of such information in a timely manner. TLS shall have no obligation to post any Listing or make any change as it pertains to Profile Information that has not been approved by Subscriber for truth and accuracy. Any Profile Information provided by Subscriber to TLS or on a website or webpage maintained by the Subscriber or Surgeon is deemed approved. Subscriber's failure to make timely approvals of any changes to the Profile Information may result in delay in posting the Profile Page to the Website or any changes related thereto, or suspension or removal of the Surgeon/Practice's Listings until such approval is received.

C. Changes to Profile Information. Subscriber shall use reasonable efforts to provide prompt notice to TLS of any changes in the Profile Information and any website links from a website or webpage maintained by Subscriber or the Surgeon(s) used by TLS to provide the Services, including, without limitation, the Listings.

D. License of Profile Information. TLS does not claim ownership of any Profile Information submitted by Subscriber to TLS to determine whether the Surgeon(s) meets the criteria or in connection with the Services and Listings provided by TLS to Subscriber. Subscriber grants TLS a free and non-exclusive license to use the Profile Information on the Website for the purpose of providing the Services. TLS may also aggregate Profile Information and use any Profile Information contained on the Website for its internal use

and for TLS's marketing purposes. TLS may refer to the Practice and the Surgeon as a client in its marketing materials and on the Website. No compensation will be due to Subscriber in connection with any of the foregoing.

E. License of Other Submissions by Subscriber. Any communications or information submitted by or otherwise provided by Subscriber (including its Surgeon(s)) that is not marked "Confidential" by Subscriber and is not Profile Information, including, without limitation, comments, feedback, suggestions, responses made to TLS or through the Website (collectively "Other Submissions"), may be freely used by TLS on the Website or otherwise. Subscriber grants TLS a free and non-exclusive license in perpetuity to use the Other Submissions, including, without limitation, the rights to copy, distribute, transmit, publish, publicly display, publicly perform, link to, reproduce, edit, translate, sublicense and reformat in any media now known or unknown. No compensation or attribution of authorship for such license will be due to Subscriber (or its Surgeon(s)) in connection with the foregoing.

F. Website Links. Subscriber shall use reasonable efforts to provide links from Subscriber's website to the TLS Website in a form and manner mutually agreed to by the parties. During the Term, TLS grants a non-exclusive, royalty-free license to use the service marks, trademarks, names, and logos of TLS as provided by TLS to Subscriber in referring to and linking to TLS from the Subscriber's Practice website to the TLS Website. TLS shall have the express right at all times to pre-approve any language proposed or otherwise used by Subscriber in referring to TLS on Subscriber's website and in any of Subscriber's marketing, sales, or biographical materials of any kind in any media. Subscriber shall promptly make any changes requested by TLS regarding the foregoing.

G. Requests for Information. Subscriber shall respond to any requests from TLS for information related to the Surgeon and/or the Services in a timely manner or earlier if otherwise set forth in this Agreement.

H. Verification. At any time during the Term, TLS may require Subscriber to provide proof or documentation of any information related to any Representations concerning any Surgeon or the Profile Information. In

connection with the foregoing, TLS may require a written release from any Surgeon to contact the applicable entity to verify any Profile Information or Representations, and Subscriber shall comply with such request by TLS within seven (7) business days.

4. **Subscriber Warranties.** Subscriber represents and warrants the following:

A. Subscriber's use of the Services and the Website are expressly subject to Subscriber's acceptance of all terms set forth in this Agreement.

B. Subscriber will (i) use best efforts to maintain that the Representations will continue to be true and accurate in all respects; (ii) in the event that any of the Representations ceases to be true or otherwise changes, Subscriber will immediately inform TLS in writing via email or fax; (iii) if at any time a Surgeon fails to meet the minimum required Criteria as set by TLS, TLS may remove any references to the Surgeon from any applicable Listings until such time as such Surgeon meets the minimum Criteria or any defect in the Representations is cured.

C. Any Profile Information submitted by Subscriber and any information contained on a website maintained by Subscriber or the Surgeon shall be true and accurate.

D. Any information submitted by Subscriber to TLS does not and will not infringe the rights of any third party, including without limitation, any intellectual property rights, rights of publicity, rights of privacy, rights to payment of royalties, or any other rights of third parties.

E. TLS is not a professional medical services company, does not provide any medical services to the public, and is not affiliated with Subscriber in any way.

F. Except as otherwise expressly provided herein, the use of public areas of the Website are governed by the Privacy Policy and the Terms of Use.

G. Any information provided by TLS to Subscriber shall be used by Subscriber solely in connection with the Services or the marketing of the Surgeon's practice, as applicable.

H. Subscriber expressly acknowledges that TLS shall not be liable to Subscriber for any loss, refunds, or damages due to removal or suspension of the Listings pertaining to the Surgeon(s) and the Practice due to any breach of this Agreement.

I. In the event a consumer contacts Subscriber and notifies Subscriber that he or she is seeking a consultation with a Surgeon of Subscriber based on a Listing from TLS, Subscriber shall use reasonable efforts to ensure that the requested Surgeon is available to consult with such consumer and to treat such consumer, but only if the course of treatment by the Surgeon is recommended by the Surgeon in the Surgeon's professional medical opinion.

## 5. **Term.**

A. The term (the "Term") shall commence upon the date a Local Listing is posted for the applicable Surgeon of the Practice of Subscriber (the "Effective Date") and shall continue for a period of twelve (12) months or as otherwise agreed between the parties in writing and any Renewal Terms as set forth below. Each "Renewal Term" shall be for a period of three (3) months shall automatically renew for the Renewal Term unless either party provides written notice of at least thirty (30) days prior to expiration of the then-current term to the other party of its intention not to renew the Agreement.

B. Either party may terminate this Agreement upon the occurrence of a material breach by the other party that is not cured within thirty (30) business days after notice to the other party. TLS may terminate this Agreement immediately upon breach of Sections 4D, 4G, 7, 10, or 12. Subscriber may terminate this Agreement immediately upon a breach of Sections 10 or 12.

C. Upon the termination or expiration of this Agreement, TLS shall have no further obligations to provide any services under this Agreement, and TLS may at any time thereafter in its sole and absolute discretion, remove any references to the Surgeon and the Practice in the Listings or on the Website(s). Upon termination or expiration under this Agreement, Subscriber's rights under this Agreement shall cease, and Subscriber shall promptly remove any links or references to TLS (including any references to Surgeon's qualifications that pertain to TLS) on Subscriber's website or in any marketing, sales, or other materials used by Subscriber, the Practice and/or the Surgeon(s). TLS shall not be liable to Subscriber for any loss or damages due to termination or expiration of this Agreement or removal of any references

to the Practice or any Surgeon from the Website.

D. Sections 1, 2B, 4, 5C, 5D, 6, 7, 8, 10, 11, 12, 13, 14, and 15 as well as any other terms of this Agreement that expressly extend or by their nature should extend beyond termination or expiration of the Agreement, shall survive and continue in full force and effect after any termination or expiration of the Agreement.

## 6. **Payment Terms.**

A. Credit Card. In the event Subscriber elects to pay by credit card, Subscriber shall set up and maintain an account with TLS's merchant account provider, as designated by TLS from time to time. In the event that Subscriber's credit card is not valid, Subscriber shall make payment by another means as soon as reasonably practicable.

B. Payment Terms. The Services provided herein are subject to Subscriber's timely payment of any fees due under this Agreement. Set-Up Fees and any Subscription Fees are due upon the date that is the earlier of (1) fifteen (15) days after Subscriber's receipt of an invoice from TLS or (2) thirty (30) days after the Initial or Renewal Term is due subscription within thirty forty-five (45) days of the date when the applicable Service(s) have been rendered. All fees specified herein are in U.S. dollars. Payments for the Services provided under this Agreement are non-refundable. Subscriber is solely responsible for all charges, fees, taxes and assessments arising out of any use of the Services.

C. Late Fees. When payments are past due thirty (30) days or more, TLS may add a late charge of one and one-half percent (1.5%) of the past due amount for each thirty (30) days past due on a pro-rata basis.

D. Fee Changes. TLS may change any fees for Services with thirty (30) days prior notice to Subscriber, provided that changes of any fees for the Subscription Services shall not take effect until commencement of the upcoming Renewal Term. By way of clarification only, no changes in fees for Subscription Services will take effect during the then-current Renewal Term unless otherwise agreed.

7. **Proprietary Rights**. Subscriber expressly acknowledges and agrees that all right, title, and interest in the Website(s), the Services (and any materials provided to Subscriber and

all communications from TLS in connection with the foregoing), including all business methods, trade secrets, copyrights, service marks, service names, trademarks, trade names, logos, and other intellectual property rights pertaining thereto, shall remain vested in TLS or its Service Providers, as applicable.

**8. Dealings with Third Parties.**

Subscriber's business dealings with any third parties accessed through the Services or the Website or otherwise introduced directly or indirectly to Subscriber by TLS, including payment and delivery of related goods or services, and any other terms, conditions, representations, or warranties associated with such dealings, are solely between Subscriber and such third party. Subscriber agrees that TLS shall not be responsible or liable for any loss or damage of any kind incurred as the result of any such dealings with any such third party.

**9. Additional Services.** Any services not included in the Set-Up Services or Subscription Services are "Additional Services". Any such Additional Services shall be authorized in advance by Subscriber and are provided at TLS's then-current rates. For those Additional Services where TLS charges a fee, TLS shall provide Subscriber with a "Work Order" or invoice, as the case may be, containing a description of the Additional Services to be performed and an estimate of the fees and other related costs. Such Additional Services shall become binding upon Subscriber upon the execution of the Work Order. All Additional Services shall be subject to the terms and conditions of this Agreement and any resulting Work Order(s).

**10. Confidentiality.**

A. Each party acknowledges this Agreement and certain information one party has acquired prior to and subsequent to entering into this Agreement from the other party constitutes trade secrets and confidential information. Subscriber acknowledges that TLS's business methods, surveys, written materials, Subscriber-only areas of the Website, and communications from TLS to Subscriber that are provided in connection with the Services are based upon and contain trade secrets and if provided to Subscriber are done so in confidence. Each party agrees (i) to exercise the same degree of care and protection (but no less than a reasonable

degree of care and protection) with respect to the other party's trade secrets and confidential information as each party exercises with respect to its own similar information, and (ii) not to disclose such information to any third party; however, each party may disclose information to its employees and third parties performing services for such party related to the purposes of this Agreement who have a need to know and who have agreed in writing to comply with the restrictions set forth herein.

B. These obligations of confidentiality shall not apply to information which (i) is known by the receiving party prior to its receipt, (ii) is now or hereafter becomes publicly known by acts not attributable to the receiving party, (iii) is disclosed to a party by a third party who has the legal right to make such a disclosure, (iv) is disclosed by a party with the other party's consent, (v) is subsequently developed by a party independently of any disclosures made hereunder, (vi) is required to be disclosed pursuant to governmental regulation or court order, or (vii) information provided by Subscriber to TLS for use on the Website, the Directory, a Press Release, or for use in TLS's marketing materials.

**11. TLS Warranties and Representations.**

The Services and the Website are provided "AS IS" and "AS AVAILABLE". TLS and its Service Providers make no warranties of any kind regarding the Services or the Website. TLS, its affiliates, consultants, and its Service Providers HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE. Without limiting the foregoing, TLS and its Service Providers make no representations or warranties regarding the following: (a) the accuracy, completeness, ability to access, or the reliability of the Services, the Website, or any communications from TLS nor that any of the foregoing will be up-to-date, error-free, bug-free, or virus free and/or (b) any defects or inaccuracies concerning the Services, the Website or any communications from TLS, the means of transmitting any information in connection with the Services, on the Website or any communications from TLS, or any disruptions concerning the foregoing will be corrected. Subscriber's use of the Services, the Website

or any communications from TLS (including the downloading of any materials, data, text, images, video or audio, or other items from the Website or from an email from TLS) is at Subscriber's own risk and Subscriber will be solely responsible for any loss, damage or injury resulting from the foregoing, including, without limitation, any damage to Subscriber's computer system or any other property Subscriber utilized to access or use the Services, the Website, or any communications from TLS (including any downloads as specified above), any failure of communications equipment, viruses, operator errors, unauthorized access, theft, or any loss of data.

## 12. Indemnity.

A. Except for any information provided by Subscriber to TLS (which is expressly excluded from this paragraph), TLS shall indemnify, protect, hold harmless and defend Subscriber, its employees, officers, representatives, and agents against all losses and costs (including without limitation attorney's fees and expenses), from any third party claim or demand arising directly or indirectly from any infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of the Services provided by TLS pursuant to this Agreement; provided, that, upon becoming aware of a suit or threat of suit for such infringement, Subscriber shall promptly notify TLS and TLS shall be given full opportunity to negotiate a settlement. TLS does not warrant or indemnify Subscriber against infringement by reason of the unauthorized use of the Services by others or in combination with other materials or services not part of the Services.

B. Subscriber shall indemnify, hold harmless and defend TLS, its officers, employees, affiliates, consultants, third party software providers, against all losses and costs (including without limitation attorney's fees and expenses), arising directly or indirectly from any claim or demand made by any third party due or arising out of the Subscriber's use of the Services, any alleged violation of this Agreement by Subscriber, any Profile Information or other information provided by or approved by the Subscriber for use by TLS in providing the Services to Subscriber and/or the Surgeon(s), and any alleged violation of any rights of others, including claims made by

patients of intentional torts, negligence or acts of medical malpractice. TLS may assume the sole and exclusive defense and control of any matter subject to indemnification by Subscriber, provided, however, that Subscriber's indemnity obligations shall remain in full force and effect.

13. **Force Majeure.** Neither party shall be liable for any delays in the performance of any of its respective obligations hereunder due to causes beyond its reasonable control, including, without limitation, fire, strike, war, riots, acts of civil or military, judicial actions, acts of God, or any other casualty or natural calamity.

## 14. Limitation of Liability.

A. UNDER NO CIRCUMSTANCES SHALL TLS (INCLUDING, WITHOUT LIMITATION, ITS OFFICERS, EMPLOYEES, DIRECTORS AND CONSULTANTS), ITS SERVICE PROVIDERS, BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, ANY ACTUAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES, OR ANY LOSS OF BUSINESS, PROFITS, GOODWILL, OR INJURY, ARISING OUT OF: (i) THE USE, MAINTENANCE, OR OPERATION OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT BY TLS OR ANY THIRD-PARTY PROVIDER, (ii) THE OPERATION, USE OR INABILITY TO USE THE WEBSITE OR DOWNLOAD ANY MATERIALS, DATA, TEXT, IMAGES, VIDEO OR AUDIO, OR OTHER ITEMS FROM THE WEBSITE OR IN CONNECTION WITH THE SERVICES, (iii) ANY CONTENT PUBLISHED ON THE WEBSITE, (iv) ANY THIRD-PARTY SOFTWARE OR SERVICES UTILIZED TO OPERATE THE WEBSITE OR OTHERWISE PROVIDE THE SERVICES, (v) STATEMENTS OR CONDUCT OF ANY THIRD PARTY REGARDING THE WEBSITE OR THE SERVICES; (vi) ANY UNAUTHORIZED ACCESS TO OR ALTERATION OF SUBSCRIBER'S TRANSMISSIONS OR DATA; OR (vii) ANY OTHER MATTER RELATING TO THE SERVICES OR THE WEBSITE. THIS APPLIES EVEN IF TLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

B. IN NO EVENT SHALL TLS BE LIABLE TO SUBSCRIBER, REGARDLESS OF THE FORM OF CLAIM OR ACTION, IN AN AMOUNT THAT EXCEEDS THE SUBSCRIPTION FEES PAID TO TLS IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM OR ACTION OR THE FEES FOR ADDITIONAL

SERVICES, AS APPLICABLE. THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND ARE LIMITED TO THOSE EXPRESSLY PROVIDED FOR IN THESE TERMS AND CONDITIONS.

**15. General.**

A. This Agreement shall bind and inure to the benefit of each party hereto and its respective successors and assigns. Subscriber may not assign or otherwise transfer this Agreement or any rights granted herein without the express prior written consent of TLS which shall not be unreasonably withheld. TLS may assign this Agreement with thirty (30) days notice to Subscriber.

B. All notices shall be in writing and shall be deemed to be effectively given if made as follows: (i) if e-mailed, when actually received by the party to whom notice is directed, (ii) if hand delivered or sent postage prepaid via certified mail, return receipt requested, when received, (iii) if faxed, on the date of the fax confirmation, or (iv) if mailed for overnight delivery, when delivered.

C. Each party agrees that monetary damages may not be an adequate remedy for breach of its respective obligations set forth in Sections 7 or 10, and that in addition to all other remedies to which it may be entitled, the non-breaching party shall have the right to apply to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm in the event there is a breach or threatened breach of the provisions set forth therein.

D. The failure of either party to exercise any of its rights under this Agreement shall not be deemed a waiver or forfeiture of such right.

E. If any provision of this Agreement is determined to be invalid or unenforceable, that provision will be deemed to be severed from this Agreement and will not cause the remainder of this Agreement to be invalid or unenforceable.

F. TLS may amend the Terms and Conditions of this Agreement in its sole and absolute discretion with no less than thirty (30) days written notice to Subscriber. Subscriber may not amend this Agreement without an instrument in writing signed by duly authorized representatives of both parties.

G. This Agreement constitutes the entire and exclusive understanding of the parties

with respect to the subject matter hereof and supersedes all previous and contemporaneous written and oral agreements and warranties related to the subject matter of this Agreement.

H. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada without giving effect to its conflict of law provisions. Subscriber and TLS consent and submit to the exclusive jurisdiction and venue of the federal and state courts located in Clark County, Nevada, and Subscriber waives any objection to such venue, including, without limitation, any objection based on the claim that such venue is an inconvenient forum.