

**HEARPO  
PROVIDER AGREEMENT**

This Provider Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ , by and between \_\_\_\_\_ (“Provider”) and HearPO Corp. (“HearPO”) (Provider and HearPO collectively, the “Parties”).

WHEREAS, HearPO has contracts with various entities and persons, including, but not limited to, insurance carriers, self-insured employers, member health programs, unions, associations, and workers compensation programs (collectively referred to as “Payors”) to develop and maintain a network of providers of audiology diagnostic services and hearing aid fitting, evaluation and dispensing services (“Hearing Services and Products”), and to have those providers furnish Hearing Services and Products to members (collectively referred to as “Members”) of health benefit plans offered by Payors (“Plans”), some of which Plans are regulated by the Medicare program.

NOW, THEREFORE, the Parties agree as follows:

**SECTION 1 – SERVICES TO MEMBERS**

1.1 HEARING SERVICES AND PRODUCTS. Provider shall provide Hearing Services and Products for which a Member is entitled to receive coverage under the terms of a Plan (“Covered Services”) to Members in accordance with the terms and provisions of this Agreement, the Member-specific authorization packet (the “Authorization Packet”), and the HearPO Provider Resource Manual, as amended by HearPO from time to time.

1.2 PATIENT CARE. Provider shall provide Covered Services to Members in a culturally competent manner that is consistent with professionally recognized standards of care. Provider shall not discriminate in the access to, treatment of, or quality of service rendered to Members on the basis of age, sex, marital status, sexual orientation, ethnicity, national origin, religion, health status, disability (mental or physical), or payment source.

1.3 PROVIDER REQUIREMENTS. Provider shall comply with and shall perform services in the manner and in accordance with the procedures specified in the HearPO Provider Resource Manual and/or Authorization Packet, as amended from time to time and made available to Provider by HearPO. Provider shall comply with all other policies and procedures specified in writing from time to time by HearPO.

1.4 PATIENT RECORDS. Provider shall maintain in a timely manner detailed and accurate records of all services performed for, and all products sold or supplied to, Members of the Plans. Provider shall ensure the confidentiality of such records and shall release such information only in accordance with state and federal law.

1.5 ELIGIBILITY. Provider is responsible for confirming that a Member has appropriate authorization materials prior to providing Covered Services to the Member. If a patient indicates that he or she was referred to Provider by HearPO, or if Provider is made aware that the patient has a HearPO benefit when verifying insurance, then Provider must contact HearPO to obtain the appropriate authorization materials prior to providing Covered Services to the patient.

1.6 ACCESSIBILITY. Provider shall meet or exceed any accessibility standards applicable to Provider that are set forth in the HearPO Provider Resource Manual and/or the Authorization Packet or are established by state or federal law.

1.7 CONTINUATION OF CARE. If required by applicable state law and/or an agreement between HearPO and a Payor, then in the event of non-payment by HearPO to Provider for Covered Services, Provider shall nevertheless continue to provide Covered Services to Members for the duration of the period for which premium payments have been made to the Payor under a Plan.

## **SECTION 2 – CLAIMS AND PAYMENTS**

2.1 CLAIMS. Provider is responsible for initiating the payment process by completing and submitting claim/authorization forms to HearPO, as more fully described in the HearPO Provider Resource Manual and/or the Authorization Packet. Forms shall be sent to the HearPO address specified in Section 7.7 below, or such other address as HearPO may designate in writing. All forms must be submitted within the time-frame specified in the Authorization Packet and/or the HearPO Provider Resource Manual.

2.2 PAYMENT FOR COVERED SERVICES. Provider shall be compensated for Covered Services as described in the HearPO Provider Resource Manual and/or the Authorization Packet. Provider may bill or charge Members only (1) those amounts detailed in the HearPO Provider Resource Manual and/or the Authorization Packet, and (2) for Hearing Services and Products that are not covered by the Members' Plan ("Noncovered Services"). Prior to rendering Noncovered Services, Provider shall obtain a written agreement from the Member that the Member will be solely liable for payment of the Noncovered Services. Provider acknowledges that for those Plans for which HearPO provides billing services, HearPO will retain either a flat fee or a certain percentage of the negotiated reimbursement for the Covered Services, as further described in the HearPO Provider Resource Manual and/or the Authorization Packet.

2.3 PAYMENT FOR HEARING AIDS. Provider acknowledges that Members are to pay HearPO directly for hearing aids that Provider dispenses to Members under this Agreement. Provider shall cooperate with HearPO in obtaining such payment from Members by forwarding to HearPO a completed prior authorization form containing the Member's payment information within 24 hours of fitting the hearing aid. If Provider receives hearing aid payment from the Member, Provider shall forward such payment to HearPO within 24 hours of receipt. If Provider fails to forward the prior authorization form and/or a hearing aid payment to HearPO as specified in this Section 2.3, then Provider shall be in breach of this Section 2.3 and all remedies at law and equity shall be available to HearPO. Without limiting the foregoing, HearPO may withhold any amounts owed by HearPO to Provider under this Agreement until HearPO receives hearing aid payment or payment information owed by Provider to HearPO under this Section 2.3.

2.4 PAYMENT IN FULL. Provider shall accept as full payment for any Covered Service those amounts identified in Section 2.2.

2.5 HOLD HARMLESS. Except as provided herein, Provider agrees that in no event, including, but not limited to, nonpayment by HearPO, HearPO's or the Payor's insolvency, or HearPO's

breach of this Agreement, shall Provider bill, charge, collect a deposit, seek compensation, remuneration or reimbursement from, or maintain any action at law or pursue any other recourse against, or make any surcharge upon, a Member or other person acting on a Member's behalf (other than HearPO) for any amounts that the Payor or HearPO is responsible to pay.

If HearPO receives notice of any collection by Provider of funds in excess of allowable amounts, it may take appropriate action, including, but not limited to, terminating this Agreement for cause and requiring the immediate refund of any amounts collected from the Member.

Provider agrees that this Section 2.5 shall survive the termination of this Agreement regardless of the cause giving rise to such termination and shall be construed to be for the benefit of Members and that this provision supersedes any oral or written agreements to the contrary now existing or hereafter entered into between Provider and a Member or person acting on behalf of a Member. Any modification, addition, or deletion to the provisions of this hold harmless clause shall become effective on a date no earlier than 15 days after (1) the applicable state regulatory agency has received written notice of such proposed changes and (2) the Centers for Medicare and Medicaid Services ("CMS") has approved in writing such proposed change (in the case of any Medicare Advantage Plan).

**2.6 COORDINATION OF BENEFITS.** Provider must notify HearPO when Provider learns that a Member has benefit coverage other than the Plan and/or when a Member elects such benefit coverage over the Plan.

**2.7 HEARING AID RETURNS.** Provider shall permit any eligible Member to return any hearing aid product at any time for any reason within 60 days of fitting. Upon such return, Provider shall notify HearPO in writing of the return and shall immediately return the hearing aid product to the appropriate manufacturer in accordance with the manufacturer's return policies. Upon receiving notice from the manufacturer that the hearing aid has been returned, HearPO shall provide the Member a full refund. Provider shall refund to HearPO all amounts received from HearPO in connection with the returned hearing aid, including those amounts paid for Covered Services by the Members' Plan through HearPO. Such refund shall be provided within thirty (30) days of the Member's return of the hearing aid.

**2.8 SERVICE.** As further described in the HearPO Provider Resource Manual and/or Authorization Packet, Provider shall provide each Member with re-fitting and other necessary follow-up services for a period of twelve (12) months following the sale of a hearing aid product to the Member under this Agreement. These services shall be provided at no cost to the Member and shall be provided notwithstanding any termination of this Agreement. For additional services and items that are not specific to the hearing aid product (e.g., additional diagnostic testing and replacement earmolds), Provider agrees to apply to Provider's usual and customary charge the required discounts specified in the HearPO Provider Resource Manual and/or the Authorization Packet.

### **SECTION 3 – HEARPO RESPONSIBILITIES**

3.1 CLAIMS. HearPO shall receive and process or forward to the Payors each completed claim form submitted by Provider pursuant to the requirements specified in this Agreement and the HearPO Provider Resource Manual.

3.2 PAYMENT TO PROVIDER. In accordance with the terms specified in the HearPO Provider Resource Manual and/or the Authorization Packet, HearPO shall pay Provider all amounts due to Provider, as specified in Section 2.2. HearPO shall ensure that claims for which it is financially responsible relating to services furnished by Provider under a Medicare Advantage Plan are processed (*i.e.*, paid or denied) as follows: all claims (clean or deficient) submitted by Providers are processed within no more than 60 days after HearPO receives the claim, unless other terms or a different timeframe is required by CMS.

3.3 LIST OF PROVIDERS. HearPO shall provide to the Payors, with the frequency specified by the Payors, lists of providers, including Provider, qualified to provide Covered Services to Plan Members.

3.4 PROVIDER RESOURCE MANUAL. HearPO shall maintain an up-to-date HearPO Provider Resource Manual, as well as supplementary information and requirements, on HearPO's website located at [www.hearpo.com](http://www.hearpo.com). In the event of any inconsistencies between the HearPO Provider Resource Manual and the Authorization Packet, the provisions of the Authorization Packet shall control.

3.5 COMMUNICATIONS WITH PAYORS. HearPO shall assist Provider in resolving payment and eligibility issues under Plans by communicating to the Payors such information, requests, and questions as reasonably submitted by Provider, and by communicating to Provider responses from the Payors.

#### **SECTION 4 – PROVIDER RESPONSIBILITIES**

4.1 HEARPO PROVIDER RESOURCE MANUAL. Provider shall comply with all accessibility standards, medical policies, claims submission and payment, quality management, and utilization management programs in accordance with the requirements established in the then current HearPO Provider Resource Manual.

4.2 INSURANCE. Provider shall carry and retain malpractice and liability insurance in the amount of at least \$1 million per occurrence/\$3 million in the aggregate, and shall supply to HearPO evidence of such coverage annually.

4.3 CREDENTIALS. During the term of this Agreement, Provider shall comply with HearPO's credentialing and re-credentialing programs. Provider has and will maintain at all times, all licenses, certifications, and credentials specified under federal, state, and local law, including, without limitation, all laws and regulations governing reimbursement under the Medicare program. Provider shall earn at least 10 continuing education credits per year. Provider shall provide proof of such credits if requested by HearPO. Provider shall provide to HearPO annual evidence of the licenses and certifications required in this section.

4.4 ACCESS TO RECORDS. Provider shall retain and permit HearPO, any state or federal agency, including, but not limited to, the United States Department of Health and Human

Services, the Comptroller General of the United States, CMS, or their designees, to audit, evaluate, and inspect all medical, billing, evaluation, utilization, and other records of Provider, to the extent that such records relate to any aspect of the Covered Services provided to Members, to the extent allowed by applicable law. This right to inspect and audit shall extend no less than 10 years from the later of (1) the last day of the calendar year in which the books or records were created, (2) the date of completion of any audit relating to those books and records by the Department of Health and Human Services, the Comptroller General, CMS or their designees, or (3) such other date determined by CMS in accordance with its regulatory authority. To the extent requested by state or federal officials under their regulatory authority, Provider shall furnish copies of such books and records to HearPO at no charge. Provider shall provide access to and make available its premises, physical facilities and equipment to state and federal authorities for audit and compliance review purposes.

**4.5 NON-INTERFERENCE WITH CONTRACTS.** During the term of this Agreement and thereafter, Provider shall not engage in any conduct that in any way causes any Payor to alter, modify, or terminate its relationship with HearPO.

**4.6 CERTIFICATION OF ENCOUNTER DATA.** Where applicable, Provider shall certify to its best knowledge, information, and belief, as to the accuracy, completeness and truthfulness of encounter data pertaining to Hearing Services and Products provided to Members.

**4.7 QUALITY IMPROVEMENT REVIEW.** Provider shall participate in and fully cooperate with any quality improvement review implemented by HearPO, any Payor, or any independent quality review and improvement organization with which a Payor contracts.

**4.8 MEMBER COMPLAINTS AND DISPUTES.** All complaints concerning Provider shall be addressed in accordance with the procedures specified in the HearPO Provider Resource Manual.

**4.9 COMPLIANCE WITH LAWS AND RULES.** Provider acknowledges that certain Payors are obligated under Medicare Advantage Plans to oversee and be accountable to CMS for the services provided and activities performed by Provider pursuant this Agreement. Provider agrees to comply with (1) Title VI of the Civil Rights Act of 1964 as implemented by regulations at 45 CFR part 84, (2) the Age Discrimination Act of 1975 as implemented by regulations at 45 CFR part 91, (3) the Rehabilitation Act of 1973, (4) the Americans With Disabilities Act, (5) all laws applicable to recipients of federal funds, and (6) all other state and federal laws and rules applicable to the Covered Services provided under this Agreement. Provider will cooperate and participate in HearPO's efforts to comply with applicable statutory and regulatory requirements to the extent reasonably requested by HearPO. With respect to any Medicare Advantage Plan, Provider shall provide all Covered Services to Members and perform all other activities required by this Agreement consistent with and in compliance with the Payor's policies and procedures and its contractual obligations to CMS. To the extent that any Medicare Advantage Plan delegates any functions or activities to Provider, Provider understands that such Plan may only delegate such functions or activities in a manner consistent with the requirements of 42 CFR 422.504(i)(4).

**4.10 HEARING AID DISPENSING/AUDIOLOGY OBLIGATIONS.** Provider acknowledges and agrees that it shall be solely responsible for ensuring that all hearing aid products dispensed

to Members are dispensed in accordance with applicable federal and state laws and regulations governing hearing aid dispensing and audiology, including, without limitation, laws and regulations requiring medical examinations and/or medical examination waivers prior to dispensing, use of appropriate equipment, hearing aid product purchase agreements and receipts, and notification of return rights.

## **SECTION 5 – TERM AND TERMINATION**

5.1 **TERM.** This Agreement shall become effective as of the date stated at the beginning of this Agreement, and shall remain in effect until terminated under this Section 5.

5.2 **TERMINATION WITHOUT CAUSE.** Either party may terminate this Agreement, without cause, by giving the other party 30 days' prior written notice of such termination.

5.3 **TERMINATION FOR BREACH.** Either party shall have the right to terminate this Agreement on 15 days' prior written notice if the party to whom such notice is given breaches any material provision of this Agreement. The party claiming the right to terminate must set forth in the notice the facts underlying its claim that the other party is in breach.

5.4 **TERMINATION BY HEARPO.** HearPO may terminate this Agreement:

5.4.1 immediately, if Provider loses licensure, fails to comply with Section 2.5, or fails to maintain insurance required by Section 4.2;

5.4.2 in accordance with HearPO's credentialing plan; or

5.4.3 in accordance with HearPO's quality assurance program.

5.5 **SURVIVAL.** The provisions of Sections 1.4, 2.3, 2.4, 2.5, 2.7, 2.8 4.4, 4.5, and 6 shall survive the termination of this Agreement.

## **SECTION 6 – LIABILITIES AND DISPUTES**

6.1 **INDEMNITY.** HearPO shall not be liable for any claims, injuries, demands, or judgments based upon negligence, warranty or any other grounds arising out of the manufacture, dispensing, sale, or provision of any goods or services by Provider to any Member. Accordingly, if and to the extent allowed by law, Provider shall indemnify and hold HearPO and its affiliates harmless from any and all such claims, liabilities, damages, and losses, including reasonable attorneys' fees at trial or on appeal in the event of such action.

6.2 **WAIVER OF BREACH.** Waiver by any party of any breach of any provision of this Agreement or the failure to insist upon strict compliance with any provision of this Agreement shall not operate or be construed as a waiver of such provision or any other provisions.

6.3 **DISPUTE RESOLUTION.** Any dispute arising under or related to this Agreement shall be resolved before a single arbitrator acting under the rules of the American Arbitration Association. Any dispute shall be resolved with a written opinion, rendered by the arbitrator not later than 120 days after the appointment of the arbitrator. The Parties agree that this 120-day period may be

tolled for up to 60 days to permit mediation of any dispute. The arbitrator shall be authorized to tax costs and attorneys' fees against the losing party. The arbitration proceeding shall take place in Plymouth, Minnesota.

## **SECTION 7 – MISCELLANEOUS**

7.1 INDEPENDENT CONTRACTORS. None of the provisions of this Agreement are intended to create between Provider and HearPO any partnership, joint venture, agency, employment, representative or any other relationship other than that of independent contractors.

7.2 FORCE MAJEURE. Neither party shall be liable or deemed in default of this Agreement for any delay nor failure to perform caused by Acts of God, war, disasters, strikes, or any similar cause beyond the control of either party.

7.3 ADVERTISING MATERIAL. Provider shall conduct all advertising and promotion of services in a manner consistent with the Provider Requirements set forth in the HearPO Provider Resource Manual. Nothing in this Agreement is intended to authorize or license Provider to use any trademarks, symbols, trade names, service marks, or other intellectual property.

7.4 DESCRIPTIVE HEADINGS. The headings of the paragraphs of this Agreement are inserted for convenience and shall not limit, extend, or delineate the scope or intent of the provisions hereof.

7.5 ENTIRE AGREEMENT. This Agreement constitutes this entire Agreement between HearPO and the Provider and shall not be altered or amended except as agreed in a writing signed by the Parties.

7.6 APPLICABLE LAW. It is the intent of the Parties to this Agreement that it shall be subject to and interpreted in accordance with the laws of the State of Minnesota, without regard to principles of conflicts of laws.

7.7 NOTICE. Except as otherwise provided herein, any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be deemed received when sent by certified or registered mail, return receipt requested, to the Parties at the addresses set forth below. Each Party may designate in writing a new address to which any notice required by this Agreement may thereafter be sent. Notices may be sent to HearPO at 5000 Cheshire Parkway N., Plymouth, MN 55446. Notices may be sent to Provider at the address specified below.

7.8 SEVERABILITY. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement shall continue in effect.

7.9 ASSIGNMENT. Provider shall not assign or transfer its rights, duties or obligations under this Agreement without the prior written consent of HearPO.

7.10 CONFIDENTIALITY. In the performance of its obligations under this Agreement, Provider may receive or otherwise have access to HearPO's proprietary business information, including, without limitation, this Agreement, financial and fee information, forms, provider

manuals, statistical data, reports, standards, Member information and customer lists (collectively, "HearPO Confidential Information"). Provider shall at all times maintain the confidentiality of the HearPO Confidential Information and shall not, except as necessary to perform its obligations under this Agreement, as specifically authorized in writing by HearPO, or as otherwise required by law, reproduce any HearPO Confidential Information or disclose or provide any HearPO Confidential Information to any person.

7.11 LIMITATION ON PROVIDERS. Provider acknowledges that, from time to time, a Payor may require a limited selection of providers to provide Covered Services to Members of a certain Plan. In such a situation, notwithstanding anything in this Agreement to the contrary, HearPO may, in its sole discretion, select and assign certain of its contracted providers to provide Covered Services to Members of such Plan, excluding other contracted providers. Provider understands and agrees that this Agreement does not guarantee Provider access to each Plan offered by Payors.

7.12 THIRD-PARTY RIGHTS. Except as otherwise specifically provided herein, the Parties have not created and do not intend to create by this Agreement any enforceable rights in any third party under this Agreement, including, without limitation, Members. Except as otherwise specifically provided herein, the Parties acknowledge and agree that there are no third-party beneficiaries to this Agreement.

7.13 STATE OR PAYOR SPECIFIC EXHIBITS. The state in which Provider provides Covered Services and/or certain Payors may impose additional requirements related to the provision of Covered Services under this Agreement. Any such additional requirements are set forth in one or more exhibits attached to this Agreement. Any such exhibits are expressly incorporated into this Agreement and are binding on Provider and HearPO. In the event of any inconsistent language between an exhibit and any other part of this Agreement, the provisions of the exhibit will control to the extent it is applicable.

**PROVIDER**

**HEARPO, CORP.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: Carrie Browning

Title: \_\_\_\_\_

Title: Professional Services Manager

Address: \_\_\_\_\_

Phone: \_\_\_\_\_