

# **HEARPO PROVIDER AGREEMENT**

This Provider Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, 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 services and hearing aid products ("Audiology Services"), and to have those providers furnish Audiology Services 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 PATIENT CARE. Provider shall provide Audiology 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.

1.2 PROVIDER REQUIREMENTS. Provider shall perform services in the manner and in accordance with the procedures specified in the HearPO Resource Manual, as amended from time to time and supplied to Provider by HearPO. Provider shall comply with all other policies and procedures specified in writing from time to time by HearPO.

1.3 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.

1.4 ELIGIBILITY. Provider is responsible for determining whether HearPO has an active contractual relationship with the patient's Payor and that the patient is an eligible Member of a Plan prior to performing Audiology Services. HearPO has no responsibility for eligibility determinations for any Plan. However, upon request by a Provider, HearPO will use reasonable efforts to contact any involved Plan on behalf of Provider to resolve eligibility questions.

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

1.6 CONTINUATION OF CARE. In the event of non-payment by HearPO to Provider for Audiology Services, Provider shall nevertheless continue to provide Audiology Services to Members covered by a Plan ("Covered Services") for the duration of the period for which payments have been made to the Payor under any prepaid Plan.

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

2.1 CLAIMS. Provider is responsible for initiating the payment process by completing and submitting to HearPO, as more fully described in the HearPO Resource Manual, a benefit voucher and a uniform claim form (*i.e.*, HCFA form 1500). Original forms shall be sent to the HearPO address specified in Section 8.7 below, or such other address as HearPO may designate in writing.

2.2 PAYMENT. Provider shall be compensated for Audiology Services provided to eligible Members solely and exclusively according to the terms of the applicable Plan, as described in the HearPO Resource Manual. Provider may bill or charge Members only for (1) co-payments or deductibles specified in the Members' Plan, (2) cost-sharing and balance billing amounts specified in indemnity portions of any Plan, (3) Audiology Services that are not covered by the Members' Plan ("Noncovered Services"), or (4) where expressly permitted by HearPO and the Plan, amounts in excess of allowable amounts. 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 under certain Plans, HearPO may deduct from amounts due to Provider an amount equal to a certain percentage (the "Withhold Percentage") of the total value of the Audiology Services provided to an eligible Member. The Withhold Percentage is currently 12 percent, but may be increased by HearPO in its sole discretion by not more than two percent in any twelve-month period upon 30 days' prior notice to Provider; provided, however, that the Withhold Percentage will not exceed 15 percent at any time.

Provider shall accept as full payment under any Plan (1) those amounts paid for Covered Services by the Members' Plan through HearPO, as specified in the fee schedule set forth in the HearPO Resource Manual ("Fee Schedule"), plus (2) amounts for which the Member is responsible, as identified in this Section 2.2. 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 under a prepaid Plan, such as a Medicare + Choice or health maintenance organization plan.

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 provision 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) HCFA has approved in writing such proposed change (in the case of any Medicare + Choice Plan).

2.3 COORDINATION OF BENEFITS. On an on-going basis, Provider must notify HearPO when Provider learns that a Member has benefit coverage other than the Plan.

2.4 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 purchase. Upon such return, Provider shall notify HearPO in writing, and shall either not charge the Member and the involved Payor, or shall refund to HearPO and the Member all amounts received for the returned hearing aids.

### **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 Resource Manual.

3.2 PAYMENT TO PROVIDER. In accordance with the terms specified in the HearPO Resource Manual, HearPO shall pay Provider all amounts due to Provider, as specified in the Fee Schedule. HearPO shall ensure that claims for which it is financially responsible relating to services furnished by Provider under a Medicare + Choice Plan are processed (i.e., paid or denied) as follows: (i) all claims (clean or deficient) submitted by Providers are processed within no more than 60 days, or (ii) upon any other terms and within such timeframes as required by HCFA.

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 Audiology Services to Plan Members.

3.4 RESOURCE MANUAL. HearPO shall supply Provider with an up-to-date HearPO Resource Manual, and shall supply supplementary information and requirements from time to time, in writing.

3.5 COMMUNICATIONS WITH PAYORS. HearPO shall assist Provider in resolving payment and eligibility issues with 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 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 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. Provider has and will maintain at all times, and will employ or otherwise utilize audiologists who have 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. Each audiologist affiliated with Provider shall earn at least 10 continuing education credits per year. Provider shall provide to HearPO annual evidence of the licenses, certifications, and continuing education units 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, the Health Care Financing Administration ("HCFA"), 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 Audiology Services performed for Members. This right to inspect and audit shall extend no less than 6 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, HCFA or their designees, or (3) such other date determined by HCFA 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 NO CONTRACTS. During the term of the Agreement and for a period of one year after the termination of this Agreement, Provider shall not solicit or contract with any Payor with which HearPO contracts as of the date of such termination, or in any way cause any such Payor to alter, modify, or terminate its relationship with HearPO.

4.6 COMMUNICATIONS WITH MEMBERS. All letters used by Provider with respect to claim determinations for Members shall conform to HCFA requirements and guidelines.

4.7 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 Audiology Services provided to Members.

4.8 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.

4.9 MEMBER COMPLAINTS AND DISPUTES. All complaints concerning Provider shall be addressed in accordance with the procedures specified in the HearPO Resource Manual. If HearPO determines that it is appropriate to suspend or terminate the Provider's right to provide Audiology Services under this Agreement, it shall provide written notice to the Provider detailing the grounds for the suspension or termination and the procedure and time limits for Provider to appeal HearPO's decision.

4.10 COMPLIANCE WITH LAWS AND RULES. Provider acknowledges that certain Payors are obligated under certain Plans to oversee and be accountable to HCFA 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 Audiology 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 + Choice Plan, Provider shall provide all Audiology Services to Members and perform all other activities required by this Agreement consistent with and in compliance with contractual obligations of Payors to HCFA.

## **SECTION 5 -- SUBCONTRACTS**

In order to verify compliance with federal or state requirements, HearPO shall have the right to access, review, and approve any contracts between Provider and any other entity or independent contractor through which Provider performs Audiology Services under this Agreement ("Subcontractors"), and to receive copies of such documents at no additional charge to HearPO. Provider shall transmit the requested information or documents to HearPO regarding subcontracted arrangements within one business day of a written request, and HearPO may disclose or report the information or documents as required by applicable laws or regulations. Provider will ensure that such contracts with Subcontractors shall contain provisions that meet the requirements set forth in Exhibit A, attached hereto and incorporated herein, to the extent the Subcontractor provides services under a Medicare + Choice Plan.

## **SECTION 6 – TERM AND TERMINATION**

6.1 TERM. This Agreement shall become effective as of the date stated at the beginning of this Agreement, and shall remain in effect for a one-year term, which shall be renewed automatically on a year-to-year basis, unless terminated sooner.

6.2 TERMINATION PRIOR TO RENEWAL. Either party may terminate this Agreement, without cause, by giving the other party 90 days' prior written notice of such termination.

6.3 TERMINATION FOR BREACH. Either party shall have the right to terminate this Agreement on 30 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. If HearPO seeks to terminate this Agreement, it must also set forth in the notice details of the process for the Provider to appeal HearPO's decision to terminate the Agreement.

6.4 SURVIVAL. The provisions of Sections 1.3, 2.2, 2.5, 4.4, 4.5, and 7 shall survive the termination of this Agreement and shall remain in force and effect for 10 years thereafter.

## **SECTION 7 – LIABILITIES AND DISPUTES**

7.1 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 and Provider agrees to 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.

7.2 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.

7.3 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 8 – MISCELLANEOUS**

8.1 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.

8.2 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.

8.3 ADVERTISING MATERIAL. Provider shall conduct all advertising and promotion of services in a manner consistent with the Provider Requirements set forth in the HearPO 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.

8.4 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.

8.5 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.

8.6 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.

8.7 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 Lane N., Plymouth, MN 55446. Notices may be sent to Provider at the address specified below.

8.8 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.8.9 THIRD-PARTY RIGHTS. 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. The Parties acknowledge and agree that there are no third-party beneficiaries to this Agreement.

**Legal Name of Provider:**

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

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

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

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

\_\_\_\_\_

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

## EXHIBIT A

Provider shall ensure that contracts with Subcontractors providing services under this Agreement contain the following provisions:

- a. Each Subcontractor shall agree that state and federal authorities, including without limitation the United States Department of Health and Human Services, the Comptroller General of the United States, HFCA, or their designees, shall have the right to audit, evaluate, and inspect, any pertinent contracts, books, documents, papers, and records of Subcontractor involving transactions related to this Agreement and such right to audit, evaluate, and inspect shall extend no less than 6 years from the last day of any calendar year in which the books or records were created or from the date of completion of any audit, whichever is later.
- b. Each Subcontractor shall agree to accurately maintain and safeguard the confidentiality of medical records or other health and enrollment information pertaining to Members and release such information only in accordance with state and federal law.
- c. Each Subcontractor shall agree not to discriminate against any Members on the basis of age, sex, marital status, sexual orientation, ethnicity, national origin, religion, health status, disability (mental or physical), or payment source.
- d. Each Subcontractor shall agree to perform all Audiology Services in a culturally competent manner and in accordance with the procedures specified in HearPO's Resource Manual, as amended from time to time. Subcontractor shall agree to comply with all applicable provisions of this Agreement and all other policies and procedures specified in writing from time to time by HearPO.
- e. Each Subcontractor shall agree to the payment provisions set forth in Section 2 of this Agreement.
- f. Each Subcontractor shall agree to perform any activities or functions delegated to it by Provider in accordance with the requirements set forth in this Agreement and the HearPO Resource Manual.
- g. Each Subcontractor shall agree to submit encounter data and, when required by state or federal officials under their regulatory authority, shall certify the accuracy, completeness, and truthfulness of such encounter data to the best of its knowledge, information, and belief. Each Subcontractor shall further agree to submit medical records for the validation of encounter data, when required by HCFA.
- h. Each Subcontractor shall agree to participate in and cooperate with any quality improvement review initiated by HearPO, any Payor, or any quality review and improvement organization with which a Payor contracts.
- i. Provider and its Subcontractors shall agree that their respective contract may not be terminated without cause unless at least 60 days' prior written notice is given to the other.
- j. Each Subcontractor must agree that the subcontract shall be updated and amended as necessary to comply with state and federal laws and rules applicable to the Audiology Services provided under this Agreement.
- k. Subcontracts shall be signed and dated by Provider and its Subcontractor.