PARTICIPATING ADDENDUM FOR
STATEWIDE HEARING AID PURCHASING PROGRAM

This Participating Addendum is made as of the 1st day of September, 2012, by and between Magnatone Hearing Aid Corp. (Contractor), whose address is 170 N. Cypress Way Casselberry, FL 32707, and the State of Maine (State), Department of Administrative and Financial Services (DAFS), Bureau of General Services (BGS), Division of Purchases (Division) whose address is 111 Sewall Street, Burton Cross Building, 4th Floor, 9 State House Station, Augusta, Maine 04333-0009;

WHEREAS, the State of Minnesota Cooperative Purchasing Venture (MNCPV) awarded contracts for the purchase of Hearing Aids, pursuant to Contract Release H-59(5), dated August 10, 2012, in accordance with its laws and statutes governing competitive and negotiated procurements;

WHEREAS, the State of Maine is a member of the MNCPV and therefore may participate under the organization's contractual arrangements;

WHEREAS, the Director of the Division of Purchases has determined that it is in the best interest of the State of Maine to enter into a Participating Addendum with Magnatone Hearing Aid Corp. for the purchase of Hearing Aids, thereby participating under MNCPV Contract Release H-59(5), dated August 10, 2012, Contract Number 49856;

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship; and

WHEREAS, the Riders listed below (provided as Appendix 1) are incorporated into this Participating Addendum, and the terms and conditions contained within Riders B, C, and G take precedence in the event of a conflict or inconsistency with the terms and conditions of MNCPV contract release H-59(5):

Rider A – Specifications of Work to be Performed (MNCPV Contract Release H-59(5), Contract Number 49856
Rider B – Standard Terms and Conditions
Rider C – Exceptions to Rider B (if any)
Rider G – Identification of Country in Which Contracted Work will be Performed

NOW THEREFORE, for good and valuable consideration, the parties to this Participating Addendum hereby agree as follows:

1. Term:

The term of this Participating Addendum shall be effective from a start date of September 1, 2012 through August 31, 2013, unless earlier terminated. The State of Maine reserves the right, at its sole discretion, to extend this Participating Addendum under the same terms and conditions as MNCPV Contract Release H-59(5), Contract Number 49856. The extension periods, if exercised, are defined as follows:

Extension Period 1: September 1, 2013 through August 31, 2014
Extension Period 2: September 1, 2014 through August 31, 2015
Extension Period 3: September 1, 2015 through August 31, 2016

2. Scope of Services:

The Contractor shall provide to the State of Maine and its Cooperative Purchasing Partners (to include, but not limited to, participating public entities, municipalities, and educational institutions within the State of Maine) the supply and delivery of Hearing Aids governed by the terms and conditions therein set forth under MNCPV Contract Release H-59(5), Contract Number 49856, which is incorporated herein (under Rider A of Appendix 1), and the terms and conditions specifically set forth in this Participating Addendum. Furthermore, the Contractor accepts the State of Maine's standard terms and conditions, as set forth in Appendix 1.

3. Contract Pricing:

Pricing under this Participating Addendum shall be equivalent to the pricing provided by the Contractor under MNCPV Contract Release H-59(5), Contract Number 49856. An item-by-item list of unit pricing is provided herewith under Rider A.

4. Primary Contacts:

The primary State contact for this Participating Addendum is as follows:

Name: Kevin Scheirer
Participating Entity Name: State of Maine, Division of Purchases
Address: 111 Sewall Street, 9 State House Station, Augusta, ME 04333-0009
Telephone: 207-624-7349
E-mail: kevin.sheirer@maine.gov

The primary Contractor contact for this Participating Addendum is as follows:

Name: Debbie Pease
Contractor: Magnatone Hearing Aid Corp.
Address: 170 N. Cypress Way Casselberry, FL 32707
Telephone: 800-789-6543 x121
Fax: 732-560
E-mail:debbieP@personamedical.com

5. Miscellaneous:

a. As a point of clarification, the State of Maine's ordering and payment process will differ -- at the sole discretion of the State of Maine -- from the "Agency Ordering Instructions" specified within MNCPV Contract Release H-59(5), dated August 10, 2012. Rather than requiring the Contractor to only accept orders from, ship to, and send invoices to audiologists and/or hearing instrument dispensers, the employees from user agencies within the government of the State of Maine will **also** place orders, receive and pay invoices, and direct shipments to specific audiologists and/or hearing instrument dispensers. Both forms of ordering may occur at any given time during the Participating Addendum's term. The State of Maine may also choose to pay for hearing aids under this Participating Addendum through the use of State Procurement Cards.
b. As a point of clarification, all items that are priced within the Contractor's pricing sheet, found in Rider A, shall be included within the State of Maine's Statewide Hearing Aid Purchasing Program.
c. Any requests for special orders or items not falling within any of the pricing terms of this contract shall not be provided or sold to the State of Mane by the Contractor, unless the Contractor is specifically authorized to do so by the State of Maine's Division of Purchases.
d. This Participating Addendum and any and all litigation arising there from or related thereto shall be brought in State court in the State of Maine and governed by the applicable laws, regulations and rules of evidence of the State of Maine without reference to conflict of laws principles.
e. All publicity and/or public announcements pertaining to this Participating Addendum shall be approved by the State of Maine prior to release.
f. This Participating Addendum and its appendices, together with its exhibits, attachments, amendments, changes, and modifications (if any) set forth the entire agreement between the parties

and supersede all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. As noted above, the State of Maine's terms and conditions contained within this Participating Addendum's Appendix 1, Rider B, C, and G, shall take precedence in the event of a conflict or inconsistency with the terms and conditions of MNCPV Contract Release H-59(5), Contract Number 49856 and its exhibits, appendices, changes, and attachments (if any). In addition to the preceding sentence, terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum shall not be added to or incorporated into this Participating Addendum by any subsequent Delivery Order or Purchase Order, and any such attempts to add or incorporate such terms and conditions are hereby rejected.

g. This Participating Addendum may not be amended or modified except by written agreement executed by authorized representatives of the State of Maine Division of Purchases and the Contractor.
h. Under no circumstances whatsoever shall the Contractor provide, sell, or otherwise distribute to a third party any identifying information (including but not limited to names, phone numbers, email addresses, physical addresses, and/or any information relating to State of Maine Procurement Cards) for employees of the State of Maine gained through this Participating Addendum and the subsequent Statewide Hearing Aid Purchasing Program.
i. To the extent that the State of Maine Standard Terms and Conditions (contained with Appendix 1, Riders B, C, and G) conflict with any of the foregoing, the State of Maine's Standard Terms and Conditions shall take precedence. To the extent that the foregoing is applicable, the words "the State of Maine" shall be substituted for the words "the State of Minnesota" or "Minnesota."

IN WITNESS WHEREOF, authorized representatives of Magnatone Hearing Aid Corp. and the State of Maine have executed this Participating Addendum to be effective the day and year first written above.

State of Maine
Department of Administrative
and Financial Services
Bureau of General Services
Division of Purchases

Name: Michael Wenzel
Title: Director
Date: 9/4/12

Magnatone Hearing Aid Corp.

Name: Michael Brown
Title: Vice President
Date: 8/27/12

Master Agreement #	MA - 18P- 12082400000000000026
Vendor Customer #	VC 0000158601

Appendix 1 – State of Maine Agreement to Purchase Services (BP-54) Riders A, B, C, and G

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

[*Rider A consists of Minnesota Cooperative Purchasing Venture (MNCPV) Contract Release H-59(5), dated August 10, 2012, and the pricing sheets associated with Contract Number 49856, and all exhibits, appendices, attachments, amendments, changes, and modifications (if any). Copies are provided at the end of this document.*]

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** $0.00 (zero dollars) (Unencumbered, State Agencies will use on an as-needed basis.)

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows: invoicing and payment will be made on an individual order basis, and the Contractor shall invoice each State agency or department according to its individual purchase of hearing aids. Invoices shall not be directed solely to the Division of Purchases nor the Department of Administrative and Financial Services unless the invoices pertain to orders placed by the Division or the Department under this contract.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. State agencies and departments will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Kevin Scheirer
Title: Director of Special Projects, Division of Purchases
Address: 111 Sewall Street, 9 State House Station, Augusta, ME 04333-0009

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of $50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO PUBLIC RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or

disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike

or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

RIDER C
EXCEPTIONS TO RIDER B

None.

RIDER G
IDENTIFICATION OF COUNTRY
IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:

☒ **United States. Please identify state: FL**

☐ **Other. Please identify country: _____**

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases of any changes to the information provided above.