

Admin Minnesota

Office of State Procurement

Room 112 Administration Bldg., 50 Sherburne Ave., St. Paul, MN 55155; Phone: 651.296.2600, Fax: 651.297.3996
Persons with a hearing or speech disability can contact us through the Minnesota Relay Service by dialing 711 or 1.800.627.3529.

CONTRACT RELEASE: H-59(5)

DATE: SEPTEMBER 1, 2018

PRODUCT/SERVICE: HEARING AIDS: VOLUME PURCHASE HEARING AID PROGRAM

CONTRACT PERIOD: SEPTEMBER 1, 2017, THROUGH AUGUST 31, 2019

EXTENSION OPTIONS: UP TO 36 MONTHS

ACQUISITION MANAGEMENT SPECIALIST (AMS): ROBB MIMBACH

PHONE: 651.201.2432 **E-MAIL:** robb.mimbach@state.mn.us **WEB SITE:** www.mmd.admin.state.mn.us

<u>CONTRACT VENDOR</u>	<u>CONTRACT NO.</u>	<u>TERMS</u>	<u>DELIVERY</u>
SONOVA USA, INC. 14755 27 TH AVE N Plymouth, MN 55441	129975	NET 30	2 TO 4 DAYS ARO

VENDOR NO: 0000209807-001

PRODUCT LINES: HANSATION, PHONAK, & UNITRON

DIRECTOR
GREG SANCHEZ
MOBILE: 630.346.3661 | **EMAIL:** GREG.SANCHEZ@PHONAK.COM

CONTRACT USERS. This Contract is available to the following entities as indicated by the checked boxes below

- State agencies
- Cooperative Purchasing Venture (CPV) members
- Participating States:

STATE AGENCY CONTRACT USE. State agencies should make every effort to use the Contract Vendor(s) listed. However, this Contract does not prohibit State agencies from using their delegated local purchasing authority to procure similar products and services from other vendors.

STATE AGENCY ORDERING INSTRUCTIONS. Orders are to be placed directly with the Contract Vendor. State agencies should use a Contract release order (CRO) or a blanket purchase order (BPC), although most purchases will be done outside the SWIFT system. The person ordering should include his or her name and phone number. Orders may be submitted via fax.

CONTRACT FEEDBACK. If these commodities or service can be better structured to help you with your business needs, let us know. We solicit your comments and suggestions to improve all of our contracts so that they may better serve your business needs. If you have a need for which no contract currently exists, or you would like to be able to use an existing state contract that is not available to your entity, whether a state agency or CPV, please contact us. If you have specific comments or suggestions about an individual contract you can submit those via the [Contract Feedback Form](#).

SERVICE CERTIFICATION FORM REQUIREMENTS.

Pursuant to Minn. Stat. § 16C.09, agencies must complete a “Service Contract Certification Form” prior to issuing an order for services offered from this Contract.

SPECIAL TERMS AND CONDITIONS

SCOPE. The purpose of this contract is to provide hearing aids to the State of Minnesota (lead State), other state agencies and participants in the State of Minnesota’s Cooperative Purchasing Venture (CPV) program and the states of Wisconsin, Michigan, Maine and Colorado, on an as needed basis. Hearing aids are dispensed by qualified audiologists and hearing instrument dispensers participating with the Minnesota Health Care Program (MHCP) in participation with the State of Wisconsin’s Department of Health Services (DHS), the Michigan Health Care Programs, the State of Maine’s Department of Vocational Rehabilitation (DVR), and the State of Colorado’s Division of Vocational Rehabilitation (DVR).

PARTICIPATING STATES CONTRACT PERIOD. Any current participating state that chooses to participate in the upcoming program, reserves the right to establish the starting date for its program based on the time the state will require to execute the program with its authorized hearing aid dispensers. The end date of the program must not exceed the contract term established by the Lead State.

If other new states choose to participate in the volume hearing aid purchase program, they reserve the right to establish the starting date of the Volume Hearing Aid Purchasing Program Contract with the Contract Vendor, based on the time the state will require to execute the program state-wide with the state’s authorized audiologists or hearing instrument dispensers. The end date of the program must not exceed the contract term established by the Lead State of Minnesota.

If a Contract is cancelled or allowed to expire, any hearing aid order that has been submitted, or any repair request that has been initiated prior to the end of the Contract term, must be processed under the terms and conditions of the Contract.

PARTICIPATING STATES CONTRACT EXECUTION. The state of Minnesota is the lead State for the Volume Hearing Aid Purchase Program. Any issues relating to any contracts awarded from this Solicitation must be referred to the state of Minnesota’s Acquisition Management Specialist (AMS).

Any Contract issued to a vendor does not guarantee its selection, in whole or in part, for use by a participating state in its Volume Hearing Aid Purchase Plan. A participating state may select the contracted vendor and hearing aids that meet the specific state’s requirements, but is under no obligation to make all contracted hearing aids available.

VENDOR CAPABILITIES. The Contract Vendor must distribute their products on the open market through authorized, qualified hearing aid dispensers. In order to ensure Medicaid payments are consistent with efficiency, economy, and quality of care pursuant to Title XIX § 1902(a)(30) of the Social Security Act and the Federal requirement for free choice of providers under 42 CFR § 431.51, contracted vendors must make their products available to all Medicaid enrolled audiologists and hearing instrument dispensers. Enrolled audiologists and dispensers must be allowed to offer all contracted products available to Medicaid recipients.

DEFINITIONS. As used in the Solicitation, the following definitions are applicable:

Acquisition Management Specialist (AMS) – Refers to the Department of Administration, Office of State Procurement OSP, Contract Specialist and primary contact for the Solicitation and any subsequent contracts awarded.

State - This refers to the State of Minnesota, Office of State Procurement or other participating states – current or future.

State’s Authorized Representative (SAR) – Refers to the AMS or the employee of a State agency who is designated to act under a contract – Minnesota, Maine, Michigan, Wisconsin, Colorado, or other participating states.

Volume Hearing Aid Purchasing Program – any equipment and services contracted with a Contract Vendor as a result of the solicitation.

Contract Vendor – the manufacturer or authorized distributor, who is awarded a Contract as a result of the solicitation.

Hearing Aid – a monaural hearing aid, a set of binaural hearing aids, or other device worn by the recipient to improve his/her access to and use of auditory information.

Recipient – the end user who has been approved to receive the hearing aid.

Audiologist – a qualified health care professional who engages in the practice of audiology.

Hearing Instrument Dispenser – a qualified, hearing aid dispenser who is not also an audiologist, engaged in the business of selling and dispensing hearing aids.

Minnesota Health Care Programs Liaison – the Minnesota DHS staff person assigned to management of the Volume Hearing Aid Purchasing Program on behalf of the Department of Human Services.

BACKGROUND.

Minnesota. The State of Minnesota enrolls qualified audiologists and hearing instrument dispensers through MHCP. There are approximately 320 enrolled audiologists and hearing instrument dispensers serving fee-for-service recipients. The hearing aid program is managed and supervised by the State's Department of Human Services (DHS) Health Care Programs' Purchasing and Service Delivery Division. Hearing aids will be ordered by the dispensing audiologist and/or hearing instrument dispensers unless otherwise directed by DHS. The Contract Vendor will be required to ship and invoice directly to the enrolled audiologist or hearing instrument dispenser unless otherwise directed by DHS. The Contract Vendor may not charge handling or invoice fees to the audiologist or hearing instrument dispenser. Invoices are paid directly to the Contract Vendor by the audiologist or hearing instrument dispenser unless otherwise authorized by DHS.

Minnesota estimates that approximately 1,200 hearing aids will be purchased annually for fee-for-service recipients. However, this shall not be construed as either the minimum or maximum amount. It shall also be understood and accepted by the Contract Vendor that any quantities shown are estimated quantities only and impose no obligation upon the State either minimum or maximum.

Wisconsin. The State of Wisconsin estimates that approximately 5000 hearing aids will be used annually.

Michigan. The State of Michigan estimates that approximately 200 hearing aids will be used annually.

Maine. The State of Maine estimates that approximately 1000 hearing aids will be used annually.

Colorado. The State of Colorado estimates that approximately 711 hearing aids will be used annually.

Other States. The usage and program details for future states that may join the program is unknown. Participation in the volume hearing aid purchase program must be mutually agreed to by the Contract Vendor and the participating state.

TIMELY PROCESSING OF ORDERS. The Contract Vendor shall be responsible for the timely processing and fulfillment of all orders for purchase and repair of hearing aids and associated items.

Purchase Orders. The Contract Vendor shall be required to process to completion and transmit for delivery 97 percent of all properly submitted orders for purchase within seven (7) working days of receipt of the orders by the Audiologist and hearing instrument dispensers. The first day for counting working days will be the working day immediately following the date the order was received by the Contract Vendor. All orders shall be date-stamped by the Contract Vendor on the date the order is received by any method.

In those instances where a purchase order will require more than seven (7) working days for completion, the Contract Vendor shall be required to notify the submitting Audiologist and hearing instrument dispensers within three (3) working days of receipt of an order or upon discovery of a problem which will delay timely completion of the order.

Failure to meet the order processing requirements as outlined may result in cancellation of the contract as outlined in the General Terms and Conditions.

CONTRACT EQUIPMENT.

The types of hearing aids that will be used are:

- Behind-the Ear (BTE)
- In-the-Ear (ITE)
- Personal Frequency Modulation (FM) Systems using wireless connectivity

The types of circuitry that will be used are:

- Digital

The hearing aid ranges shall be:

- Mild hearing loss -- 26-45 dB
- Moderate hearing loss -- 46-65 dB
- Severe hearing loss -- 66-85 dB
- Profound hearing loss -- 86 dB and greater

All hearing aids supplied under the Contract must be the current production models and must meet all standards and specifications of ANSI S3.22, 2003, or the latest revision. All hearing aids must be new. Reconditioned models will not be accepted. Each hearing aid ordered from the Contract must be accompanied by a performance graph, at no extra charge. Preprinted performance graphs are not acceptable.

Hearing aid models must utilize standard commercial batteries and battery sizes.

For those hearing aid models that are normally used with a conventional type ear mold, all external hearing aid receivers and adapter nubs for plastic tubing should fit the standard bushing in the ear mold. Where the receiver nubs fail to meet this requirement, suitable adapters must be furnished and firmly attached to the receiver by the manufacturer, at no additional cost.

Personal frequency modulation (FM) systems must be compatible for use with hearing aids offered using wireless connectivity.

HEARING AID MODELS – CONTRACT ADDITIONS AND DELETIONS. Due to the complexity of managing the Volume Hearing Aid Program by each state, the Contract Vendor must comply with the following requirements for adding or deleting equipment to its Contract.

Additions – If a contract extension is requested by the lead state (Minnesota) prior to September 1 of the Contract year, the Contract Vendor may add or delete equipment at that time. Any Contract extension or equipment changes accepted will be included in a Contract amendment.

Contract extensions may be for a term of up to 12 months and equipment must remain available for the full term of the Contract extension. No equipment changes will be allowed during the extended Contract term.

If equipment additions, deletions or other changes are approved and made to the Contract, a Contract Amendment will be issued and executed by the state of Minnesota on behalf of the participating states, prior to any changes by the Contract Vendor. The Contract Vendor may only sell the equipment that is selected and adopted by **each** participating state's program.

Deletions – Any equipment offered must be available during the initial term of the Contract, unless otherwise approved by the State. Equipment deletions may only occur at the time a Contract extension is offered. If a model is discontinued and there is a replacement model available and approved, it will be added at that time. The replacement equipment that is offered must be equal or better in quality and equal or less in cost than the model being replaced.

NEW EQUIPMENT TRIAL PERIOD. For the purposes of the Contract, the trial period for a new hearing aid is 90 days. New hearing aids that are not satisfactory to the recipient must be returned to the Contract Vendor, dispenser or audiologist, within 90 days of the dispensing date, but no sooner than 30 days, unless there is apparent damage. There will be no cost to the recipient or the authorized audiologist or hearing instrument dispenser if new equipment is returned within the 90 day trial period. The Contract Vendor may not charge any restocking fees for hearing aids returned during the 90 day trial period.

EQUIPMENT WARRANTY. The Contract Vendor must provide a minimum 24-month warranty on equipment covered by the Contract that includes parts and labor. Parts excluded from the warranty are the ear piece, the cord, tubing, and batteries.

Each hearing aid sold under the Contract must have a one year loss and damage warranty. The recipient, and/or the audiologist or hearing instrument dispenser, may only file one loss claim during the one year loss and damage warranty term. No deductibles may be applied or penalties incurred due to replacement under the loss and damage warranty.

The Contract Vendor shall not charge for packaging, shipping, invoicing, postage, insurance or handling while the hearing aid is under warranty and as long as the Contract Vendor is participating under the terms of the Contract.

WARRANTY EQUIPMENT REPAIRS. The Contract Vendor must process to completion and transmit for delivery not less than 97 percent of all properly submitted repair orders within ten (10) working days from receipt of the hearing aids. The first day for counting work days will be the working day immediately following the day the hearing aid repair was received. All orders shall be date-stamped by the Contract Vendor on the date the repair order is received by the Contract Vendor.

In those instances where a warranty repair order will require more than ten (10) working days for completion, the Contract Vendor shall be required to notify the submitting provider within three (3) working days of receipt of an order or upon discovery of a problem which will delay timely completion of the order.

The Contract Vendor will be responsible for all shipping costs on warranty equipment repairs.

NON-WARRANTY REPAIRS. The Contract Vendor must continue to honor the repair pricing of the Contract under which the hearing aid was sold for the life of the hearing aid, whether the hearing aid has been discontinued from the contract, the contract vendor has terminated their participation in the contract, or the contract has been cancelled or expired. An invoice must accompany the repaired hearing aid when returned to an enrolled audiologist or hearing instrument dispenser from the Contract Vendor unless otherwise directed by the participating state. The invoice repair price must be the same as the Contract repair price.

If persistent repairs are required due to equipment failure or required parts become unavailable to operate the hearing aid, the Contract Vendor will replace the hearing aid with a new model equal to or better than the failed unit. The replacement equipment must include a full warranty from the date of receipt by the audiologist or hearing instrument dispenser.

The Contract Vendor will be responsible for all shipping costs on non-warranty equipment repairs.

The Contract Vendor must provide a minimum warranty period of six months on all non-warranty hearing aid repairs.

INVOICES. The Contract price must be the invoiced price. The invoice must accompany each shipment unless otherwise directed by the participating state.

PAYMENTS. Invoice payment shall constitute payment in full to the Contract Vendor. The participating state will direct the Contract Vendor if the invoice is to be paid by the audiologist or hearing instrument dispenser or directly by the participating state.

PRICES. Prices are firm through the initial period of the contract. After that period, prices may increase once a year. Price increases are not effective until they are approved by the AMS. **NOTE:** At no time should the ordering entity pay more than the Contract price. Agencies must contact the AMS immediately and fill out a [Vendor Performance Report](#) if there is a discrepancy between the price on the invoice and the Contract price.

FIXED PRICE CONTRACT. All prices offered and accepted are firm for the initial term of the Contract. Contract Vendors may not change or negotiate Contract prices – higher or lower – with other state participants or any audiologist that is authorized to use the Contract.

ITEMS OFFERED AS NEW. All products, material, supplies and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the solicitation opening, unless otherwise stated in this solicitation.

FREIGHT (FOB). Orders shall be shipped FOB Destination, prepaid and allowed. Freight costs shall be included in the bid unit price.

<u>PRODUCT OR SERVICE</u>	<u>UNIT OF MEASURE</u>	<u>UNSPSC CODE</u>
1. Hearing Aid Equipment, Accessories, & Supplies	EA = Each	42210000
2. Fixed Non-Warranty Repair	UN = Unit	85160000

THE MINNESOTA HEALTHCARE PROGRAM WITH PRICING CAN BE ACCESSED THROUGH THE DEPARTMENT OF HUMAN SERVICES WEBSITE AT:

<https://mn.gov/dhs/partners-and-providers/policies-procedures/minnesota-health-care-programs/provider/types/hearing-aid-contract-and-vendors/>

(Copy to your browser)

MINNESOTA HEALTH CARE PROGRAM HEARING AID SPECIALIST

Cheryl Newgren

MN Department of Human Services

Health Care Benefits Policy Consultant

651.431.2497

Cheryl.a.newgren@state.mn.us

PRICE SCHEDULE COLUMNS.

Descriptions and Features should include: Digital (full digital signal processing with two or three channels), remote, tele-coil, DAI, etc.

- For “Behind the Ear” and “In the Ear” models, indicate if the equipment is CROS or BiCROS.

db Range – The db ranges listed in Contract Equipment section.

Manufacturer – The manufacturer of the equipment.

Model Number – Must not exceed 19 alpha/numeric characters, including spaces. Must not contain an asterisk (*) or plus sign (+) symbols.

HPCPS Codes – Provided for each item offered.

Equipment Published List Price – The manufacturer’s list price.

- Monaural Hearing Aid Prices – Prices offered will be for one (1) hearing aid. *(Separate price line required.)*
- Binaural Hearing Aid Prices – Prices offered will be for two (2) hearing aids. *(Separate price line required.)*
- CROS – Prices offered shall include the price of all components of the CROS system, including a hearing aid. Bids shall indicate transmission used with system, whether wired or wireless *(Separate price line for CROS system required.)*
- BiCROS – Prices offered shall include the price of all components of the BiCROS system, including a hearing aid. Bids shall indicate transmission used with system, whether wired or wireless. *(Separate price line for BiCROS system required.)*

Equipment Percent (%) Discount off List Price –The percent discount offered to be deducted from the list price. Up to three decimals (.000) is acceptable.

Equipment Total Price – Equipment Published List Price minus Equipment Percent Discount Off List Price equals the total price that should be paid. Customers should pay the Equipment Total Price.

Fixed Non-Warranty Repair Price – Fixed price for non-warranty repairs.

Non-Warranty Repair Period (Months) – Must be a minimum of six months.

Warranty Repair Period (Months) – Must be a minimum of 24 months.

REVISIONS.

- | | |
|----------|---|
| 09/01/18 | All contracts extended through August 31, 2019, at the same terms and conditions, with price changes. |
| 01/01/18 | Unitron Hearing name change to Sonova USA, Inc. Assignment agreement from Phonak, LLC to Sonova USA, Inc. |
| 10/04/17 | Unitron Hearing contract address changed to 14755 27 th Ave. N., Plymouth, MN 55447. |
| 09/26/17 | Sivantos, Inc. MN contract address changed to 3033 Campus Drive, W125, Plymouth, MN 55441. |

**PARTICIPATING ADDENDUM FOR
STATEWIDE HEARING AID PURCHASING PROGRAM**

This Participating Addendum is made as of the 1st day of September, 2017, by and between PHONAK, LLC (Contractor), whose address is 4520 WEAVER PKWY, WARRENVILLE, IL 60555-3927 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 September 1, 2017, 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 PHONAK, LLC for the purchase of Hearing Aids, thereby participating under MNCPV Contract Release H-59(5), dated September 1, 2017, Contract Number 129971;

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 129971)
- 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

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

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, 2017 through August 31, 2018, 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 129971. The extension periods, if exercised, are defined as follows:

EXTENSION OPTIONS: UP TO 48 MONTHS

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 129971, 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 129971. 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: Donny Crockett

Participating Entity Name: State of Maine, Division of Purchases

Address: 111 Sewall Street, 9 State House Station, Augusta, ME 04333-0009

Telephone: 207-624-7336

E-mail: Donny.Crockett@maine.gov

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

Name: BERTHA CHAVEZ

Contractor: PHONAK, LLC

Address: 4520 WEAVER PKWY, WARRENVILLE, IL 60555-3927

Telephone: 630.821.5005

Fax: _____

E-mail: BERTHA.CHAVEZ@PHONAK.COM

5. Miscellaneous:

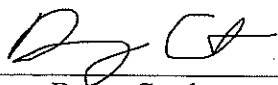
- a. As a point of clarification, the State of Maine's ordering and payment process will differ -- at the sole discretion of the State of Maine -- from the "Agency Ordering Instructions" specified within MNCPV Contract Release H-59(5), dated September 1, 2017. Rather than requiring the Contractor to 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 Maine 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 129971 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.

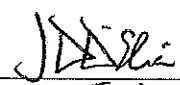
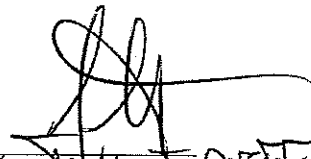
- g. This Participating Addendum may not be amended or modified except by written agreement executed by authorized representatives of the State of Maine Division of Purchases and the Contractor.
- h. Under no circumstances whatsoever shall the Contractor provide, sell, or otherwise distribute to a third 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 PHONAK, LLC 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: Donny Crockett
Title: Contract Grant Specialist
Date: 9/11/2017

PHONAK, LLC

 / 
Name: J.D. Diela / Jan Reitzdorf
Title: VP, FINANCE / President
Date: 9/8/17 / 9/11/17

Master Agreement #	MA - 18P- 1708250000000000021
Vendor Customer #	VC0000158094

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 September 1, 2017, and the pricing sheets associated with Contract Number 129971, 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: Donny Crockett
Title: Contract Grant Specialist, 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: IL**
- 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.