



# State of Minnesota Contract

SWIFT Contract No.: 217770

This Contract is between the State of Minnesota, acting through its Commissioner of Administration (“State”) and Oticon Inc whose designated business address is 580 Howard Ave, Somerset, NJ 08873 (“Contractor”). State and Contractor may be referred to jointly as “Parties.”

## Recitals

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1. State issued a solicitation identified as G0210-2000012895 on May 12, 2022 for Hearing Aids: Volume Purchase Hearing Aid Program (“Solicitation”);
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

## Contract

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### 1. Term of Contract

1.1 Effective date. September 1, 2022, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin the work.

1.2 Expiration date. August 31, 2023, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The contract may be extended for up to an additional 48 months, in increments as determined by the State, through a duly executed amendment.

1.3 Contract Use. This Contract is not exclusive and shall not be construed as guarantying a minimum or maximum amount of usage.

### 2. Contractor’s Duties

The Contractor shall perform all duties described in this Contract to the satisfaction of the State.

### 3. Representations and Warranties

3.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law Statute 256B.04 the State is empowered to engage such assistance as deemed necessary.

3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.

3.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

#### 4. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

#### 5. Compensation and Conditions of Payment

5.1 Compensation. The State will pay for performance by the Contractor under this Contract in accordance with the breakdown of costs as set forth in Exhibit D which is attached and incorporated into this Contract.

5.2 Conditions of Payment. All duties performed by the Contractor under this Contract must be performed to the State's satisfaction and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

#### 6. Authorized Representative

6.1 The State's Authorized Representative is Robb Mimbach, Acquisition Management Specialist, 651.201.2432, or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

6.2 Contractor's Authorized Representative. The Contractor's Authorized Representative is Cathleen Van Evra, Director Strategic Accounts at the following business address and telephone number: 580 Howard Ave, Somerset, NJ 08873 and 732.809.4965, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

#### 7. Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

- Exhibit A: Contract Terms
- Exhibit B: Insurance Terms (Not applicable)
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Price and Payment Schedule
  - o Exhibit D: Price Schedule
  - o Exhibit D – Attachment 1  
Sample Invoice and Sample Quote


**1. Contractor**

*The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.*

Print name: Cathleen Van Evra  
Signature:   
Title: Director Strategic Accounts Date: August 26, 2022

**2. State Agency**

*With delegated authority*

Print name: Robb A Mimbach  
Signature:   
Title: AMS Date: 8/29/2022

**3. Commissioner of Administration**

*As delegated to The Office of State Procurement*

Print name: Justin Patrick  
Signature:   
Title: Goods & Services sup Date: 8/29/2022

## **Exhibit A: Contract Terms**

### **1. Prompt Payment and Invoicing.**

1.1 Prompt Payment. Payment will be made to the Contractor by the ordering audiologist or hearing aid dispenser as described in Exhibit C.

1.2 Invoicing. The invoice must be in the same format as the sample invoice form approved as Exhibit D – Attachment 1 with the Contract, unless an alternative format is approved in writing by the State Authorized Representative, or delegate. See Exhibit D - Attachment 1 for a list of minimum invoice requirements.

### **2. Assignment, Amendments, Waiver, and Contract Complete.**

2.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors.

2.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.

2.3 Waiver. If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

2.4 Contract Complete. This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

### **3. Termination.**

3.1 Termination for Convenience. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.

3.2 Termination for Breach. If the Contractor fails to perform according to the contract terms and conditions, the State is authorized to immediately cancel the Contract or purchase order, or any portion of it, and may obtain replacement goods or services and charge the difference of costs to the defaulting Contractor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contractor may be removed from the vendors list, suspended or debarred from receiving a Contract for failure to comply with terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.

3.3 Termination for Insufficient Funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services addressed within this Contract. Termination must be by written notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that dedicated funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding. This notice will be provided within a reasonable time of the State's receiving notice.

#### **4. Force Majeure.**

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

#### **5. Indemnification.**

5.1 In the performance of this Contract, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

#### **6. Governing Law, Jurisdiction, and Venue.**

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

#### **7. Contract Use by State Agencies.**

To the extent applicable, the Contract does not prohibit state agencies from using their delegated purchasing authority to procure similar goods and services from other sources.

#### **8. Warranty.**

The Contractor warrants to the ordering entity that materials and equipment furnished under the Contract will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the contract. Work not conforming to these requirements, including substitutions not properly approved and authorized in writing may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If requested, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used.

The Contractor must provide a warranty as specified in Exhibit C.

**9. Cooperative Purchasing Venture (CPV) Members.**

The Contract will be available to all CPV members. Minn. Stat. § 16C.03, subd. 10 authorizes the State, acting through its Office of State Procurement, to enter into purchasing agreements with one or more governmental units and other entities allowable by law, as described in Minn. Stat. § 471.59, subd. 1, to exercise jointly the purchasing powers and functions each has individually. This authority is referred to as the Cooperative Purchasing Venture program. For more information, see State website [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us).

The Contractor agrees to extend the Contract to CPV members at the same prices, terms, conditions, and specifications. With the approval of the Contractor, a CPV member may add additional terms to its ordering document applicable to the CPV member's purchasing activities. Such additional terms shall not modify, diminish, or derogate the terms applicable to the State.

**10. Delivery.**

Contractor is obligated to deliver within the quoted lead times. If delivery is not made within that time frame, the State reserves the right to deem the Contractor in default.

**11. Risk of Loss.**

The State is relieved of all risks of loss or damage to the goods and equipment during periods of transportation, installation by the Contractor, or while in the possession of the Contractor or its agent.

**12. Purchase Orders.**

The parties agree that there is no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract.

**13. Equipment Specifications.**

All equipment must meet the contract specifications and all federal and State safety codes and regulations in effect at the date of manufacture. All equipment must be Original Equipment Manufacturer (OEM) equipment unless otherwise stated in the contract.

**14. Items Offered as New.**

All products, materials, supplies, replacement parts, 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, unless otherwise stated in this Contract.

**15. Product Changes During the Contract.**

All equipment offered should be available during the initial term of the contract. No equipment changes will be allowed during the contract year. Equipment adds or deletions may only occur at the time a Contract extension is offered. Any changes must be confirmed in writing by the State through a written amendment.

**16. Subcontracting.**

This Contract may not be subcontracted in whole or in part.

**17. Data Disclosure.**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

## 18. Government Data Practices.

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

## 19. Intellectual Property Rights.

19.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

19.1.1 "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract.

19.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

19.1.3 "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes Documents.

19.2 Ownership. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

19.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor's Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

19.4 Obligations.

19.4.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.



19.4.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

19.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

**20. Copyright.**

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

**21. Assignment of Antitrust Rights.**

Upon the request of the State of Minnesota, Contractor will irrevocably assign to State any state or federal antitrust claim or cause of action that the Contractor now has or which may accrue to the Contractor in the future, in connection with any goods, services, or combination provided by Contractor under the terms of this Contract.

**22. Survivability of Orders.**

In the event the term of any order or Professional/Technical Services work order ("Order") placed under this Contract extends past the termination or expiration of this Contract, the terms and conditions of this Contract shall remain in full force and effect as it applies to such order and will continue in effect for such order until the term of that order expires or the order is cancelled or terminated in accordance with the terms of this Contract.

**23. Contractor's Documents.**

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

**24. State Audits.**

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.



## 25. Usage Reports.

Contractor must track and report to the State usage data on this Contract (Usage Reports). Usage Reports should be sent via email to [osp.usagereports@state.mn.us](mailto:osp.usagereports@state.mn.us). A Usage Report must identify the State Contract Number and provide the following information:

- The total amount of spend under the Contract by the State and other entities,
- The total amount of spend by State agencies, and
- The total amount of spend by other entities (CPV members).

Contractor must send an annual Usage Report, or as otherwise requested. An annual usage report is due within thirty days of the Contract execution anniversary date. A requested Usage Report is due within thirty days from when the request was made. Contractor must provide the State with a final Usage Report within 30 calendar days of the expiration or termination of the Contract. Failure to provide a Usage Report may result in the State cancelling the Contract. This term survives the expiration or termination of the Contract.

## 26. Diverse Spend Reporting.

If the total value of the Contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Contract is in effect.

## 27. Publicity and Endorsement.

27.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

27.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

## 28. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions.

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

## 29. Federal Funds.

29.1 Compliance with Federal Requirements. Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

29.2 Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

**30. Contingency Fees Prohibited.**

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

**31. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).**

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

**32. Non-discrimination (in accordance with Minn. Stat. § 181.59).**

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

**33. Affirmative Action Requirements**

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

33.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.

33.2 General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

33.3 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

**AFFIRMATIVE ACTION FOR DISABLED WORKERS**

33.3.1 The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

33.3.2 The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

33.3.3 In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

33.3.4 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

33.3.5 The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

33.4 Consequences. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

33.5 Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

#### **34. Equal Pay Certification.**

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

#### **35. Hazardous Substances.**

To the extent that the goods to be supplied to the State by the Contractor contain or may create hazardous substances, harmful physical agents, or infectious agents, as set forth in applicable State and federal laws and regulations, the Contractor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be provided upon request. Goods and containers supplied to the State must be labeled in compliance with state and federal laws, rules, and regulations.

These terms apply to goods supplied under this contract:

35.1 Products Containing Triclosan Banned. The Contractor must comply with Minn. Stat. § 145.945.

35.2 Products Containing Certain Types of Polybrominated Diphenyl Ether Banned. The Contractor must comply with Minn. Stat. § 325E.385-325E.388).

35.3 Coal Tar Sealant Use and Sale Prohibited. The Contractor must comply with Minn. Stat. § 116.202.

35.4 Products Containing Mercury. The Contractor must comply with Minn. Stat. § 116.92.

#### **36. Survival of Terms.**

The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

**Exhibit B: Insurance Requirements**

This Contract does not have any insurance requirements.

## Exhibit C: Specifications, Duties, and Scope of Work

### 1. Purpose and Background.

The purpose of the 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).

The Minnesota Health Care Programs (MHCP) enrolls qualified audiologists and hearing instrument dispensers. 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.

### 2. Definitions.

The following definitions are applicable for the contract.

2.1 State's Authorized Representative (SAR) – Refers to the Department of Administration, Office of State Procurement OSP, Contract Specialist and primary contact for the contract and any subsequent contracts awarded.

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

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

2.4 Volume Hearing Aid Purchasing Program – any equipment and services contracted with a Contractor as a result of this contract.

2.5 Contractor – the manufacturer or authorized distributor, who is awarded a Contract.

2.6 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.

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

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

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

2.10 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.

### **3. Lead State.**

The State of Minnesota is the lead state for the contract awards and amendments. Participating Addendums may be completed by other States if the terms and conditions need to be adjusted, and if mutually agreed by the contractors and the other States.

### **4. Contractor Capabilities.**

The Contractor shall be in business for not less than three years and have experience in providing hearing aid equipment and services with customers of similar size and be able to meet the needs of the participating state.

### **5. Medicaid Requirements.**

The Contractor 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, or, if contractor has an arrangement with audiologists and/or hearing instrument dispensers, then the contractor must explain how it will allow its exclusively licensed audiologists and dispensers to provide free choice of hearing aids to Medicaid recipients.

### **6. Other States.**

The usage and program details for future states that may join the program is unknown. Participating states will execute a Participating Addendum, subject to agreement by the Contractor.

### **7. Hearing Aid Additions, Deletions, and Selection.**

Due to the complexity of managing the Volume Hearing Aid Program by each state, the Contractor must comply with the following requirements for adding or deleting equipment to its Contract.

7.1 Additions – If a contract extension is requested by the lead state (Minnesota), the Contractor may add or delete equipment at that time. Any Contract extension or equipment changes accepted will be included in a Contract amendment. 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 Contractor. The Contractor may only sell the equipment that is selected and adopted by each participating state's program.

7.2 Deletions – Any equipment offered must be available during the initial term of the Contract. 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. Contractors are cautioned not to submit equipment that cannot be provided during the Contract term.

7.3 Selection - Any Contract issued to a contractor 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 contractor(s) and hearing aids that meet the specific state's requirements, but is under no obligation to make all contracted hearing aids available. Hearing aids may be accepted for the Contract, but not be selected by one or more participating states, including Minnesota.

## **8. Warranty.**

### **8.1 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 Contractor, 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 the new equipment is returned within the 90 day trial period. The Contractor may not charge any restocking fees for hearing aids returned during the 90 day trial period.

### **8.2 Equipment Warranty.**

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

## **9. Non-Warranty Repairs.**

The Contractor must continue to honor the repair pricing of the Contract under which the hearing aid was sold for the life of the hearing aid or at least 5 years, whether the hearing aid has been discontinued from the contract, the contractor 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 Contractor 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 Contractor 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 Contractor will be responsible for all shipping costs on non-warranty equipment repairs.

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

## **10. Contract Equipment.**

The Contractor must provide a complete line of hearing aid equipment and services. Contractor must only offer equipment that will be available for the initial Contract term.

### **10.1 The types of hearing aids that will be used are:**

10.1.1 Behind-the Ear (BTE)

10.1.2 In-the-Ear (ITE)

10.1.3 Personal Frequency Modulation (FM) Systems using wireless connectivity

### **10.2 The types of circuitry that will be used are:**



10.2.1 Digital

10.3 The hearing aid ranges shall be:

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

10.4 All hearing aids supplied under the Contract must be the current production models and must meet all standards and specifications of ANSI S3.22, 2014, 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.

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

10.6 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.

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

## **Exhibit D: Pricing**

### **1. Contract Pricing.**

1.1 In General. Prices listed take into consideration all inherent costs of providing the requested goods and services. The Contractor agrees to pay any and all fees, including, but not limited to: duties, custom fees, permits, brokerage fees, licenses and registrations, government taxes, overhead, profit, parking permits, proper disposal of materials, insurance payments. The State will not pay any additional charges beyond the price(s) listed, unless otherwise provided for by law or expressly allowed by the Contract. Prices listed within Exhibit D are maximum prices. These maximum prices shall remain firm for the initial term of the Contract. The Price List may not include any additional terms or conditions. A unit price and a total for the quantity must be stated for each item quoted. Prices must be quoted in United States currency. Any increase to Contract pricing requires a duly executed amendment to this Contract. Contractors may not change or negotiate Contract prices – higher or lower – with other state participants or any audiologist that is authorized to use the Contract.

### **2. Price Schedule(s).**

The following price schedule(s) are hereby attached and incorporated into this Exhibit D as follows:

#### 2.1 Exhibit D: Price Schedule

### **3. Delivery New Hearing Aids.**

Contractor must deliver the ordered goods in seven (7) working days, after receipt of order (ARO). The first day for counting working days will be the working day immediately following the date the order was received by the Contractor. All orders shall be date-stamped by the Contractor 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 Contractor 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.

The contractors normal delivery time offered ARO is: BTE's 5 working days, ITE's/Earmolds 10 working days and VarioTherm Molds 15 working days.

### **4. Delivery of Warrantied/Repaired Hearing Aids.**

Contractor must deliver the repaired ordered goods 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 Contractor on the date the repair order is received by the Contractor.

In those instances where a warranty repair order will require more than ten (10) working days for completion, the Contractor 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 Contractor will be responsible for all shipping costs on warranty equipment repairs.

The contractors normal delivery time offered ARO is: BTE's 3 working days, ITE's/Earmolds 10 working days and VarioTherm Molds 15 working days.

### **5. Transportation.**

All prices must be FOB Destination, prepaid and allowed (with freight included in the price), to the ordering entity as instructed by the ordering entity.

### **6. Taxes.**

Hearing aids are prosthetic devices which are exempt from sales tax.

**7. Invoices.**

7.1 The Contractor will be required to ship and invoice directly to the enrolled audiologist or hearing instrument dispenser. The Contractor may not charge handling or invoice fees to the audiologist or hearing instrument dispenser. Invoices are paid directly to the Contractor by the audiologist or hearing instrument dispenser.

7.2 The invoice must accompany each shipment unless otherwise directed by the participating state.

**Exhibit D - Attachment 1  
Sample Invoice and Quote**

Attached is a sample invoice and quote.

Contractor is required to use the sample quote and sample invoice for all transactions under this Contract. Contractor may not materially change either document unless the change has been approved in writing by the State's Authorized Representative. Contractor may not modify the sample quote or sample invoice to provide less detail regarding purchases under this Contract. Contractor hereby waives the right to enforce any term in either sample which contradicts or modifies any term of the solicitation or any Contract that may result, including subsequent amendments to the Contract, or would result in an unencumbered expense if enforced against the state or its CPV members. The State anticipates the sample quote and sample invoice will contain, at a minimum:

- Customer name
- State Contract number field
- Item/service description
- Item quantity
- List price
- Contract price



Office of State Procurement  
112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155  
Voice: 651.296.2600  
Fax: 651.297.3996

August 15, 2023

**SENT VIA EMAIL**

Ms. Cathleen Van Evra  
Oticon Inc.  
580 Howard Ave.  
Somerset, NJ 08873

Dear MS. Cathleen Van Evra:

The following document is enclosed for you to complete and return:

- Amendment No. 1 to SWIFT Contract No. 217770, Release No. H-59(5)

Please sign and return the documents, **VIA EMAIL**, to Robb Mimbach at the following email address [robb.mimbach@state.mn.us](mailto:robb.mimbach@state.mn.us) by **August 21, 2023**.

If the Amendment is not properly executed it will be returned to you. Upon receipt of the properly executed document, and after signatures are obtained from the appropriate State authorities, a copy of the completed Amendment will be sent to your company.

If you have any questions, please feel free to contact me.

Sincerely,

*Robb Mimbach*

Robb Mimbach  
Acquisition Management Specialist / Buyer  
Enclosure

**AMENDMENT NO. 1 TO CONTRACT NO. 217770 RELEASE NO. H-59(5)**

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its Commissioner of Administration (“State”), and Oticon Inc., 580 Howard Ave., Somerset, NJ 08873 (“Contractor”).

**WHEREAS**, the State has a Contract with the Contractor identified as Contract No. 217770, September 1, 2022, through August 31, 2023 (“Contract”), to provide Hearing Aids: Volume Purchase Hearing Aid Program; and

**WHEREAS**, Minn. Stat. § 16C.03, subd. 5, affords the Commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

**WHEREAS**, the terms of the Contract allow the State to amend the Contract as specified herein, upon the mutual agreement of the Office of State Procurement and the Contractor in a fully executed amendment to the Contract.



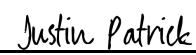
**NOW, THEREFORE**, it is agreed by the parties to amend the Contract as follows:

1. That Contract No. 217770 is extended through August 31, 2024.
2. The existing price schedule is DELETED in its entirety and REPLACED with the attached price schedule labeled, “Exhibit D: Price Schedule – Amendment No. 1”.
3. All other terms, conditions, and specifications remain unchanged.

This Amendment is effective beginning September 1, 2023, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect through contract expiration, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be duly executed intending to be bound thereby.

<p><b>1. OTICON INC.</b> The Contractor certifies that the appropriate person(s) have executed this Amendment on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.</p> <p>By: <u></u> Signature <u>Gary Rosenblum</u> Printed Name</p> <p>Title: <u>President</u></p> <p>Date: <u>17/08/2023</u></p> <p>By: _____ Signature</p> <p>_____ Printed Name</p> <p>Title: _____</p> <p>Date: _____</p>	<p><b>2. OFFICE OF STATE PROCUREMENT</b> In accordance with Minn. Stat. § 16C.03, subd. 3.</p> <p>By: <u></u> A1E48AB0DEB54D8...</p> <p>Title: <u>Acquisition Management Specialist / Buyer</u> 8/23/2023</p> <p>Date: _____</p> <p><b>3. COMMISSIONER OF ADMINISTRATION</b> Or delegated representative.</p> <p>By: <u></u> D0517CF9A9854F3...</p> <p>Date: <u>8/23/2023</u></p>
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