

AUTOMATIC EXTERNAL DEFIBRILLATORS & ACCESSORIES

Led by the State of Oklahoma

Master Agreement #: OK-SW-300

Contractor: **CARDIAC SCIENCE CORPORATION**

Participating Entity: **STATE OF WYOMING**

The following products or services are included in this contract portfolio:

- All products and accessories listed on the Oklahoma NASPO ValuePoint Master Agreement Award. Exhibit C – Price and Cost Proposal.

The following products or services are not included in this agreement:

- Installation services.

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the Automated External Defibrillator (AED) Units, Accessories, and Service and Support Options led by the State of Oklahoma for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Wyoming. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Lorraine Murphy
Address:	500 Burdick Parkway, Deerfield, WI 53531
Telephone:	(262) 953-3540
Fax:	(800) 925-2825
Email:	bidadministration@cardiacscience.com



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Participating Entity

Name:	Angela Morson
Address:	2800 Central Avenue, Cheyenne WY 82002
Telephone:	(307) 777-6705
Fax:	NA
Email:	angela.morson@wyo.gov

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. See Attachment A, State of Wyoming General Conditions, attached to and incorporated into this Participating Addendum by this reference.
2. Subcontractors: All contactors, dealers, and resellers authorized in the State of Wyoming, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
3. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
4. Entire Agreement: This Participating Addendum and the Master Price Agreement number OK-SW-300 (administered by the State of Oklahoma) together with its attachments and exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary, or in addition to the terms and conditions of this Addendum and the Price

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Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of Attachment A, Wyoming General Conditions, shall prevail and govern in the case of any inconsistent or additional terms within the Participating Addendum, the Price Agreement, or its attachments and exhibits.

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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Wyoming	Contractor: <i>Cardiac Science Corporation</i>
Signature: <i>Angela Morson</i>	Signature: <i>Dan Harrington</i>
Name: Angela Morson	Name: <i>Dan Harrington</i>
Title: Procurement Officer	Title: <i>Chief Financial Officer</i>
Date: <i>2/14/18</i>	Date: <i>February 8, 2018</i>

DEPARTMENT OF ADMINISTRATION AND INFORMATION

Dean Fausset *2-12-18*
Dean Fausset, Director Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Tyler M Renner #176193 *Jan. 25, 2018*
Tyler M. Renner, Assistant Attorney General Date

Attachment A Wyoming General Conditions

This Attachment A, Wyoming General Conditions, supplements and replaces terms and conditions contained in the State of Oklahoma NASPO ValuePoint Agreement Number OK-SW-300, dated October 5, 2017, and Participating Addendum for NASPO Valuepoint Cooperative Purchasing Program, Automated External Defibrillator (AED) Units, Accessories, and Service and Support (collectively referred to as "Participating Addendum") entered into between Cardiac Science ("Contractor") and the State of Wyoming ("State"). In the event of any inconsistencies between the terms and conditions contained in the Participating Addendum and this Attachment A, the terms and conditions in this Attachment A shall control and shall supersede and replace the terms contained in the Participating Addendum.

The following General Conditions are made part of and incorporated into the Participating Addendum by this reference:

1. General Provisions.

A. Amendments. Any changes, modifications, revisions or amendments to this Participating Addendum which are mutually agreed upon by the parties to this Participating Addendum shall be incorporated by written instrument, executed by all parties to this Participating Addendum.

B. Applicable Law, Rules of Construction, and Venue. The construction, interpretation, and enforcement of this Participating Addendum shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Participating Addendum as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Participating Addendum and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

C. Assignment Prohibited and Participating Addendum Shall Not be used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Participating Addendum without the prior written consent of the other party not to be unreasonably withheld. The Contractor shall not use this Participating Addendum, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the State.

D. Audit and Access to Records. The State and its representatives shall have access to any books, documents, papers, electronic data, and records of the Contractor which are pertinent to this Participating Addendum.

E. Availability of Funds. Each payment obligation of the State is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including,

but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for the continued performance of the Participating Addendum, the Participating Addendum may be terminated by the State at the end of the period for which the funds are available. The State shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

F. Award of Related Contracts. The State may award supplemental or successor Participating Addendums for work related to this Participating Addendum or may award participating addendums to other contractors for work related to this participating addendum. The Contractor shall cooperate fully with other contractors and the State in all such cases.

G. Compliance with Laws. The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Participating Addendum.

H. Confidentiality of Information. All documents, data compilations, reports, computer programs, photographs, data and other work provided to or produced by the Contractor in the performance of this Participating Addendum shall be kept confidential by the Contractor unless written permission is granted by the State for its release. If and when Contractor receives a request for information subject to this Participating Addendum, the Contractor shall notify the State within ten (10) days of such request and shall not release such information to a third party unless directed to do so by the State.

I. Extensions. Nothing in this Participating Addendum shall be interpreted or deemed to create an expectation that this Participating Addendum will be extended beyond the term described herein. Any extension of this Participating Addendum shall be initiated by the State and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Participating Addendum or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Participating Addendum.

J. Force Majeure. Neither party shall be liable for failure to perform under this Participating Addendum if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the

problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

K. Indemnification. The Contractor shall release, indemnify, and hold harmless the State, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's negligence or other tortious conduct.

L. Independent Contractor. The Contractor shall function as an independent contractor for the purposes of this Participating Addendum, and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Participating Addendum, the Contractor shall be free from control or direction over the details of the performance of services under this Participating Addendum. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Participating Addendum, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Participating Addendum. Nothing in this Participating Addendum shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the State, or to incur any obligation of any kind on behalf of the State of Wyoming or the State. The Contractor agrees that no health or hospitalization benefits, workers' compensation or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Participating Addendum.

M. Nondiscrimination. The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), and the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin or disability in connection with the performance under this Participating Addendum.

N. Notices. All notices arising out of, or from, the provisions of this Participating Addendum shall be in writing either by regular mail or delivery in person at the addresses provided under this Participating Addendum.

O. Notice of Sale or Transfer. The Contractor shall provide the State with notice of any proposed sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notice provision of this Participating Addendum and, when possible and lawful, in advance of the

transaction. If the State determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Participating Addendum, then the State may, at its discretion, terminate or renegotiate the Participating Addendum.

P. Prior Approval. This Participating Addendum shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Participating Addendum has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

Q. Publicity. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the State as the sponsoring agency and shall not be released without prior written approval from the State.

R. Severability. Should any portion of this Participating Addendum be judicially determined to be illegal or unenforceable, the remainder of the Participating Addendum shall continue in full force and effect, and parties may renegotiate the terms affected by the severance.

S. Sovereign Immunity and Limitations. Pursuant to Wyo. Stat. § 13-9-104(a), the State of Wyoming expressly reserves sovereign immunity by entering into this Participating Addendum and specifically retains all immunities and defenses available to it as a sovereign entity. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to agree to certain terms and conditions supplied by the Contractor, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Contract, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Participating Addendum shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

T. Taxes. The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

U. Termination of Participating Addendum. This Participating Addendum may be terminated, without cause, by the State upon thirty (30) days written notice. This Participating Addendum may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Participating Addendum.

V. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Participating Addendum shall not be construed so as to create such status. The rights, duties, and obligations contained in this Participating Addendum shall operate only between the parties to this Participating Addendum and shall inure solely to the benefit of the parties to this Participating Addendum. The provisions of this Participating Addendum are intended only to assist the parties in determining and performing their obligations under this Participating Addendum.

W. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Participating Addendum.

X. Waiver. The waiver of any breach of any term or condition in this Participating Addendum shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

Y. Counterparts. This Participating Addendum may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Participating Addendum. Delivery by the Contractor of an originally signed counterpart of this Participating Addendum by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the State.