

**Participating Addendum Number 291 - Stryker
for
Automated External Defibrillator (AED) & Accessories
between
State of North Dakota
and
Stryker Sales, LLC**

This Participating Addendum ("**Participating Addendum**") is entered into by the State of North Dakota ("**Participating Entity**") and the following Contractor (each a "**Party**" and collectively the "**Parties**") for the purpose of participating in NASPO ValuePoint Master Agreement dated July 22, 2024, executed by Contractor and the State of Oklahoma ("**Lead State**") for Automatic External Defibrillator & Accessories ("**Master Agreement**") through solicitation number EV00000354, Oklahoma Statewide SW0300, which opened November 17, 2023:

Stryker Sales, LLC ("Contractor")
11811 Willows Rd NE
Redmond, WA 98052

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Kenny Stiverson
Strategic Sales, Manager
ken.stiverson@stryker.com (269) 535-3660

Participating Entity's contact for this Participating Addendum is:

Abigail Dschaak
State Procurement Officer
aadschaak@nd.gov
701-328-4912

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below ("**Effective Date**") and will terminate upon termination of the Master Agreement ("**Term**"), as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum, established pursuant to N.D.C.C § 54-44.4-13, may be used by all state agencies, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C § 39-04.2, and the International Peace Garden. Participating Entity has sole authority to determine which additional entities authorized by state statute are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
- a. Products.** All Products available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
 - b. Services.** All Services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
 - c. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to

Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.

- V. ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.
- VI. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Quarterly reports will be provided by Contractor to Participating Entity showing a summary of each sale to include Purchasing Entity, description and amount.
- VII. FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. The Parties agree to work in good faith to negotiate and mutually agree to the requirements set forth therein.
- VIII. ATTACHMENTS.** This Participating Addendum includes Attachment A: Participating Entity Modifications and Additions to Master Agreement Terms and Conditions.
- IX. NOTICE.** Any notice required herein shall be sent to the following:
- | | |
|-------------------------|---------------------------|
| For Contractor: | For Participating Entity: |
| Stryker Sales, LLC | Abigail Dschaak |
| US Contracts | State Procurement Officer |
| USContracts@stryker.com | aadschaak@nd.gov |
| | 701-328-4912 |
- X. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

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Between **the State of North Dakota** and
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SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR:



Signature

Abigail Dschaak

Printed Name

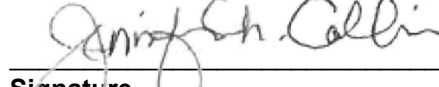
State Procurement Officer

Title

2-24-2025

Date

PARTICIPATING ENTITY:



Signature

Jennifer N. Collins

Printed Name

Manager, Strategic Pricing & Contracts

Title

December 11, 2024

Date

**Attachment A – Participating Entity Modifications and Additions to
Master Agreement Terms and Conditions**

I. TERMINATION (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM #14.6)

Termination for Lack of Funding or Authority

Participating Entity, by written notice to Contractor, may terminate the whole or any part of this Participating Addendum under any of the following conditions:

- a. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the Products or Services in the indicated quantities or term.
- b. If federal or state laws or rules are modified or interpreted in a way that the Products or Services are no longer allowable or appropriate for purchase under this Participating Addendum or are no longer eligible for the funding proposed for payments authorized by this Participating Addendum.
- c. If any license, permit, or certificate required by law or rule, or by the terms of this Participating Addendum, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Participating Addendum under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

II. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

Contractor shall have and keep current all licenses and permits required by law during the Term of this Participating Addendum all licenses and permits required by law.

As of the Effective Date of this Participating Addendum, Contractor does not currently boycott Israel and agrees to not boycott Israel for the Term of this Participating Addendum. (See N.D.C.C § 54-44.4-15.). If Participating Entity receives evidence that Contractor boycotts Israel, Participating Entity shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Contractor has fewer than ten full-time employees.

Contractor's failure to comply with this section shall allow the Participating Entity the option, in its sole discretion, to terminate in accordance with the Termination for Cause section of the Master Agreement, Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions, item 14.6.

III. INJUNCTIVE RELIEF (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 14.2.3)

Each Party shall use all commercially reasonable efforts to immediately report to the other Party any and all unauthorized disclosures or uses of a respective Party's confidential information or proprietary information of which a Party or its staff is aware or has knowledge. Each Party acknowledges that any unauthorized publication or disclosure of the other Party's confidential information or proprietary information to others may cause immediate and irreparable harm to such Party. If either Party should publish or disclose such confidential information or proprietary information without authorization, the respective Party shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

IV. INDEMNIFICATION (SUPPLEMENTS MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM XII; AND EXHIBIT D: VALUE ADD: PROCARE SERVICE TERMS, SECTION 11.)

Any attorney appointed to represent the Participating Entity must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Should Contractor fail to uphold its indemnification obligations under Section 11 of Exhibit D, Contractor also agrees to reimburse the Participating Entity for all costs, expenses and reasonable attorneys' fees incurred if the Participating Entity prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. Notwithstanding the foregoing, Contractor shall have no liability or be in breach of this Section unless Contractor is notified promptly of any such third party claim. This obligation shall continue after the termination of this Participating Addendum.

V. INSURANCE (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 13.3.1)

Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations liability, contractual liability, bodily injury (including death), personal and advertising injury liability, and property damage, with a limit of \$2 million per occurrence and \$2 million general aggregate.

VI. CONFIDENTIALITY (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 14.2.1)

Contractor shall not use or disclose any information it receives from Participating Entity under this Participating Addendum that Participating Entity has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Participating Addendum or as authorized in advance by Participating Entity. Participating Entity shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that Participating Entity determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. ch. 44-04](#). The duty of Participating Entity and Contractor to maintain confidentiality of information under this section continues beyond for a period of three (3) years after the Term of this Participating Addendum.

VII. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Participating Addendum, certain records may be open to the public upon request.

Public records may include: (a) records Participating Entity receives from Contractor under this Participating Addendum, (b) records obtained by either Party under this Participating Addendum, and (c) records generated by either Party under this Participating Addendum.

Contractor agrees to contact Participating Entity immediately upon receiving a request for information under the public records law and to comply with Participating Entity's instructions on how to respond to such request.

VIII. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

Each Party shall promptly notify the other Party of all potential claims that may arise or result from this Participating Addendum. Each Party shall also take all commercially reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while

maintaining public safety, and grants to each Party the opportunity to review and inspect such evidence, including the scene of an accident.

IX. SEVERABILITY

If any term of this Participating Addendum is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Participating Addendum did not contain that term.

X. APPLICABLE LAW AND VENUE (REPLACES MASTER AGREEMENT, EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, ITEM 14.12)

This Participating Addendum is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Participating Addendum must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

XI. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Participating Addendum, each Party does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. Each Party does not waive any right to a jury trial.

XII. ATTORNEY FEES AND COSTS

Intentionally Omitted.

XIII. STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of Contractor relevant to this Participating Addendum are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Contractor shall maintain these records for at least three (3) years following the Term of this Participating Addendum and be able to provide them upon advance reasonable notice. Participating Entity, State Auditor, or Auditor's designee shall provide reasonable notice to Contractor prior to conducting examination.

XIV. LIMITATION OF LIABILITY, SECTION 10 OF EXHIBIT D TO THE MASTER AGREEMENT IS HEREBY RESTATED AS FOLLOWS:

EXCEPT FOR THIRD PARTY DAMAGES RELATED TO CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER SECTION 11 OF THIS EXHIBIT D OR SECTION 12 OF THE MASTER AGREEMENT, CONTRACTOR'S LIABILITY ARISING UNDER THE SERVICE PLAN WILL NOT EXCEED TWICE (2X) THE AMOUNT OF SERVICE FEES PAID UNDER THE SERVICE PLAN DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. IN NO INSTANCE WILL CONTRACTOR BE LIABLE TO PARTICIPATING ENTITY FOR INCIDENTAL, PUNITIVE, SPECIAL, COVER, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES OR UNREASONABLE ATTORNEYS' FEES OR COSTS FOR ANY ACTIONS UNDER OR RELATED TO SERVICE PLAN. NOTWITHSTANDING THE FOREGOING, CONTRACTOR SHALL ONLY BE HELD LIABLE FOR REASONABLE ATTORNEYS' FEES OR COST IF NOT DEFENDING AN INDEMNIFICATION CLAIM BROUGHT BY A THIRD PARTY.

THE FOREGOING LIMITATIONS DO NOT APPLY TO LOSS TO PARTICIPATING ENTITY OR CONTRACTOR THAT CANNOT BE LIMITED UNDER N.D.C.C. § 32-12.2-15(4).