

Participating Addendum Number MA2024001
for
Laboratory Equipment and Supplies
between
State of North Dakota
and
Fisher Scientific Company LLC

This Participating Addendum is entered into by 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 Number MA2024001, executed by Contractor and the State of Idaho ("Lead State") for Laboratory Equipment and Suppliers ("Master Agreement"):

Fisher Scientific Company, LLC ("Contractor")
300 Industry Drive
Pittsburg, PA 15275

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Brian Gill
Senior Director National Programs
brian.gill@thermofisher.com
412-567-1383

Participating Entity's contact for this Participating Addendum is:

Jessica Aga
State Procurement Officer
jaga@nd.gov
701-328-1728

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or March 1, 2024, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities 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. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- V. 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 within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement, as may be amended, will be resolved in favor of the Participating Addendum. The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

- VI. ORDERS.** Purchasing Entities may place orders under this Participating Addendum must include the Participating State Contract number: **#171** as well as the Lead State Master Agreement No. MA2024001. 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. For the avoidance of doubt, unless otherwise agreed in the Purchase Order, inside delivery will be charged to the Purchasing Entity. Contractor will not be obligated to accept credit cards or purchase cards at any point beyond the sale.
- 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. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.
- VIII. ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a. Attachment A: Modifications and Additions to Master Agreement Terms and Conditions
- IX. AUDITS.** In the event Participating Entity audits Contractor per its rights set out in Section 14.1 of the Master Agreement then the following shall apply:
- a. In calculating any underpayment or overpayment, Participating Entity shall be required to offset any undercharges against overcharges.
- In the event that Participating Entity wishes to engage a third party auditor to perform any audits under this Participating Addendum or related to an RFP, such third party auditor must execute a confidentiality agreement with Contractor in a form acceptable to Contractor. Contractor reserves the right to reject any third party auditor that Contractor reasonably believes will use its confidential and proprietary pricing and methods in any manner for the benefit of the third party auditor, such as benchmarking, and/or the benefit of Fisher Scientific's competitors.
- X. WARRANTY.** Notwithstanding the warranty requirements set out in Section 10.2 of the Master Agreement, the following shall apply to each Product purchased by the Participating Entity under this Participating Addendum:
- a. Products supplied by Contractor that are obtained by Contractor from an original manufacturer or third party supplier are not warranted by Contractor, but Contractor agrees to assign to Participating Entity any warranty rights in such Product that Contractor may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier. In no event shall Contractor have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Participating Entity, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and

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handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Contractor.

XI. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Brian Gill
Senior Director National Programs
brian.gill@thermofisher.com
412-657-1383

For Participating Entity:

Jessica Aga
State Procurement Officer
jaga@nd.gov
701-328-1728

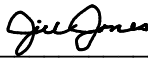
XII. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

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
Jill Jones

Printed Name
Jill Jones

Title
27-Mar-2024

Date

Electronically signed by: Jill Jones
Reason: Approver of the Non-GxP
document
Date: Mar 27, 2024 12:31 EDT

PARTICIPATING ENTITY:



Signature
Jessica Aga

Printed Name
State Procurement Officer

Title
3/28/2024

Date

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ATTACHMENT A

Modifications and Additions to Master Agreement Terms and Conditions

1. Coterminous: The term of this Participating Addendum shall be coterminous with the State of Idaho Contract Number MA2024001.
2. Confidentiality: 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 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 open records law, North Dakota Century Code (N.D.C.C.) ch. 44-04. The duty of Participating Entity and Contractor to maintain confidentiality of information under this section continues beyond the term of this Participating Addendum.
3. 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.

4. Spoliation: Contractor shall notify Participating Entity of all potential claims that Contractor is aware of that arise as a result of Contractor's performance under this Participating Addendum. Contractor shall also take all 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 Participating Entity the opportunity to review and inspect the evidence, including the scene of an accident.
5. Cooperative Purchasing Contract: This Participating Addendum is a cooperative purchasing contract established pursuant to N.D.C.C. § [54-44.4-13](#). This Participating Addendum is made available to state entities, 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 chapter [39-04.2](#), and the International Peace Garden. Participation in this open-ended Participating Addendum is not mandated; therefore, the estimated volume of this Participating Addendum is not known.

6. Governing Law and Venue: 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*.
7. Indemnification: In addition to any indemnity obligations found within the Master Agreement, Contractor agrees that 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.
8. Alternative dispute resolution – Jury Trial: Participating Entity does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating Entity does not waive any right to a jury trial.
9. Attorney Fees: In the event a lawsuit is instituted by Participating Entity to obtain performance due under this Participating Addendum, and Participating Entity is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay Participating Entity's reasonable attorney fees and costs in connection with the lawsuit.
10. 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 Contract.

Contractor is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE 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 (10) full-time employees.

Contractor's failure to comply with this section may be deemed a material breach by Contractor entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.