

PARTICIPATING ADDENDUM
NASPO VALUEPOINT COOPERATIVE PURCHASING PROGRAM
Laboratory Equipment and Supplies
Administered by the State of Idaho (hereinafter "Lead State")

VWR International, LLC
Master Agreement No: **MA16000234-2**
(hereinafter "Contractor")

And

State of Utah
(hereinafter "Participating State")

1. Scope: This Participating Addendum (**PADD**) #**MA412**, covers the Laboratory Equipment and Supplies contract led by the State of Idaho (Master Agreement No. MA16000234-2) for use by state agencies and other entities located in the **Participating State**, as provided below.
2. Participation: Use of NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities authorized by an individual state's statutes to use **Participating State** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Participating State Modifications or Additions to Master Agreement: The Participating State's Terms and Conditions will take precedent over any conflicting terms contained within the Master Agreement.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Lewis McMillan
Address	100 Matsonford Road, Suite 200, Randor PA 19087-8660
Telephone	770-335-7925
Fax	484-881-5697
E-mail	lewis.mcmillan@vwr.com With Copy to: government@vwr.com

Participating State



Name	Nicholas Hughes
Address	3150 State Office Building
Telephone	801-538-3148
Fax	
E-mail	nhughes@utah.gov

5. 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. All orders issued by purchasing entities within the **Participating State** must include the Participating State contract number: **MA412** as well as the Lead State Master Agreement No. **MA16000234-2**.

6. **Entire Agreement:** This PADD and the Master Agreement No. MA16000234-2, together with its 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. The terms and conditions of this PADD shall prevail and govern in the case of any inconsistency or conflict with the terms and conditions of the Master Agreement, as to the Participating State, and shall otherwise have no impact on the Master Agreement and its exhibits.

The parties have executed this PADD as of the date of the last signature below.

Participating State: State of Utah	Contractor: VWR International, LLC
By:  12-27-16	By: 
Name: Kent Beers	Name: Yvonne Garofalo
Title: Director, Division of Purchasing	Title: Vice President, Sales
Date:	Date: December 22, 2016

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases]

State of Utah Terms and Conditions

1. **DEFINITIONS:** The following terms shall have the meanings set forth below, terms defined in Attachment A of the Master Agreement will have the same definition in this Participating Addendum:
 - a) "**Division**" means the Division of Purchasing and General Services.
 - b) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts, including this Participating Addendum, and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - c) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Participating Addendum, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - d) "**Procurement Item**" means the Product that Contractor is authorized to provide to Eligible Users under this Participating Addendum and Master Agreement.
 - e) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - f) "**Subcontractors**" means a person under contract with a Contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
2. **GOVERNING LAW AND VENUE:** This Participating Addendum shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Participating Addendum shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made under this Participating Addendum. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, Division staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Participating Addendum.
4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor's failure to comply with this section will be considered a material breach of this Participating Addendum.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
6. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the Participating Addendum, with responsibility for all Procurement Items delivered and/or performed as stated in this Participating Addendum. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Participating Addendum into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Participating Addendum. Contractor is responsible for its Subcontractors compliance under this Participating Addendum.
7. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Participating Addendum caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property of an Eligible User.
8. **AMENDMENTS:** This Participating Addendum may only be amended by the mutual written agreement by the Division and Contractor, which amendment will be attached to this Participating Addendum. Automatic renewals will not apply to this Participating Addendum, even if identified elsewhere in this Participating Addendum.
9. **TERMINATION:** Unless otherwise stated in this Participating Addendum, this Participating Addendum may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Participating Addendum may be terminated

for cause immediately and subject to the remedies below. This Participating Addendum may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon thirty (30) days written termination notice being given to the other party. The Division and the Contractor may terminate this Participating Addendum, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Participating Addendum, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Participating Addendum for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Participating Addendum.

10. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Participating Addendum may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Participating Addendum; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Participating Addendum. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

11. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Participating Addendum will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Participating Addendum.
12. **INSURANCE:** Contractor shall at all times during the term of this Participating Addendum, without interruption, carry and maintain commercial general liability insurance from an insurance company authorized to do business in the State of Utah. The limits of this insurance will be no less than one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) aggregate. Contractor also agrees to maintain any other insurance policies required in the Solicitation. Contractor shall provide proof of the general liability insurance policy and other required insurance policies to the Division within thirty (30) days of contract award. Contractor must add the State of Utah as an additional insured with notice of cancellation. Failure to provide proof of insurance as required will be deemed a material breach of this Participating Addendum. Contractor's failure to maintain this insurance requirement for the term of this Participating Addendum will be grounds for immediate termination of this Participating Addendum.
13. **INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to the Eligible User. The Participating Addendum number shall be listed on all invoices, freight tickets, and correspondence relating to this Participating Addendum. The prices paid by an Eligible User will be those prices listed in this Participating Addendum, unless Contractor offers a prompt payment discount within its Response or on its invoice. Eligible Users have the right to adjust or return any invoice reflecting incorrect pricing.
14. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.
15. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Participating Addendum after determining such delay will prevent Contractor's successful performance of this Participating Addendum.
16. **LARGE VOLUME DISCOUNT PRICING:** No amendment to this Participating Addendum is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
17. **REPORTS AND FEES:**
- a. Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the Division in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The quarterly administrative fee will be one percent (1%) and will apply to all purchases (net of any returns, credits, or adjustments) made under this Participating Addendum.
 - b. Quarterly Reports: Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.

c. Report Schedule: Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

d. Fee Payment: After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

e. Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Participating Addendum.

18. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Participating Addendum.
19. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Participating Addendum, then a copy of the End User Agreement must be attached to this Participating Addendum as an attachment. The term of the End User Agreement shall not exceed the term of this Participating Addendum, and the End User Agreement will automatically terminate upon the completion of termination of this Participating Addendum. An End User Agreement must reference this Participating Addendum, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Participating Addendum.
20. **WORK ON ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.
21. **PARTICIPATING ADDENDUM INFORMATION:** During the duration of this Participating Addendum the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Participating Addendum to inquire about Contractor's job vacancies within the State of Utah.
22. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Participating Addendum, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
23. **TRAVEL COSTS:** If travel expenses are permitted, all travel costs associated with the delivery of Procurement Items under this Participating Addendum will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
24. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors.
25. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Participating Addendum. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
26. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Participating Addendum.
27. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
28. **SURVIVAL OF TERMS:** Termination or expiration of this Participating Addendum shall not extinguish or prejudice Eligible Users' right to enforce this Participating Addendum with respect to any default of this Participating Addendum or defect in the Procurement Item(s) that has not been cured.
29. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Participating Addendum shall not affect the validity or enforceability of any other provision, term, or condition of this Participating Addendum, which shall remain in full force and effect.
30. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Participating Addendum. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.