

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

Fisher Scientific Company, LLC
Master Agreement No: MA16000234-1
(hereinafter "Contractor")

And

[State of North Dakota]
(hereinafter "Participating State")

1. **Scope:** This Participating Addendum (PADD) covers the Laboratory Equipment and Supplies contract led by the State of Idaho (Master Agreement No. MA16000234-1) 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 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:**
Notwithstanding any provisions in the Master Agreement to the contrary, the following shall apply to this PADD:
4. **Coterminous:** The term of this participating addendum shall be coterminous with the State of Idaho Master Agreement No. MA16000234-1.
5. **Confidentiality:** CONTRACTOR shall not use or disclose any information it receives from STATE under this contract that STATE 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 contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.
6. **Compliance with public records laws:** CONTRACTOR understands that, except for disclosures prohibited in this Contract, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE as soon as reasonably possible upon receiving a

request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

7. Spoliation: CONTRACTOR shall notify State of all potential claims that CONTRACTOR is aware of that arise as a result of CONTRACTOR'S performance under this contract. 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 State the opportunity to review and inspect the evidence, including the scene of an accident. Contractor shall notify the State of all applicable claims that arise from or result from this contract and provide the State the opportunity to review and inspect any evidence.

8. Cooperative Purchasing Contract: This contract is a cooperative purchasing contract established pursuant to North Dakota Century Code (N.D.C.C.) § 54-44.4-13. This contract 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 ch. 39-04.2, and the International Peace Garden. Participation in this open-ended contract is not mandated; therefore, the estimated volume of this contract is not known.

9. Governing Law and Venue: This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract 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.

10. Insurance

Fisher Scientific will maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth below with insurance companies rated B+ or better by "A.M. BEST" rating services. Insurance includes (a) Commercial General Liability (CGL) insurance for a limit of \$1,000,000 (one million) for each occurrence and \$2,000,000 (two million) in the aggregate, (b) Statutory workers' compensation and employer's liability insurance for a limit of \$1,000,000 (one million), and (c) Automobile liability of \$1,000,000 (one million). Insurance coverage shall not be materially changed without thirty-(30) day advance notification to Buyer from carrier.

Indemnification: In addition to any indemnity obligations found within the Master Agreement, CONTRACTOR agrees that any attorney appointed to represent the STATE 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.

11. Alternative dispute resolution: – jury trial

STATE 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. STATE does not waive any right to a jury trial.

12. Attorney fees:

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

14. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Eric Van Denburg
Address	300 Industry Drive, Pittsburg, PA 15275
Telephone	949-842-9685
Fax	949-858-8782
E-mail	Eric.vandenburg@thermofisher.com



Participating State

Name	Chad Keech
Address	600 E Boulevard Ave Dept 012, 14 th Floor Capitol Tower, Bismarck, ND 58505-0310
Telephone	701-328-2767
Fax	701-328-1615
E-mail	ckeech@nd.gov

15. 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 state must include the Participating State contract number: **PADD #171** as well as the Lead State Master Agreement No. MA16000234-1.

16. Entire Agreement: This PADD and the Master Agreement No. MA16000234-1, 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:	Contractor: Fisher Scientific Company, LLC
By: 	By: 
Name: Chad Keech	Name: Gary M. Galluzzi
Title: Procurement Officer II	Title: Vice President
Date: 4/18/16	Date: 4/14/16

[Additional signatures as required by Participating State]

For questions on executing a participating addendum, please contact:

WSCA-NASPO	
Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@wsca-naspo.org

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