

PARTICIPATING ADDENDUM
NASPO ValuePoint
Digital Print & Quick Copy Services
Administered by the State of Utah (hereinafter "Lead State")

MASTER AGREEMENT
Office Depot, Inc.
Master Agreement No: PD2454
(hereinafter "Contractor")

And
The State of South Carolina
(hereinafter "Participating State/Entity")
Contract 4400014691

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1. **Scope:** This Participating Addendum covers the *Digital Print & Quick Copy Services* led by the State of Utah for use by state agencies and other entities located in the Participating State/Entity authorized by that state's statutes to utilize state/entity contracts with the prior approval of the State's Chief Procurement Official. The Effective Date of this Participating Addendum shall be November 18, 2016. This Participating Addendum will terminate upon the termination or expiration of the PD2454 Master Agreement. Either the Contractor or the State of South Carolina can terminate the Participating Addendum for convenience with thirty (30) days' written notice.

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state/entity 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/Entity Modifications or Additions to Master Agreement:**

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

A. Pursuant to Section 11-35-4810, South Carolina (also referred to herein as "SC") public procurement units, both state and local (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) are authorized to participate in cooperative purchasing.

Participation by local public procurement units (as defined by S.C. Code Ann. § 11-35-4610(3), as amended) in the Master Agreement is optional. By submitting an order and receiving delivery of an item pursuant to the Master Agreement, a local public procurement unit manifests its intent to be and is bound by the Master Agreement, including this Participating Addendum, unless the local public procurement unit has entered into a separate Participating Addendum.

Each SC Participant's obligations and liabilities are independent of any other SC Participant's obligations and liabilities. SC Participants are not obligated for any order submitted by another SC Participant and do not incur any liability with regard to any other SC Participant. The State Procurement Office is acting solely on behalf of SC governmental bodies and bears no liability for any damages that any party may incur with regard to the Master Agreement.

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B. Deletions from Master Agreement: Any provisions of the Master Agreement regarding Payment or Governing Law and Venue do not form a part of the contract with the State of South Carolina or any of its public procurement units. With the exception of orders which are placed by a Using Governmental Unit and produced at an Office Depot retail store, the following contract categories are excluded from this Participating Addendum:

- 1. File copying as defined in the Master Agreement**
- 2. Orders with a total price exceeding \$2,500**

Notwithstanding the foregoing, for orders which are placed by a Using Governmental Unit and produced at an Office Depot retail store, the parties agree that Contractor will use best efforts to ensure that such orders produced have a total price of no greater than \$ 2,500.

C. Definitions:

"Authorized Agent" All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement.

"Board" means the Board of the South Carolina State Fiscal Accountability Authority..

"Procurement Officer" means the person, or his successor, identified as such in this Participating Addendum.

"SC Participant(s)" means all participating South Carolina public procurement units (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) or governmental bodies (as defined by S.C. Code Ann. § 11-35-310(18), as amended).

"State" means the Using Governmental Unit(s) identified on the Cover Page.

"You and Your" means Contractor.

"Using Governmental Unit" means all South Carolina Public Procurement Units [11-35-4610(5)] eligible to purchase under this Master Agreement and Participating Addendum.

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D. Board as Procurement Agent: The Procurement Officer is an employee of the Board of the State Fiscal Accountability Authority, acting on behalf of the Using Governmental Unit(s) pursuant to the South Carolina Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Board is not a party to such contracts, unless and to the extent that the Board is a Using Governmental Unit, and bears no liability for any party's losses arising out of or relating in any way to such contracts.

E. South Carolina Prompt Payment Statute: The obligations of any SC Participant are governed by Section 11-35-45 of the South Carolina Code of Laws, if the participant is a "governmental body," as that term is defined in Section 11-35-310(18).

F. SC Registered Distributor: Vendor agrees to distribute its products to South Carolina governmental bodies through vendors registered with the South Carolina Secretary of State as an authorized South Carolina vendor <http://www.scbos.com>.

G. Iran Divestment Act - Certification:

(a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtm>(.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to enter into a participating addendum with You.

(b) By signing this Participating Addendum, You certify that, as of the date You sign, You are not on the then-current version of the Iran Divestment Act List.

(c) You must notify the Procurement Officer immediately if, at any time before posting of a participating addendum, You are added to the Iran Divestment Act List.

H. Iran Divestment Act – Ongoing Obligations:

(a) You must notify the Procurement Officer immediately if, at any time during the Participating Addendum term, You are added to the Iran Divestment Act List.

(b) Consistent with Section 11-57-330(B), You shall not contract with any person to perform a part of the work, under this Participating Addendum if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List.

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I. Open Trade: During the Participating Addendum Term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

J. Choice of Law: This Participating Addendum is established as a term contract (as defined in Section 11-35-310(35)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). Use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is optional. The contract, any dispute, claim, or controversy relating to the contract, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.

Choice-of-Forum. All disputes, claims, or controversies relating to the contract shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina.

Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided in the contract or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

K. No Indemnity or Defense: Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

L. Payment & Interest:

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in the Master Agreement in addition to the Administrative Fee as set forth in subsection "S" for supplies delivered and accepted or services rendered and accepted, less any deductions provided in the Master Agreement or this Participating Addendum. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Using Governmental Unit. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check. (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, which provides the Contractor's

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exclusive means of recovering any type of interest. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding.

M. Code of Conduct: When Contractor employees are working on-site, the Contractor agrees to follow and enforce SC Code of Conduct Policy. If Contractor is working at facilities controlled by other state agencies, Contractor agrees to follow and enforce the Code of Conduct Policy of these other state agencies when Contractor is providing services at these facilities under provisions of this Participating Addendum. The Contractor will assure that each on-site Contractor employee under Contractor's supervision receives a copy of such Code of Conduct. Upon request, SC Department of Technology agrees to provide Contractor with a copy of any applicable Codes of Conduct. If a Contractor is working at any state agency which has a Code of Conduct applicable to this Participating Addendum, the Project Manager will provide the Contractor with a copy in advance of the Contractor's on-site contract services performance. Notwithstanding the foregoing, Contractor will comply with the aforementioned Codes of Conduct to the extent such do not conflict with Contractor's internal policies and procedures.

N. Publicity: Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

O. CISG: The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this Participating Addendum.

P. Statewide Term Contract – Contract Limitations: No sales may be made pursuant to this Participating Addendum for any item or service that is not expressly included in the Scope. No sales may be made pursuant to this Participating Addendum after expiration of this Participating

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Addendum. Violation of this provision may result in termination of this Participating Addendum and may subject Contractor to suspension or debarment.

Q. Relationship Of Using Governmental Units: Each Using Governmental Unit's obligations and liabilities are independent of every other Using Governmental Unit's obligations and liabilities. No Using Governmental Unit shall be responsible for any other Using Governmental Unit's act or failure to act.

R. Item Substitution: No Substitutes will be allowed on purchase orders received from South Carolina procurement units without written permission from the issuing procurement unit.

S. Administrative Fee: Procurement Services ("PS") issues and maintains State term contracts for the benefit of all South Carolina state and local public entities. State term contracts allow all public entities to maximize their purchasing power by aggregating their requirements and to benefit from increased efficiencies in the acquisition process. In order to maintain and enhance the quality and quantity of its State term contracts, each participating public procurement unit will be assessed an administrative fee. Accordingly, a public procurement unit (as defined in S.C. Code Ann. § 11-35-4610(5)), by participating in this contract, owes (PS) an administrative services fee ("fee"). Participating public procurement units shall pay the fee to Contractor as a part of the price set forth in the Master Agreement. Contractor is responsible both for collecting the fee at the time of billing and for remitting the fee to PS. The fee to be collected by the Contractor constitutes a debt by the Contractor to PS. Contractor shall factor the fee into its pricing and shall not separately itemize or invoice for the fee.

For each reporting period, Contractor shall pay to PS a fee equal to one percent (1%) percent of the total dollar amount (excluding sales taxes and adjusted for credits or refunds) of purchases made by any South Carolina public procurement unit from Contractor pursuant to the Master Agreement and Participating Addendum.

(a) As used in this clause, the term "reporting period" means each full calendar quarter (Jan. -- Mar., Apr. -- Jun., Jul. -- Sep., and Oct. -- Dec.) and any remaining periods less than a full calendar quarter during the term of this Participating Addendum. For each reporting period, Contractor shall report to PS its total sales pursuant to this Participating Addendum for the period and shall remit the fee to the PS Reports Manager. Payment for each reporting period is due no later than the last day of the month immediately following the end of the reporting period (Example: payment for the reporting period ending March 31 is due April 30). If the amount due for a reporting period is less than \$10.00,

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no payment is required. The Procurement Officer will provide Contractor an information packet, including a detailed explanation of reporting and payment requirements, within fifteen (15) calendar days following contract award. Contractor may contact the PS Reports Manager at:

Procurement Services Division
Attn: Reports Manager
1201 Main Street, Suite 600
Columbia, SC 29201
Phone: (803) 737-0600 (ask to speak to the Reports Manager)

(b) Contractor shall submit a usage report for each reporting period, even if no payment is due for the reporting period. The usage report shall include any information requested by PS to verify the amount due. At a minimum, each usage report shall reflect the following information for the applicable reporting period: Contractor's name, Participating Addendum contract number, Participating Addendum description, reporting period/quarter, total dollar value of sales (excluding sales taxes and showing any adjustments for credits or refunds), total number of units (if practicable), and the number, date, and amount of Contractor's check to PS. Unless otherwise specified by the PS Reports Manager, the usage report shall be submitted electronically according to instructions in the information packet. If the PS Reports Manager requires the Contractor to provide a more detailed usage report, the PS Reports Manager will work directly with the Contractor to determine the appropriate content and format of the report.

(c) PS or its authorized representatives shall be afforded access to Contractor's records (including, without limitation, bank statements, deposits, checks; invoices; correspondence; ledgers; receipts; transmittals) in order to audit all transactions involving goods sold, work performed, or fees due pursuant to this Participating Addendum. PS agrees not to disclose any material discovered or produced during the audit that the Contractor reasonably designates as proprietary or confidential. If the audit indicates that Contractor has materially underpaid PS, then Contractor shall remit the balance found to be due (including any amounts assessed pursuant to subparagraph (d)).

(d) Payments of the fee which are due and unpaid by the Contractor (including amounts disclosed by audit) shall bear simple interest from the date due until paid unless paid within 30 calendar days of becoming due. The interest rate shall be the highest prime rate (as published in The Wall Street Journal) plus 2% per annum (unless a higher rate is provided by law, but in no event be greater than the maximum interest rate permitted by law), shall be variable, and shall be adjusted effective at the close of business on the day of any change in the prime rate. In addition to the fee and interest, Contractor agrees to pay to PS its reasonable expenses of collection, including costs and reasonable attorneys' fees, whether or not PS commences legal action.

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(e) If the Contractor fails to (i) timely submit accurate usage reports; (ii) remit to PS the fee when due; or (iii) promptly and fully cooperate with an audit request, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions:

(1) order the Contractor to not accept any further orders under the Participating Addendum until the cause for such order has been eliminated;

(2) terminate this Participating Addendum;

(3) order the Contractor to not accept any further orders under any other South Carolina statewide term contract;

(4) terminate the Contractor's award of any other South Carolina statewide term contract.

(f) For purposes of this clause, PS is intended as a third-party beneficiary of this Participating Addendum.

Reports MUST reference the SC Participating Addendum number 4400014691 to assure accurate accounting of purchases under this Participating Addendum and reported administrative fees. Each remittance will include the period covered and the Participating Addendum number.

T. Taxes: Any tax the Contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the Contractor upon acceptance. It shall be solely the State's obligation, after payment to Contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to Contractor by the taxing authority. In the event that the Contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to Contractor, Contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the Contractor.

U. Any printing done for state agencies must conform to the guidelines found on our website under **Printing-Specific Forms and Publications:** <http://procurement.sc.gov/PS/general/PS-general-reference-room.phtm> .

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

Contractor

Name	Pam Pedler, National Account Manager
Address	40 Overhill Rd, Warren RI 02885

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Telephone	860-883-9281
Fax	
E-mail	pam.pedler@officedepot.com

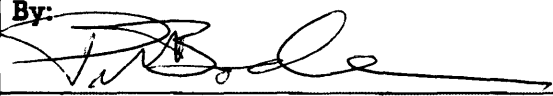
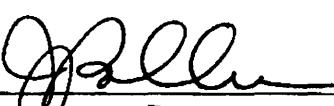
Participating State/Entity

Name	Patricia Bode
Address	1201 Main St, Ste 600, Columbia SC 29201
Telephone	803-737-3224
Fax	803-737-0639
E-mail	pbode@mmo.sc.gov

5. **Subcontractors:** This section is not applicable, as Contractor is not using dealers or resellers.

6. **Orders:** Any Order placed by a Participating State/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 or other terms and conditions apply, as set forth in section 3. herein.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the Effective Date.

Participating State/Entity: The State of South Carolina	Contractor: Office Depot, Inc.
By: 	By: 
Name: Patricia Bode	Name: Jim Pollman
Title: Procurement Manager	Title: Vice President
Date: 11-8-16	Date: 11-3-16



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For questions on executing a Participating Addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Shannon Berry
Telephone	775-720-3404
E-mail	sberry@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]