

**PARTICIPATING ADDENDUM
to NASPO ValuePoint
FOR OFFICE SUPPLIES AND SERVICES
Toner, Paper, Recycled-Content/Green Products
and other Miscellaneous Products
Administered by the State of Oregon
with Office Depot, Inc.
Master Agreement No. PA 5737
And
The State of Colorado**

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the "Participating Addendum"), is entered into by and between Office Depot, Inc. (the "Contractor"), and the State of Colorado (the "State"). This Participating Addendum covers participation in the Master Agreement For Office Supplies and Services, Toner, Paper, Recycled-Content/Green Products and other Miscellaneous Products, Master Agreement number PA 5737, led by the State of Oregon (the "Master Agreement"), for use by State agencies and other entities located in the State authorized by the State's statutes to utilize State contracts with the prior approval of the State Purchasing Director.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State's statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

To the extent not modified by this Participating Addendum, all terms and conditions of the Master Agreement shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.

4. RESERVED.

5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing, without a formal amendment to this Participating Addendum no later than 5 days following the date on which the change occurs. The Contractor's

primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

Primary Contact for the State:

Brian Swift
Department of Personnel & Administration
1525 Sherman Street
3rd floor
Denver, CO 80203
303.866.6146
brian.swift@state.co.us

Primary Contact for the Contractor:

Pam Pedler
Office Depot, Inc.
40 Overhill Road

Warren, RI 02885
860.883.9281
pam.pedler@officedepot.com

Each individual identified in this §5 of the Participating Addendum shall be the primary contact of the designating Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's primary contact at the address set forth above or (C) as an email with read receipt requested to the primary contact at the email address, if any, set forth above. If a Party delivers a notice to another through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Unless otherwise provided in this Participating Addendum, notices shall be effective upon delivery of the written notice.

In addition to the primary contact in this section, the Contractor shall also provide an individual who is ultimately responsible for the creation and submission of the quarterly volume report described in Exhibit A. This individual, as named in this section, shall ensure that all required quarterly volume reports are accurate and delivered by the appropriate due date for that quarterly volume report. The Contractor may change this individual or their contact information by notice submitted to the other party in writing, without a formal amendment to this Participating Addendum no later than 5 days following the date on which the change occurs.

Individual Responsible for Quarterly Volume Report Creation and Submission:

Mark Dabbert
Office Depot, Inc.
800 Bryn Mawr Ave

Itasca, IL 60143
630.438.7195
Mark.Dabbert@officedepot.com

6. SUBCONTRACTORS

The Contractor may only use Subcontractors, as defined in Exhibit A, under this Participating Addendum if the state has provided written approval for the Contractor to use that Subcontractor. All such approved Subcontractors authorized in the State of Colorado, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to the State and any Purchasing Entity in the State. The Contractor's Subcontractor's participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum, as appropriate.

7. ORDERS

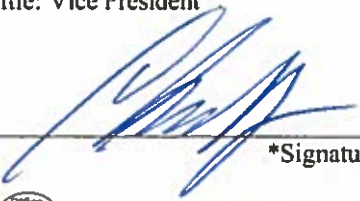


Any Order placed by a Purchasing Entity in the State of Colorado for a Good or Service available from this Participating Addendum shall be deemed to be a sale (and governed by the prices and

Participating Addendum and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- A. Colorado Special Provisions in §13 of Participating Addendum Exhibit A, State Specific Terms
- B. The provisions of the main body of this Participating Addendum
- C. All other sections of Participating Addendum Exhibit A, State Specific Terms
- D. Exhibit B Statement of Work
- E. Exhibit C Goods and Prices


Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that (i) requires the State to indemnify or hold harmless Contractor or any other party, (ii) is in violation of State law as, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State or (iii) is contrary to any of the provisions incorporated into §14 or the main body of this Participating Addendum.

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

<p style="text-align: center;">CONTRACTOR OFFICE DEPOT, INC.</p> <p>By: Chris Lupo Title: Vice President</p> <p> _____ *Signature</p> <p> Date: <u>2-11-2019</u></p>	<p style="text-align: center;">STATE OF COLORADO Jared Polis, Governor</p> <p style="text-align: center;">Department of Personnel and Administration State Purchasing Office Kara Veitch, Executive Director</p> <p> _____ By: Cindy Lombardi, State Purchasing and Contracts Director or John Chapman, State Purchasing Manager</p> <p>Date: <u>2/12/19</u></p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

§24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Participating Addendum is not valid until signed and dated below by the State Controller or an authorized delegate.

<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By:  _____</p> <p>Name: <u>Nicole Severin</u></p> <p>Effective Date: <u>2/15/19</u></p>
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PARTICIPATING ADDENDUM EXHIBIT A, STATE SPECIFIC TERMS

1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, 24-101-101 *et. seq.*, C.R.S., and its associated rules.

2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Administrative Fee”** means the fee that is due to the State for the administration of this Participating Addendum, as described in §7. A. of this Exhibit A.
- B. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- C. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- D. **“Ceiling Price”** means the maximum price a Contractor may charge for a Good or Service under this Participating Addendum.
- E. **“Chief Procurement Officer”** means the position described in the Colorado Procurement Code and its implementing regulations.
- F. **“Confidential Information”** means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S. (“CORA”).
- G. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement, and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- H. **“Order”** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Contract from the Contractor, and shall include any modification to such a document.
- I. **“Purchasing Entity”** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the

State, institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.

- J. **“Services”** means the services to be performed by Contractor as set forth in this Participating Addendum or the NASPO ValuePoint Master Agreement, and shall include any services to be rendered by Contractor in connection with the Goods.
- K. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- L. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- M. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work. The term **“Subcontractor”** includes, but is not limited to, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- N. **“Work”** means the Goods delivered and Services performed pursuant to this Participating Addendum.
- O. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. **“Work Product”** does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any term used in this Participating Addendum that is defined in another Exhibit or in the main body of this Participating Addendum shall be construed and interpreted as defined in that portion of this Participating Addendum.

3. **TERM**

A. **Initial Term - Work Commencement**

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall terminate on the date on which the NASPO ValuePoint Master Agreement terminates, unless this Participating Addendum is terminated earlier as described in this Participating Addendum or the State cancels its participation as described in the Master Agreement (the **“Term”**).

B. **Extension of Term**

If the term of NASPO ValuePoint Master Agreement is extended for any reason, then that extension shall be automatically incorporated in this Participating Addendum and the Term

of this Participating Addendum shall be automatically modified to account for that extension, so long as such extension complies with the Colorado Procurement Code.

4. PAYMENTS

A. Purchasing Entity Payments

Each Purchasing Entity will make its own payments under any Order that it enters into. The State shall not be liable to the Contractor for any payments due under any Order unless the State is a party to that Order.

B. Administrative Fee Payments

For each Fiscal Year quarter, the Contractor shall remit to the State an Administrative Fee equal to one percent (1%) of the total "Spend" by all Purchasing Entities under this Participating Addendum during that quarter. The Contractor shall remit all administrative fees to the State's Primary Contact identified in this Participating Addendum, and with the payee as "State of Colorado", within 30 days following the State Fiscal Year quarter to which the administrative fee applies. For purposes of this Participating Addendum, "Spend" shall mean all Purchasing Entities' paid-for purchases net of taxes, shipping costs, returns, discounts, credits, any incentives amortized for the applicable period, rebates actually paid, employee purchases under any type of purchasing program, postage, shipping and mailing services, technology items, non-code and special order furniture, gift cards and warranties.

Contractor shall remit all Administrative Fees to the State's primary contact identified in §5 of the Participating Addendum and with the payee as "State of Colorado".

5. REPORTING - NOTIFICATION

A. Volume Reporting

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State's representative identified in Section 5 of this Contract within thirty (30) calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form as directed by the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

- i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
 - a. The total spent by each type of Purchasing Entity under this Participating Addendum.
 - b. The total of the list cost of all items purchased by each type of Purchasing Entity under this Participating Addendum.
 - c. The total estimated cost savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list cost minus the total spent for that Purchasing Entity.
 - d. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.

- e. The amount of the total administrative fee due to the State.
 - f. Any additional summary information as requested by the State.
- ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
- a. The name of the Purchasing Entity who the sale was made to.
 - b. The date of the sale.
 - c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, the unit price for the item, the extended cost for the item calculated by multiplying the unit price by the quantity, the list price per unit for the item, the extended list cost for the item calculated by multiplying the quantity by the list price, and the savings on the item calculated by subtracting the extended cost from the extended list cost.
 - d. Any other detail information as requested by the State.
- B. **Additional Operational Reporting**
- Quarterly volume reporting §5.A. of this Exhibit A is the standard requirement of the reporting. If an additional request is added by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Participating Entities as requested by the State. The Contractor shall provide all such additional reports as available, following the State's request for that information, in a time frame as mutually agreed .
- C. **Environmentally Preferable Product Reporting**
- Upon request by the State, the Contractor shall provide detailed reporting on environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, that are purchased or made available under this Participating Addendum. The scope and detail of such reports shall be agreed upon by the State and the Contractor. The Contractor shall provide all such additional reports on a quarterly basis following the State's request for that information, unless the State agrees to a longer period of time in writing.
- D. **Litigation Reporting**
- If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact described in this Participating Addendum. Information provided shall be limited to public records only.
- E. **Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.**
- To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact in accordance with §5 of the Participating Addendum and in the form designated by the State in Exhibit D attached hereto ("**Contract Performance Outside the United States or Colorado**"), within 30 days of the end of each calendar year. Such notice shall specify the type of Services performed outside

the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds.

6. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall hold and maintain any and all Confidential Information provided to Contractor or made available to Contractor by the State or its Purchasing Entities in confidence for the sole and exclusive benefit of the State or Purchasing Entity that provided such Confidential Information. Contractor shall not, without prior written approval of the State, use for Contractor's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Participating Addendum. Any request or demand to Contractor by any third party for the State's Confidential Information shall be immediately forwarded to the State's primary contact described in this Participating Addendum.

B. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §6.A of this Exhibit A may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §6.A of this Exhibit A.

7. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the Work. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State or a Purchasing Entity, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Participating Addendum or any Order.

B. Apparent Conflicts of Interest

Contractor acknowledges that with respect to this Participating Addendum, even the appearance of a conflict of interest will be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Contractor's obligations under this Participating Addendum.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to

promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Participating Addendum.

8. BREACH OF CONTRACT

A. Notice and Cure Period

In the event of a Breach of Contract, the aggrieved party shall give written notice of breach to the other Party's primary contact described in this Participating Addendum. If the notified Party does not cure the Breach of Contract within 30 days after receipt of written notice, or, if a cure cannot be completed within 30 days but cure of the Breach of Contract has not begun within 30 days and has not been pursued with due diligence, the State may exercise any of the remedies set forth in §9 of this Exhibit A. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in this Participating Addendum to protect the public interest of the State.

9. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum, the State, following the notice and cure period set forth in §8.A of this Exhibit A, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum and any remedies available by law or equity. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Participating Addendum or any part of this Participating Addendum. Contractor shall continue performance of this Participating Addendum to the extent not terminated, if applicable.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding Orders and subcontracts with third parties. However, Contractor shall complete and deliver to Purchasing Entities all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. At the request of the State or any Purchasing Entity, Contractor shall assign to the Purchasing Entity all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Purchasing Entity has an interest. At the State or Purchasing Entity's request, Contractor shall return materials owned by the Purchasing Entity that Contractor possesses at the time of any

termination. Contractor shall deliver all completed Work Product to the Purchasing Entity at the State or Purchasing Entity's request.

b. Payments

Purchasing Entities shall reimburse Contractor only for accepted Goods and Services received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any reasonable damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages. A Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the Purchasing Entity in procuring from third parties replacement Work as cover.

ii. Early Termination in the Public Interest

The State is entering into this Participating Addendum for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Participating Addendum ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Participating Addendum, in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's or any Purchasing Entity's obligations hereunder. This subsection shall not apply to a termination of this Participating Addendum by the State for cause or breach by Contractor, which shall be governed by §9.A(i) or as otherwise specifically provided herein.

a. Method and Content

The State shall notify Contractor of such termination in accordance with §5 of this Participating Addendum. The notice shall specify the effective date of the termination, and whether it affects all or a portion of this Participating Addendum.

b. Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to, and comply with, the same obligations and rights set forth in §9(A)(i).

iii. Remedies Not Involving Termination

The State, in its discretion, may exercise the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule.

Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Purchasing Entity shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the public interest.

c. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, at the option of and as approved by the State or Purchasing Entity (i) secure that right to use such Work for the State, Purchasing Entity and Contractor; (ii) replace the Work with non-infringing Work or modify the Work so that it becomes non-infringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the Purchasing Entity.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum, Contractor, following the notice and cure period set forth in §8.A of this Exhibit A and the dispute resolution process in §10 of this Exhibit A shall have all remedies available to it at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

C. Purchasing Entity's Remedies

If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that Order, in addition to all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 10 Business Days following Contractor's receipt of that notice of breach or termination.

10. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum, or any Order to which the State is a party, which cannot be resolved by the designated Participating Addendum representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies arising under this Participating Addendum

If the initial resolution described in §10.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of State Purchasing and Contracts Office as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Resolution of Controversies arising under an Order

Any dispute between Contractor and a Purchasing Entity concerning the performance of an Order shall be resolved under the dispute resolution processes as described in the applicable Order. If the Order does not describe a dispute resolution process, the dispute shall be resolved under the Purchasing Entity’s dispute resolution statutes, policies, or other applicable regulations, or in a manner as agreed upon by the Purchasing Entity and Contractor.

11. RIGHTS IN WORK PRODUCT

Unless otherwise modified by another Exhibit to this Participating Addendum, the State shall have all rights to title and ownership granted to it by the Master Agreement.

12. GENERAL PROVISIONS

A. Binding Effect

All provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.

B. Counterparts

This Participating Addendum may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

C. Venue

The exclusive venue for all suits or actions related to this Participating Addendum shall be in the State of Colorado, in the City and County of Denver.

D. Modification

Except as otherwise provided in this Participating Addendum, any modification to this Participating Addendum shall only be effective if agreed to in a formal amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Participating

Addendum, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

E. Severability

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of this Participating Addendum.

F. Survival of Certain Participating Addendum Terms

Any provision of this Participating Addendum that imposes an obligation after termination or expiration of this Participating Addendum shall survive the termination or expiration of this Participating Addendum and shall be enforceable by the other Party.

G. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-701, *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Some Purchasing Entities may be subject to taxes for Orders, but in no event shall the State have liability to the Contractor for any such taxes.

H. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns permitted under this Participating Addendum, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties, except for rights explicitly provided for Participating Entities or rights contained in an Order. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties, except for rights explicitly provided for Participating Entities or rights contained in an Order. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties, except for rights explicitly provided for Participating Entities or rights contained in an Order.

I. Standard and Manner of Performance

Contractor shall perform its obligations under this Participating Addendum in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

J. Additional Insured

The Contractor shall ensure that the State is added as an additional insured for all insurance required under the Master Agreement

13. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Participating Addendum shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Participating Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Participating Addendum. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Participating Addendum. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Participating Addendum shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Participating Addendum and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Participating Addendum, including, without limitation, immediate termination of this Participating Addendum and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Participating Addendum. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. . The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or

contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT B STATEMENT OF WORK

1. GOODS AND/OR SERVICES

For a description of what the Participating Addendum will provide, see Exhibit B of the Master Agreement 5737, "Goods and Prices".

2. OTHER PROJECT REQUIREMENTS

A. Delivery of Goods and Performance of Services

- i. Contractor shall provide all Goods and perform all Services described in each Order.
- ii. Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. All Goods shall be free on board ("F.O.B.") destination to the location specified in the Order.
- iii. If a good in an Order is out of stock, Contractor may only provide a substitute good if it has notified the Purchasing Entity for that Order, in writing, that the good is out of stock and has received the Purchasing Entity's approval to provide the substitute good. Purchasing Entities may request additional information comparing the substitute good with the original good in the Purchasing Entity's sole discretion.

B. Additional Terms

Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form, including, without limitation, terms regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Participating Addendum or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish receipt of Goods or completion of Services and shall not make any term of that form enforceable.

EXHIBIT C GOODS AND PRICES

3. Contractor has been awarded the following categories:

- Office Supplies and Services Toner, Paper, Recycled-Content/ Green Products and other Miscellaneous Products

4. The products and price list is located on the Contractor's dedicated State website, hosted and maintained by the Contractor, and is incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the lead state and shall be effective when published on the dedicated state website.

Contractor's website address: www.officedepot.com

5. Pricing

C. Price Lists

The State may publish any pricing information under this Participating Addendum the State's website as the State determines is necessary or efficient to facilitate the use of this Participating Addendum by Purchasing Entities. Pricing on the State's website may not be the most current contractual pricing as agreed to under the Master Agreement.

D. Price Decreases

The Contractor may offer lower prices to Purchasing Entities, and Purchasing Entities may negotiate lower prices with Contractor, without the review or approval of the State.

E. Environmentally Preferable Purchasing

- i. Contractor shall provide training regarding the environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, that are purchased or made available under this Participating Addendum. This training shall be provided at no additional cost, unless otherwise agreed upon by the Parties, and shall be presented at a time and in a manner as agreed upon by the Parties.
- ii. The State reserves the right to request additional provisions and requirements to ensure this Participating Addendum is in compliance with all State regulations and policies, including all sustainable purchasing and environmentally preferable purchasing policies or executive orders.