DEPARTMENT OF LAW
STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE AND VOLUNTARY COMPLIANCE

IN THE MATTER OF OFFICE DEPOT, INC.

This Assurance of Discontinuance and Voluntary Compliance ("Assurance") is entered into between the State of Colorado, *ex rel.* Attorney General John W. Suthers, through the undersigned Assistant Attorney General ("State") and Office Depot, Inc. ("Office Depot"). This Assurance is entered into pursuant to the Attorney General's powers under C.R.S. § 6-1-110(2) (2011), and is being agreed to by the parties in lieu of the Attorney General's filing a complaint against Office Depot for the conduct described below.

PARTIES

1. John W. Suthers is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and to prosecute violations of the Colorado Consumer Protection Act ("CCPA"), C.R.S. § § 6-1-101 – 6-1-1120.

2. Office Depot is a Delaware corporation that transacts substantial business in the State of Colorado.

ALLEGATIONS

3. From January 2006 through December 2010, Office Depot sold office supplies to certain Colorado governmental and non-profit entities ("Customers") under the auspices of the U.S. Communities purchasing cooperative. It was understood between all parties that Office Depot's sales to the Customers would be made pursuant to

the terms of Master Agreement No. 42595 by and between County of Los Angeles and Office Depot (collectively with all Attachments, Exhibits, Amendments and Extensions thereto, "the Contract").

4. The State undertook an investigation into several allegations of improper practices relating to the Contract, including violating "most favored customer" pricing obligations; incorrectly/improperly applying contract discounts; incorrectly/improperly calculating cost for pricing purposes; and, during the 2006-March 2009 time frame, placing certain Customers on a potentially higher-cost price plan either without the Customer's knowledge or without giving the Customer complete and accurate information about the potential cost differences (collectively, the "Allegations").

5. After a year-long investigation, the State contends that during the 2006-2009 time frame, certain Customers were placed on the higher-cost price plan either without their knowledge or without a complete and accurate explanation of the price difference between the two price plans. Roughly 113 Customers paid a total of $126,294.04 more than they would have on the lower-cost price plan.

OFFICE DEPOT'S ASSURANCES

6. Office Depot enters this Assurance as a compromise and settlement of the State's allegations herein. This Assurance shall not be considered an admission of violation or liability for any purpose. Office Depot assures the State that Office Depot will comply with the CCPA and its contractual obligations in conducting business in the State of Colorado.

MONETARY RELIEF

7. Within twenty (20) days of signing this Assurance, Office Depot shall pay $412,000 to the State under C.R.S. § 6-1-110 and 112. This payment shall be made payable to the Colorado Department of Law with a reference to "Office Depot Settlement" and shall be delivered to:

Mark T. Bailey
Assistant Attorney General
Consumer Fraud Unit
1525 Sherman Street – 7th Floor
Denver, Colorado 80203

8. $189,441.06 of such $412,000 shall be held in trust by the Attorney General to make payments to Customers who were put on the higher-cost price plan, pursuant to the claims process described in ¶¶ 9-13, below ("Claims Process"). The remaining $222,561.94, and any interest thereon, shall be held in trust by the Attorney General to be used first for reimbursement of the State's actual costs and attorney fees and, second, to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement actions.

9. Office Depot and the State shall jointly administer the Claims Process, which Office Depot shall make available to all Customers who purchased office supplies under the higher-cost price plan.

10. Within twenty (20) days of signing this Assurance, Office Depot shall provide written notice of this settlement and Assurance to each Customer listed in **Exhibit A** hereto. The written notice shall be sent by certified mail and shall consist of the letter attached hereto as **Exhibit B** and the Claim Form attached hereto as **Exhibit C**. Simultaneously with the mailing of written notice, Office Depot shall provide the State proof of mailing to all

Customers on **Exhibit A** and complete contact information, including address and phone number, for each Customer listed in **Exhibit A**.

11. Office Depot shall take all reasonable steps necessary to ensure that each Customer listed on **Exhibit A** receives its Claim Form. By way of example, should Office Depot receive notice that any Claim Form was returned as "undeliverable," Office Depot will notify the State and take reasonable steps to determine the correct address for the Customer.

12. Customers will have until eighty-five (85) days after the execution of this Assurance to submit Claims Forms. Each Customer that timely completes and submits its Claim Form shall receive 1.5 times the amount by which the prices paid by the Customer exceeded the prices the Customer would have paid under the alternative price plan. Such sums will be paid by the Attorney General from the $189,441.06 referenced in ¶ 8.

13. If any Customer does not timely return its Claim Form, such Customer will not be entitled to any monies under this Assurance. Any unclaimed monies from the $189,441.06 referenced in ¶ 8 will be held in trust by the Attorney General to be used first for reimbursement of the State's actual costs and attorney fees and, second, to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement actions.

14. If Office Depot makes only a partial payment under this Assurance, the State's acceptance of such partial payment does not prevent the State from declaring the Assurance breached, collecting the full amount due hereunder, and seeking other remedies.

15. Office Depot agrees that if any of its employees, contractors or agents violates any term of this Assurance, as determined by a court with jurisdiction to hear the matter, he or she will be subject to additional penalties as contained in C.R.S. § 6-1-112.

ADDITIONAL TERMS

16. The obligations set forth in this Assurance are of a continuing legal nature.

17. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA under C.R.S. § 6-1-110(2). Upon Office Depot's violation of any of the terms of this Assurance, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

18. The State acknowledges by its execution hereof that this Assurance constitutes a complete settlement and release of all claims on behalf of the State against Office Depot with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted with regard to the acts, practices or omissions alleged by the State in this Assurance that arose prior to this date under the cited consumer protection statutes. The State agrees that it shall not proceed with or institute any civil action or proceeding against Office Depot, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys' fees, or costs, for any communication disseminated prior to this date which relates to the Allegations that are the subject matter of the Assurance or for any conduct or practice prior to the date of this Order which relates to the Allegations. Notwithstanding the foregoing, the State may institute an action or proceeding to enforce the terms and provisions of this Assurance or to take action based on future conduct by

Office Depot. Nothing in this Assurance shall be construed to release claims held by any other governmental authority or unit. However, execution and submission of a Claims Form by a governmental entity will constitute a release of claims by that entity.

This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to C.R.S. § 6-1-113 of the CCPA, or under any other statutes through claims or actions in common law. However, execution and submission of a Claims Form by a private party will constitute a release of claims by that party.

19. Pursuant to C.R.S. § 6-1-110(2), this Assurance shall be a matter of public record.

20. The person who signs this Assurance in a representative capacity for Office Depot warrants that he or she is duly authorized to do so. Office Depot acknowledges that it has had a full opportunity to review this Assurance and consult with legal counsel regarding the same.

21. This Assurance may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Assurance. Facsimile and electronic copies of this Assurance and the signatures hereto may be used with the same force and effect as an original.

22. Any notices, complaints, or other documents required or contemplated by this Assurance (including any request or legal process) shall be sent to the following addresses.

To Office Depot:

Heather Stern
Senior Managing Counsel
Office Depot, Inc.
6600 North Military Trail
Boca Raton, FL 33496

with a copy to:

Paul T. Hourihan
Williams & Connolly LLP
725 12th Street, N.W.
Washington, DC 20005

To the Attorney General:

Mark T. Bailey
Assistant Attorney General
Consumer Protection Section
1525 Sherman Street – 7th Floor
Denver, Colorado 80203

DATED this 2nd day of JUNE, 2011.

OFFICE DEPOT, INC.

By: _____
(Signature)

ELISA D. GARCIA C., EVP, GENERAL COUNSEL
(Please print name and title)

DATED this 3rd day of June, 2011.

JOHN W. SUTHERS
ATTORNEY GENERAL
STATE OF COLORADO

By: _____
Mark T. Bailey
Assistant Attorney General
Consumer Protection Section
Phone: 303-866-4059
Fax: 303-866-4916

Exhibit A

Customers

3RD JUDICIAL DIST PROBATION
4TH JUDICIAL DIST
ADAMS STATE COLLEGE
AMERICAN INDIAN & ALASKA NATIV
ANDREW WOMMACK MINISTRIES
ARAPAHOE LIBRARY DIST EMP
ASPEN HISTORICAL SOCIETY
BANCROFT CLOVER WATER & SANITA
BRD OF WATER WKS PUEBLO
BUENA VISTA SCHL DIST
C S EMPLOYEE PURCHASE
CENTER FOR NETWORK DEVELO
CHEYENNE MOUNTAIN CHARTER SCHO
CHILDRENS ARK INC
CITY OF ALAMOSA
CITY OF COLORADO SPRINGS
CITY OF CORTEZ
CITY OF CRIPPLE CREEK
CITY OF DURANGO
CITY OF GRAND JUNCTION
CITY OF MANITOU SPRINGS
CITY OF TRINIDAD
CIVA CHARTER HIGH SCHL
CLASSICAL ACADEMY
CLEAR CREEK CNTY LIBRARY DIST
CLIFTON FIRE PROTECTION DIST
CMEA
CO WEST MENTAL HEALTH CRP
COLORADO MNCPL LEAGUE
CPCD COMM PARTNERSHIP
CSSD #11
CUSTER CNTY TREASURER
DISTRICT 11 PRINT SHOP
DOHERTY HIGH SCHL SSA
DURANGO SCHL DIST #9R
EAGLE RIVER FIRE PROTECTION
EL PASO CNTY
ESTES VALLEY PUBLIC LIBRA
FALCON SCHL DIST 49
GOVERNORS COMM ON COMMUNITY S
GRAND JUNCTION FED CREDIT

HANOVER SCHL DIST
HOUSING AUTHORITY OF PUEBLO
HOWARD BISHOP & CO
HYLAND HILLS PARKS & REC
IDE
KEYSTONE SYMPOSIA
KIRKLAND MUSEUM ART
KIT CARSON CNTY
LAS ANIMAS CLERK RECORDER
LAS ANIMAS CTY REHAB CENT
LIFEBRIDGE CHRISTIAN CHUR
LONGMONT CHRISTIAN SCHL
MADD COLORADO STATE OFC
MANCOS SD RE-6
MEDICAL EDUCATION COLLABO
MERCY HOUSING INC
METRO SOUTH
METRO STATE CIEL
MIDWESTERN COLORADO MENTAL HEA
MINERAL CNTY
MITCHELL HS SSA
MONTROSE CNTY ASSESSOR'S
MONTROSE CNTY SHERIFFS OFC
MONTROSE RECREATION DIST
MORGAN CNTY GOVT
MOUNTAIN RESOURCE CTR
MUSEUM OF COLORADO PRISONS
NATL ACADEMY OF NEURO
NCWCD
ODYSSEY ELEM
OFC OF THE CONTROLLER
OFC OF THE GUARDIAN AD LI
OJC BOOKSTORE
OURAY CNTY
PIKES PEAK CHRISTIAN SCH
PIKES PEAK LIBRARY DIST
PLATTEVILLE POLICE DEPT
POUDRE SCHL DIST R 1
POUDRE SCHL R 1
PPRTA
PUEBLO CITY CNTY HEALTH
PUEBLO LIBRARY DIST
ROCKY MTN MUTUAL HOUSING
SENATE BILL 94
SHERIDAN SCHL DIST 2

SOUTH SUBURBAN PARK & REC
STATE CAPITOL BLDG
TELLER CNTY GOVT
TELLURIDE SCHOOLS
THE VAIL ACADEMY
THOMPSON SCHL DIST
TOWN OF GENOA
TOWN OF HOOPER
TOWN OF KIOWA
TOWN OF LOCHBUIE
TOWN OF MONUMENT
TOWN OF PAGOSA SPRINGS
TOWN OF RANGLEY
TOWN OF SILVERTON
TOWN OF TELLURIDE
TOWN OF WESTCLIFFE
TROY UNIV WESTERN DIVISION
UNCOMPAHGRE VALLEY WATER
UPPER THOMPSON SANT DIST
WASHINGTON CHILDRENS CTR I
WASSON HS SSA
WELD CNTY SD #6
WEST SNOW/ICE CONF
WIDEFIELD SCHL DIST 3
WILLIAM J PALMER PARKS FOUNDAT
YMCA OF THE ROCKIES
YOUTH ASSESSMENT CTR

Exhibit B

[Date]

[Name and Address of Customer]

Re: Notice of Settlement and Claims Process

Dear _____,

On _____, 2011, Office Depot entered into a settlement agreement with the Attorney General of Colorado that relates to the prices charged to Colorado governmental and non-profit entities under Office Depot's now-expired general office supplies agreement offered through the U.S. Communities Government Purchasing Alliance. Under the applicable contract, during the period January 1, 2006, through March 30, 2009, certain office supplies were priced according to one of two price plans: "Option 1" and "Option 2." You are receiving notice of this settlement and the attached Claim Form because the records of Office Depot indicate that your entity purchased office supplies under Option 2 at some point during the relevant period.

Upon completion and timely submission of the Claim Form, your entity will receive a refund equal to the difference between the amount you paid for office supplies under Option 2 and the amount you would have paid under Option 1 (if greater), plus an additional 50% of that amount.

With questions, contact Assistant Attorney General Mark Bailey at 303-866-4059 or [OD contact].

Sincerely,

_____

Exhibit C

OFFICE DEPOT SETTLEMENT OFFER
CERTIFIED CLAIM FORM

TO BE CONSIDERED FOR QUALIFICATION UNDER THE OFFICE DEPOT SETTLEMENT OFFER, THIS FORM MUST BE COMPLETED, SIGNED, AND TRANSMITTED BY **[85 DAYS AFTER EXECUTION OF ASSURANCE]** TO:

Mark T. Bailey
Assistant Attorney General
Office of the Colorado Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203
303-866-4059

Part 1: Organization Information

Organization Name: _____
Address: _____
_____
Telephone Number: _____
Point of Contact: _____
Title: _____
Telephone Number: _____
E-mail Address: _____

Part 2: Certified Claim

This certified claim is made to the best of my knowledge, after a reasonable inquiry, and I am duly authorized to make this certified claim on behalf of my Organization.

To the extent my Organization was on the 'Option 2' price plan under the Office Depot contracts available through the U.S. Communities purchasing program, I hereby certify that the Organization either (1) did not choose to be on the 'Option 2' price plan or (2) was not informed that 'Option 2' was potentially more expensive than 'Option 1' and would not have chosen 'Option 2' if it had known of the potential cost difference.

Part 3: Release and Waiver

On behalf of the above-referenced organization ("Organization"), I understand and agree that if, after submitting this Certified Claim Form, the Organization receives a refund payment pursuant to the settlement between Office Depot, Inc. and the Colorado Attorney General, then the Organization and its affiliates, parents, and subsidiaries, and all their respective owners, shareholders, parents, affiliates, subsidiaries, divisions,

predecessors, successors, assigns, attorneys, agents, officers, directors, principals, employees, law firms, and legal representatives, as well as the heirs, personal representatives, executors, administrators, predecessors, successors, and assigns of each of the foregoing, in each case past and present (collectively, "Releasing Parties"), will thereby fully and forever release, acquit, and discharge Office Depot, Inc., and its affiliates, parents, and subsidiaries, and all their respective owners, shareholders, parents, affiliates, subsidiaries, divisions, predecessors, successors, assigns, attorneys, agents, officers, directors, principals, employees, law firms, and legal representatives, as well as the heirs, personal representatives, executors, administrators, predecessors, successors, and assigns of each of the foregoing, in each case past and present (collectively, "Released Parties"), from any and all manner of claims relating to the lead agency contracts formerly available through the U.S. Communities purchasing program, including but not limited to any grievances, controversies, allegations, accusations, , judgments, causes of action, demands, actions, suits, whether class, representative, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever as well as all forms of relief, including all remedies, costs, losses, liabilities, damages, debts, expenses, penalties, interest, and attorneys' and other professionals' fees and related disbursements, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, whether (a) claiming compensation, money damages, equitable or other type of relief; (b) based on any federal, state, municipal statute, law, ordinance, or regulation; (c) based on common law or public policy; or (d) sounding in tort or contract, whether oral or written, express or implied, law or equity, statutory or common law, or any other causes of action that the Releasing Parties, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Released Parties, from the beginning of time through the date this Certified Claims Form is submitted.

I further understand that under certain principles of law applicable in some jurisdictions, a general release does not extend to claims that a creditor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her could have materially affected his or her settlement with the debtor. TO THE EXTENT THAT SUCH PRINCIPLES OF LAW, OR ANY SIMILAR, COMPARABLE OR EQUIVALENT FEDERAL OR STATE LAW, RIGHT, RULE, OR LEGAL PRINCIPLE MAY BE APPLICABLE TO THIS RELEASE, THE RELEASING PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE AND RELINQUISH THEIR APPLICATION.

Signed on _____, 2011.

Signature: _____

Print Name: _____

Title: _____