

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
TAXPAYER PROTECTION BUREAU

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IN THE MATTER OF THE

**Assurance No. 14-117**

INVESTIGATION OF OFFICE DEPOT, INC.

BY ERIC T. SCHNEIDERMAN,  
ATTORNEY GENERAL OF THE STATE OF NEW YORK

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**ASSURANCE OF DISCONTINUANCE**

In May 2011, the Office of the Attorney General of the State of New York (the “Attorney General”) began an investigation, pursuant to the New York False Claims Act (Sections 187 through 194 of the New York State Finance Law) and Section 63(12) of the Executive Law of New York, into Office Depot, Inc.’s pricing of office supplies sold to the State of New York and its agencies and localities (the “Investigation”). This Assurance of Discontinuance (“Assurance”) contains the findings of the Attorney General’s Investigation and the relief agreed to by the Attorney General on behalf of the State of New York (the “State”) and Office Depot, Inc. (collectively, the “Parties”).

**ATTORNEY GENERAL’S FINDINGS**

1. Office Depot, Inc. (“Office Depot”) is a global supplier of office products and services headquartered in Boca Raton, Florida.
2. Office Depot submitted a bid for and was awarded a Miscellaneous Office Supplies contract (Contract No. PC63827) by the New York State Office of General Services (“OGS”), to supply miscellaneous office supplies to various state agencies and government entities throughout the State of New York as well as other authorized purchasers (the “New York OGS Customers”). This contract

(referred to herein as the “2008 OGS Contract”) began in May 2008 and ended in May 2013 (the “Relevant Period”). Total purchases under the 2008 OGS Contract during the Relevant Period were approximately \$11.6 million.

3. As part of the Investigation, the Attorney General’s Office reviewed the bid submitted by Office Depot for the 2008 OGS Contract. In its bid, Office Depot promised that, if awarded the 2008 OGS Contract, for each product included in the contract, it would offer the New York OGS Customers a price at least as low as the price at which it sold that product to the United States General Services Administration (the “GSA”).
4. Specifically, in its 2008 Invitation for Bids, OGS asked Office Depot: “Do you have a contract with the General Services Administration (GSA) or Veterans Affairs (VA) for products offered? (Check all that apply)” to which Office Depot checked “GSA.” In the same document, OGS asked Office Depot: “If [your answer to the prior question was] yes, will you offer New York State pricing equal to or better than your GSA or VA pricing?” to which Office Depot checked “Yes.”
5. The Attorney General’s Investigation found that, at the time Office Depot submitted the above referenced bid, and from May 2008 through and including May 2013, Office Depot had inadequate systems in place to ensure that the prices offered to New York OGS Customers were at least as low as the prices at which Office Depot sold goods to the GSA.
6. The Attorney General’s Investigation further determined that, during the Relevant Period, Office Depot in fact invoiced the New York OGS Customers purchasing

under the 2008 OGS Contract approximately \$243,000 more than it would have charged under GSA prices for the same products, despite its answers in its response to the Invitation for Bids as described above.

7. Based on its investigation, the State has certain civil claims against Office Depot for the following “Covered Conduct”:

- a. At the time Office Depot promised OGS that, if awarded the 2008 OGS Contract, it would offer prices equal to or better than GSA prices on all products, Office Depot had inadequate systems in place to ensure compliance with the promise.
- b. During the Relevant Period, Office Depot failed to ensure that prices offered to New York OGS Customers were equal to or better than the prices at which Office Depot sold products to the GSA, as required by the 2008 OGS Contract awarded to Office Depot and New York statutes and regulations referenced therein.
- c. During the Relevant Period, Office Depot charged New York OGS Customers prices for certain products that were in excess of the prices at which Office Depot sold such products under its arrangements with the GSA.

### **RELIEF**

WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of a continued Attorney General Investigation of Office Depot or of protracted litigation concerning the Covered Conduct, the Parties desire a final negotiated settlement and compromise of their disputes;

WHEREAS, Office Depot finds this Assurance prudent and appropriate and is willing to accept this Assurance voluntarily as a settlement of the Attorney General's Investigation, and neither admits nor denies the Attorney General's Findings (1—7) above;

WHEREAS, the Attorney General finds the relief contained in this Assurance appropriate and in the public interest;

WHEREAS, the Attorney General is willing to accept the terms of this Assurance pursuant to §63(15) of the Executive Law in lieu of commencing a statutory proceeding, and to discontinue the Investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties that:

8. Office Depot agrees to pay the State of New York four hundred and seventy-five thousand dollars (\$475,000) ("the Total Settlement Amount") in damages, penalties, fees, and costs, to be paid as follows:
  - a. Office Depot shall pay the State of New York two hundred thirty-one thousand, sixty-one dollars and forty-four cents (\$231,061.44), within 7 days of the execution of this Agreement (the "New York State Amount") by electronic funds transfer pursuant to instructions provided by the Attorney General;
  - b. Office Depot shall pay a total of two hundred forty-three thousand, nine hundred thirty-eight dollars and fifty-six cents (\$243,938.56) to the New

York OGS Customers listed in Schedule A in the individual amounts indicated therein (the “New York OGS Customers Amount”) and pursuant to the process described below:

- i. For those New York OGS Customers listed in Schedule A, Office Depot shall mail to each customer, within 30 days of the Effective Date of this Assurance, a check in the amount indicated in Schedule A in the column titled “Payment Amount” along with a letter in the form at Exhibit 1.
  - ii. In the event that any checks or mail sent pursuant to this section are returned to Office Depot, Office Depot shall make reasonable efforts to determine the correct address and attempt to re-send within 14 days of the return.
  - iii. In any event, the amounts of any checks that remain undeposited by any New York OGS Customers 180 days after the execution of this Assurance shall be remitted to the State of New York. On or after the 180th day after execution of this Assurance, Office Depot may place stop payment orders on any uncashed checks and promptly thereafter shall remit the aggregate amount of any such uncashed checks to the State of New York pursuant to instruction to be provided by the Attorney General.
9. In consideration of the obligations incurred by Office Depot herein, the State agrees to release Office Depot and its parents, subsidiaries, affiliated or related

entities, their predecessors in interest, and all of its and their current and former officers, directors, employees and agents (collectively, the “Office Depot Releasees”), from any civil or administrative monetary claim (including for attorney’s fees, costs, and expenses of every kind and however denominated) the State has or may have for the Covered Conduct against the Office Depot Releasees; except as provided in Paragraph 11 below.

10. Office Depot releases the Attorney General, OGS, as well as their employees, attorneys, and agents (“New York Released Parties”) from any claims (including for attorney’s fees, costs, and expenses of every kind and however denominated) that Office Depot has or may have for the Covered Conduct against any of the New York Released Parties.
11. The State specifically does not release any person or entity from any of the following liabilities:
  - a. Any civil, criminal, or administrative liability arising under state tax laws;
  - b. Any criminal liability;
  - c. Any liability to the State of New York (or its agencies) for any conduct other than the Covered Conduct;
  - d. Any liability based upon such obligations as are created by this Assurance;
  - e. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
  - f. Any liability for personal injury or property damage arising from the Covered Conduct;

- g. Any liability for failure to deliver goods or services due; and
  - h. Any civil or administrative liability of individuals, except as provided for herein.
12. The Attorney General has agreed to the terms of this Assurance based on, among other things, (i) the representations made to the Attorney General by Office Depot and its counsel and (ii) the Attorney General's Investigation as set forth in the Findings above. To the extent that any material representations, submissions, or omissions are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in his sole discretion. The Attorney General retains the right pursuant to Section 63(15) of the Executive Law of New York to compel compliance with all of the terms of this Assurance.
13. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Office Depot in agreeing to this Assurance. Office Depot represents that this Assurance is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
14. Office Depot represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized, by the appropriate employees, directors, and officers of Office Depot.
15. Office Depot shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without basis. Nothing in this paragraph affects Office Depot's (i)

- testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.
16. This Assurance is not intended for use by any third party in any other proceeding against Office Depot.
  17. For purposes of construction, this Assurance shall be deemed to have been drafted by all parties to this Assurance and shall not, therefore, be construed against any party for that reason in any subsequent dispute.
  18. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.
  19. This Assurance shall be binding on and inure to the benefit of the parties to it and their respective successors and assigns, provided that no party, other than the Attorney General, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the Attorney General.
  20. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance, if the Attorney General, in his sole discretion, determines that such unenforceability shall not affect any other provision of this Assurance.
  21. To the extent not already provided under this Assurance, Office Depot shall, upon request by the Attorney General, provide all documentation and information necessary for the Attorney General to verify compliance with this Assurance.
  22. All notice, requests and other communications to any party to this Assurance shall

be in writing and addressed as follows:

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

with a copy to:  
Paul Hourihan, Esq.  
Williams & Connolly LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005

Counsel for the State of New York  
Nicholas Suplina, Esq.  
Office of the Attorney General  
of the State of New York  
120 Broadway, 25<sup>th</sup> Floor  
New York, NY 10271

23. Acceptance of this Assurance by the Attorney General shall not be deemed or construed as an approval by the Attorney General of any of the practices or procedures referenced herein, and Office Depot shall make no representation to the contrary.
24. If, pursuant to Section 63(15) of the Executive Law of New York, a court of competent jurisdiction finally determines after all applicable appeals have been exhausted, that Office Depot has breached this Assurance, Office Depot shall pay to the Attorney General the costs, if any, of such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.
25. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this Assurance will be the Supreme Court of the State of New York, New

York County.

26. Pursuant to Section 63(15) of the Executive Law, evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the Attorney General.
27. This Assurance is effective on the date of signature of the last signatory to the Assurance (the "Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Assurance.
28. This Assurance may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
29. All correspondence related to this Assurance must reference the opening caption and Assurance No.14-117.

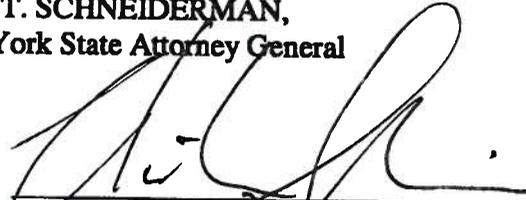
IN WITNESS WHEREOF, this Assurance is executed by the parties hereto.

**THE STATE OF NEW YORK**

ERIC T. SCHNEIDERMAN,  
New York State Attorney General

Dated: 5/6/14

By:



NICHOLAS O. SUPLINA, ESQ.  
Senior Advisor and Special Counsel  
120 Broadway  
New York, New York 10271  
212-416-8735

**OFFICE DEPOT, INC.**

Dated: 5/5/14

By:



HEATHER STERN, ESQ.  
Vice President, Associate General Counsel  
Office Depot, Inc.  
561-438-7501

## **SCHEDULE A**

## EXHIBIT 1

*[Date]*

*[Customer Name]*

*[Customer Address]*

Dear Valued Customer:

You are receiving this letter and the attached check because you have purchased items from Office Depot under a Miscellaneous Office Supplies contract (Contract No. PC63827) by the New York State Office of General Services (the "Contract") and are a customer identified in a settlement agreement reached between Office Depot and New York Attorney General Eric T. Schneiderman.

Attorney General Schneiderman alleges that, from 2008-2013, Office Depot failed to provide you and other customers purchasing through the Contract certain prices that were promised in the Contract. Specifically, Attorney General Schneiderman alleges that Office Depot was supposed to ensure New York customers buying under the Contract received prices as least as good as those received by the U.S. General Services Administration, but that Office Depot failed to do so with respect to certain items.

Office Depot does not admit to these allegations, but Office Depot and Attorney General Schneiderman have reached an agreement to resolve the dispute. Per the agreement, you are receiving the attached check, which represents 100% of the amount of the alleged overcharge relating to your purchases from 2008 to 2013. If you incurred less than \$50 in alleged overcharges, you are receiving a check for \$50.

We are pleased that the State of New York and Office Depot were able to bring this matter to conclusion as Office Depot prides itself on pricing integrity. If you have any questions for Office Depot regarding this agreement, please contact David Trudnowski at 562-490-9075. If you have any questions for the Attorney General's Office, please call Senior Advisor and Special Counsel Nicholas Suplina at 212-416-8735. You are a valued customer and we look forward to providing you with quality office supplies and services in the future

Sincerely,

*[Office Depot Representative]*