

Framework for the Supply of Personal Computers with Varying
Operating System Builds and Associated Products and Services

VENDOR PARTICIPATION AGREEMENT

Between
The Department of Finance
And
[VENDOR'S FULL NAME]

PART A.

A1. Whereas the **The Department of Finance** published a tender for Participation in a Framework for the Supply of Personal Computers and Associated Products and Services in the Official Journal of the European Communities on the [OJEC Date] and, having evaluated the response of [VENDOR'S FULL NAME] (“[THE VENDOR]”) to that tender, has selected [THE VENDOR] as a suitable vendor to participate in the Framework,

A2. This **VENDOR PARTICIPATION AGREEMENT** is made between the Department of Finance and [THE VENDOR].

A3. [THE VENDOR] and the Department of Finance agree that the terms of this Vendor Participation Agreement will govern [THE VENDOR]'S participation in the Framework for the Supply of Personal Computers and Associated Products and Services.

A4. [THE VENDOR] agrees to be bound by the terms of the Framework for the supply of Personal Computers and associated products and services. The Framework is set out in Schedule One hereto.

A5. This Agreement will commence on the [Commencement Date].

A6. For and on behalf of:

- i. Name of Participating Vendor: [Vendor's Full Name]
- ii. Address: [Vendor's Address]
- iii. By (Authorised Signature):
- iv. Name (Please Print):
- v. Title:
- vi. Date:

A7. For and on behalf of the the Department of Finance, [Contracting Authority's Address]

- i. By (Authorised Signature):
- ii. Name (Please Print):
- iii. Title:
- iv. Date:

Schedule 1.

S1-1. Definition of Terms

For the purposes of this agreement, the definitions listed below will be read as described.

1. **The Framework** is the multi-vendor Framework for the Supply of Personal Computers and Associated Products and Services established on foot of the tender published in the Official Journal of the European Communities on the [OJEC Date] (OJEC reference [OJEC Reference]).
2. **Contract Manager** is an individual or organisation that may be appointed by the Department of Finance to take responsibility for maintaining the smooth, efficient and viable operation of the Framework. Where no such Contract Manager is appointed any reference to a Contract Manager herein shall be taken as meaning the Department of Finance.
3. **CUSTOMER** is a public or civil service body or non-commercial state agency which is included on the list maintained by the Department of Finance. The Department of Finance maintains a list of over five thousand non-commercial public sector bodies that includes –
 - Central Government Departments, Offices and non-commercial public bodies that have a formal reporting and legal relationship with Departments;
 - Local Authorities in Ireland;
 - The Irish Health Sector;
 - Department of Education and associated agencies and organisations, third level institutions, VEC schools, primary and secondary schools;
 - Department of Justice Equality and Law Reform and agencies and organisations that have a formal reporting and legal relationship with the Department,
 - Department of Defence, the Defence Forces and agencies and organisations that have a formal reporting and legal relationship with the Department.
4. **VENDOR** is a company, consortium or other entity that has successfully tendered to participate in the Framework.
5. **Office Personal Computer** is a computer that is designed and marketed for use in an office (as opposed to the home or factory floor) and which is not intended as a portable device, server or thin client.
6. **Associated Product** is a consumable or a device or item that may be either purchased separately for use with a Personal Computer, such as, inter alia, monitors, keyboards, etc. or included in the specification of a Personal Computer whether internally, such as, inter alia, additional RAM, hard drives, graphics adapters, etc. or externally such as, inter alia, removable cards, etc.

7. **Associated Service** is a service that is related to the supply of usable Personal Computers and/or associated components and may include, inter alia, catalogue production, product delivery, deployment, etc.
8. **[THE VENDOR]'S Agreed Range** will be that range of products proposed by [THE VENDOR], and accepted by the CONTRACT MANAGER, in response to the tender on foot of which the Framework was established. [THE VENDOR]'S agreed range may only be revised, to take account of product and market developments over time, with the agreement of the CONTRACT MANAGER.
9. **Product Category** is a category of Personal Computers for which [THE VENDOR] must endeavour to supply a standard model and specification.
10. **[THE VENDOR]'S Standard Category Product** is that model and specification of Personal Computer that [THE VENDOR] proposes to meet those requirements laid down by the CONTRACT MANAGER for a standard product in each category. [THE VENDOR]'S Standard Category Product may only be revised with the agreement of the Contract Manager.
11. **Contract** is any agreement or arrangement between parties to the Framework that relates to the supply of products or services through the Framework.
12. **In Writing** will be understood to include electronic as well as handwritten or printed representations of information. For example an order submitted electronically will be deemed to have been submitted in writing.
13. **Mini Competition** is a process whereby all VENDORS in the Framework, and only the VENDORS in the Framework, are invited to bid for the supply of products or services through the Framework.
14. **Working Day** is any day excluding Saturday, Sunday and public holidays.
15. **Selling Rights** are those permissions granted by the CONTRACT MANAGER to [THE VENDOR] to sell goods and services through the Framework.

S1-2. General Terms

S1-2.1 Parties to the Framework

The Parties to the Framework are:

- (i) The CUSTOMERS, being those parties defined as such as per item S1-1(3) above.
- (ii) The VENDORS, including [THE VENDOR], being those parties defined as such as per item S1-1(4) above.
- (iii) The Department of Finance, being the CONTRACTING AUTHORITY. The Department of Finance may be a CUSTOMER of the Framework.

The Department of Finance and [THE VENDOR] shall in the fulfilment of their respective obligations hereunder act in good faith and in a professional and fair manner at all times exercising all due skill care and attention.

S1-2.2 Roles & Delegations

S1-2.2.1 The Department of Finance

- (i) The role of the Department of Finance is to endeavour to ensure that the Framework is implemented in full accordance with all legal requirements and to manage the participation of VENDORS to maximise the benefits of the agreement to the CUSTOMERS. In this regard the Department of Finance may recognise any body established by the CUSTOMERS to represent the CUSTOMERS' interests in the Framework and incorporate that body in the management of the Framework.
- (ii) The Department of Finance may delegate or sub contract any such tasks or functions related to its role as owner and manager of the agreement to any individual or organisation it deems suitably qualified.
- (iii) The Department of Finance may act as or nominate or appoint an individual or organisation to act as CONTRACT MANAGER of the Framework with responsibility for maintaining the smooth, efficient and viable operation of the Framework.
- (iv) The CONTRACT MANAGER'S role will include the provision of information, advice and assistance to CUSTOMERS in the framing and conduct of mini competitions.
- (v) The Department of Finance may act as or nominate or appoint an individual or organisation to act as BROKER to the Framework, with responsibility for accumulating and collating requests for quotations from CUSTOMERS and recommending one or more suitable suppliers from among the VENDORS.

- (vi) Any delegate, sub-contractor, contract manager, or broker appointed by the Department of Finance pursuant to (ii), (iii) or (iv) above, shall at no time be an agent of the Department of Finance. The Department of Finance shall have no liability whatsoever or howsoever arising from any act or omission of the said delegate, sub-contractor, contract manager or broker.

S1-2.2.2 [THE VENDOR]

- (i) The role of [THE VENDOR] is to endeavour to make the Framework the CUSTOMERS' preferred mechanism for procuring Personal Computers by making an attractively priced and specified range of products and services that are aimed at addressing the CUSTOMERS' needs available through the Framework.
- (ii) [THE VENDOR] agrees to act in full compliance with any and all directions of the Department of Finance or the Department of Finance's duly authorised delegate or the Contract Manager.
- (iii) [THE VENDOR] will nominate or appoint an individual to act as [THE VENDOR]'S CONTRACT LIAISON with responsibility for monitoring the ongoing operation of the Framework from [THE VENDOR]'S perspective and for raising any unresolved issues with the CONTRACT MANAGER.
- (iv) Subject to obtaining the approval of the CONTRACT MANAGER, [THE VENDOR] may delegate or sub contract any such tasks or functions related to its role as VENDOR to any individual or organisation [THE VENDOR] deems suitably qualified. It is [THE VENDOR]'S responsibility to put in place any such constraints or procedures necessary to ensure that [THE VENDOR]'S delegates or sub contractors do not compromise [THE VENDOR]'S obligations and responsibilities under the Framework and to ensure that the arrangements governing such delegations or sub contracts are fully compliant with any relevant directions of the CONTRACT MANAGER or conditions imposed by the CONTRACT MANAGER.
- (v) Any CONTRACT LIAISON or VENDOR delegate or sub-contractor referred to above in points (iii) and (iv) shall at all times be an agent of [THE VENDOR]. Any act of such an agent which if carried out by [THE VENDOR] would constitute a breach of this VENDOR PARTICIPATION AGREEMENT, shall constitute a breach on the part of [THE VENDOR], of this VENDOR PARTICIPATION AGREEMENT. [THE VENDOR] agrees to at all times keep the Department of Finance fully indemnified in respect of all acts or omissions on the part of [THE VENDOR] itself, its servants and agents.
- (vi) The Vendor's contract liaisons, delegates and subcontractors are as set out in the Third Schedule hereto.

S1-2.3 Duration

- (i) The Framework will endure for 1 year from the date of its commencement unless it is either extended by the Department of Finance choosing to exercise the option to extend mentioned in point (ii) below or terminated at an earlier date by an order of the Department of Finance.
- (ii) This decision to extend the duration of the framework will be taken annually; and after a maximum of four years of operation will cease – unless terminated earlier.
- (iii) This VENDOR PARTICIPATION AGREEMENT will endure so long as the Framework endures unless (1) it is first terminated by [THE VENDOR]. Termination by [THE VENDOR] will be subject to the conditions given in clause S1-2.17 of the Framework or (2) It is first terminated by the Department of Finance by the service of one month's written notice on [THE VENDOR].
- (iv) Any order of the Department of Finance to terminate the Framework will be made subject to the following conditions:
 - a. That the date of termination will not be greater than 3 years from the date of the Framework's commencement or, where an extension to the original term of the Framework has been exercised, not greater than the expiry date of the extension

And

- b. That the Department of Finance will serve one month's notice to all parties to the Framework of its intention to terminate it.

S1-2.4 Scope

- (i) The Framework will be for the supply of:
 - a. Personal Computers.
 - b. Personal Computer supplies and consumables.
 - c. Personal Computer components & parts, whether internal or external, sold separately or as included with an actual Personal Computer.
 - d. Associated services related to the supply of one or more usable Personal Computers, such as delivery, installation, replacement (whether including disposal or not), configuration, etc.
 - e. Associated services related to the ongoing maintenance of one or more Personal Computers, such as technical support, etc.

- (ii) [THE VENDOR] may only sell those products that are covered by the scope of the Framework through the Framework.
- (iii) CUSTOMERS may select any product from [THE VENDOR]'S agreed range and [THE VENDOR] may propose any product from that agreed range in accordance with the ordering mechanisms described in section S1-5 of this document.
- (iv) No CUSTOMER will be required to purchase any level of any product or service offered under the Framework.
- (v) CUSTOMERS will remain free to purchase any product or service offered under the Framework.

S1-2.5 Ownership & Intellectual Property Rights (IPR)

- (i) All ownership in any new copyright or other IPR pertaining to the Framework, including but not limited to the copyright of the Framework itself, this agreement and any and all data, information, reports, documents and images relating to them will reside solely with the Department of Finance. Additionally the Department of Finance may use licence and distribute any documents arising under this agreement to the CUSTOMERS and any permissions of use required from [THE VENDOR] with regard to background intellectual property shall be supplied upon a royalty free and perpetual manner.
- (ii) The Department of Finance may during the course of this Agreement require certain licences to facilitate the implementation and use of any systems and processes from [THE VENDOR] to permit the CUSTOMERS to take benefit of the purchasing and ordering envisaged under this agreement. Any such licences are and shall be granted to the Department of Finance and CUSTOMERS on a royalty free basis during the term of this Agreement.
- (iii) All ownership in any new copyright pertaining to any agreement between [THE VENDOR] and the CUSTOMER, including but not limited to the copyright of the agreement itself and any and all data, information, reports, documents, bespoke or developed software and images relating to its operation will reside solely with the CUSTOMER.
- (iv) Title in any Product or service shall pass to the CUSTOMER upon full payment of the agreed sum under the terms of the relevant agreement between CUSTOMER and [THE VENDOR].
- (v) For the avoidance of doubt none of the above provisions effect the pre-existing intellectual property rights or any background intellectual property rights of the Department of Finance, [THE VENDOR] or the CUSTOMER.

S1-2.6 Liability

- (i) [THE VENDOR] will be jointly and severally liable for any failure on [THE VENDOR]'S part or on the part of any Contract Liaison, delegate or sub contractor acting on behalf or at the behest of [THE VENDOR] to meet the requirements of any contract, agreement or arrangement concluded under the Framework. Such requirements include, but are not limited to, adherence to health and safety and environmental protection legislation.
- (ii) No liability or obligation arising from a contract, agreement or arrangement concluded between parties to the Framework may be imposed upon or extended to any other party.
- (iii) The Department of Finance shall not be held liable by any party to this Vendor Participation Agreement or to the Framework for any act or omission of the Department of Finance, its servants, agents or employees whether pursuant to the Vendor Participation Agreement, the Framework or otherwise.
- (iv) [THE VENDOR]'S liability will be limited to the full value of the contract, agreement or arrangement giving rise to the liability. [THE VENDOR] will not be liable for any indirect or consequential losses, loss of profits, data, revenues, contract or goodwill.
- (v) Notwithstanding any other provision of this agreement, [THE VENDOR] will not exclude or restrict liability for death or personal injury resulting from [THE VENDOR]'S own negligence and/or wilful misconduct.

S1-2.7 Information

- (i) [THE VENDOR] will provide any information relating to [THE VENDOR]'S participation in the Framework that the CONTRACT MANAGER requests. Such information will be supplied promptly, in the format and media prescribed by the CONTRACT MANAGER and all costs associated with the supply of such information will be borne by the party supplying it. Failure to supply the requested information in the timeframe specified will constitute a “penalty-strike” and may result in Sanction as specified at S1-11.2 (i) f.
- (ii) Under certain circumstances certain information, such as product specifications and prices, will be advertised among the CUSTOMERS and [THE VENDOR] acknowledges this and accepts the loss of confidentiality in these circumstances. The CONTRACT MANAGER will inform [THE VENDOR] when and where such circumstances will apply.
- (iii) [THE VENDOR] acknowledges that the Department of Finance and the CUSTOMERS of the Framework are subject to the Irish Freedom of Information Act and that information provided by [THE VENDOR] or relating

to [THE VENDOR] may be released to the public. It is [THE VENDOR]'S responsibility to identify any information [THE VENDOR] wishes to be withheld, together with valid reasons under the Act for withholding that information and a reasonable time limit after which the information may be released.

- (iv) Notwithstanding the fact that the Department of Finance and [THE VENDOR] will make all reasonable endeavours to keep all information relating to the Framework and this Agreement confidential, no party to the Framework will be liable for any loss or damage caused by the passing of information to parties outside the Framework.

S1-2.8 Product Worthiness & Suitability for Use

- (i) [THE VENDOR] confirms that all products offered through the Framework are of merchantable quality and conform to all applicable technical and quality standards laid down by National and EU Legislation. Where it can be shown that [THE VENDOR] has sold a product through the Framework that is in contravention of this confirmation [THE VENDOR] will replace that product or refund the cost and make good any direct loss or damage caused by the product.
- (ii) [THE VENDOR] confirms that all products offered through the Framework are suitable for use in a normal corporate office environment in terms of, inter alia, robustness, noise and other emissions. Where it can be shown that [THE VENDOR] has sold a product through the Framework that is in contravention of this confirmation [THE VENDOR] will replace that product or refund the cost.
- (iii) [THE VENDOR] guarantees that all products offered through the Framework will meet or exceed the relevant specifications published by the CUSTOMER in a Request for Quote for which the products are offered in response or any minimum specifications set by the CONTRACT MANAGER for publication in [THE VENDOR]'S active catalogue. The relevant specifications must be met or exceeded under all specified headings.
- (iv) [THE VENDOR] guarantees that where a product is proposed to address a specific intended use the product will be suitable in all regards for that use.
- (v) [THE VENDOR], by supplying a product or service through the Framework, indemnifies the CUSTOMER against any action, claim or liability relating to infringement of third parties' intellectual property rights arising from the ownership or normal use of that product or execution of that service as supplied by [THE VENDOR]. For the avoidance of doubt, this indemnity does not extend to any issue relating to an alleged or proven breach of intellectual property rights by the CUSTOMER where the ownership or normal use of the product or service supplied by [THE VENDOR] is incidental or immaterial to the claim, action or liability.

The Customer shall give to [the VENDOR] notice as soon as is reasonably practicable in writing of any claim being made or action threatened or brought against the Customer. The Customer shall provide all reasonable cooperation at [the VENDOR]'S reasonable expense with the Customer and permit [the VENDOR] at [the VENDOR]'S own expense to control and conduct any litigation or negotiations which may lead to a settlement of the claim. Under this section [the VENDOR] shall indemnify the Customer only the amount (i) a court finally awards; or (ii) [the VENDOR] accepts in any settlement.

In the event of such infringement or alleged infringement under clause S1-2.8 [the VENDOR] will at its own expense, either:-

- (a) Procure for the Customer the right to continue to use the Product; or in the alternative,
- (b) Modify the Product so that it becomes non-infringing without loss of functionality; or in the alternative
- (c) Replace the Product with equally suitable non-infringing Product; or
- (d) if none of the foregoing are reasonably achievable, credit the total price of the Product to the Customer or refund if the Agreement is terminated.

[The VENDOR] has no obligation regarding any claim based on any of the following:

- anything the Customer provides which is incorporated into a Product or [the VENDOR]'S compliance with any designs, specifications, or instructions provided by the Customer or by a third party on the Customer's behalf;
 - the Customer's modification of a Product's use in other than its specified operating environment; or
 - the combination, operation, or use of a Product with any product, data, apparatus, or business method that [the VENDOR] did not provide if the infringement would not have occurred were it not for such combination, operation or use.
- (vi) For the purpose of clarity, [the VENDOR] may refuse to respond to a CUSTOMER'S Request For Quote where [the VENDOR] believes that responding to such a Request For Quote would incur an unacceptable risk in terms of its guarantees and/or indemnity obligations under this VENDOR PARTICIPATION AGREEMENT.

S1-2.9 Force Majure

- (i) *Force Majure* will be understood to mean any circumstance that is beyond the party's reasonable control and which either temporarily or permanently prevents it from meeting its contractual obligations.
- (ii) *Force Majure* will not be taken to mean any circumstance arising out of commercial activity to include but not limited to product and raw material shortages, production delays, industrial disputes, etc., that the party can be expected to manage.
- (iii) Where genuine *force majeure* circumstances arise the affected party must notify the CONTRACT MANAGER on or before the next working day.

S1-2.10 Interpretation, Precedence & Jurisdiction

- (i) Where any ambiguity or confusion arises out of the meaning or interpretation of any word or term used in this agreement or any other document relating to it the meaning and interpretation attributed to that word or term by the Department of Finance will be final. The Department of Finance will not accept responsibility for any misunderstanding of this agreement or any other document relating to it.
- (ii) Where a period is specified in calendar days or working days that period will be deemed to commence on the appropriate day (calendar or working) after the event that gives rise to the period (e.g. an order gives rise to a delivery time limit) and to expire at midnight or at 5PM for calendar and working days respectively on the last day of the period.
- (iii) The order of precedence relating to any contract, agreement or arrangement concluded under the Framework is as follows:
 - a. The Laws of the Republic of Ireland.
 - b. The terms and conditions of this **VENDOR PARTICIPATION AGREEMENT**.
 - c. The **CUSTOMER'S** own terms and conditions.
 - d. **[THE VENDOR]'S** own terms and conditions.
- (iv) Where any apparent conflict arises between the terms and conditions of any contract, agreement or arrangement concluded by **[THE VENDOR]** on foot of the Framework and those of this agreement the terms and conditions of this agreement will take precedence.
- (v) **[THE VENDOR]** will provide the **CONTRACT MANAGER** with copies of any contract, agreement or arrangement concluded on foot of the Framework on or before the next working day after being asked to do so.

- (vi) The Framework and any contracts, agreements or arrangements concluded on foot of it, including this **VENDOR PARTICIPATION AGREEMENT**, will be subject to the jurisdiction of the Republic of Ireland.

S1-2.11 Tax & Legal Compliance

- (i) [THE VENDOR] will maintain itself in full compliance with all taxation obligations imposed by Irish Law for the full duration of this **VENDOR PARTICIPATION AGREEMENT**.
- (ii) It is [THE VENDOR]'S responsibility to have and to maintain any necessary qualifications, permissions, licences, etc. regarding the supply of the proposed products and services and to produce evidence of these upon demand by the **CONTRACT MANAGER** or the **CUSTOMER**.
- (iii) It is [THE VENDOR]'S responsibility to ensure that it is adequately appraised of the issues pertaining to it regarding the conduct of business by it through the Framework.
- (iv) [THE VENDOR] will conduct all business through the Framework in full compliance with all relevant legislation.

S1-2.12 Prohibition on Anti-Competitive Practices

- (i) [THE VENDOR] will not initiate or participate in any action or arrangement that might have the result of influencing or undermining the normal competitive forces within the Framework. Such actions or arrangements include, but are not limited to, collusive arrangements with customers, selective discounts or rebates, etc.
- (ii) [THE VENDOR] will not use the existence of the Framework to influence or undermine the normal competitive forces at work in the market at large.

S1-2.13 Commissions, Levies & Fees

- (i) Any party to this agreement may charge its delegates or sub contractors any commission, levy or fee it deems appropriate to the function so delegated or sub contracted.
- (ii) [THE VENDOR] may not charge the **CUSTOMER** or the Department of Finance or any delegate or sub-contractor of the **CUSTOMER** or of the Department of Finance any commission, levy or fee of any kind, other than the cost of those products or services procured from [THE VENDOR] by the **CUSTOMER**, **CUSTOMER'S** delegate or sub-contractor, Department of Finance, Department of Finance's delegate or Department of Finance's sub-contractor through the Framework.

- (iii) The Department of Finance may charge, or authorise the charging of, [THE VENDOR] any such commissions, levies or fees, including penalties, it deems appropriate to the effective operation of the Framework.

S1-2.14 Conflicts of Interest

- (i) Any registrable or declarable interest involving [THE VENDOR], or any person connected to [THE VENDOR], must be fully disclosed to the CONTRACT MANAGER immediately upon such information becoming known to [THE VENDOR]. The terms “registrable interest”, “declarable interest” and “connected person” shall be interpreted as per Section 2(1) of the Ethics in Public Office Act, 1995 or Section 166 of the Local Government Act, 2001 as appropriate.
- (ii) Any interest in any existing or proposed contract, agreement or arrangement involving [THE VENDOR] that could reasonably be perceived as conflicting with the Framework or any existing or proposed contract, agreement or arrangement concluded or to be concluded under it must be disclosed to the CONTRACT MANAGER and all other affected parties immediately.
- (iii) It is the responsibility of the party that believes its interests may be in conflict to bring the CONTRACT MANAGER’S attention to the conflict of interest.
- (iv) The CONTRACT MANAGER’S opinion as to whether or not an interest represents a conflict of interest will be final.
- (v) The CONTRACT MANAGER’S decision regarding the resolution of conflicts of interest will be final.

S1-2.15 Bonds & Guarantees

- (i) Without prejudice and at any time during the lifetime of the Framework, the CONTRACT MANAGER may require [THE VENDOR] to underwrite any aspect of [THE VENDOR]’S performance or participation in the Framework by means of a bond or guarantee. The nature, terms and conditions of the bond or guarantee will be as prescribed by the CONTRACT MANAGER.
- (ii) Without prejudice, the CUSTOMER may require [THE VENDOR] to underwrite any aspect of [THE VENDOR]’S execution of any term or condition of any contract, agreement or arrangement concluded under the Framework by means of a bond or guarantee. The nature, terms and conditions of the bond or guarantee will be as prescribed by the CUSTOMER.
- (iii) The details of all bonds and guarantees, including the terms and conditions, must be notified to the CONTRACT MANAGER.

S1-2.16 Contract Terms

- (i) Purchases under the Framework will be made by individual contracts, concluded by the CUSTOMER or the CUSTOMER'S delegate or sub-contractor on the one hand and [THE VENDOR] or [THE VENDOR]'S delegate or sub-contractor on the other.
- (ii) All contracts concluded under the Framework will be concluded in writing. Where the CONTRACT MANAGER requests a copy of any contract concluded on foot of the Framework [THE VENDOR] will provide such a copy in the medium and manner specified by the CONTRACT MANAGER. Failure to supply the requested information in the timeframe specified will constitute a "penalty-strike" and may result in Sanction as specified at S1-11.2 (i) f.
- (iii) It is [THE VENDOR]'S responsibility to ensure that any contract concluded between the CUSTOMER or the CUSTOMER'S delegate or sub-contractor and [THE VENDOR] or [THE VENDOR]'S delegate or sub-contractor under the Framework is in full compliance with all relevant legislation and this VENDOR PARTICIPATION AGREEMENT.
- (iv) The CONTRACT MANAGER may confirm to its satisfaction that the provisions of this VENDOR PARTICIPATION AGREEMENT where relevant are incorporated into any agreements concluded under this Framework between [THE VENDOR] and the CUSTOMER.
- (v) *Drawdown Agreements*, whereby an agreement is made to procure products and/or services from [THE VENDOR] over a period of time will be permitted under the Framework only where:
 - a. The Drawdown Agreement is concluded on foot of a Mini Competition.
 - b. The duration of the Drawdown Agreement is no longer than 12 months, extendable to a maximum of 18 months using any options defined in the Drawdown Agreement.
- (vi) No product or service other than those necessitated by the ongoing maintenance of a product procured through the Framework may be procured on foot of a contract concluded under the Framework once the Framework has expired or terminated.
- (vii) The CONTRACT MANAGER shall have the right to examine the terms and conditions and the manner of execution of any contract concluded under the Agreement.

S1-2.17 Termination

- (i) [THE VENDOR] may terminate its participation in the Framework by giving 3 months notice in writing to the CONTRACT MANAGER.

- (ii) Where [THE VENDOR] terminates its participation in the Framework [THE VENDOR] agrees not to use any information or experience gained through [THE VENDOR]'S participation in the Framework to deliberately undermine the Framework's efficiency or operation, or in any way that could be reasonably perceived as threatening the efficiency or operation of the Framework.
- (iii) Where [THE VENDOR] terminates its participation in the Framework [THE VENDOR] agrees not to take any deliberate action aimed at undermining the Framework's efficiency or operation or any other action that could be reasonably perceived as threatening the efficiency or operation of the Framework.

S1-2.18 Transfer

- (i) Where the CONTRACT MANAGER believes that a change has occurred, subsequent to a tendering process, to [THE VENDOR]'S personal circumstances, business and/or technical capacity or in respect of any criterion that was used to evaluate [THE VENDOR]'S suitability to participate in the Framework and that that change is likely to have a significant and detrimental impact on [THE VENDOR]'S participation the CONTRACT MANAGER may:
 - a. Revoke [THE VENDOR]'S Selling Rights through the Framework either permanently or until such time as the CONTRACT MANAGER is satisfied of [THE VENDOR]'S suitability to continue participating in the Framework

Or

- b. Require [THE VENDOR] to underwrite its performance by means of a guarantee or bond, the nature and terms of which will be defined by the CONTRACT MANAGER.

S1-2.19 Severance

- (i) If any of the provisions of this agreement are rendered, by any Court decision or as a result of any statute or Government Order, invalid or unenforceable, the invalidity or unenforceability of such provision shall not effect the other provisions of this agreement and shall be deemed not to form part of this agreement and the enforceability of the remainder of the agreement shall not be affected.

S1-2.20 Changes to these Terms and Conditions

- (i) The CONTRACT MANAGER, acting on behalf of the Department of Finance and the CUSTOMERS, may at any time during the life of the Framework alter, extend or delete any term or condition of the Framework or introduce new terms or conditions to the Framework subject to:
 - a. Having first given two weeks' notice of the intended change to all parties to the agreement. It is the respective parties' responsibility to disseminate such notices of intended changes to their relevant delegates and sub-contractors, etc.

AND

- b. Having obtained the express agreement of all VENDORS to each proposed change prior to the date such changes are to come into effect.

S1-2.21 Unsolicited Mail Or E-Mail

- (i) [THE VENDOR] will not send unsolicited mail or e-mail that refers to the Framework to CUSTOMERS without the express permission of the CONTRACT MANAGER in each instance.
- (ii) Where [THE VENDOR] does send such unsolicited mail or e-mail without the express permission of the CONTRACT MANAGER the CONTRACT MANAGER may impose such sanctions as the CONTRACT MANAGER deems appropriate in accordance with section S1-11 of the Framework.

S1-3. Participation

S1-3.1 The CUSTOMER

- (i) Any body or agency provided for under the terms of the tender through which the Framework was established may be designated a CUSTOMER of the Framework upon that body or agency's acceptance of the Framework Terms and Conditions.

S1-3.2 [THE VENDOR]

- (i) By virtue of being selected as a VENDOR on foot of the tendering exercise through which the Framework was established, [THE VENDOR] is granted non-exclusive Selling Rights that may only be revoked, either temporarily or for the duration of the Framework, by the Department of Finance or the CONTRACT MANAGER during the lifetime of this VENDOR PARTICIPATION AGREEMENT.

- (ii) Where [THE VENDOR]'S Selling Rights have been revoked neither [THE VENDOR] nor [THE VENDOR]'S delegates or sub-contractors may make any goods or services available through the Framework until [THE VENDOR]'S Selling Rights have been restored. For the avoidance of doubt this item does not affect the obligations of either [THE VENDOR] or the CUSTOMER under any contract, agreement or arrangement (including Draw-Down Agreements) concluded between [THE VENDOR] and the CUSTOMER under the Framework prior to the revocation of [THE VENDOR]'S Selling Rights.
- (iii) Where [THE VENDOR] engages sub contractors [THE VENDOR] will be responsible for the satisfactory execution of the entire contract, including the sub contracted portion, and the sub contractor's satisfactory and professional conduct.
- (iv) Where [THE VENDOR] proposes to sub contract any portion of a contract [THE VENDOR] must supply the CUSTOMER with full details of that sub contractor's qualifications and experience.
- (v) Where [THE VENDOR] proposes that [THE VENDOR]'S sub contractor be invoiced directly for any work done [THE VENDOR] will supply the CUSTOMER with any tax compliance documentation relating to the sub contractor that the CUSTOMER requires. [THE VENDOR] will ensure that its sub-contractor is in compliance with all taxation obligations.
- (vi) [THE VENDOR] will commit to an active participation in the Framework. The CONTRACT MANAGER may impose sanctions in accordance with section S1-11 of these Terms and Conditions where the CONTRACT MANAGER is satisfied that [THE VENDOR] is not actively responding to mini competitions with a view to winning them.
- (vii) [THE VENDOR]'S participation will be subject to monitoring by the CONTRACT MANAGER.

S1-3.3 Other Parties

- (i) The Department of Finance and its delegates or sub contractors may participate in the Framework only in accordance with the roles defined for them under section S1-2.2.1 above or in the terms and conditions of any such contract, agreement or arrangement made with the Department of Finance in accordance with the Framework.
- (ii) Any other party that acts on behalf or at the behest of the CUSTOMER, [THE VENDOR] or the Department of Finance will act only and wholly in accordance with the terms and conditions governing that party on whose behalf or at whose behest it acts.
- (iii) No party that is not a CUSTOMER, VENDOR or the Department of Finance or a delegate or sub contractor of a CUSTOMER, VENDOR or the

Department of Finance or that does not act on behalf or at the behest of a CUSTOMER, VENDOR or the Department of Finance may participate in the Framework in any capacity.

S1-4. Catalogue Management

S1-4.1 General

- (i) The Framework will cater for *Catalogue Items* and *Off-Catalogue Items*, defined as follows:
 - (a) Catalogue Items are those products from [THE VENDOR]'S agreed range that [THE VENDOR] advertises by means of an agreed catalogue. Any item that has been proposed as a Standard Category Product (see section S1-8.1(iii) of these terms and conditions) must be included as a Catalogue Item.
 - (b) Off-Catalogue Items are any item from [THE VENDOR]'S agreed range, and therefore available to be proposed or purchased through the Framework, that is not published in [THE VENDOR]'S catalogue.
- (ii) [THE VENDOR] will submit its catalogues for approval by the CONTRACT MANAGER in whatever format, via whatever medium or media and according to whatever schedule the CONTRACT MANAGER may specify from time to time. Failure to supply the requested information in the timeframe specified will constitute a “penalty-strike” and may result in Sanction as specified at S1-11.2 (i) f.
- (iii) [THE VENDOR] will bear all costs associated with the production and delivery of [THE VENDOR]'S Catalogue including, but not limited to, compilation, printing, conversion and/or extraction to electronic data files, etc.
- (iv) It is [THE VENDOR]'S responsibility to ensure that its catalogue is received by the CONTRACT MANAGER in the correct format and through the correct medium.
- (v) The right to approve or disapprove of [THE VENDOR]'S Catalogue, Catalogue Item or Off-Catalogue Item will reside with the CONTRACT MANAGER.
- (vi) No Catalogue, Catalogue Item or Off-Catalogue Item that is awaiting approval or that has been disapproved of by the CONTRACT MANAGER will be offered by [THE VENDOR] through the Framework.
- (vii) The CONTRACT MANAGER may temporarily or permanently revoke approval for any Catalogue, Catalogue Item or Off-Catalogue Item for whatever reason and at whatever time the CONTRACT MANAGER deems it appropriate to do so.

- (viii) [THE VENDOR] will not publish or advertise the contents of any Catalogue that is to be made available through the Framework to any party to the Framework other than the CONTRACT MANAGER without the prior approval of the CONTRACT MANAGER.
- (ix) The CONTRACT MANAGER may put in place any such mechanisms and procedures for processing catalogues as it deems appropriate. [THE VENDOR] will comply with any instructions issued by the CONTRACT MANAGER in this regard and will bear any costs associated with such compliance.
- (x) A VENDOR'S Catalogue that has been published or authorised for publication by the CONTRACT MANAGER will be known as the VENDOR'S *Active Catalogue*.

S1-4.2 Presentation & Distribution

- (i) [THE VENDOR] will comply promptly with any reasonable instruction of the CONTRACT MANAGER concerning the presentation and distribution of [THE VENDOR]'S catalogue.
- (ii) [THE VENDOR] will undertake to present its catalogue in a medium, manner and format consummate with its role in the Framework.
- (iii) [THE VENDOR], taking account of any relevant instructions from the CONTRACT MANAGER, may define the format and medium in which [THE VENDOR] presents and distributes [THE VENDOR]'S own catalogue to the CUSTOMER.
- (iv) The CONTRACT MANAGER may collate and present or distribute [THE VENDOR]'S catalogues, either individually or collectively with other VENDORS' catalogues, to whomever and in whatever format or medium the CONTRACT MANAGER deems appropriate.
- (v) [THE VENDOR] will undertake to render any such assistance requested of it by the CONTRACT MANAGER to any party nominated by the CONTRACT MANAGER in preparing, presenting and distributing [THE VENDOR]'S catalogue, whether uniquely or in conjunction with other information and/or VENDORS' catalogues and to bear any costs associated with [THE VENDOR]'S part in rendering that assistance.

S1-4.3 Ad hoc Modifications

- (i) [THE VENDOR]'S approved catalogue will remain current, and all Catalogue Items offered in it will continue to be offered as per the details contained in it, until succeeded by [THE VENDOR]'S next approved catalogue or suspended by an order of the CONTRACT MANAGER.

- (ii) No modifications to [THE VENDOR]'S approved catalogue may be made during the period of [THE VENDOR]'S approved catalogue's currency without the prior approval of the CONTRACT MANAGER except where the change is specifically a reduction of a particular item's price or a range of items' prices.
- (iii) The CONTRACT MANAGER may put in place any such mechanisms and procedures for processing ad hoc modifications to [THE VENDOR]'S approved catalogues as it deems appropriate. [THE VENDOR] will comply with any instructions issued by the CONTRACT MANAGER in this regard and will bear any costs associated with such compliance.

S1-5. Ordering Mechanisms

S1-5.1 General

- (i) The term *Direct Purchase* will refer to a purchase made by the CUSTOMER without recourse to a competition.
- (ii) The term *Mini Competition* will refer to a competition between those parties that have been registered as VENDORS in the Framework.
- (iii) Notwithstanding that the rules on advertising and time limits are superseded by those laid down in the terms and conditions of the Framework, any procedure defined in Chapter V of the Public Procurement Directive 2004/18/EC may be used in a Mini Competition.
- (iv) The *Ordering Process* will be understood to mean that process initiated by the CUSTOMER with the intention of procuring products or services through the Framework or of soliciting proposals of any kind from the VENDORS through the Framework whether that process ultimately results in the purchase of a product or service by the CUSTOMER through the Framework or not.
- (v) The CONTRACT MANAGER may define the format that the ordering process must take.
- (vi) Unless otherwise explicitly stated in a CUSTOMER'S Request for Quote, the terms of any quotation supplied by [THE VENDOR] in response to a mini competition will hold good for a minimum of 20 working days after the closing date of the mini competition.
- (vii) Unless otherwise explicitly agreed between the CUSTOMER and [THE VENDOR] the price obtained by the CUSTOMER on foot of a Direct Purchase will hold good for a minimum of 20 working days after the date on which the CUSTOMER obtained [THE VENDOR]'s price.

S1-5.2 Direct Purchases

- (i) The CUSTOMER may purchase any Associated Product and/or Service that relates to one or more Personal Computers offered by [THE VENDOR] through the Framework directly from [THE VENDOR] without recourse to a Mini Competition. For the avoidance of doubt this item does not apply to the purchase of actual Personal Computers through the Framework.
- (ii) Where a CUSTOMER has concluded a Draw-Down Agreement with [THE VENDOR] in accordance with item S1-2.16(v), and only in those circumstances, that CUSTOMER may purchase any Office Personal Computer or Associated Product and/or Service being the subject of that Draw-Down Agreement from [THE VENDOR] without recourse to a Mini Competition.
- (iii) [THE VENDOR] will comply with any direction of the CONTRACT MANAGER regarding the conduct of Direct Purchases including but not limited to any direction relating to the format and/or media to be used.

S1-5.3 CUSTOMER Managed Mini Competition

- (i.) The CUSTOMER may conduct and manage a Mini Competition between the VENDORS for any value or size of order.
- (ii.) The CONTRACT MANAGER may require that all Mini Competitions be conducted according to any such procedure or process and adhere to any minimum time limits that the CONTRACT MANAGER may define. [THE VENDOR] will comply with any instructions issued by the CONTRACT MANAGER in this regard and will bear any costs associated with such compliance.
- (iii.) The CUSTOMER may extend the time limits for the compilation of responses to a Request For Quote, submission of queries and issuing responses and for the evaluation of VENDORS' responses as appropriate to the needs and circumstances of the competition and the CUSTOMER.
- (iv.) The CUSTOMER must include all VENDORS under the Framework that are not prohibited from participating in a Mini Competition by reason of any sanction imposed by the CONTRACT MANAGER.
- (v.) Neither the CONTRACT MANAGER nor the Department of Finance shall have any liability howsoever arising from the conduct or outcome of a Customer Managed Mini Competition.

S1-5.4 BROKER Managed Mini Competition

- (i) The Department of Finance may provide a BROKER to act on behalf of the CUSTOMERS in conducting Mini Competitions. The terms and conditions governing the constitution and operation of the BROKER will be as defined by the Department of Finance.

- (ii) The BROKER may define, subject to the approval of the CONTRACT MANAGER, any such procedures or processes it deems necessary for the efficient management and provision of the BROKER service. [THE VENDOR] will comply promptly with all such procedures and/or processes and will bear the cost of [THE VENDOR]'S compliance.
- (iii) The CUSTOMER will not be bound in any way to accept the BROKER'S recommendation with regard to any Request For Quote submitted by the CUSTOMER.
- (iv) Neither the BROKER nor the Department of Finance nor the CONTRACT MANAGER will be responsible or liable in any way for the CUSTOMER'S acceptance or rejection of the BROKER'S recommendations with regard to any Request For Quote submitted by the CUSTOMER.
- (v) Neither the Department of Finance nor the CONTRACT MANAGER will be responsible or liable in any way howsoever arising from the conduct or result of a Broker Managed Mini Competition.

S1-6. Award Criteria

- (i) CUSTOMERS may define *Special Requirements* pertaining to any order placed through the Framework. A Special Requirement is any requirement relating to the fulfilment of an order or the successful or appropriate operation or execution of the products or services being the subject of the order and which cannot be reasonably anticipated at the time of electing to participate in the Framework.
- (ii) Proposals received in response to a Mini Competition conducted under the Framework will be evaluated according to the Award Criteria set out in no particular order below:
 - a. Suitability for Intended Use
 - b. Cost
 - c. References attesting to the quality of the VENDOR's products and/or services
 - d. Excess over Specification
 - e. Delivery Conditions
 - f. Environmental Considerations
 - g. Special Requirements
- (iii) The CUSTOMER or BROKER conducting the Mini Competition may further clarify the Award Criteria listed above to reflect the requirements of the particular Mini Competition.
- (iv) The CUSTOMER or BROKER conducting the Mini Competition may ascribe weighted values of its choice to each criterion to reflect the requirements of the particular Mini Competition.

- (v) The decisions of the CUSTOMER or BROKER conducting the Mini Competition with regard to the Award Criteria to be used for evaluating responses and the weightings to be ascribed to them are final.
- (vi) In all cases, the Award Criteria pertaining to the Mini Competition, together with their ascribed weightings, will be published in the Request For Quote.
- (vii) The CUSTOMER or BROKER conducting the Mini Competition will apply the Award Criteria contained in the Request For Quote in accordance with the core principles of equal treatment, mutual recognition, proportionality and transparency.
- (viii) The CUSTOMER or BROKER may make any such enquiries it deems appropriate to establish the likelihood of obtaining satisfactory products and services from [the VENDOR], including enquiries to known customers of [the VENDOR].
- (ix) Neither the BROKER, CONTRACT MANAGER nor [CONTRACTING AUTHORITY] will have any liability whatsoever in respect to the conduct and outcome of a mini competition. It is agreed by the parties that the broker will not constitute an employee or agent of the [CONTRACTING AUTHORITY] and will, for the avoidance of doubt, constitute a private entity.
- (x) The CUSTOMER or BROKER conducting the Mini Competition will not be bound to accept the lowest priced or any proposal it receives.
- (xi) [The VENDOR] shall have the right to participate on an equal and non-discriminatory basis in any competition where [the VENDOR] is deemed qualified according to the terms of S1-3.2 and S1-5.3 (iv) above.
- (xii) Further to item S1-6 (xi) above, the CUSTOMER will notify [the VENDOR] of its requirements by means of a Request For Quote under the Framework issued to [the VENDOR] and all other qualified VENDORS at the same time.
- (xiii) The Request For Quote will include the following information at a minimum:
 - (a.) The Contact Details of the person in the CUSTOMER'S organisation who is running the competition.
 - (b.) The Closing Date and Time of the competition. This will have regard to the complexity of the CUSTOMER'S requirements and allow a reasonable amount of time for [the VENDOR] to compile and submit a response.
 - (c.) As much detail regarding the CUSTOMER'S requirements as reasonably possible.
 - (d.) The marking scheme to be used in evaluating responses

- (xiv) [The VENDOR] agrees to respond to every Request For Quote received by [the VENDOR] and to ensure that it responds with its best terms and conditions, including price, in each instance. Failure to supply the requested information in the timeframe specified will constitute a “penalty-strike” and may result in Sanction as specified at S1-11.2 (i) f.
- (xv) [The VENDOR] shall have the right to clarify any aspect of the Request For Quote up to a reasonable time limit. The CUSTOMER shall not unreasonably deny any request for clarification and will make its response to any such request available to the other VENDORS participating in the competition.
- (xvi) The format of the Request For Quote will be as determined by the CUSTOMER. Where the CUSTOMER defines a format for the response it is [the VENDOR]’S responsibility to ensure that [the VENDOR]’S response adheres to this format. [The VENDOR] acknowledges and agrees that the CUSTOMER is free to disregard any response that, in the opinion of the CUSTOMER, deviates unacceptably from the prescribed format.
- (xvii) The CUSTOMER will undertake to evaluate [the VENDOR]’S response to a Request For Quote in a reasonable amount of time and to notify [the VENDOR] of the outcome of a competition to which [the VENDOR] has submitted a response. Such notification will include the name of the successful VENDOR.
- (xviii) [The VENDOR] agrees to respond to every Request For Quote received by [the VENDOR] and to email a copy of the response to the Contract Manager in all instances. Failure to copy the Contract Manager will constitute a “penalty-strike” and may result in Sanction as specified at S1-11.2 (i) f.

S1-7. Order Fulfilment

S1-7.1 General

- (i) An order placed through the Framework will be understood to have been fulfilled when the CUSTOMER has accepted delivery of all of the items included on the order.
- (ii) The term *delivery lead time* will be read as the interval between the date on which an order is submitted by the CUSTOMER and the date on which the CUSTOMER takes delivery of all the products or services ordered.
- (iii) The delivery lead time will commence on the working day following the date on which the CUSTOMER’S order is submitted and will end on the date the goods and/or services being the subject of the CUSTOMER’S order are delivered.

S1-7.2 Time Limits

- (i) [THE VENDOR] will specify a delivery lead time in working days on [THE VENDOR]'S response to the CUSTOMER'S Request For Quote and ensure that the CUSTOMER receives delivery within that specified lead time.
- (ii) The delivery lead time mentioned in item S1-7.2(i) above may only be extended with the express agreement of the CUSTOMER. The CUSTOMER will be free to give or withhold its agreement to an extension at its sole discretion.
- (iii) [THE VENDOR] may not make deliveries that, while observing the delivery lead time mentioned in S1-7.2(i) above, would result in the partial fulfilment of a CUSTOMER'S order on a temporary or permanent basis without providing the CUSTOMER with at least 2 working days' notice.

S1-7.3 Delivery Methods

- (i) A Delivery Method will be understood to be any process or otherwise by which [THE VENDOR] provides the CUSTOMER with ownership and physical possession of goods, or any process or otherwise by which [THE VENDOR] completes the execution of all relevant tasks associated with the provision of a service, ordered through the Framework.
- (ii) [THE VENDOR] will advise the CONTRACT MANAGER of its Delivery Methods and any details pertaining to its Delivery Methods that the CONTRACT MANAGER requests.
- (iii) [THE VENDOR] will define a *Standard Delivery Method*, in consultation with the CONTRACT MANAGER, by which all deliveries will be made under normal circumstances.
- (iv) [THE VENDOR]'S Standard Delivery Method will be available to all CUSTOMERS of the Framework at the same cost.
- (v) [THE VENDOR]'S Standard Delivery Method will specify that all deliveries will be made to the location specified by the CUSTOMER during normal working hours and on normal working days.
- (vi) No change to [THE VENDOR]'S Standard Delivery Method or any change to the terms or conditions relating to [THE VENDOR]'S Standard Delivery Method will be considered valid without the prior approval of the CONTRACT MANAGER.
- (vii) [THE VENDOR] will be free to define and advertise Alternative Delivery Methods, though not to impose or insist upon an Alternative Delivery Method for any order placed through the Framework.

S1-7.4 Acceptance

- (i) All deliveries to the CUSTOMER'S premises are subject to acceptance by the CUSTOMER.
- (ii) The CUSTOMER may specify Acceptance Criteria on either its order or on the standard Request For Quote.
- (iii) [THE VENDOR] will allow 2 working days, or any other such period that has been agreed, from the date of delivery for the CUSTOMER to conduct any test or inspection to establish whether or not the CUSTOMER'S Acceptance Criteria have been met.
- (iv) Where the CUSTOMER is not satisfied, for whatever reason, that its Acceptance Criteria have been met by part or all of the delivery the CUSTOMER is free to reject that part or all of the delivery without prejudice or liability of any kind.
- (v) The CUSTOMER will notify [THE VENDOR] of the CUSTOMER'S acceptance or rejection of the delivery as soon as possible and in any case not later than 2 working days after the date of delivery or such other period as was agreed under S1-7.4(iii).
- (vi) Upon being notified of the CUSTOMER'S rejection of a delivery [THE VENDOR] will make all necessary arrangements, and bear all associated costs, to have the rejected items removed from the CUSTOMER'S premises within 2 working days of the notification.
- (vii) A CUSTOMER'S acceptance of an order will not affect that CUSTOMER'S statutory rights with regard to product worthiness, warranted performance or in any other regard. [THE VENDOR]'S guarantees under clause S1-2.8 will continue notwithstanding the Customer's acceptance of an order.

S1-8. Product Categories and Specifications.

S1-8.1 General

- (i) The CONTRACT MANAGER may at any time and at its sole discretion define a Product Category, being an identifiable sub-group of products either available or potentially available through the Framework.
- (ii) The CONTRACT MANAGER may define a minimum specification for a Standard Category Product for each such Product Category. These Standard Category Product specifications may be revised at any time and at the CONTRACT MANAGER'S sole discretion to take account of industry and market changes over time.
- (iii) [THE VENDOR] will endeavour to make a suitable model that meets or exceeds the most current specification of each Standard Category Product available for purchase through the Framework as a Catalogue Item.

- (iv) Where [THE VENDOR] is unable to make a suitable model that meets or exceeds the most current specification of a Standard Category Product available for purchase through the Framework the CONTRACT MANAGER may disqualify [THE VENDOR] from responding to any competition for such Standard Category Products.
- (v) [THE VENDOR] may, having advised the CONTRACT MANAGER of the proposed changes and obtained the CONTRACT MANAGER'S approval for those changes in advance, revise the specification of [THE VENDOR]'S Standard Category Products to incorporate whatever changes to the specification are deemed appropriate.
- (vi) Changes that would, in the opinion of the CONTRACT MANAGER, result in a poorer overall specification will not be approved.
- (vii) Where, in any product category, demand for a particular product or specification of a product offered by [THE VENDOR] through the Framework exceeds the demand for [THE VENDOR]'S Standard Product in that category the CONTRACT MANAGER may direct [THE VENDOR] to revise the specification of [THE VENDOR]'S Standard Product in that category to take account of the CUSTOMERS' preferences.
- (viii) The CONTRACT MANAGER may at any time request that a sample unit of a particular Standard Category Product be supplied for testing by the CONTRACT MANAGER or its delegate. Any such tests will be designed and administered by the CONTRACT MANAGER or its delegate and the results will be final, irrespective of the particular product's performance in apparently similar or identical tests. All costs associated with the delivery and collection of such samples will be borne by [THE VENDOR]. Failure to supply the sample unit in the timeframe specified will constitute a "penalty-strike" and may result in Sanction as specified at S1-11.2 (i) f.

S1-8.2 Basic and Marginal Revisions

- (i) A *Marginal Revision* will be understood to be any revision to [THE VENDOR]'S Standard Category Product Specification that, in the opinion of the CONTRACT MANAGER, offers little or no discernable overall improvement, regardless of whether or not improvements are made under particular headings of the specification.
- (ii) A *Basic Revision* will be understood to be any revision to [THE VENDOR]'S Standard Category Product Specification that, in the opinion of the CONTRACT MANAGER, does offer a clear discernable overall improvement.

- (iii) No Basic or Marginal revision will be made available to the CUSTOMER without being first approved by the CONTRACT MANAGER.
- (iv) [THE VENDOR]'S Standard Category Product Specification will only be deemed to have been *Properly Revised* where [THE VENDOR] has made a Basic Revision to its Standard Category Product Specification that has been approved by the CONTRACT MANAGER.
- (v) A Proposed Revised Price as described in section S1-9.2 may only be proposed for a Properly Revised Standard Category Product Specification.
- (vi) [THE VENDOR]'S current Standard Product Specification in any category will be [THE VENDOR]'S most recent Properly Revised Standard Product Specification for that category and any subsequent Marginal Revisions to that specification.

S1-9. Price Calculation

S1-9.1 General

- (i) [THE VENDOR] guarantees that the price of any item or service included in [THE VENDOR]'S catalogues published through the Framework is, at the time of publication, equal to or less than [THE VENDOR]'S lowest price available to any Irish public or civil service body or state agency.
- (ii) [THE VENDOR] guarantees that the price of any item or service included in [THE VENDOR]'S response to any given Request For Quotation submitted by a CUSTOMER of the Framework will be, at the time that response is submitted, equal to or less than [THE VENDOR]'S lowest price available to any Irish public or civil service body or state agency.
- (iii) [The VENDOR] guarantees that the price and specification of a standard category product included in [the VENDOR]'S response to any given order placed under an existing drawdown by a CUSTOMER of the Framework will be, at the time that order is placed, equal to or better than [the VENDOR]'S price and specification listed in [the VENDOR]'S current published price catalogue.
- (iv) [THE VENDOR] will supply any information the CONTRACT MANAGER requests to demonstrate [THE VENDOR]'S compliance with the above guarantees within two working days of such a request. Failure to supply the requested information in the timeframe specified will constitute a “penalty-strike” and may result in Sanction as specified at S1-11.2 (i) f.
- (v) Where it can be shown that [THE VENDOR] is in accidental breach of either one or both of the above guarantees [THE VENDOR] will refund the

difference between the amount paid by the CUSTOMER, including any commissions, levies or fees that [THE VENDOR] has recovered from the CUSTOMER on its own behalf or on behalf of another party, and the lower price made available by [THE VENDOR] to an Irish public or civil service body or state agency.

- (vi) Where it can be shown that [THE VENDOR] has been deliberately or repeatedly in breach of the above guarantees or that [THE VENDOR] has not applied due diligence in calculating the price it charges the CUSTOMER so that it is in accordance with the terms and conditions of the Framework, the CONTRACT MANAGER may impose whatever sanction or sanctions it considers appropriate within the terms described in section S1-11 of this document.

S1-9.2 Standard Category Product Pricing

- (i) For each new Standard Category Product specified by the CONTRACT MANAGER, [THE VENDOR] will be required to set an *Initial Price* for [THE VENDOR]'S proposed Standard Product in that category.
- (ii) [THE VENDOR] guarantees that a price offered for a Standard Category Product in response to any competition conducted under this Framework which is lower than the Initial Price and accepted by a public body will constitute [THE VENDOR]'s ceiling price for that Standard Category Product for all public bodies from that date onwards and that [THE VENDOR]'s ceiling prices will be revised accordingly. All customers (including those with existing drawdown arrangements) must be charged at the revised prices from that date onwards.
- (iii) In each case, the Initial Price proposed by [THE VENDOR] will be in full compliance with section S1-9.1 above.
- (iv) Upon proposing a *Properly Revised Specification* for [THE VENDOR]'S Standard Product in any Product Category, [THE VENDOR] will submit a Proposed Revised Price for that Standard Product that is in full accordance with section S1-9.1 above and which will not exceed the Initial Price proposed by [THE VENDOR] for that Standard Product.
- (v) Without affecting the generality of the previous item, the CONTRACT MANAGER may at its sole discretion approve a Proposed Revised Price for [THE VENDOR]'S Standard Product that is in excess of [THE VENDOR]'S Initial Price for that Standard Product where:
 - a. The CONTRACT MANAGER is satisfied that the specification of that Standard Product is sufficiently in excess of the most recent specification for that Standard Product to warrant a price in excess of the Initial Price

And

- b. The requirement for the new specification arose out of a direction by the CONTRACT MANAGER as per item (vii) of section S1-8.1 above or out of circumstances that the CONTRACT MANAGER is satisfied were beyond [THE VENDOR]'S control.
- (vi) [THE VENDOR] will supply the CONTRACT MANAGER with any information regarding the mechanisms used and the values and circumstances that contributed to the calculation of [THE VENDOR]'S Initial or Proposed Revised Prices immediately on being requested to do so by the CONTRACT MANAGER.

S1-10. Dispute Resolution

S1-10.1 General

- (i) The Department of Finance may establish, in consultation with the VENDORS and the CUSTOMERS or any body that the CUSTOMERS have put forward to represent their interests, any such mechanisms for resolving disputes and/or appealing decisions made by the CONTRACT MANAGER as it deems appropriate to the smooth, efficient and viable operation of the Framework.
- (ii) Without prejudice to their legal rights, all parties to the Framework will agree to make all reasonable efforts to resolve any dispute between themselves and any other party to the Framework as quickly and amicably as possible.
- (iii) No party to the Framework may rely on any other party to the Framework to arbitrate or resolve any dispute between a particular party to the Framework and that party's delegates or sub-contractors.

S1-10.2 Between CUSTOMERS and [THE VENDOR]

- (i) Where a dispute arises between a CUSTOMER and [THE VENDOR] and either party considers it unlikely that an amicable or satisfactory resolution will be arrived at that party may invite the CONTRACT MANAGER to arbitrate or invoke those mechanisms mentioned in item S1-10.1(i) above.

S1-10.3 Between the CONTRACT MANAGER and [THE VENDOR]

- (i) Where [THE VENDOR] believes that the CONTRACT MANAGER is not acting in a manner commensurate with the role assigned to the CONTRACT MANAGER by the Department of Finance [THE VENDOR] may seek to have the CONTRACT MANAGER censured by the Department of Finance in any manner that the Department of Finance deems appropriate and which is

provided for in the contract, agreement or arrangement by which the CONTRACT MANAGER is appointed.

- (ii) Where the Department of Finance is acting as the CONTRACT MANAGER and the option given above is considered unsatisfactory by [THE VENDOR] the relevant parties will seek to resolve the issue by a mutually agreeable means. Such means may include arbitration by a panel of neutral CUSTOMERS and VENDORS or by a mutually agreed independent third party. Any costs associated with securing and retaining the agreed arbitration service will be shared equally between the parties at dispute.
- (iii) Where a dispute cannot be resolved, [THE VENDOR]'S only redress shall be to terminate this VENDOR PARTICIPATION AGREEMENT in accordance with section S1-2.17.

S1-11. Sanctions

S1-11.1 General

- (i) The CONTRACT MANAGER may impose any such sanctions, whether financial or otherwise, upon [THE VENDOR] for any act or failure to act on the part of [THE VENDOR] or on the part of any contract liaison, delegate or sub contractor of [THE VENDOR] that has or in the opinion of the CONTRACT MANAGER is likely to have a negative impact on the smooth, efficient and viable operation of the Framework.
- (ii) Any sanction imposed upon [THE VENDOR] by the CONTRACT MANAGER is subject to appeal by [THE VENDOR] to the arbitration mechanisms defined in section S1-10.
- (iii) Where [THE VENDOR] has been sanctioned by the CONTRACT MANAGER [THE VENDOR] may apply to put a bond or guarantee in place that in the opinion of the CONTRACT MANAGER offers adequate protection against a recurrence of the issue that gave rise to the sanction. Such a bond or guarantee may, at the discretion of the CONTRACT MANAGER, be accepted in lieu of the specified sanction.
- (iv) Where [THE VENDOR] is dissatisfied with the terms or effects of any sanction imposed upon [THE VENDOR] by the CONTRACT MANAGER and upheld by the Department of Finance, [THE VENDOR]'S only redress will be to terminate this VENDOR PARTICIPATION AGREEMENT in accordance with the terms given in section S1-2.17 of this agreement, whereupon any sanctions will be deemed unenforceable.
- (v) The CONTRACT MANAGER may notify CUSTOMERS of any sanctions it imposes or of issues under investigation that may lead to sanctions being imposed.

- (vi) Unless otherwise provided for in the terms of an agreement, contract or arrangement concluded under the Framework, a CUSTOMER can not impose sanctions on [THE VENDOR] other than the specific instance of delayed delivery described in section S1-11.2(i)a below.

S1-11.2 Specific Sanctions

- (i) Notwithstanding the generality of Condition S1-11.1 the following specific sanctions may be applied by the CONTRACT MANAGER in the circumstances described:
 - a. *Delayed Delivery:* Where products or services are not delivered within the lead time specified by [THE VENDOR] on [THE VENDOR]'S response to the CUSTOMER'S Request for Quote, as per item S1-7.2(i), or by such date in excess of that timeframe as has been previously agreed by the CUSTOMER and [THE VENDOR], [THE VENDOR] will:
 - i. Where delivery is made within 5 working days of the maximum delivery date or of the agreed delivery date, waive any delivery fees associated with that delivery.
 - ii. Where delivery is made in excess of the fifth working day from the maximum delivery date or of the agreed delivery date, waive any delivery fees associated with that delivery and reduce the cost of those items by 1% for each working day by which the goods have been delayed to a maximum of 15% ("Liquidated Damages"). The Liquidated Damages will be in full and final settlement and not be considered a penalty.
 - iii. Where, for whatever reason, a CUSTOMER that is entitled to the waivers and/or refunds mentioned in points (i) and (ii) above has paid the full amount as per the original order (i.e. the waivers/reductions have not been taken into account in the actual payment) [THE VENDOR] will either refund the relevant amount or provide the CUSTOMER with a credit note for the appropriate value as per the CUSTOMER'S wishes.
 - b. *Inadequate Participation:* The CONTRACT MANAGER may suspend [THE VENDOR]'S Selling Rights for a period to be decided by the CONTRACT MANAGER where the CONTRACT MANAGER believes [THE VENDOR] is not actively participating in the Framework. The CONTRACT MANAGER will furnish [THE VENDOR] with one month's written notice of its intention to apply this sanction, stating its reasons for believing that [THE VENDOR] is not actively participating in the Framework.
 - c. *Anti-Competitive Actions:* Where [THE VENDOR] engages in any act that may, in the opinion of the CONTRACT MANAGER, have a negative impact on the normal competitive forces at work within the Framework or

an unnecessarily negative impact on the competitive forces at work in the wider marketplace the CONTRACT MANAGER may permanently suspend [THE VENDOR]'S Selling Rights through this agreement.

- d. *Poor Service or Quality:* Where the CONTRACT MANAGER is satisfied that the service provided by [THE VENDOR] is poor or that the quality of the products being supplied is poor the CONTRACT MANAGER may suspend [THE VENDOR]'S Selling Rights through the Framework until such time as the CONTRACT MANAGER is satisfied that [THE VENDOR] will supply products and services of an acceptable quality. The CONTRACT MANAGER will furnish [THE VENDOR] with one month's written notice of its intention to apply this sanction, citing examples of poor quality products or services supplied by [THE VENDOR].
- e. *Failure to Comply with a Direction of the CONTRACT MANAGER:* Where [THE VENDOR] fails to comply with any direction of the CONTRACT MANAGER within the timeframe specified or to a standard that is acceptable to the CONTRACT MANAGER the CONTRACT MANAGER may do any or all of the following:
- i. Suspend [THE VENDOR]'S Selling Rights for a period that is in the opinion of the CONTRACTING AUTHORITY commensurate with [THE VENDOR]'S failure to comply.
 - ii. Impose a fixed fine on [THE VENDOR] to be paid in accordance with the instructions of the CONTRACT MANAGER.
 - iii. Impose any such penalty, whether financial or otherwise, that is agreeable to both the CONTRACT MANAGER and [THE VENDOR].
- f. *Accumulation of Penalty-Strikes:* Where [THE VENDOR] accumulates three consecutive "penalty-strikes" as a result of failure to comply with any directions where a penalty-strike applies, the CONTRACT MANAGER may do any or all of the following:
- i. Suspend [THE VENDOR]'S Selling Rights for a period that is in the opinion of the CONTRACTING AUTHORITY commensurate with [THE VENDOR]'S failure to comply.
 - ii. Impose a fixed fine on [THE VENDOR] to be paid in accordance with the instructions of the CONTRACT MANAGER.
 - iii. Impose any such penalty, whether financial or otherwise, that is agreeable to both the CONTRACT MANAGER and [THE VENDOR].

The directions where a penalty-strike applies are:

- S1-2.7(i)
- S1-2.16(ii)
- S1-4.1(ii)
- S1-6(xiv)
- S1-6(xviii)

- S1-8.1(viii)
- S1-9.1(iv)

S1-12. Removal from the Framework

Where the CONTRACT MANAGER is satisfied that [the VENDOR] is not engaging with the Framework to the fullest extent in terms of responding to the CONTRACT MANAGER'S requests for information, responding to the CUSTOMER'S Requests For Quote, actively seeking to win business through the Framework and actively ensuring that the CUSTOMER is satisfied with [the VENDOR]'S service the CONTRACT MANAGER will notify [the VENDOR] of the reason why the CONTRACT MANAGER is dissatisfied and afford [the VENDOR] an opportunity to explain and address the issue.

Where no satisfactory explanation is offered, or where [the VENDOR] fails to address the issue in a satisfactory manner and in a reasonable amount of time, the CONTRACT MANAGER may seek the Department of Finance's permission to remove [the VENDOR] from the Framework on a permanent or temporary basis.

Where [the VENDOR] is removed from the Framework on a temporary or permanent basis [the VENDOR]'S obligations under the terms of any contract concluded on foot of the Framework will remain unaffected.

S1-13. Service of Notices

Any notice to be given or served on foot of this Framework, and for the avoidance of doubt the Vendor Participation Agreement, shall be in writing and for the purposes of this clause in writing excludes electronic representations of information, and may (in addition to any other mode of service prescribed by the Contract Manager) be given by directing it to the intended recipient and delivering it by hand or sending same by prepaid post to the address set out for [THE VENDOR] at clause A6 of this Agreement and for the Department of Finance at clause A7 of this Agreement.

Any such notice shall be deemed to have been given or served, when delivered- at the time of delivery and, when posted- at the expiration of three working days after the envelope containing the same and properly addressed, was put in the post.

Schedule 2 – Products & Services

Schedule 3 – [THE VENDOR]'S Contacts