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CH Framework Agreement
Schedule 5.3 (Financial Reports and Audit Rights)

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Schedule 5.3

Financial Reports and Audit Rights

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1. Definitions

In this Schedule, the following definitions shall apply:

"Annual Contract Report"	the annual contract report to be provided by the Supplier to the Framework Authority pursuant to paragraph 1 of Part B of Schedule 5.3 (Financial Reports and Audit Rights);
"Audit Agents"	(a) the Framework Authority's internal and external auditors; (b) the Framework Authority's statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Framework Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
"Contract Amendment Report"	the contract amendment report to be provided by the Supplier to the Framework Authority pursuant to Paragraph 1 of Part B;
"Financial Model"	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Framework Authority in accordance with paragraph 2 of Part B of Schedule 5.3 (Financial Reports and Audit Rights);
"Financial Reports"	the Contract Inception Report and the reports listed in the table in paragraph 1.1 of Part B of Schedule 5.3 (Financial Reports and Audit Rights);
"Financial Representative"	a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
"Financial Transparency Objectives"	has the meaning given in paragraph 1 of Part A of Schedule 5.3 (Financial Reports and Audit Rights);
"Material Change"	a Change to this Framework Agreement or any Call-Off Agreement which: (a) materially changes the profile of the Charges; or (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by: (i) 5% or more; or

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(ii) £5m or more; and

"Open Book Data"

complete and accurate financial and non-financial information which is sufficient to enable the Framework Authority or a Customer to verify the Charges already paid or payable and charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier's and Key Sub-contractor's costs broken down by item/heading including capital expenditure;
- (b) the Supplier's and Key Sub-contractor's operating expenditure relating to the provision of the Services including an analysis by item/heading;
- (c) the Supplier's and Key Sub-contractor's overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier and Key Sub-contractor's Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier; and
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency.

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PART A

Financial Transparency Objectives and Open Book Data

1. Financial Transparency Objectives

The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Framework Authority in order to achieve, the following objectives:

Understanding the Charges

- (a) for the Framework Authority to understand any payment sought from it by the Supplier including an analysis of the costs, overhead recoveries (where relevant) and the Supplier Profit Margin; and
- (b) for both Parties to be able to understand the Financial Model and cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

Agreeing the impact of Change

- (d) for both Parties to agree the quantitative impact of any Changes to this Framework Agreement or any Call-Off Agreement that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (g) to enable the Framework Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "**Financial Transparency Objectives**").

2. Open Book Data

2.1 The Supplier acknowledges the importance to the Framework Authority, each Customer and any Service Recipients of the Financial Transparency Objectives and the Framework Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Framework Authority and/or the Audit Agents access to the Open Book Data.

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3. Internal Control Assurance

- 3.1 Each anniversary of the Framework Effective Date, the Supplier shall provide to the Framework Authority:
- (a) a statement of internal control in the form agreed by the Parties which describes the adequacy and effectiveness of the Supplier's internal control arrangements, systems and processes;
 - (b) a copy of the latest management letter received by the Supplier from its auditors (or similar document from an external assurance entity) in relation to the adequacy and effectiveness of the Supplier's internal control arrangements, systems and processes; and
 - (c) subject to Paragraph 3.2, any other information reasonably required by the Framework Authority in relation to the adequacy and effectiveness of the Supplier's internal control arrangements, systems and processes.
- 3.2 The Framework Authority and the Supplier shall, as reasonably required by the Framework Authority, discuss the information provided in accordance with Paragraph 3 and whether (and to what extent) any additional information is required to be provided by the Supplier.

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PART B

Financial Reports

1. Provision Of The Financial Reports

1.1 The Supplier shall provide:

- (a) the Contract Inception Report on or before the Framework Effective Date; and
- (b) during the Term the following financial reports to the Framework Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Framework Authority or any Customer
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates

1.2 The Supplier shall provide to the Framework Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Framework Authority to the Supplier on or before the Framework Effective Date for the purposes of this Framework Agreement. The Framework Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Framework Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Framework Authority's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Framework Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all costs as exclusive of any VAT; and
- (e) quote all costs and Charges based on current prices.

1.5 Each Annual Contract Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Framework Authority in advance of issue of the relevant Financial Report), acting with express authority, as:

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- (a) being accurate and not misleading;
- (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
- (d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
- (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the costs and Supplier profit margin forecast by the Supplier; and
- (c) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Framework Authority may have on any of the Financial Reports and/or Open Book Data.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

- (a) the costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Framework Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this paragraph 1.8 shall not have the effect of amending any provisions of this Framework Agreement or any Call Off Agreement.

2. Financial Model

2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract

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Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Framework Authority; and

- (c) the Framework Authority shall either within 10 Working Days of the meeting referred to in paragraph 2.1(a) notify the Supplier that:
 - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Framework Authority with such supporting evidence as is required to address the Framework Authority's concerns within 10 Working Days of such notification and the Framework Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
 - (ii) the Framework Authority has approved the relevant Financial Report.

2.2 Following approval by the Framework Authority of the relevant Financial Report in accordance with paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Framework Agreement, a version of which shall be held by both the Framework Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Framework Authority's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Framework Authority, the matter shall be referred for determination in accordance with Schedule 6.3 (Dispute Resolution Procedure) of the Framework Agreement.

3. Key Sub-Contractors

3.1 The Supplier shall, if requested by the Framework Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

3.2 Without prejudice to paragraph 1.1 of Part C, the Supplier shall:

- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Framework Authority, provide the Framework Authority or procure that the Framework Authority is provided with:
 - (i) full copies of audit reports for the Key Sub-contractors. The Framework Authority shall be entitled to rely on such audit reports; and
 - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

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PART C

Audit Rights

1. Audit Rights

- 1.1 The Framework Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Framework Agreement and each Call-Off Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
 - (b) to verify the accuracy of the Charges and any other amounts payable by any Customer under any Call-Off Agreement (and proposed or actual variations to such Charges and payments);
 - (c) to verify the costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) to verify the certificate of costs and/or the Open Book Data;
 - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Framework Agreement or any Call-Off Agreement and applicable Law;
 - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Framework Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (h) to obtain such information as is necessary to fulfil the Framework Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement or any Call Off Agreement;
 - (j) to carry out the Framework Authority's internal and statutory audits and to prepare, examine and/or certify the Framework Authority's annual and interim reports and accounts;
 - (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Framework Authority has used its resources;
 - (l) to verify the accuracy and completeness of any management information delivered or required by this Framework Agreement or any Call Off Agreement;

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- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - (o) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - (p) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (q) to review the Supplier's compliance with the Standards; and/or
 - (r) to review the integrity, confidentiality and security of the Framework Authority Data and Customer Stored Data.
- 1.2 Except where an audit is imposed on the Framework Authority, a Customer or a Service Recipient by a regulatory body or where the Framework Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Framework Agreement or any Call-Off Agreement, the Framework Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Framework Agreement or any Call Off Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.
- 2. Conduct Of Audits**
- 2.1 The Framework Authority shall during each audit comply with the reasonable security, sites, systems and facilities operating procedures of the Supplier and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Framework Authority's obligations of confidentiality, the Supplier shall on demand provide the Framework Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Framework Authority within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.

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- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels and Key Performance Indicators at a level of detail sufficient to verify compliance with the Service Levels and Key Performance Indicators.
- 2.4 The Framework Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Framework Authority for all the Framework Authority's reasonable costs incurred in connection with the audit.

3. Use Of Supplier's Internal Audit Team

- 3.1 As an alternative to the Framework Authority's right pursuant to paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Framework Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in paragraph 1.1.
- 3.2 Following the receipt of a request from the Framework Authority under paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Framework Authority has unfettered access to:
- (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4. Response To Audits

- 4.1 If an audit undertaken pursuant to paragraphs 1 or 3 identifies that:
- (a) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - (b) a Customer has overpaid any Charges, the Supplier shall pay to the relevant Customer:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Customer up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Customer in undertaking the audit,and the Customer may exercise its right to deduct such amount from the Charges if it prefers; and
 - (c) a Customer has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by that Customer.