

## Schedule 3

### Commercial Schedule

#### Part 1: Customer Contracts – CT-16

The version of CT-16 in force from time to time, the current version of which is attached hereto.

#### Part 2: Not Used

#### Part 3: Permitted Activities

1. Any activity in relation to the management and execution of existing Customer Contracts as described in the LTP for Management of other Sales Contracts – 1.1.5.35.16.60.35584.00001.35/07044 and the associated Scope Elements, attachments and supporting documentation referenced in the said detailed volume and work identified in any associated Performance Based Incentives, provided that any such proposed activities:
  - 1.1 Are not novel, contentious or repercussive;
  - 1.2 Do not involve the provision of any indemnity;
  - 1.3 Do not involve a waiver of debt;
  - 1.4 Do not involve a Customer-funded project valued at over £100,000 (one hundred thousand pounds);
  - 1.5 Do not involve a contractual compensation payment over £100,000 (one hundred thousand pounds);
  - 1.6 Do not generate a value of sales or costs over £1,000,000 (one million pounds);
  - 1.7 Does not involve a potential cash deferment to later years;
  - 1.8 Does not involve a price reduction, credit note or incremental risk over £100,000 (one hundred thousand pounds); and
  - 1.9 Are not and are not expected to be loss-making.
2. In the event of any uncertainty as to whether any of the conditions at 1.1 to 1.9 apply the Contractor will consult the Authority and shall take the Authority's views into account.

## CT-16 CUSTOMER CONTRACTS

### *PURPOSE AND APPLICATION*

#### A. *Purpose*

*This procedure is to set out the requirements for a Tier 1 Contractor's Customer Contracts when:*

- (a) the Contractor wishes to enter into a new Customer Contract;*
- (b) the Contractor wishes to amend an existing Customer Contract;*
- (c) the NDA is being consulted on the exercise of a discretion under a Customer Contract;*
- (d) the NDA is issuing instructions in respect of a Customer Contract;*
- (e) the Contractor wishes to amend existing or propose new Permitted Activities.*

#### B. *Application*

*This procedure applies to all NDA Tier 1 Contractors.*

*The contractually binding language is in bold regular font, with narrative identified in italics. Note that the requirement to consult and gain approval for new or amended customer contracts under this procedure does not replace any other requirements under the primary contract. For example, a new customer contract might also give rise to the need for changes under Schedule P, revisions to performance-based incentives under CT05 and/ or sub contracts under CT15. In these instances all relevant applications should be submitted together and cross-referenced appropriately. NDA will endeavour to approve such applications simultaneously, but approval under one of the above procedures or this procedure does not automatically imply approval under all relevant procedures.*

**This Part Schedule F Part 5 (CT-16 (Customer Contracts)) shall be applied by the Parties on a site-by-site basis such that the provisions herein are operated separately for Sellafield and Windscale.**

#### C. *Definitions*

*Clause or Schedule: refers to the primary contract between the NDA and the Contractor and all defined terms have the meaning given to them in the Contract.*

### 1A. **OVERARCHING VALIDATION PROCEDURE**

**Before seeking the NDA's approval under any provisions in this CT-16 (Customer Contracts), the Contractor shall consult the provisions set out in the overarching validation procedure of Part A (Overarching Validation Procedure) of CT-14 (Project Validation and Financial Sanction). In complying with this CT-16 (Customer Contracts), the Parties shall work together to endeavour to ensure that the process set out in this CT-16 (Customer Contracts) is, so far as possible, run simultaneously with consultation under and oversight of the processes set out in CT-14 (Project Validation and Financial Sanction), CT-15 (Subcontracting/Procurement Requirements) and/or Schedule P (Setting the NTWP and Change Control) as applicable such that each**

Party is aware of what is happening and what decisions are being taken and the reasons for them under each approval process and there is minimal requirement for the duplication of the same information to obtain different approvals.

## **1. CONSULTATION**

*Except to the extent that the Contractor has Permitted Activities, the Contractor should consult with NDA on any amendment to or exercise of a discretion under a Customer Contract or any New Customer Contract. The objective of such consultation is to keep NDA informed, and where necessary for the NDA to provide guidance to a Contractor on its preferred approach. Consultation should be at an early stage so that no commercial or moral obligation is created to the Customer prior to consultation.*

### **1.1 Except to the extent that the Contractor has Permitted Activities pursuant to Clause 10A.4 (Permitted Activities) (in which event the provisions of Clause 10A.4 shall apply), and subject to the NDA's rights under Clause 10A.3 (Authority's right to instruct), if the Contractor wishes to:**

**1.1.1 enter into a New Customer Contract; or**

**1.1.2 amend any existing Customer Contract, whether the amendment is initiated by the Contractor or the counterparty, or suggest to the counterparty any amendment; or**

**1.1.3 exercise a discretion under a Customer Contract,**

**the Contractor shall consult with the NDA at an early stage of the proposal in order to ascertain its feasibility and, when making such proposal, shall take into consideration any current Strategy for Customer Contracts of the NDA as notified to the Contractor by the NDA from time to time.**

### **1.2 In consulting with the NDA pursuant to paragraph 1.1, the Contractor shall provide the NDA with written details (an "Outline Proposal") setting out:**

**1.2.1 the date of the Outline Proposal;**

**1.2.2 details of the New Customer Contract or the Customer Contract which the Contractor wishes to amend or in respect of which it wishes to exercise a discretion including:**

**(A) a description of its subject matter;**

**(B) the identity of the counterparty;**

**(C) the date of the Customer Contract and of any amendments already effected to it or, in the case of a New Customer Contract, the likely commencement date;**

**(D) its estimated value; and**

**(E) its term or, in the case of a New Customer Contract, its likely term;**

- 1.2.3 the reasons why the Contractor wishes to enter into the New Customer Contract or the Amendment, and whether the amendment is being initiated by the Contractor or the counterparty;
- 1.2.4 any significant risks proposed to be accepted by the Contractor under the New Customer Contract or as a result of the Amendment or the exercise of the discretion and any aspect of the proposal that might in the reasonable opinion of the Contractor be considered novel or contentious;
- 1.2.5 any details in respect of the counterparty and its business and/or the Contractor's relationship with the counterparty which the NDA may reasonably be expected to find useful in evaluating the Outline Proposal;
- 1.2.6 in the case of the exercise of a discretion, the relevant provisions of the Customer Contract which have given rise to the Contractor's discretion;
- 1.2.7 in the case of the exercise of a discretion, the background to and any relevant issues surrounding the exercise of the discretion including the Contractor's opinion concerning how and why the discretion should be exercised;
- 1.2.8 an outline of the estimated Capital Costs and Current Costs which are likely to be incurred or no longer incurred as a result of the Contractor entering into the New Customer Contract or the Amendment;
- 1.2.9 an outline of the estimated annual and total revenue likely to be receivable by the Contractor under the New Customer Contract (and whether the revenue should be treated as Category 1 Revenue or Category 2 Revenue) or, in the case of an Amendment, any impact on the annual and total revenue likely to be receivable under the existing Customer Contract;
- 1.2.10 the proposed timescales for effecting the New Customer Contract or the Amendment (as the case may be).
- 1.3 The NDA shall evaluate the Outline Proposal.
- 1.4 Throughout any consultation, the Contractor shall comply (as applicable) with paragraph 15 of Schedule P (Setting the NTWP and Change Control) in respect of Trending.
- 1.5 The NDA may request from the Contractor such additional information as the NDA reasonably requires for the purposes of considering the Outline Proposal (having regard to the preliminary nature of the Outline Proposal) and shall make any such request to the Contractor as soon as reasonably practicable after receiving the Outline Proposal.
- 1.6 The Contractor shall provide any information requested by the NDA pursuant to paragraph 1.5 as soon as reasonably practicable after receiving such request.
- 1.7 As soon as reasonably practicable after the NDA receives the Outline Proposal (and any additional information provided pursuant to paragraph 1.5), the Parties shall meet to discuss the Outline Proposal and, if applicable, how the Contractor should exercise the relevant discretion.
- 1.8 In respect of an Outline Proposal relating to the exercise of a discretion:

- 1.8.1 **the NDA shall notify the Contractor in writing of the NDA decision in respect of how the Contractor should exercise the relevant discretion including relevant details concerning in what manner and when the discretion should be exercised. (For the avoidance of doubt, if as a direct result of the NDA's instructions under this paragraph 1.8.1, the Contractor requires a Change (a "Related Change") pursuant to Schedule P (Setting the NTWP and Change Control), the provisions of paragraph 11 of Schedule P (Setting the NTWP and Change Control) shall apply);**
- 1.8.2 **without prejudice to paragraph 1.8.1 or 1.8.3, upon receipt of the NDA's notification provided pursuant to paragraph 1.8, the Contractor shall carry out the NDA's instructions in accordance with the notification;**
- 1.8.3 **if the counterparty to the Customer Contract is unwilling to proceed in the manner prescribed by the NDA, the Contractor shall use its best endeavours to carry out the NDA's instructions and the NDA and the Contractor shall consult with one another in order to agree how to resolve the issue. If the resolution changes the contents of the NDA's notification given pursuant to paragraph 1.8.1, the NDA shall amend its notification accordingly and as soon as reasonably practicable shall provide the amended notification to the Contractor.**
- 1.9 **In respect of an Outline Proposal relating to a New Customer Contract or an Amendment:**
- 1.9.1 **as soon as reasonably practicable after the receipt of the Outline Proposal and following any consultation, the NDA shall notify the Contractor in writing whether the NDA accepts or rejects the Outline Proposal;**
- 1.9.2 **if the NDA rejects the Outline Proposal, it shall give reasons for the rejection to the Contractor including confirming whether or not the NDA considers that the Outline Proposal is within the NDA's Strategy for Customer Contracts;**
- 1.9.3 **if the NDA accepts the Outline Proposal, the Contractor shall serve a written notice on the NDA (a "Proposal") setting out the information listed at paragraph 2.1 and the Parties shall comply with the procedure set out in paragraph 2 of this CT-16 (Customer Contracts).**

*Note that the use of a Scope Trend under Schedule P to anticipate changes to revenue and costs will be appropriate when there is a reasonable likelihood that a new or revised Customer Contract will have a financial impact. If genuine uncertainty exists over whether, for example, a new business opportunity is within the NDA's new business strategy, it may be appropriate to complete the consultation before including the potential sales and costs arising as a Scope Trend under Schedule P. The other procedures referred above should, if applicable, be followed in parallel with the New Customer Contract or Amendment approval process in paragraph 2 below so that all relevant matters are reviewed by NDA simultaneously.*

*The Contractor shall maintain a CT-16 Log in accordance with Clause 10A.5 to record the status of any consultations initiated under this paragraph 1, and any subsequent Proposal submitted under paragraph 2. The CT-16 Log shall record the date of any submission and response, any connected applications made under other procedures, and any actions or*

*Instructions requested by the NDA or outstanding. When the matter is concluded (by a contractual decision, Amendment, New Customer Contract signature, the implementation of an Instruction, or discontinuation), a closure entry should be made in the CT-16 Log.*

**1.10 Any decision of the NDA in relation to an Outline Proposal shall be at its sole discretion.**

**2. CONTENTS OF CONTRACTOR'S PROPOSAL FOR NEW CUSTOMER CONTRACTS AND AMENDMENTS**

*Proposals complying with this paragraph 2 should be submitted only after consultation under paragraph 1 has been completed. During the consultation process, the NDA representative may give its acceptance so that an appropriate point has been reached for the Proposal to be initiated.*

*Both the consultation and the approval process are iterative processes and the NDA representative may approve the initiation of non-binding customer negotiations in order to obtain further clarification. It is therefore anticipated that the full and detailed information requirements of this paragraph may not always be capable of fulfilment early in a negotiation process, in which case the Proposal should make clear where applicable that the proposed terms set out are those anticipated and are subject to further negotiation.*

**2.1 Any Proposal served pursuant to paragraph 1.9.3 shall set out on Form CT-16A:**

**2.1.1 the details set out in the Outline Proposal as provided in accordance with paragraphs 1.2.1 to 1.2.5 updated, amended or added to as necessary;**

**2.1.2 any estimated Capital Costs and Current Costs which are likely to be incurred or no longer incurred as a result of the Contractor entering into the New Customer Contract or the Amendment;**

**2.1.3 the estimated annual and total revenue likely to be receivable by the Contractor under the New Customer Contract (and whether the revenue should be treated as Category 1 Revenue or Category 2 Revenue) or, in the case of an Amendment, any impact on the annual and total revenue likely to be receivable under the existing Customer Contract;**

**2.1.4 the proposed text of the New Customer Contract or the Amendment;**

**2.1.5 evidence that the Contractor has the necessary expertise to fulfil its obligations under the New Customer Contract or under the existing Customer Contract following the implementation of the Amendment and the Contractor's proposed use of resources to carry out the New Customer Contract or the existing Customer Contract following the implementation of the Amendment including use of Employees, Nominated Staff and Key Personnel, the facilities and installations on the Site, equipment, stock and other assets;**

**2.1.6 the Contractor's proposed strategy for managing its work under the New Customer Contract or under the existing Customer Contract following the implementation of the Amendment including cost control and performance management;**

- 2.1.7 the Contractor's assessment on whether the New Customer Contract or the Amendment will have an impact on the provision of the Tasks or the Contractor's other obligations under this Contract;
- 2.1.8 the proposed timescales for effecting the Amendment or entering into the New Customer Contract and any date by which the NDA's decision on the Amendment or the New Customer Contract is critical;
- 2.1.9 in the case of an Amendment, any effect which the Amendment may reasonably be expected to have on the Contractor's ability to fulfil its obligations under the existing Customer Contract;
- 2.1.10 in the case of an Amendment, whether the Amendment to the Customer Contract will be effected via the Customer Contract's variation mechanism or through the mutual agreement of the parties to the Customer Contract.

## **2.2 Related Approvals**

**In addition to the requirements of paragraph 2.1, if paragraphs 3.1 (Tasks requiring approval under CT-14 (Project Validation and Financial Sanction Procedure)) and 3.2 (Change proposed but no approval required under CT-14 (Project Validation and Financial Sanction Procedure)) of CT-14 (Project Validation and Financial Sanction Procedure) do not apply (or the NDA decides that a Task does not require NDA validation pursuant to Part B (Project Validation and Financial Sanction of Tasks) of CT-14 (Project Validation and Financial Sanction Procedure)) and the Contractor considers that entering into a New Customer Contract or an Amendment will require the Contractor to enter into a new Subcontract or amend an existing Subcontract, the Contractor shall explain this in the Proposal and attach any details to the Proposal which the Contractor is required to produce pursuant to the requirements of CT-15 (Subcontracting/Procurement Requirements).**

## **3. EVALUATION OF THE PROPOSAL**

- 3.1 The NDA may request from the Contractor such additional information as the NDA reasonably requires for the purposes of considering the Proposal and shall make any such request to the Contractor as soon as reasonably practicable after receiving the Proposal.
- 3.2 The Contractor shall provide any information requested by the NDA pursuant to paragraph 2.1 as soon as reasonably practicable after receiving such request.
- 3.3 Following the receipt of the Proposal (and any additional information requested pursuant to paragraph 2.1), the NDA shall evaluate the Proposal taking into account all relevant issues, including:
  - 3.3.1 whether the New Customer Contract or the Amendment will affect the Contractor's performance of the Tasks or its ability to comply with Clause 4.1 (Nature of Contractor's Obligations);
  - 3.3.2 whether the Contractor in the NDA's opinion has the necessary expertise and resources to fulfil the New Customer Contract or the amended Customer Contract;

- 3.3.3 whether the New Customer Contract or the amended Customer Contract will adversely affect the relationship of the NDA with Third Parties;
- 3.3.4 whether the New Customer Contract or amended Customer Contract materially adversely affects the risks, costs or liabilities to which the Contractor or the NDA is exposed; or
- 3.3.5 the relationship with the counterparty (or the proposed counterparty).

and, at the same time, if paragraphs 3.1 (Tasks requiring approval under CT-14 (Project Validation and Financial Sanction Procedure)) and 3.2 (Change proposed but no approval required under CT-14 (Project Validation and Financial Sanction Procedure)) do not apply (or the NDA decides that a Task does not require NDA validation pursuant to Part B (Project Validation and Financial Sanction of Tasks) of CT-14 (Project Validation and Financial Sanction)), the NDA shall consider any subcontracting approval requirements in accordance with the relevant paragraphs of CT-15 (Subcontracting/Procurement Requirements).

- 3.4 As soon as reasonably practicable after the NDA receives the Proposal, the Parties shall discuss and attempt to agree:
  - 3.4.1 the contents of the Proposal (or any modifications made pursuant to paragraph 2.4.2);
  - 3.4.2 the scope of the Contractor's right to negotiate the New Customer Contract or the Amendment with the potential Customer or the Customer (as applicable) without further reference to the NDA (the "Negotiation Brief").
- 3.5 As a result of the discussions undertaken pursuant to paragraph 3.4, the Contractor may modify the Proposal to reflect the comments of the NDA and shall issue any such modifications to the NDA as soon as reasonably practicable.
- 3.6 The NDA shall be entitled, at any time and in its sole discretion, to reject the Proposal and the NDA shall give reasons for such rejection to the Contractor in reasonable detail (subject to any constraints on such disclosure under any applicable law or for policy reasons).
- 3.7 If the NDA consents to the Proposal (as modified (where relevant) pursuant to paragraph 2.4.2), the NDA shall:
  - 3.7.1 notify the Contractor in writing that the Contractor may enter into the New Customer Contract or the Amendment (as applicable) on the terms set out in the relevant Proposal (as modified (where relevant) pursuant to paragraph 2.4.2),

such notification to be without prejudice to the provisions of paragraphs 3.10 and 2.12 or the overarching provisions of Part A (Overarching Validation Procedure) of CT-14 (Project Validation and Financial Sanction).

- 3.8 Upon receipt of the NDA's consent pursuant to paragraph 2.7 and subject to the willingness of the counterparty (or proposed counterparty) to proceed, the Contractor shall negotiate the New Customer Contract or the Amendment (as applicable) with the counterparty (or proposed counterparty) in accordance with the terms of the agreed Proposal and the ambit of the Negotiation Brief. If, at any time, the NDA



acting reasonably considers it necessary and/or efficacious to attend such negotiations, the Contractor shall use all reasonable endeavours to procure the agreement of the counterparty (or proposed counterparty) to the NDA's attendance at such negotiations.

3.9 **If at any time prior to entering into the New Customer Contract or the Amendment (as applicable), the terms of the proposed New Customer Contract or the Amendment fall outside the terms of the agreed Proposal and/or the ambit of the Negotiation Brief, the NDA's approval shall be deemed withdrawn and the Contractor shall revise the relevant Proposal to reflect the change and the Parties shall comply with the procedure set out in paragraphs 2.1 to 3.8.**

3.10 **Unless the NDA agrees otherwise, any consent by the NDA to a Proposal shall be conditional upon the Contractor ensuring that:**

3.10.1 **subject to paragraph 3.10.3, no New Customer Contract or no Amendment (as the case may be) contains any term which:**

- (A) **provides the counterparty to the Customer Contract with a right of consent or a right of termination or amendment if the Contractor is subject to a change in ownership, management or control;**
- (B) **directly or indirectly excludes or attempts to exclude any right of the NDA which arises under the Contracts (Rights of Third Parties) Act 1999 or in any other way seeks to prevent the NDA from enforcing the terms of the Customer Contract;**

3.10.2 **subject to paragraph 3.10.3, any New Customer Contract includes:**

- (A) **provisions allowing the disclosure to the NDA by the Contractor of such Customer Contract and any information passing between the parties in relation to it and, where permitted under Clause 18 (Confidentiality), disclosure by the NDA to third parties;**
- (B) **an acknowledgement by the counterparty to the Customer Contract of the Contractor's obligations to comply with, and the NDA's rights under, Clauses 12A (Reporting and Reviewing), 12B (Records), 13 (Inspection and Audit) and 18 (Confidentiality) and a waiver of any liability that may arise under the Customer Contract as a result of the Contractor complying with its obligations under such Clauses of this Contract;**
- (C) **an obligation on the counterparty to the Customer Contract to make its employees available for the purposes of the NDA's audit under Clause 13 (Inspection and Audit);**
- (D) **if the Customer Contract is governed by the English law, an obligation on the counterparty to the Customer Contract to become a party to the Dispute Resolution Procedure and comply with the obligations contained therein;**
- (E) **an obligation on the counterparty to the Customer Contract to permit the NDA to attend meetings between the Contractor and the Customer and/or Customer Groups;**

- (F) a Termination for Convenience provision enabling the Contractor to terminate at any time on giving reasonable notice to the counterparty to the Customer Contract (and, in the event of such Termination for Convenience, the Contractor shall only agree, subject to the NDA's approval, to pay the relevant counterparty's reasonable costs arising directly from the termination of the Customer Contract and shall not agree any payment in respect of loss of anticipated profits, loss of opportunity or the consequential losses of affiliates of the counterparty);
- (G) a provision ensuring that the Customer Contract is capable of being assigned to the NDA's nominee either without the consent of the counterparty to the Customer Contract or with the consent of the counterparty to the Customer Contract such consent not to be unreasonably withheld (and in either case without requiring the consent of any other third party and without incurring any payment obligation or other additional liability),

or that no Amendment contains a term which directly or indirectly excludes or attempts to exclude (as the case may be) any of the terms in paragraphs 3.10.2(A) – (G);

- 3.10.3 where an existing Customer Contract contains any of the terms in paragraphs 3.10.1(A) – (B) or excludes or attempts to exclude (as the case may be) any of the terms in paragraphs 3.10.2(A) – 3.10.2(G), the Contractor has used reasonable endeavours to ensure that the Amendment alters the terms of the existing Customer Contract so that such existing Customer Contract does not include any of the terms in paragraphs 3.10.1(A) – (B) and does not exclude or attempt to exclude (as the case may be) any of the terms in paragraphs 3.10.2(A) – 3.10.2(G).
- 3.11 The consent by the NDA to the Contractor's entry into a New Customer Contract or an Amendment (as applicable) pursuant to Clause 10A.1 (New Business and Amendments to Customer Contracts) and this paragraph 2 of CT-16 (Customer Contracts):
- 3.11.1 shall be without prejudice to any of the NDA's rights under this Contract;
  - 3.11.2 shall not constitute acceptance by the NDA of any terms and conditions of the New Customer Contract or the Amendment (as applicable) which are outside the terms of the agreed Proposal and/or the ambit of the Negotiation Brief (as modified (where relevant) pursuant to paragraph 2.4.2 and 3.9);
  - 3.11.3 shall not, unless expressly agreed in relation to any Related Change, relieve or excuse the Contractor from any liability or obligation under this Contract; and
  - 3.11.4 shall not in respect of any cost arising in relation to the New Customer Contract or, in the case of an Amendment, in relation to the relevant existing Customer Contract, unless expressly agreed in relation to any Related Change, alter whether such cost is treated by the NDA as an Allowable Cost or a Disallowable Cost.

- 3.12 **Within thirty (30) Calendar Days of the execution of any Customer Contract or of any Amendment being effected (as applicable), the Contractor shall provide the NDA with a certified copy of the New Customer Contract or a certified conformed copy of the existing Customer Contract incorporating the Amendment (as applicable).**
- 3.13 **If the entry into the Customer Contract or the Amendment (as applicable) does not occur, the Contractor shall inform the NDA in writing that this is the case and at the same time shall provide an explanation as to why the entry into the Customer Contract or the Amendment (as applicable) has not taken place.**

#### **4. CONTENTS OF NDA'S INSTRUCTIONS NOTICE**

4.1 **Any Instructions Notice served pursuant to Clause 10A.3 (Authority's right to instruct) shall set out:**

4.1.1 **the date of the Instructions Notice;**

4.1.2 **the NDA's instructions in sufficient detail to enable the Contractor to implement them including:**

(A) **in all cases where the instructions relate to an existing Customer Contract, details of the relevant Customer Contract including:**

- (1) **a sufficient description of the Customer Contract for the Contractor to be able to identify it;**
- (2) **the detailed instructions which the NDA requires the Contractor to implement;**
- (3) **details of any waiver to be given by the NDA pursuant to paragraph 5.3; or**

(B) **where the NDA wishes the Contractor to enter into a New Customer Contract, details of:**

- (1) **the identity of the counterparty to the new Customer Contract and any details in respect of the counterparty and its business and/or the NDA's relationship with the counterparty;**
- (2) **a description of the subject matter of the new Customer Contract;**
- (3) **the term and commencement date of the new Customer Contract;**
- (4) **any estimated Capital Costs and Current Costs which are likely to be incurred or no longer incurred as a result of the Contractor entering into the new Customer Contract;**
- (5) **the estimated annual and total revenue likely to be receivable under the new Customer Contract;**

- (6) **the principal terms which should be contained in the new Customer Contract such as the pricing mechanism, the parties' key obligations, any indemnities, any limits on the parties' liability, the force majeure provisions and the parties' termination rights including any termination payments payable;**
  - 4.1.3 **any reason for the NDA's instructions which the NDA wishes (but, for the avoidance of doubt, is not obliged) to convey to the Contractor;**
  - 4.1.4 **the date by which the NDA wishes its instructions to have been implemented (subject to agreement by the counterparty or the proposed counterparty); and**
  - 4.1.5 **any other information that the NDA reasonably considers would assist the Contractor in carrying out its instructions.**
- 4.2 **Any instructions issued by the NDA pursuant to Clause 10A.3 (Authority's right to instruct) shall be deemed to be an NDA Change and the Contractor shall issue to the NDA any Change required in accordance with the relevant provisions of Schedule P (Setting the NTWP and Change Control).**

## **5. NDA'S INSTRUCTIONS**

*The chart below illustrates the instructions. If there is failure to agree the process may be an iterative one in which several discussions between the NDA and the Contractor take place as well as negotiation meetings between the Contractor and the counterparty to the relevant Customer Contract.*

- 5.1 **As soon as reasonably practicable after the Contractor receives the Instructions Notice, the Parties shall meet to discuss the instructions. The Contractor shall inform the NDA:**
  - 5.1.1 **if the instructions have any impact on any Subcontract or Series of Subcontracts; and**
  - 5.1.2 **of any impact of which the Contractor is aware of the instructions on the NDA, the Contractor, the performance or terms of this Contract (including the application of CT-03) and/or the Customer Contracts.**
- 5.2 **Subject to paragraph 5.3, the Contractor shall be entitled at any time before the NDA confirms its Instructions Notice pursuant to paragraph 5.4, to serve on the NDA a written notice (an "Objection Notice") setting out in detail the grounds on which the Contractor objects to the Instructions Notice, provided that the Contractor shall only be entitled to object to an Instructions Notice if the content of the Instructions Notice would if implemented:**
  - 5.2.1 **be inconsistent with the Contractor's obligations under Clause 4.2 (Standard of Performance);**
  - 5.2.2 **be inconsistent with the Contractor's obligations under Clause 4.2.4 (Compliance with Specifications and Standards in NTWP);**

5.2.3 result in the Contractor being in breach of any of its obligations under this Contract (other than its obligation to perform the Customer Contracts in relation to which a waiver will be provided under paragraph 5.3);

5.2.4 materially alter the basic nature of the Services to be provided,

and upon the NDA's receipt of any Objection Notice, the provisions of paragraph 5.1 shall apply save for, if the Parties cannot agree within thirty (30) Calendar Days of meeting (or any longer period as the Parties may agree) whether the Contractor's objections are valid, the matter shall be referred to the Dispute Resolution Procedure under Clause 26 (Dispute Resolution). If the Parties agree, or the Disputes Resolution Procedure determines, that the Contractor's objections are valid, the NDA shall withdraw or modify the Instructions Notice.

5.3 If the NDA instructs the Contractor not to perform any of its obligations under any Customer Contract, the NDA shall waive the Contractor's obligation under this Contract to perform in respect of the relevant Customer Contract and the Contractor shall not be entitled to object to the relevant Instructions Notice on any of the grounds set out in paragraph 5.2.3.

5.4 As a result of the discussions undertaken pursuant to paragraph 5.1, the NDA may confirm, modify or withdraw the Instructions Notice.

5.5 Without prejudice to paragraph 5.7, upon receipt of any confirmation pursuant to paragraph 5.4, the Contractor shall implement the NDA's instructions in accordance with the Instructions Notice and in accordance with any further guidance from the NDA (as applicable given the nature of the instruction). If, at any time, the NDA acting reasonably considers it necessary and/or efficacious to attend any negotiations with the counterparty (or proposed counterparty), the Contractor shall use all reasonable endeavours to procure the agreement of the counterparty (or proposed counterparty) to the NDA's attendance at such negotiations.

5.6 Upon receipt of any modification pursuant to paragraph 5.2 or 5.4, the provisions of paragraphs 5.1 to 5.5 shall apply with the necessary changes according to the circumstances.

5.7 If the counterparty (or proposed counterparty) to the Customer Contract is unwilling to proceed in the manner prescribed by the NDA in its Instructions Notice, the Contractor shall use its reasonable endeavours to overcome the counterparty's objections through negotiation (in which event it shall comply with the NDA's directions as to the negotiating strategy and approach to be adopted) and to carry out the NDA's instructions. The NDA and the Contractor shall consult with one another in order to agree how to resolve the issue.

5.8 The NDA may request from the Contractor such additional information and in such format as the NDA reasonably requires for the purpose of considering any issues raised by the Contractor in relation to an Instructions Notice. The Contractor shall provide any information requested by the NDA pursuant to this paragraph 5.8 as soon as reasonably practicable after receiving such request and in any event by such deadline as the NDA reasonably requests.

5.9 If, as a result of any discussions pursuant to paragraph 5.7, the NDA modifies or withdraws the Instructions Notice, the NDA shall issue to the Contractor any such modification or withdrawal (as the case may be) as soon as reasonably practicable.

5.10 Upon receipt of any modification pursuant to paragraph 5.9, the provisions of paragraphs 5.1 to 5.5 shall apply with the necessary changes according to the circumstances.

## **6. AMENDING PERMITTED ACTIVITIES AND NEW PERMITTED ACTIVITIES**

6.1 The Contractor shall be entitled to request any new Permitted Activities, the amendment of any existing Permitted Activities or the update of Annex II (Permitted Activities) to reflect the Current Year's NTWP by serving a written notice (a "Permitted Activities Request") on the NDA setting out:

6.1.1 the date of the Permitted Activities Request;

6.1.2 the reasons for requesting the proposed new, amended or updated Permitted Activity;

6.1.3 the terms of the proposed amendment to Annex II (Permitted Activities) to Schedule B.

6.2 As soon as reasonably practicable after the NDA receives the Permitted Activities Request, the Parties shall meet to discuss and attempt to agree the proposals set out in the Permitted Activities Request (or any modifications made pursuant to paragraph 6.3).

6.3 As a result of the discussions undertaken pursuant to paragraph 6.2, the Contractor may modify the Permitted Activities Request and shall issue any such modifications to the NDA as soon as reasonably practicable.

6.4 The NDA shall be entitled, at any time and in its sole discretion, to reject the Permitted Activities Request and the NDA shall give reasons for such a rejection.

6.5 If the NDA consents to the Permitted Activities Request (as modified (if relevant) pursuant to paragraph 6.3), it shall notify the Contractor in writing. As soon as reasonably practicable after receipt of such notification, the Contractor shall amend the relevant paragraph of Annex II (Permitted Activities) to Schedule B and provide a certified copy to the NDA.

## **7. VARIATION**

The NDA may, acting reasonably, vary the terms of this CT-16 (Customer Contracts) by serving a written notice on the Contractor setting out the variation.

**CUSTOMER CONTRACT INITIATION OR AMENDMENT PROPOSAL REF CT16 A**

*Use continuation sheets as necessary to complete the requirements of this proposal form.*

**Date of the Customer**

**New Contract or Amendment?**

**Contract Proposal**

**Details of the New Customer Contract or the Customer Contract which the Contractor wishes to amend including:**

**(A) a description of its subject matter;**

**(B) the identity of the counterparty;**

**(C) the date of the Customer Contract and of any amendments already effected to it or, in the case of a New Customer Contract, the likely commencement date;**

**(D) its estimated value; and**

**(E) its term or, in the case of a New Customer Contract, its likely term**

**The reasons why the Contractor wishes to enter into the New Customer Contract or the Amendment, and whether the amendment is being initiated by the Contractor or the counterparty.**

**Any significant risks proposed to be accepted by the Contractor under the New Customer Contract or as a result of the Amendment and any aspect of the proposal that might in the reasonable opinion of the Contractor be considered novel or contentious.**



**Any details in respect of the counterparty and its business and/or the Contractor's relationship with the counterparty which the NDA may reasonably be expected to find useful in evaluating the Proposal.**

**Any estimated Capital Costs and Current Costs which are likely to be incurred or no longer incurred as a result of the Contractor entering into the New Customer Contract or the Amendment.**

**The estimated annual and total revenue likely to be receivable by the Contractor under the New Customer Contract (and whether the revenue should be treated as Category 1 Revenue or Category 2 Revenue) or, in the case of an Amendment, any impact on the annual and total revenue likely to be receivable under the existing Customer Contract.**

**Please confirm whether the proposed text of the New Customer Contract or the Amendment is attached.**

**Evidence that the Contractor has the necessary expertise to fulfil its obligations under the New Customer Contract or under the existing Customer Contract following the implementation of the Amendment and the Contractor's proposed use of resources to carry out the New Customer Contract or the existing Customer Contract following the implementation of the Amendment including use of Employees, Nominated Staff and Key Personnel, the facilities and installations on the Site, equipment, stock and other assets.**

**The Contractor's proposed strategy for managing its work under the New Customer Contract or under the existing Customer Contract following the implementation of the Amendment including cost control and performance management.**

**Any proposed or amended subcontracting arrangements including the identity of the proposed subcontractors and evidence of compliance with the subcontracting and procurement procedures set out in CT-15 (Subcontracting/Procurement Requirements).  
*Attach relevant proposals and information required under CT-15.***

**The Contractor's assessment on whether the New Customer Contract or the Amendment will have an impact on the provision of the Tasks or the Contractor's other obligations under this Contract.**

**The proposed timescales for effecting the Amendment or entering into the New Customer Contract and any date by which the NDA's decision on the Amendment or the New Customer Contract is critical.**

**In the case of an Amendment, any effect which the Amendment may reasonably be expected to have on the Contractor's ability to fulfil its obligations under the existing Customer Contract.**

**In the case of an Amendment, whether the Amendment to the Customer Contract will be effected via the Customer Contract's variation mechanism or through the mutual agreement of the parties to the Customer Contract.**

**Whether the Contractor, in accordance with paragraph 2.2 of this CT-16 (Customer Contracts), has attached a copy of any proposal which the Contractor is required to produce pursuant to the requirements of CT-15 (Subcontracting/Procurement Requirements).**