

Request for Proposal (RfP)

SMART SYSTEMS AND HEAT (SSH) PROGRAMME

ENGAGING WITH STAKEHOLDERS TO DESIGN FUTURE ENERGY MARKET STRUCTURES

APPENDIX C - NON DISCLOSURE AGREEMENT

The Non-Disclosure Agreement (NDA) protects the confidential information of the Respondent(s) and the ETI during the period of the Project Commissioning Process. For the successful Respondent(s), the confidentiality provisions in the Consultancy Agreement (when executed) will supersede this NDA for the purposes of the Project.

Notes

In order to ensure parity across different groups of Respondents, the ETI will not enter into negotiations on the terms of this NDA.

NDA Execution Process / Instructions

Each Respondent (as proposed Sole/Prime Contractor) should:

- complete Schedule 1 of a single electronic NDA with its company (legal) details and a postal address for return by the ETI of a fully executed NDA;
- print and sign **TWO** paper copies of the NDA. **The NDA must not be dated on the front page;**
- scan a copy of a signed and undated NDA and email it to the ETI at the address on the front of the RfP; and.
- post both original signed and undated copies to the ETI.

On receipt, the ETI will countersign and date the two original copies of the NDA. The ETI will retain one of these copies and post the other to the Respondent at the address provided by the Respondent at Schedule 1 of the completed NDA.

CONFIDENTIALITY AGREEMENT



THIS AGREEMENT is made on _____ of _____ 2014

BETWEEN:

- (1) **ENERGY TECHNOLOGIES INSTITUTE LLP**, a limited liability partnership (company no. OC333553) whose registered office is at Holywell Building, Holywell Way, Loughborough, Leicestershire, LE11 3UZ (the “**ETI**”); and
- (2) **The party named in Schedule 1 of this Agreement** (the “**Respondent**”),
(collectively the “**Parties**” and individually a “**Party**”)

BACKGROUND:

The Parties intend to exchange certain Information on or after the Effective Date for or in relation to the Purpose. The Parties agree to receive such Information, and to treat it as confidential information, on the following terms and conditions.

IT IS AGREED:

In consideration of the above and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

- 1 In this Agreement, unless the context requires otherwise, the following words shall have the following meanings:

“**Consultancy Agreement** ” means a Consultancy Agreement as such term is defined in RfP.

“**Disclosing Party**” means a Party that discloses Information pursuant to this Agreement;

“**Effective Date**” means the date of execution of this Agreement;

“**ETI Affiliates**” means the Secretary of State for Business, Innovation and Skills (and any successor governmental department or agency from time to time) and any other entity which is entitled to appoint the directors or otherwise having the ability to direct management policies of the ETI (together with any affiliates of those entities), together with their respective officers, employees, agents and consultants;

“**Information**” means any and all confidential information or data exchanged, submitted or otherwise disclosed in respect of or further to the Purpose or prepared for or in relation to the Purpose, including but not limited to written proposal documentation, due diligence materials, contractual documentation, reports, and the fact that the Parties have entered into this Agreement and are discussing and considering a business relationship;

“**Project**” means the proposed project under the ETI's Smart Systems and Heat Programme entitled “Engaging with Stakeholders to Design Future Energy market Structures”

“**Project Commissioning Process**” means the ETI's commissioning process for the Project as defined in the RfP or as later may be notified or published by the ETI;

“**Proposal**” means a Proposal as such term is defined in the RfP;

“**Purpose**” means:

- a the preparation and/or submission of any Proposals and related documents in response to the RFP;

- b the Project Commissioning Process;
- c any activities related to the assessment of any Proposals for the Project; and
- d any related exchanges of Information, clarifications, clearances, discussions, due diligence, meetings, and/or negotiations in respect of the RFP, the Project Commissioning Process, the Consultancy Agreement and/or the Project;

“Receiving Party” means a Party that receives Information pursuant to this Agreement; and

“RFP” means the request for proposals relating to the Project, issued by the ETI on 7th October, 2014.

2 The Receiving Party shall with regard to any Information disclosed pursuant to this Agreement by or on behalf of a Disclosing Party on or after the Effective Date:

- a hold the Information in confidence and, except as is otherwise stated herein or agreed in writing by the Disclosing Party, shall not disclose or make available the Information by publication or otherwise to any third party (including for the avoidance of doubt, disclosure in any patent application or to any patent office) and shall use any Information disclosed to it pursuant to this Agreement only for carrying out the Purpose;
- b make copies of the Information (or any further information derived from the Information) in whatever form or medium only to the extent that the copies are reasonably necessary for the Purpose and clearly mark all such copies as confidential;
- c take all necessary and proper security precautions (and at least as great as those it takes to safeguard its own information) to safeguard every part of the Information to prevent it from being disclosed or otherwise made available to any third party except as permitted by this Agreement; and
- d at the request and direction of the Disclosing Party, and without delay, return or destroy any Information provided to it pursuant to this Agreement and any copies of such Information, except that one copy may be kept by the Receiving Party for archival purposes and for the purpose of defending itself against any claims arising in connection with this Agreement.

3 The obligations set out in clause 2 shall not apply to Information that:

- a the Receiving Party can prove (using written or electronic records), was lawfully known to the Receiving Party or in its possession prior to its communication by or at the direction of the Disclosing Party and was not communicated to the Receiving Party subject to any restrictions on disclosure or use; or
- b is or becomes a part of the public domain through no wrongful act of the Receiving Party or any person on its behalf, provided that this clause 3(b) shall only apply from the date that the relevant Information so enters the public domain; or
- c the Receiving Party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that Information as a result of a breach of an obligation of confidence; or
- d subject to clause 4, is required to be disclosed or made available by the Receiving Party pursuant to any applicable law, governmental regulation, or decision of any court or tribunal of competent jurisdiction or any government body, agency or regulatory body.

4 If a Receiving Party believes it is required by law to disclose any Information under clause 3(d) above, the Receiving Party shall (in each case and to the extent not prohibited in law):

- a provide the Disclosing Party with prompt written notice of such requirement or obligation (together with a copy of any relevant access request, court order or other evidence giving rise to such belief) in advance of the required disclosure, to enable the Disclosing Party to

seek appropriate protective relief and/or to take other steps to resist or narrow the scope of any required disclosure;

- b where it is not permitted in law to notify the requirement for disclosure in advance of the required disclosure, notify the Disclosing Party as soon as reasonably practicable after the disclosure confirming the nature of and extent of the disclosure; and
- c co-operate with the Disclosing Party with respect to such matters,

and in any event disclose only such Information as it has ascertained, after taking legal advice, it is legally compelled to disclose.

5 The ETI shall be entitled to disclose or make available any Information it receives from the Respondent to:

- a such of the ETI Affiliates, and either the ETI's or the ETI Affiliates' employees, officers, secondees, agents, consultants, sub-contractors, proposed sub-contractors, professional advisers and proposed professional advisers where such disclosure is necessary for the Purpose, provided that all such aforementioned persons to whom any Information is disclosed by the ETI are bound by obligations of confidentiality and the ETI shall be responsible for breaches of the obligations by such persons. Each ETI Affiliate may enforce this clause in accordance with the Contracts (Rights of Third Parties) Act 1999; and
- b the Department of Business, Innovation and Skills (or other relevant government department), the European Commission and such other bodies and/or individuals (including without limitation professional advisers) as may reasonably be required for the notification of, to seek advice in relation to, as part of an assessment of, or otherwise in relation to, State aid.

6 The Respondent shall be entitled to disclose or make available any Information it receives from the ETI or any other Respondent to such of its employees, officers, consultants, sub-contractors, proposed sub-contractors and professional advisers where such disclosure is necessary for the Purpose provided that all such persons to whom any Information is disclosed are bound by obligations that are no less restrictive than those in this Agreement. The Respondent shall be responsible for breaches of the obligations by such persons.

7 Each Party as Receiving Party expressly agrees and accepts that, except in the case of fraud, no representation or warranty, express or implied, is made by the Disclosing Party as to the accuracy, completeness, reasonableness or otherwise in respect of the use of the Information, and that neither the Disclosing Party or any of its affiliates nor any of its or their respective employees, officers, secondees, agents, consultants, sub-contractors and professional advisers (as applicable) shall have any liability to the Receiving Party as a result of the Receiving Party's possession or use of the Information.

8 The Parties agree that money damages would not be a sufficient remedy for any breach of this Agreement and that the Disclosing Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement, but shall be in addition to all other remedies available at law or equity.

9 No rights or obligations other than those expressly set out in this Agreement are to be implied and nothing contained in this Agreement:

- a constitutes an offer by or on behalf of the Disclosing Party; or
- b confers upon the Receiving Party a licence or other transfer of rights in respect of any Party's interest in any Information or in any present or future patent or patent application; or
- c affects the present or prospective rights of the Disclosing Party under the patent laws of any country or precludes the filing or prosecution of any patent applications by the Disclosing Party.

- 10 This Agreement represents the entire agreement between the Parties in relation to the subject matter contained herein and supersedes all other agreements and representations, whether oral or written, between the Parties relating to such subject matter. This Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each Party. Each Party also agrees that it shall have no remedies or claims under this Agreement for any innocent or negligent misrepresentation based on statements made prior to the Effective Date.
- 11 The Parties agree that the ETI may disclose that the Respondent is involved in discussions with the ETI and the subject matter of the discussions provided that the ETI will provide a copy of any press release or other announcement to the Respondent and seek the approval of the Respondent prior to its publication or release. Other than as set out in this clause, neither of the Parties will make any public announcements, statements or otherwise publicise the subject matter of this Agreement (or its existence) without the prior written consent of the other Party and neither Party will use the business names or trademarks of the other Party in any way without that Party's prior written consent.
- 12 This Agreement shall come into force on the Effective Date and shall continue in full force and effect, notwithstanding the completion of the Purpose, for a period of 7 (seven) years from the Effective Date unless extended, superseded or otherwise varied by a subsequent written agreement between the Parties.
- 13 It is not intended that a third party (other than an ETI Affiliate) should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14 The rights of the Disclosing Party under this Agreement are in addition to and not exclusive of rights under the general law and may be waived only in writing and specifically. Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right, partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement and waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.
- 15 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
 - a the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
 - b the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.
- 16 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise one Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 17 Except as provided otherwise, no person may assign any of its rights under this Agreement or any document referred to in it.
- 18 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each Party has executed at least one counterpart.
- 19 This Agreement shall be construed in accordance with and governed by English law and the Parties hereby submit to the non-exclusive jurisdiction of the English Courts.

The Parties have caused this Agreement to be executed by their duly authorised representatives.

ENERGY TECHNOLOGIES INSTITUTE LLP

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 1

Respondent	Signature
Company Name: Company No: Address of Company:	By: Name: Title:

The ETI will return a copy of the executed Non-Disclosure Agreement to the Respondent. Please provide the relevant name and address for this correspondence below.

Contact for return of executed Non-Disclosure Agreement	Send to [name]: At postal address:
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