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**Programme Area:** Smart Systems and Heat

**Project:** Data Management and System Architecture

**Title:** Request for Proposal

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**Abstract:**

A request for proposal for delivery of the Data Management & Overall System Architecture project.

**Context:**

This project specified the data system functionality and architecture that would fulfil the information and service requirements of a smart energy system. This included data security and privacy aspects. Hitachi Europe and energy & sustainability consultants DNV Kema worked independently on two £100,000 contracts to identify any data system constraints that need to be incorporated into smart energy systems. The projects were launched in February 2013. The envisaged ETI Smart Systems and Heat system will depend on Information and Communications Technology (ICT) for its efficient design, operation and management. The ICT system will need to provide functionality right along the energy delivery chain: from supply to the end consumer. It will also need to support commercial activities such as billing, and to support academic analysis and review of the system during trials and proving.

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# Request for Proposal (RfP)

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## Title of Services for which Proposals are Requested

# Data Management & Overall System Architecture

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## Request Issue Date

5<sup>th</sup> October 2012

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## Deadline for Notification of Intention to Submit a Proposal

12<sup>th</sup> October 2012

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## Closing Date

2<sup>nd</sup> November 2012

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## Contact for Enquiries

Melissa Bradshaw  
Programme Management Office

Tel: +44 (0)1509 202029 or Switchboard: +44 (0)1509 202020

Email: [smart@eti.co.uk](mailto:smart@eti.co.uk)

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## Address for Notifications and Submission of Proposals

Energy Technologies Institute LLP

FAO: Melissa Bradshaw

Holywell Building  
Holywell Way  
Loughborough  
LE11 3UZ

Email: [smart@eti.co.uk](mailto:smart@eti.co.uk)

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## 1. ETI Introduction

### 1.1. Introduction to the Energy Technologies Institute

The Energy Technologies Institute (ETI) is a public-private partnership between global industries – BP, Caterpillar, EDF, E.ON, Rolls-Royce and Shell – and the UK Government.

Public sector representation is through the administration of the Department for Business, Innovation and Skills, with funding channelled through the Technology Strategy Board and the Engineering and Physical Sciences Research Council. The Department of Energy and Climate Change are observers on the Board.

The ETI is focused on accelerating the deployment of affordable, secure low-carbon energy systems for 2020 to 2050 by demonstrating technologies, developing knowledge, skills and supply-chains and informing the development of regulation, standards and policy.

Further information can be found on our web-site at [www.eti.co.uk](http://www.eti.co.uk).

### 1.2. ETI approach to Health, Safety and Environment (HSE)

The HSE of those who may be affected by ETI Projects is of paramount importance to the ETI. The ETI expects those who receive ETI funding to demonstrate a commitment to best practice in health, safety and environmental management as well as demonstrating that legal requirements are met.

See [Appendix B](#) of this RfP for further information.

## 2. Project Overview

### 2.1. Background to the SSH programme

Improving the management and optimisation of energy demand, generation and infrastructure is likely to be critical to delivering the UK's long-term energy targets in an affordable way. This is particularly relevant given the major changes that are expected to take place during the UK transition towards a low-carbon economy.

The potential implications of the transition include the decarbonisation of the electricity grid, increasing electrification of heat, greater diversity of energy sources, greater intermittency in electricity supply from renewable resources, and the diversification of transport fuel sources.

The challenge is to develop a system wide low-carbon solution that meets the requirements of future energy consumers in an affordable way, provides energy security and has an effective commercial foundation.

#### Smart Energy System

There is therefore a significant opportunity for the development of a 'smart energy system' which:

- is based upon consumer requirements for energy based services, and also meets UK climate change targets;
- incorporates power, heat, transport and the energy infrastructure;

- includes energy demand, supply, delivery and storage; and
- integrates energy control and management across the system.

However, the required functionality and shape of Smart Energy Systems relevant to the UK energy system is currently unclear and needs further investigation. Furthermore, the broad commercial viability of Smart Energy Systems in the UK context is yet to be demonstrated.

Based on prior work undertaken by the ETI it is expected that a UK smart energy system development would have four key themes:

- understanding real mass-market consumer behaviour, requirements and profiles in order to design and communicate effective service products;
- the provision of energy services and integrated products (i.e. the physical elements) to consumers in domestic and commercial buildings (primarily domestic & retrofit);
- key focus on space and water heating (comfort, cleanliness), but including other energy service needs in or connected to buildings (e.g. vehicle charging); and
- understanding the evolution of the whole energy system out to 2050, including buildings retrofits and energy distribution system choices.

### **Smart Systems and Heat Programme Structure**

The ETI has commissioned a major two-phase Smart Systems and Heat programme in 2012, focussing specifically on the design, development and demonstration of a smart energy system aligned with the needs of UK consumers in the domestic and small commercial-scale sectors.

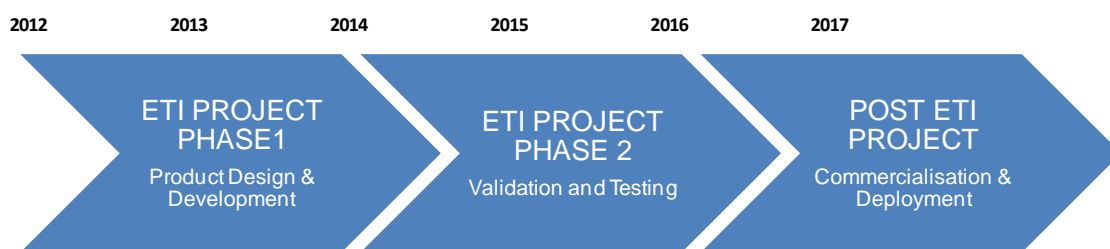
The Smart Systems and Heat programme will focus on the retro-fitting of pre-existing buildings, and will involve a significant low-carbon heat delivery activity. This work will inform technologists and policy makers on the social requirements, technology, commercial frameworks and policy design of a smart energy system.

The Smart Systems and Heat programme has been split into a number of self-contained Work Areas (WA) covering key technology and consumer-end issues; the alignment and integration of these work areas will be critical to overall project success, and will be managed by a dedicated work area with oversight provided by the ETI.

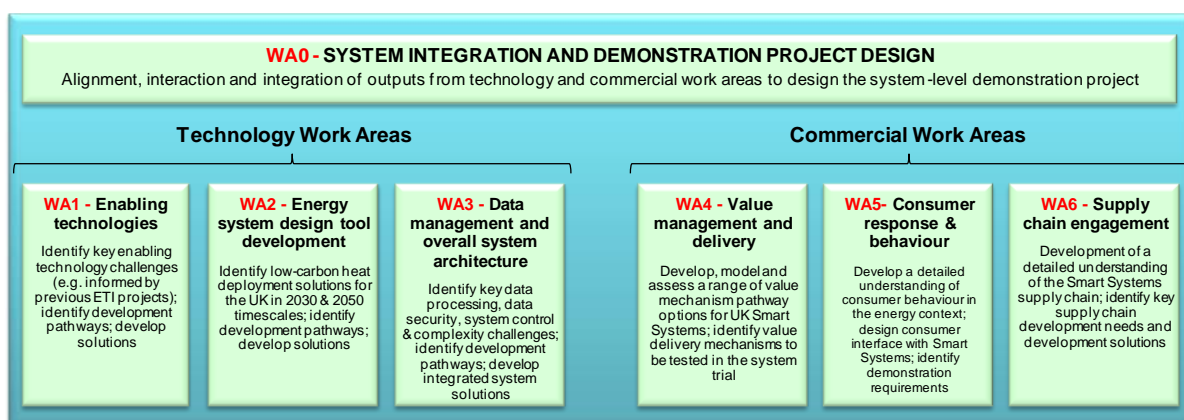
The two distinct phases of the programme are:

- **Phase 1:** The first phase will develop the toolkit and capacity to deliver the prototype 'product' to mass market consumers.
- **Phase 2:** The second phase will validate this with a significant system level demonstration.

Phase 1 of the programme contains six work areas WA1-WA6, under the guidance of a single work area WA0. WA1-WA3 will focus on technology, while WA4-WA6 will focus on the commercial aspects of the deliverables.



**Figure 1: ETI SSH Programme Phasing**



**Figure 2: Phase 1 Work Areas**

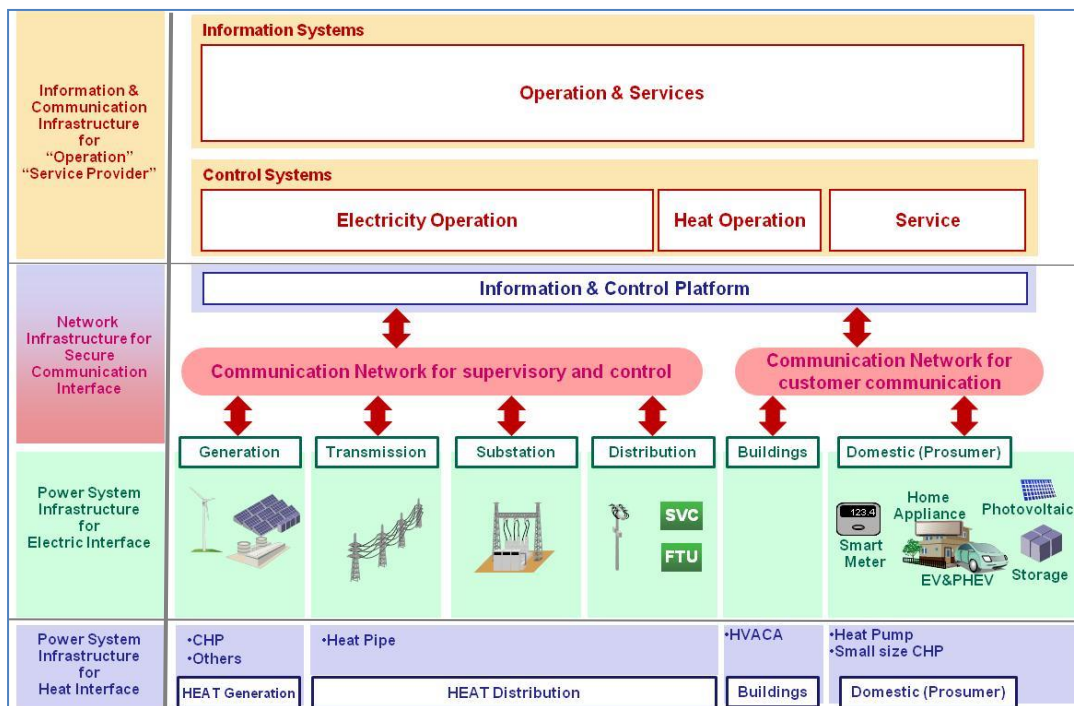
## 2.2. WA3 – Data Management and Overall System Architecture Overview

The envisaged ETI Smart Systems and Heat system will depend on Information and Communications Technology (ICT) for its efficient design, operation and management. The ICT system will need to provide functionality right along the energy delivery chain: from supply to the end consumer. It will also need to support commercial activities such as billing, and to support academic analysis and review of the system during trials and proving.

The purpose of Work Area 3 (WA3) is to specify a data architecture that fulfils the information and service requirements of the smart energy system (including data security and privacy).

The generic architecture envisaged includes Measurement and Sensing; Data Communication; Data Storage and Data Processing functions. The System Control Technology envisaged includes the ICT Platform; Devices; Wide Area Network; Home Area Network and Applications.

The following diagram illustrates what may need to be included in the anticipated Smart Systems ICT architecture and some of the items that may need to be considered in its design (Note: this diagram does not necessarily define the full scope of what needs to be considered).



**Figure 1: Preliminary Architecture Image Illustration**

### 2.3. Required overall outcomes of WA3 – Data Management and Overall System Architecture

This planned output of this WA3 work area is the design of a scalable, flexible, reliable and secure ICT system architecture that will provide cost effective information and system control functionality for a Smart Energy System.

It is envisaged that the ICT system architecture will as a minimum include the following:

- Data processing function
- Data storage function
- Data communications function
- Data protocols
- System control technologies
- Measurement and sensors

The outcomes from WA3 will reflect any system constraints identified in associated work areas (particularly the WA2 energy model).

The ICT systems architecture will comply with best practice and all UK and relevant EU legal requirements relating to data security and privacy.



### 3. Scope of the Project

#### 3.1. WA3 – Data Management and Overall System Architecture Project Structure

The overall outcomes and aims of WA3 in Phase 1 as described in section 2.3 will be realised through the delivery of three key work packages designated WP1, WP2, and WP3. This RfP relates to WP1 only.

WP1 is the first activity in the WA3 area of the SSH project and will be let as an initiating contract to enable ETI to more clearly define the content and outputs required from WP2 and WP3. Work Packages 2 and 3 will be subject of a larger, single follow-on RfP to be released at a later date.

A top level description of the key Work Packages (WP) is as follows:

##### **Work Package 1**

WP1 includes a technology landscape review of the current energy system ICT capabilities, together with a roadmap of likely developments out to 2050.

An additional required output is the development of an outline functional outcomes based performance specification and use case for a) the UK Smart System and b) the Smart System Trial in Phase 2 of the programme.

##### **Work Package 2**

WP2 will develop a methodology for the design of ICT architecture that fulfils the information and service requirements of a Smart Energy System and meets user requirements, including data security and privacy aspects.

##### **Work Package 3**

WP3 will develop a prototype ICT system (desk top simulation or other) that clearly demonstrates system operation, reaction to changing system inputs and outputs, and to apply this methodology to a Smart Energy System. This will include specifying in detail the design of the ICT architecture to facilitate the Smart Energy System to be implemented in Phase 2 of the ETI SSH Programme.

#### 3.2. Delivery Overview for WP1

WP1 is the first activity in the WA3 area of the SSH project and will be let as an initiating contract to enable ETI to more clearly define the content and outputs required from WP2 and WP3.

The ETI expects to **fund up to three respondents for WP1 across technology companies and service providers to ensure we obtain a balanced perspective of ICT developments**, who will each:

- 1) Review, list and provide an outline of international initiatives being undertaken in the ICT/Systems Architecture arena that are relevant or could be applicable to the Smart Systems and Heat programme;

- 2) Review, list and provide an overview of any UK/EU wide directives, standards or legislative initiatives that may impact on the implementation or delivery of a Smart System e.g. Mandate 490 Smart Grid, Mandate 441 Smart Metering.
- 3) Deliver a Technology Roadmap applicable to Smart Systems out to 2050, highlighting key technological developments, their insertion points and the likely improvements in ICT technology;
- 4) Describe and specify the Phase 2 Smart Energy System performance requirements, identifying any constraints and the critical system requirements and their targets for an ICT System to support:
  - a) Scaling to a UK Smart System, including all system information, billing, and system control requirements, and
  - b) The Phase 2 Smart System trial including all system information, billing and system control requirements. This is expected to include additional test functionality required to monitor the trial system, such as distribution infrastructure sensors, heat pump sensors, heat network sensors, equipment diagnostics etc.
- 5) Estimate likely Rough Order of Magnitude (ROM) budgets and timeframes for implementation of an ICT system and interfaces for the Phase 2 trial, including all system information, billing and system control requirements along with test functions (as per 3.2.4 (b)).

### **3.3. Formal Deliverables for WA3, Work Package 1**

The formal deliverables from the Work Package 1 project will be as follows:

- 1) A report summarising International initiatives being undertaken in the ICT/Systems Architecture arena and indicate their applicability and relevance to a UK Smart Systems and Heat programme.
- 2) An overview report of any UK/EU directives, protocols or legislative initiatives that may impact or act as a constraint on the implementation or delivery of a Smart System e.g. Mandate 490 Smart Grid, Mandate 441 Smart Metering together with their description and likely timeframe
- 3) A report outlining the ICT technology roadmap to 2050, explaining key technology developments and their functional and cost implications for smart energy systems.  
  
The Roadmap should: Specify and describe major ICT technology areas, specify the technology drivers and their target, identify technology alternatives and their timelines, recommend the technology alternatives that should be pursued along with their insertion points, and create a technology roadmap report.
- 4) An ICT System outline performance specification that describes applicable performance criteria and presents the basic flow and alternative flows of information with definition of the actors involved to:
  - a) Meet the generic needs of a UK Smart Energy System for a Smart Systems Programme.

- b) Meet the needs of the demonstration phase of the SSH programme. This includes definition of the additional functionality required, specific to the trial such as interfaces to sensors embedded within the distribution infrastructure, household data collection systems etc.
- 5) Performance criteria metrics should be specified as an appropriate range for each scenario (e.g. future maximum/optimum to currently achievable) that can be used to judge the operation of a system indicating any fundamental design constraints. This will include criteria (along with performance metrics) such as, but not limited to:
- Resource constraints (processor speed, memory, disk space, network bandwidth, etc.)
  - Response time
  - Latency
  - Reliability (MTBF, MTTR...)
  - Scalability (horizontal, vertical)
  - Security Parameters
  - Software, tools, standards etc. and compatibility
  - Stability
  - Supportability
  - Testability
  - Usability by target user community
  - Any other special requirements, parameters or standards that that are applicable e.g. Quality, Safety
- 6) Supply of ROM budget and timeframe estimates for implementation of ICT Smart System, infrastructure and interfaces in the Phase 2 trial, including all system information, billing and system control requirements along with test functions in spreadsheet form.

As the system is not yet specified in detail, it is important that any assumptions concerning performance and systems content (hardware and software) are made clear in the budget build with indications of any cost and timescale trade-offs versus functionality and performance. These estimates will not be suitable to form a contract but may be used to further develop the SSH programme. The estimates should highlight any key ICT expenditure elements, critical paths and long lead items that may affect or influence the overall SSH programme aims and timescales.

In addition to the formal deliverables, the project will be required to provide regular updates on progress, including weekly updates by email or telephone call.

### **3.4. Project Timescales**

The ETI anticipate that the project will be completed within 3 months of kick off.

### 3.5. Project organisation structure

More than one participant may be required to provide all the necessary knowledge, skills, experience and inputs to complete the Project.

If this is the case the ETI expects to enter a contract with a single Prime Contractor. The Prime Contractor shall manage the Project Contract with the ETI and act as primary interface with the ETI.

It is a requirement that during contract finalisation the ETI approves any Sub-contractor (and may review Sub-contracts).

The ETI places great emphasis on two critical roles in the delivery of projects – Project Manager and Chief Technologist.

- **The Project Manager** is responsible for managing and progressing the project team and programme of work to time and cost, handling information flows and commercial issues, ensuring effective team-working and the continued engagement and support of key stakeholders. In essence this responsibility is to make sure that the ETI benefits from a result at the end of the programme of work that meets the agreed outcomes within time and cost.
- **The Chief Technologist** is responsible for the technical quality and content of the work, ensuring the competence of key technical staff allocated to individual work packages, the effective review of key outputs and the effectiveness of detailed technical planning to ensure that the emerging results of work are fed back into the forward plan. In essence this position has the responsibility to assure the technical quality of the Project and its outcomes.

The ETI will assess the competence, experience and authority of these two people and their ability to work together as critical to Project success.

### 3.6. Project governance

Throughout the duration of the Project the ETI expects to hold review meetings with the Project Manager and Chief Technologist, which may be at the ETI or Participants' premises as appropriate, typically monthly or at other points which may be agreed. The ETI may involve advisors, external consultants, key industrial stakeholders, or representatives from the Members as appropriate.

The timing and scope will be confirmed in discussions once the Respondents' plans have been reviewed. Preliminary arrangements are as follows:

- a) **Project Kick Off:** This will be held within two weeks of the Project start date. The purpose of the meeting is to review within the team and the ETI the scope of the Project, planned timescales, deliverables, and the way of working and interfacing with the ETI to ensure a common understanding of how the project will be delivered in accordance with the contract. It is anticipated that this review will be held at the Participants' premises and take no longer than one day.
- b) **Project Reviews:** These will be agreed at key points during project delivery. It is anticipated that these reviews will be held at the ETI's premises and take no longer than one day each.

### **3.7. Project funding and payment structure**

This Project will be paid on a fixed cost basis. The Technology Contract will include defined deliverables, with acceptance criteria and defined Payment Milestones by which one or more deliverables will have been completed.

### **3.8. State Aid**

Funding from the ETI for this Project will constitute state aid. The ETI has a specific state aid clearance from the European Commission. A copy is available on request. In relation to their Proposals, Respondents should note:

- a) Further information may be required to support the specific state aid requirements of any Proposal during the procurement process;
- b) Successful Respondents will be required to provide full transparency of costs throughout the Project to ensure both the Participant(s) and the ETI comply with EU state aid law; and
- c) Participants will need to agree to certain contractual obligations related to the state aid requirements including the duration of the retention of records, and obligations to return ETI funding in certain exceptional circumstances.

Each Respondent must confirm that there are no potential, threatened, pending or outstanding recovery orders by the European Commission in respect of any funding received by any Consortium Member.

### **3.9. Terms and Conditions for Project Contract**

The Project will be governed by a Technology Contract, a draft of which will be made available to Respondents on signature of a non disclosure agreement ([Appendix F](#)). The final Technology Contract will incorporate appropriate information from the ETI's RfP, the Respondent's Proposal and information drawn up and agreed during the Project shaping and contract negotiation phase.

## **4. Commercial and Legal Requirements**

The most important issues that the ETI would like to highlight for initial consideration are as follows:

### **4.1. Insurance**

The Respondent should confirm that liability and indemnity insurance cover is held and should confirm levels of cover and expiry for each. See [Appendix C](#) for further detail.

### **4.2. Intellectual Property (IP)**

The ETI will own all Arising IP from the project. The Contract will include a warranty that no Background or Third Party IP shall be included in any Deliverable without the prior consent of the ETI or that such Background IP or Third Party IP included is automatically licensed to the ETI. Respondents should note that this applies to any copyright diagrams/images and must ensure appropriate permissions are obtained and evidence of permission provided to the ETI.

### 4.3. Statement of compliance

The Respondents shall provide a statement that the Proposal is fully compliant with the Request for Proposals, or shall state clearly any exceptions, deviations, alternative approaches or additions, with justification. Note that in the absence of any specifically-stated deviation in this section of the Proposal, in the case of any subsequent dispute, the ETI's Request for Proposals will take precedence over the Proposal. Additional comments and clarifications should also be listed where appropriate (for example to clarify interpretation of requirements), but these must be differentiated from any deviations / exceptions above.

In relation to the Technology Contract, the Statement of Compliance should set out as a minimum;

- a) The acceptance by each Respondent of the terms and conditions of the Technology Contract.
- b) Any exceptions to the terms and conditions of the Technology Contract issued by the ETI.

The exceptions set out will both be considered as part of the selection process to determine whether there is material compliance of the terms and conditions. Respondents should note that compliance with ETI terms and conditions is one of the Selection Criteria for this Request for Proposal. The ETI will not consider any further exceptions post selection which has not been identified in the Statement of Compliance.

### 4.4. Non Disclosure Agreement

Respondents are required to enter into a Non Disclosure Agreement (NDA) with the ETI before submitting their Proposal. Submission of a signed NDA will be viewed by the ETI as the Respondent's formal intent to submit a proposal. NDAs should be returned by the deadline outlined in [Section 6.1](#).

A draft Technology Contract shall be made available upon the successful execution and submission of an NDA to aid in the shaping of proposals. Signed NDAs should be returned to the ETI following the instructions provided in [Appendix F](#).

For further information on the release of the draft Project Contract and other information, please refer to the Terms and Conditions in [Appendix E](#).

### 4.5. General Due Diligence

All Respondents (except ETI Members, Programme Associates, universities / higher education institutions and UK/EU government laboratories / agencies) which provide more than 20% of the resources for the Project or which provide an input which is critical to the Project's success, shall provide due diligence Information to the ETI according to the table in [Appendix A](#).

Please note that successful completion of all elements of the due diligence is a pre-requisite to any contract award: Failure to meet due diligence requirements at any stage may result in the exclusion of that Respondent or the Proposal from the ETI's selection process.

#### 4.6. Warranties

The Technology Contract contains a number of warranties and undertakings related to IP. The ETI will conduct an appropriate level of due diligence before the start of the Project which relates to IP and the IP warranties. The wording of any warranties may be amended to reflect due diligence performed.

#### 4.7. Indemnities

The ETI will contribute funding to this Project but has no control over any risks and associated liabilities that may arise from the Project. Therefore the Technology Contract contains a number of indemnities for the ETI including for third party claims and for IP infringement. Respondents should review and comment on the indemnity position in the Submission.

### 5. Disclaimers

- a) The ETI at its discretion may request clarification of a Proposal, and may reject any Proposal which is unclear.
- b) Neither the issue of any documentation in the Request for Proposals process nor any of the information presented in it should be regarded as a commitment or representation on the part of the ETI or any other person to enter into a contractual arrangement. The Request for Proposals is not an agreement to purchase goods or services, and the ETI is not bound to enter into any contract with the Respondent. By responding to this Request for Proposals, the Respondent does not commit itself to entering into a contract with the ETI.
- c) All decisions made by the ETI relating to the acceptance, review and selection or otherwise of Proposals are final.
- d) All documents, including Proposals, submitted to the ETI become the property of the ETI. They will be received and held in confidence by the ETI, subject to the terms of the Non Disclosure Agreement ([Appendix F](#)). No part of a Proposal, or documents provided by Respondents, shall be returned.
- e) The ETI reserves the right to (i) change the basis of, or the procedures for, the Request for Proposals process, including the timetable or Closing Date, (ii) make modifications to, or alter any of the information within, the Request for Proposals at any time until the execution of the Technology Contract, (iii) reject any or all of the Proposal received, and (iv) not invite any Respondent to proceed further. In cases (i) and (ii) the ETI shall provide a minimum of five working days written notice.
- f) Neither the ETI nor any of its agents or advisers accepts any liability or responsibility for the accuracy, adequacy or completeness of any of the information provided or any opinions contained in this Request for Proposals or of any other information made available during the Request for Proposals process. No representation or warranty, express or implied, is or will be given by the ETI or any of its agents or advisers with respect to such information provided or opinion given therein. Any liability is thereby expressly disclaimed.



- g) Respondents must assess the information and terms contained in this Request for Proposals independently, having taken professional advice if necessary. The Respondent will be deemed to have examined all the documents enclosed with this Request for Proposals and by its own independent observations and enquiries will be held to have fully informed itself as to the nature and extent of the requirements of the Request for Proposals. The Respondent must rely on its own enquiries and on the terms and conditions contained in any agreement, when and if finally executed, subject to such limitations and restrictions as may be specified therein.
- h) Respondents shall be wholly responsible for the costs they incur in the preparation and submission of their responses to the Request for Proposals. The ETI shall not be responsible for, and shall not pay, any costs and expenses which may be incurred by the Respondent in connection with its participation in the Request for Proposals process, including but not limited to any costs or expenses incurred up to the execution of the Technology Contract.
- i) The ETI may, at its discretion, shortlist Respondents for the next phase. The ETI does not undertake to accept the lowest bid or to accept part or all of any Proposal and the acknowledgement of receipt of any Proposal shall not constitute any actual or implied agreement between the ETI and the Respondent.
- j) The submission of a Proposal will confirm acceptance of the foregoing provisions by the Respondent without qualification. Any attempt to qualify any of the foregoing provisions in this Disclaimer Notice, either expressly or impliedly, may result in a Respondent being disqualified.
- k) The copyright in the documentation and any other materials supplied by the ETI and/or its advisers in this Request for Proposals process, in whatever format, belongs to the ETI or its appointed advisers. Such documentation and materials may not, either in whole or in part, be copied, reproduced, distributed or otherwise made available to any other third party or used without the prior written consent of the ETI, except in relation to the preparation of the Proposal in the course of the Request for Proposals process. All documentation supplied by the ETI in relation to this Request for Proposals process must be returned on demand, without any copies being retained by the Respondent.

This Request for Proposals, and any dispute or claim arising out of or in connection with it (including any dispute or claim relating to non-contractual obligations), shall be governed by and construed in all respects in accordance with the laws of England and Wales and the parties agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this document (including any non-contractual disputes or claims).

## 6. Project Procurement and Selection

### 6.1. Estimated procurement and Project timeframes

The following tables outline the anticipated schedule for the procurement process.

The timing and the sequence of events resulting from this Request for Proposals may vary and shall ultimately be determined by the ETI.



Request for Proposal and Selection	Anticipated Dates
Issue of Request for Proposal	5 <sup>th</sup> October 2012
Deadline for notifying the ETI of an intent to submit a proposal (via return of signed Non-Disclosure Agreement)	12 <sup>th</sup> October 2012
Closing date for submission of proposal	2 <sup>nd</sup> November 2012

Project Start	Anticipated Dates
Contract signature target date	29 <sup>th</sup> November 2012
Project duration	3 months

## 7. Procurement Process

### 7.1. Questions and clarifications

The ETI will endeavour to answer any questions or provide clarifications for potential Respondents before the Proposal deadline.

Any advice or clarifications of ETI requirements requested by and provided to any Respondent may (at the ETI's discretion) be made available to all Respondents to ensure parity of information. Respondents should therefore consider presenting requests for advice and clarifications in a way that the ETI can respond to all Respondents without revealing confidential information.

### 7.2. Submission content and format

The Submission shall comprise five components:

- 1) Detailed Proposal, arranged according to the structure set out in Appendix D. The content must demonstrate how the bidding organisation/Consortium will meet the requirements and criteria set out in this Request for Proposal. The Proposal must be written in a succinct manner and must not include imprecise statements, generalities or repetition. The Proposal must be easily readable with appropriate font sizes (11pt or larger), margins, etc, and shall not exceed a maximum of 10 pages (excluding appendices).
- 2) Supporting information as specifically set out in Appendix D.
- 3) Risk Register, as described in Appendix D, part 3.4.
- 4) Due-diligence information (as set out in Section 4.5).

Statement of Compliance and, if appropriate, supporting information, confirming compliance with or identifying exceptions to the specification or contractual requirements (as set out in Section 4.3). This must be signed by the Respondent.

Additional information (such as organisational brochures, etc) may be provided to accompany the Submission, but such additional information will not be taken into account when reviewing Proposals.

The Submission shall consist of three (3) hard copies, with each component separately bound, and one (1) electronic copy. The latter shall be provided in both PDF and Microsoft Word formats.

### **7.3. Selection criteria**

Proposals will be reviewed and judged primarily against the criteria listed below and the supporting evidence supplied.

#### **Knowledge, skills and experience to deliver the project:**

- Specific knowledge relating to the subject area of this RfP;
- Experience and capability of key staff involved in project, including the Project Manager and Chief Technologist;
- Availability and stability of deployable resources to mobilise sufficiently rapidly and for sufficient durations;
- Record and ability in quality, timely and on-budget delivery (of projects of a similar nature) to the full satisfaction of stakeholders.

#### **Quality and credibility of proposal:**

- Demonstration of understanding of the ETI's requirements;
- Clarity of the proposed work programme;
- Credibility of the proposed project plan to deliver within the ETI's required timescales.

#### **Value for Money:**

- Total fixed price;
- Cost rates of proposed project staff.

#### **Compliance with ETI technical and contractual requirements:**

- Compliance with technical specification or requirements (if applicable);
- Compliance with contractual requirements;
- Ability to commence and deliver the project within ETI's required timescales.

The ETI at its discretion may request further clarification of a Proposal, and may reject any Proposal which is unclear.

## 8. Selection

### 8.1. Selection process

Following the closure date, the ETI will convene a Selection Panel as part of its evaluation process to recommend which Respondent(s) should proceed to project shaping and contract. In addition to ETI staff, this panel may comprise of experts selected by the ETI (typically including individuals drawn from ETI Member organisations and third parties) to provide the necessary expertise to consider the technical, commercial, legal and financial aspects of each bid.

In the event that the ETI receives a large number of bids, the ETI may make an assessment to select a manageable shortlist of bids for consideration by the Selection Panel.

The ETI may hold initial discussions with more than one Respondent, to ensure that all key issues are resolved fully and promptly, before making / confirming a final selection decision.

Respondents may, at the ETI's discretion be invited to attend the Selection Panel in order to provide further information. Respondents will be notified if this is required.

## 9. Post-Selection Procurement Process

### 9.1. Project shaping and contract negotiation

Following selection, the ETI will invite a preferred Respondent (or Respondents) to enter into a phase of Project shaping, which includes due diligence and contract negotiations. An overall period of 4 weeks has been allowed for this phase.

The Project shaping and contract negotiation phase will include the following activities (as required and dependent on the level of detail provided in the Respondent's proposal):

- a) Detailing of the proposed technical programme, including definition of deliverables and acceptance criteria;
- b) Detailing and agreement of Project Stage Gate;
- c) Other due diligence activities if required;
- d) Agreement of any identified contractual issues (note that compliance with the ETI's contractual conditions is a key selection criterion and the ETI does not anticipate that any significant exceptions to its contractual conditions will be agreed);
- e) Agreement (and approval by the ETI) to terms of other key contractual arrangements (e.g. Sub-contracts, Consortium Agreement).
- f) Gaining all necessary Respondent and ETI approvals to undertake the Project.
- g) Any further information or assessment that may be necessary to meet state aid requirements.

### 9.2. Contract detailing & negotiation requirements

These are only required if a Proposal is selected to proceed to the Project shaping and contract negotiations phase, and will include:

- a) It is anticipated that this project will be desk-based only. However, a full health and safety competency assessment will be carried out by the ETI, to assess the organisation's health, safety and environmental management systems and specific technical competence to manage the risks in this Project.
- b) Further intellectual property due diligence: This will primarily comprise detailed Background IP questionnaire.
- c) Copies of insurance policies.
- d) Any other information that the ETI reasonably requires in order to fund the proposed Project including any information necessary to meet state aid requirements.

## Appendix A: Due Diligence Table

A stand alone copy of this form is available to download from the ETI website.

Details of Organisation
Full name:
Registered Office:
Type of Business: <input type="checkbox"/> Sole Trader <input type="checkbox"/> Limited Company <input type="checkbox"/> Partnership <input type="checkbox"/> Other – please describe:
Names of Directors/Partners/Owner:
VAT Number:
Details of Directors, Partners or Associates
Have any directors, partners or associates of the organisation been involved in any organisation which has been liquidated or gone into receivership? <input type="checkbox"/> Yes <input type="checkbox"/> No
Have any directors, partners or associates of the organisation been convicted of a criminal offence relevant to the business or profession? <input type="checkbox"/> Yes <input type="checkbox"/> No
Please give (and attach if necessary) full details if you have answered 'Yes' to either of the two previous questions.
Audited Financial Accounts
Please supply Audited Financial Accounts for the last 3 years for the organisation, or relevant part thereof.

## Claims of Litigation

Please provide (and attach if necessary) details of any claims or litigation against the organisation, outstanding and/or anticipated.

## Insurance

Please confirm that you have insurance cover for the following risks, and confirm levels of cover and expiry for each. ETI will require evidence of these during the Project Detailing phase.

- Property damage
- Business interruption
- Employer's liability
- Public liability
- Product liability (or justify its exclusion if not appropriate)
- Professional Indemnity

Related Links: [General Due Diligence](#)

## Appendix B: The ETI's Approach to HSE in Projects

The ETI's approach to the management of HSE in Projects is based on three key elements:

- Competency Assessment.
- Performance Assurance.
- Project Incident Protocol.

How the ETI applies this approach to a specific Project depends upon the nature and content of the Project.

Respondents should ensure their Proposal makes the nature of the Project clear, demonstrates their competency to undertake the Project, and describes how they intend to organise themselves and manage health, safety and environmental issues in the Project. Specifically:

- a) Respondents should advise if any work to be undertaken during the Project is not desk based (e.g. site visits, field trials, experimental or laboratory work).
- b) Respondents should identify any specific HSE issues related to specific facilities or sites to be used in the Project. To the extent that parts of the Project take place outside of the UK, the Respondents should deal with the analogous issues as they apply in the local laws of the relevant country.
- c) Details of the Respondent's proposals to appoint a Construction Design and Management Regulations (CDM) Coordinator and/or a Principal Contractor should be included in the Proposal.
- d) The ETI expects that the Lead Coordinator or Prime Contractor will elect to act as Client and details should be included in the Proposal to confirm which Participant will elect to be the Client.
- e) Respondents should demonstrate their experience of identifying and managing HSE issues in Projects of equivalent complexity and scale, including:
  - i. Coordination of HSE across multiple contractors, if applicable.
  - ii. Incorporating safety into design, if applicable.
- f) Respondents are required to provide evidence throughout the Project that HSE is being managed and that such arrangements are adequate. The Respondents are required to set out in their Proposal how their management arrangements will enable such evidence to be provided.
- g) Respondents should set out their approach to managing contractors. This should include key roles and responsibilities of different Participants in the Project.

The Respondent should note that:

- Specific HSE requirements will be included in the Technology Contract including reporting against HSE performance on a periodic basis.
- The ETI will carry out a full HSE competency assessment against the Respondents (the Prime Contractor and the members of any Consortium) prior to contract award.

- The ETI will wish to explore the management of environmental issues with the Respondent prior to contract award.

Related Links: [ETI approach to Health, Safety and Environment \(HSE\)](#)  
[Contract detailing & negotiation requirements](#)



## Appendix C: Insurance Requirements

The Respondent should confirm that insurance cover for the following risks is held, and should confirm levels of cover and expiry for each. The ETI will require evidence of these during the Project shaping phase.

- Property damage (both any Property occupied by the Participants and any third party properties).
- Business interruption.
- Employer's liability.
- Public liability.
- Product liability (or justify its exclusion if not appropriate).
- Professional Indemnity.
- The Respondent should identify if it self-insures for any of these risks.
- The Respondent should identify if it is intending to take out any Project-specific insurance for the Project and the scope and intended beneficiaries of such insurance.

In relation to the Professional Indemnity Insurance, Respondents should note that the ETI has the following requirements.

Each Project Participant is required to have in place at the start of a Project a professional indemnity insurance policy (with at least a 6 month unexpired term).

- Each policy should have a limit of indemnity of not less than £1,000,000 each and every loss.
- Each policy should provide an indemnity at least as extensive as the ETI's policy (the ETI will make this assessment). For example, the cover needs to include cover for negligent acts or omissions, and dishonest or fraudulent acts or omissions by the insured).
- Each Project Participant will need to agree to maintain a professional indemnity insurance policy in force for 6 years from the date of completion of the Project.
- The ETI will require sight of the insurance policy provided by the Project Participant or a copy of a letter of confirmation from the Project Participant's insurance company or broker summarising the policy.

Related Links: [Insurance](#)

## Appendix D: Content and Format of Proposals

The Proposal shall be arranged according to the structure defined below and shall explicitly include all the information listed. Proposals should be a maximum of 26 pages. Appendices are in addition to this but may not be reviewed by the Selection Panel.

### 1. **Executive Summary** [approximately 1 page]

A summary of the Proposal, describing briefly:

- The organisation(s) / Consortium undertaking the work and the project organisation structure
- Summary of the predicted cost of outcomes, approaches taken and key deliverables
- Confirmation of compliance with the Request for Proposals and brief summary of key exceptions/deviations
- Project cost and duration

### 2. **Background to Proposed Participants** [approximately 4 pages, plus appendices if required]

#### 2.1. **Project Participants** [approximately 2 pages]

This section should identify all key roles and all associated key individuals (including deputies and alternates where appropriate). As well as key technical and other specialists, this should specifically include, (in detail), the Project Manager and Chief Technologist.

The proportion of each individual's time dedicated to the project should be identified and their expertise briefly summarised. CVs, of no more than 2 pages each, should be included in an appendix.

#### 2.2. **Key Individuals and Roles** [approximately 2 pages]

This section should identify all key roles and all associated key individuals (including deputies and alternates where appropriate). As well as key technical and other specialists, this should specifically include, (in detail), the Project Manager and Chief Technologist.

The proportion of each individual's time dedicated to the project should be identified and their expertise briefly summarised; (CVs, of no more than 2 pages each, should be included in an appendix).

#### 2.3. **Project Organisation** [approximately 1 page]

An organisation diagram showing the organisations and their roles (complete with key individuals) should be included – for each Phase if appropriate.

### 3. **Project Description** [approximately 13 pages, plus appendices if required]

#### 3.1. **Programme of Work** [approximately 8 pages, plus appendices if required]

The programme of work to be undertaken in the Project should be described. The description should include a task by task breakdown of the proposed work, identifying for each task:

- The task leader and others involved;
- The task objectives;
- Dependencies;
- The technical approach (e.g. methodologies, tools, techniques);
- Deliverables produced (labelled D1 to Dn)
- Issues or Assumptions

The inter-dependencies between Tasks should also be identified.

### **3.2. Project Schedule** [approximately 1 page]

A detailed schedule should be submitted, including all deliverables.

### **3.3. Deliverables and Payment Milestones** [approximately 1 page]

The Respondent should provide a summary of all deliverables including those required for Project Governance. This section should also propose acceptance criteria, and desired payment milestones.

### **3.4. Risk Management** [approximately 1 page, plus risk register as an appendix]

The Respondent should describe the proposed risk management strategy (i.e. how risks to the successful delivery of the Project will be identified and managed throughout the Project). The Respondent should also separately provide a risk register, identifying the key challenges, risks (including any assumptions or dependencies identified), issues and opportunities which may affect the successful delivery of the Project outcomes and identifying planned activities to address / mitigate each item.

A summary of key risks should be included in this section, with a complete risk register as described above provided as an appendix.

### **3.5. Health, Safety & Environment (HSE)** [approximately 1 page]

In this section Respondents should give evidence of their competence to undertake this Project, and to summarise their approach to manage and coordinate HSE in the Project.

The anticipated work required for this study is a desktop study using available information. It is not anticipated that any site visits, field trials, experimental or laboratory work will be required. Respondents should advise if any work which is not desk based is included in their Proposal and set out any key HSE risks in the risk register.

## **4. Intellectual Property** [maximum 5 pages, plus appendices if required]

### **4.1. Arising IP:**

The Respondent should provide a brief overview of the nature of any anticipated Arising IP from each stage of the Project.

In this Project, the Arising IP will belong to the ETI. Any licensing of Arising IP from the ETI to the Participants may be discussed if appropriate. If Respondents wish to

discuss any licence to use the Arising IP, Respondents should note that under State Aid rules profit cannot be paid for the Project in addition to the grant of a licence of Arising IP.

#### 4.2. Background IP

The Respondent should describe any Background IP (e.g. patents, proprietary data, computer algorithms, know how or other IP) only to the extent there is Background IP:

- Which is needed (whether by the ETI, or to be licensed from one Participant to another Participant or a Sub-contractor, or to be licensed by a Sub-contractor to a Participant or to another Sub-contractor, or otherwise) to carry out the Project or which may be used during the Project; or
- Which may be needed by the ETI to exploit the Arising IP.

The description of any such Background IP should detail:

- The nature of the IP (including the legal nature of the IP right);
- Rights to that IP; and
- Ownership and control, whether this is by any of the Project Participants or by any third parties.

### 5. Project Finances [approximately 2 pages, plus appendices if required]

#### 5.1. Project Costs

The Respondent should provide a breakdown of the total fixed price contract value as set out in the following table. If there are any assumptions or limitations to this price, these should be clearly stated.

	Date	Participant 1 (Lead Coordinator or Prime Contractor)	Participant 2	Participant 3	Participant 4	Total
Milestone 1						
Milestone 2						
TOTALS						

The Respondent should also provide a breakdown of the total fixed cost contract value as specified in the table below.

	Participant 1 (Lead Coordinator or Prime Contractor)	Participant 2	Participant 3	Participant 4	Total
Number of Person-days					
Total Labour					
Materials					
Subcontractors (minor)					
Travel & Subsistence					
Other					
<b>TOTAL PRICE</b>					

Significant Subcontractors (>20% costs) should be considered as Participants and fill in a column in the table Base Labour should include direct add-ons (e.g. NI, pension etc).

**6. Insurance** [approximately ½ page]

The Respondent should confirm that insurance cover for the following risks is held, and should confirm levels of cover and expiry for each. The ETI will require evidence of these during the Project detailing phase. Refer to [Appendix C](#) for full requirement.

**7. Plan for Project Shaping and Contract Finalisation** [approximately ½ page]

Respondents must clearly confirm in the submission that their key technical, commercial and legal resources will be available to meet the contract award target date.

Related Links: [Project organisation structure](#)  
[Submission content and format](#)  
[Selection criteria](#)

## Appendix E: Terms and Conditions of the Project Contract

### Summary of Terms

#### Introduction

The following represents a summary of the key contractual terms which the ETI would expect to be included in the Project Contract.

#### Structure

1. The Project is subject to state aid rules. Certain requirements relating to information on costs, IP and return of funding are a requirement of State Aid requirements. The ETI cannot fund a Project with a Respondent who is unable to agree to terms relating to state aid requirements.

#### Project Management

2. The Prime Contractor will be required to appoint a project manager for the day-to-day management of the Project normally from the Lead Co-ordinator. The ETI will appoint a programme manager to act on behalf of the ETI with regards to the Project.
3. The ETI, its Members and Programme Associates shall be entitled to attend meetings.
4. The Prime Contractor must fulfil various reporting obligations which will a weekly update to the ETI by email or by phone. Each report must address a specified list of topics required by the ETI.

**Note: Respondents should include costs to fulfil the reporting obligations in their Proposal.**

5. The ETI will require the right to carry out a stage gate review on completion of a "stage" in order to assess (a) overall performance in the Project; (b) whether the project continues to deliver against ETI outcomes; and (c) also in order to carry out a validation exercise against the business case. The ETI may carry out stage gate reviews more frequently if the project is in jeopardy. It is anticipated that there will be at least one Stage Gate.

#### Finance

6. The ETI will pay fixed sums.
7. Acceptance of milestones will be determined by the ETI against acceptance criteria agreed with the Participant[s]. Any increase in costs in carrying out the project over and above the agreed contractual amounts will only be payable by the ETI when such charges are agreed in accordance with the contractual variation control procedure.
8. Costs are payable in Sterling and the ETI will pay valid invoices within 30 days of receipt of an invoice and all supporting financial documentation following acceptance of a milestone.

9. The ETI reserves the right to require the return of funding in certain exceptional circumstances (such as in the event of corruption or fraud, overpayment, costs incurred in respect of unapproved project changes and failure to comply with State Aid obligations).

### **Representatives, Warranties and Covenants**

10. The Project Contract will contain representations and warranties in favour of the ETI as to the accuracy of information provided by the Prime Contractor to the ETI prior to entry of the Contract.
11. The Project Contract will contain on-going covenants from the Prime Contractor, including to meet certain ETI requirements, deliverables due dates, and environmental and health and safety requirements.
12. In certain rare circumstances, major subcontractors may need to enter into deeds of collateral warranty and representation in favour of any parties nominated by the ETI.

### **Key Personnel**

13. The Contract will identify a limited number of key personnel involved in the project, and the Prime Contractor will be required to gain approval from the ETI for proposed replacement staff.

### **Confidentiality**

14. Restrictions on disclosure of any other party's confidential information will apply. Any publication of results (if appropriate) will be subject to the confidentiality provisions in the Contract.

### **Audits and Records**

15. ETI will require the right to audit the project and Prime Contractor during the Project and, in certain circumstances, up to 7 years from the end of the Project on financial or technical grounds
16. The Prime Contractor will be required to maintain the majority of project records for a minimum of 10 years from the project end date to comply with State Aid rules.
17. The Prime Contractor will be required to keep relevant project records for more than 20 years where the records relate to registered intellectual property rights.

### **Sub-contracting and assignment**

18. Sub-contracting or assignment (other than by the ETI) is not permitted without consent. However, details of known sub-contractors (and therefore the requisite consent) can be given in the Project Contract at signing.
19. The terms of any material sub-contract will be subject to the prior approval of the ETI. The ETI may impose conditions prior to consenting to any subcontract.

### **Variation**

20. Any variations to the project must be made via the variation control procedure.

### **Liability**

21. Total contractual liability will be capped at the amount payable by the ETI to the Prime Contractor under the Project (except in relation to the agreed indemnities, return of funding or other liabilities which cannot be limited or certain excluded by law). For these claims, no cap will apply. Recovery of indirect, consequential etc. damages will usually be excluded.
22. The ETI will require an indemnity in respect of (a) third party infringement claims (to be uncapped) (b) certain claims brought by any third parties against the ETI as a result of the acts or omissions of the Prime Contractor under the Project (a cap may be accepted as long as this reflects a full allocation of the risk to the Prime Contractor and must be proposed in the Proposal).

### **Insurance**

23. Participant[s] will be obliged to carry appropriate insurance which will be tailored on a project by project basis.

### **Termination and Suspension**

24. The ETI reserves the right to terminate the agreement in certain circumstances (such as breach by a participant, withdrawal of a participant, insolvency, change of control of a Prime Contractor without ETI consent etc).
25. The ETI also reserves the right to terminate the agreement unilaterally upon giving a (to be agreed) period of notice to the Prime Contractor. Upon unilateral termination, the ETI will pay the eligible costs (pre-approved by the ETI) incurred by the project participant[s] up to the date of termination.
26. The ETI will reserve the right to suspend the project in certain defined circumstances.

### **Governing Law**

27. The Project Contract will be governed by English law and the parties will submit to the exclusive jurisdiction of the English Courts.

Related Links: [Terms and Conditions for Project Contract](#)  
[Non Disclosure Agreement](#)



## Appendix F: Non Disclosure Agreement

The Non Disclosure Agreement protects the confidential information of the Respondents and the ETI during the bidding process through to the conclusion of contract negotiations. For the successful Respondents, the confidentiality provisions in the Project Contract will supersede this NDA.

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

A separate version of this NDA is available on the ETI website.

### Instructions for completing the Non Disclosure Agreement

#### Respondents bidding through a Prime Contractor

1. The Prime Contractor should arrange to complete a single electronic NDA with its company details in Schedule 1.
2. The Prime Contractor should print and sign TWO copies of the NDA. The NDA **must not be dated**.
3. A copy of the signed NDA is to be sent to the ETI by post and scanned by email to the address on the front of the RFP.
4. The Respondent should indicate if it wishes to receive an original hard copy by post signed by the ETI.
5. On receipt of an NDA fully signed by the Respondent, the ETI will execute and date all copies of the NDA. The ETI will then send a scanned copy of the now fully executed NDA by email to the proposed Prime Contractor Respondent. The ETI will retain the original hard copies. The ETI will also send original hard copies signed by it, if requested.
6. The proposed Prime Contractor should then arrange for non disclosure agreements to be entered between it and proposed Subcontractors in order to comply with the NDA.

#### Respondents bidding as a Consortium (please discuss with ETI first)

1. The Lead Coordinator should arrange to complete a single electronic NDA with the company details of each Respondent that proposes to be a Project Participant in Schedule 1. **It is critical that each organisation signs an NDA with an identical Schedule 1 with all the details of each organisation bidding in that consortium printed on that Schedule.**

2. The Lead Coordinator should circulate electronically the NDA with the fully completed Schedule 1 to all Project Participants to EACH print and sign TWO copies. The NDA **must not be dated**.
3. One copy signed by each proposed Project Participant for a Respondent is to be sent to the ETI by post and scanned by email to the address on the front of the RFP.
4. Each Respondent should indicate if they wish to receive an original hard copy by post signed by the ETI.
5. On receipt of a complete set of NDAs fully signed by the Respondents, the ETI will execute and date all copies of the NDA. The ETI will then send a scanned copy of the now fully executed NDA by email to the proposed Lead Coordinator as appropriate (the Lead Coordinator should send these on to each Project Participant). The ETI will retain the original hard copies. The ETI will also send original hard copies signed by it, if requested.

A separate version of this NDA is available on request to: [smart@eti.co.uk](mailto:smart@eti.co.uk).

**Hard copies** of the completed NDA must be sent by post, with **original signatures**, to the ETI.

**MULTI-PARTY CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on \_\_\_\_\_ of \_\_\_\_\_ 2012

**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 parties named in Schedule 1 of this Agreement** (the “**Respondents**”),  
(collectively the “**Parties**” and individually a “**Party**”)

**BACKGROUND:**

The Parties intend to exchange certain Information on or after the Effective Date for the Purpose. The Parties agree to receive such Information, which shall be treated as confidential information, for the Purpose 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:

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

“**Effective Date**” means the date 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) and any Programme Associates, and in each case together with their respective officers, employees, agents and consultants;

“**Information**” means any and all confidential information or data submitted in respect of or further to the Purpose or prepared 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;

“**Procurement**” means the procurement by the ETI of the Project including any stages set out in the RFP or as later may be notified or published by the ETI;

“**Project**” means the proposed project Data Management and Overall Systems Architecture;

“**Programme Associate**” means any means an entity which is designated as such by the ETI from time to time;

“**Purpose**” means:

- a the preparation of documents and the making of any proposal in response to the RFP;
- b any activities related to the assessment of a Respondent's proposal or proposals for the Project including, but not limited to, any technology, commercial offer, financial information, management systems and intellectual property; and
- c any related exchanges of Information, clarifications, discussions, meetings, or negotiations in respect of the RFP, the Procurement and the Project;

**“Receiving Party”** means any Party that receives Information pursuant to this Agreement;

**“Respondent Affiliate”** means any undertaking that is:

- a a holding company of such Respondent;
- b the ultimate holding company of the group to which such Respondent belongs; or
- c a subsidiary of any holding company or subsidiary of the group to which such Respondent belongs,

and for the purposes of this definition, the terms above are as defined in section 1159 of the Companies Act 2006;

**“RFP”** means the request for proposals relating to the Project, issued by the ETI on 5<sup>th</sup> October 2012.

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) 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 advice, it is legally compelled to disclose.
- 5 The ETI shall be entitled to disclose or make available any Information it receives from the Respondents to 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 in the case of disclosure of Information to ETI Affiliates, that this is limited to disclosure as is reasonably necessary for the purpose of ETI's governance of the Procurement and the Project.
- 6 The ETI shall be entitled to disclose or make available any Information it receives from the Respondents to the Department of Business, Innovation and Skills (or other relevant Government department) and to the European Commission and their advisers as is necessary to seek advice in relation to the application of state aid, to notify or as part of any detailed assessment of state aid in the Project.
- 7 The ETI shall ensure that all such persons to whom any Information under clause 5 of this Agreement is disclosed are bound by obligations of confidentiality and the ETI shall be responsible for breaches of the obligations by such persons.
- 8 The ETI shall be entitled to disclose or make available any Information it receives from a Respondent to the other Respondent where it is necessary for the Purpose.

- 9 Each Respondent shall be entitled to disclose or make available any Information it receives from the ETI or the other Respondent to such of the Respondent Affiliates and either the Respondent's or the Respondent's Affiliates employees, officers, consultants, subcontractors, proposed subcontractors 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 written obligations that are no less restrictive than those in this Agreement. The Respondent disclosing Information shall be responsible for breaches of the obligations by such persons.
- 10 Each Respondent shall be entitled to disclose or make available any Information it receives from the ETI to the other Respondent where it is necessary for the Purpose.
- 11 The 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.
- 12 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.
- 13 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.
- 14 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. 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 upon statements made prior to the date of this Agreement.
- 15 Neither Party 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.
- 16 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 seven years from the Effective Date unless extended or superseded by a subsequent written agreement.

- 17 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 Contracts (Rights of Third Parties) Act 1999.
- 18 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.
- 19 If any provision of this Agreement is or become 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.
- 20 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 either 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.
- 21 Except as provided otherwise, no person may assign any of its rights under this Agreement or any document referred to in it.
- 22 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.
- 23 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 Registration No: Address of Company:	By:  Name:  Title:
Company Name: Company Registration No: Address of Company:	By:  Name:  Title:
Company Name: Company Registration No: Address of Company:	By:  Name:  Title:
Company Name: Company Registration No: Address of Company:	By:  Name:  Title:

The ETI will return a copy of the executed Non Disclosure Agreement to the Prime Contractor/Lead Coordinator of a consortium (whichever appropriate). 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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## Appendix G: Glossary

Term	Definition
Arising IP	Any intellectual property which is created by or for any Participant during the Project or for the purposes of the Project.
Background IP	Any intellectual property which existed prior to any Participant's commencement of the Project and which was created by or for the Participant.
Client	As defined by CDM.
Company Registration Number	Company number as registered at Companies House. Universities should enter their Royal Charter (RC) number in place of the Company Registration Number requested.
Consortium Agreement	The agreement to be entered into between the organisations together forming a Consortium which governs the execution of the Project within the Consortium.
ETI	The Energy Technologies Institute LLP, a limited liability partnership (Company no. OC333553) whose registered office is at Holywell Building, Holywell Way, Loughborough, Leicestershire LE11 3UZ.
ETI Executive	The Executive Committee of the ETI.
Participant	Either the Prime Contractor or a Consortium Member.
Payment Milestone	A contract milestone with defined constituent deliverables, associated deliverable acceptance criteria, and milestone value (all to be detailed in the Respondent's Proposal and agreed in the Technology Contract which should be completed in order to reach the said milestone, and at which, subject to acceptance by the ETI that the milestone has in fact been reached, payment may be claimed from the ETI.
Prime Contractor	A sole organisation which contracts with the ETI to manage the Project. It may have Subcontractors.
Programme Manager	The individual appointed by the ETI to manage the overall ETI programme to which this Project is affiliated, and to whom the Project Manager is accountable.
Project	The Project for which the purpose, scope of work and other details are described in this Request for Proposals.

Term	Definition
Project Contract	The contract, as described in Appendix E, to be entered into between the ETI and the Participants (whether between the Consortium Members or a Prime Contractor).
Project Manager	The individual who is appointed by the Lead Coordinator or Prime Contractor, or is otherwise agreed by the Project Participants, to carry out its responsibilities.
Project Organisation	The entity or group of entities / organisations, and the contracting and management structure which they adopt, as described in Section 3.5, which together will carry out the Project if commissioned by the ETI and includes any Consortium Members or Prime Contractor and any Subcontractors.
Proposal	The proposal for the Project submitted to the ETI, in response to this Request for Proposals.
Public Funding	Any funding provided by a public authority or agency.
Respondents	The organisations submitting a Proposal to the ETI.
Review Point	A Project review involving Project Participants and ETI representatives at which the overall progress in Project or a specific Work Package will be critically reviewed and following which a formal decision will be made on the future Project programme.
Stage Gate	A major Project Review Point involving Project Participants and ETI representatives at which the overall performance and business case for the Project will be critically reviewed and following which a formal decision will be made whether to continue with the Project, based on whether agreed Stage Gate Criteria have been met.
Subcontract	A contractual arrangement between a Participant (described in Section 3.6) and another organisation to which work for the Project has been subcontracted.
Subcontractor	An organisation which has a Subcontract.
Submission	The components set out in <a href="#">Appendix D</a> , including the Respondent's Proposal submitted by the Respondent in response to this Request for Proposals.
Task	A significant activity or group of activities (within a Work Package) which results in completion of a deliverable or a significant part of one, or which represents a significant step in the process towards one.

<b>Term</b>	<b>Definition</b>
Work Package (WP)	A major section of the Project scope of work, which may be identified in this Request for Proposals or in the Respondent's Proposal, in order to break up the scope of work into separate manageable parts. A Work Package will usually consist of a number of Tasks.