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**Programme Area:** Heavy Duty Vehicles

**Project:** HDV OH Market Analysis

**Title:** Request for proposals for the On Highway Market Analysis Project

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**Abstract:**

Request for proposals for the On Highway Market Analysis Project

**Context:**

The aim of this project is to provide an improved understanding of the current activities and trends occurring in the On-Highway Heavy Duty Vehicle arena. Future technologies and legislation are being assessed to further enhance the our knowledge of the existing market and anticipated future market state.

The project is being delivered by a consortium led by Ricardo UK with partners Automotive World and Ricardo-AEA.

# Request for Proposal (RfP)

## Heavy Duty Vehicle Efficiency Programme: On-Highway Market Analysis Project

### Request Issue Date

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28<sup>th</sup> October 2014

### Closing Date and Deadline for submission of signed NDA

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Proposals and signed NDAs must be received before 12:00 noon on the 28<sup>th</sup> November 2014

### Contact for Enquiries

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### Address for Notifications and Submission of Proposals

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## SUMMARY OF KEY PROJECT INFORMATION

The overarching deliverable of the ETI's On-Highway Market Analysis Project will be a report containing the data relating to the various markets, technologies, trends and analysis of these.

A glossary of terms used in this RfP is provided at Appendix D.

Project Financing	Anticipated Value
ETI Investment	To be proposed by Respondent

Request for Proposal and Selection	Dates
Issue of RfP	Fixed Date: 28 <sup>th</sup> October 2014
Closing date for (i) submission of Proposals and (ii) return of a properly signed and completed Non-Disclosure Agreement (Appendix B);	Fixed Date: 28 <sup>th</sup> November 2014 (12 noon)
Preferred Respondent(s) notified	Anticipated Date: 8 <sup>th</sup> December 2014

Project Timescales	Anticipated Dates
Consultancy Agreement execution target date	9 <sup>th</sup> January 2015
Project start	12 <sup>th</sup> January 2015
Project finish	Q1 2015

Respondents shall be wholly responsible for the costs they incur in the preparation and submission of their Proposals in response to the RfP. The ETI shall not be responsible for, and shall not pay, any costs and expenses which may be incurred by Respondents in connection with participation in the Project Commissioning Process, including but not limited to any costs or expenses incurred up to and including the execution of the Consultancy Agreement.

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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 Innovate UK (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's role is to bring together engineering projects that accelerate the development of affordable, secure and sustainable technologies that help the UK address its long term emissions reduction targets as well as delivering nearer term benefits.

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

## **2. PROGRAMME INTRODUCTION**

### **2.1. Background to the Heavy Duty Vehicle Efficiency Programme**

Heavy duty vehicles (HDV) such as shipping, heavy goods vehicles (HGV), construction equipment, agricultural equipment etc. currently contribute 8% to UK CO<sub>2</sub> emissions. Apart from bio-fuels, the low carbon options for replacing fossil fuels as the energy source for HDV applications are limited. Fuel efficiency will therefore be increasingly important to the future affordability, security and sustainability of HDV operation in the UK.

Given the economic, security and climate change benefits of restraining or even reducing fuel consumption there is significant opportunity for early benefits from the introduction of improved vehicles, especially as European legislation is likely to move from a focus on emissions to fuel efficiency over the period required to develop significant vehicle technology improvements.

The ETI anticipates that there is a significant opportunity to accelerate vehicle technology development through investment in Platform Technologies which will enable and support vehicle system development.

To address the concerns and accelerate the opportunities, the ETI has setup a Heavy Duty Vehicle Efficiency Programme, with the specific aim of identifying and demonstrating a package of powertrain efficiency improvement technologies relevant to multiple domains within the heavy duty transport sector.

### **2.2. Programme Objectives**

The ETI believes that it is realistic to target an overall weighted average efficiency improvement across the in scope applications in excess of 30%. The expectation is that vehicles / vessels embodying technologies from this Programme will be on sale by 2020 and that the full efficiency benefit will be delivered into the market from 2030 onwards. It is intended that these vehicles / vessels will be competitively superior products and will be purchased preferentially due to their superior economics and mission performance in use.

### **3. THE PROJECT**

#### **3.1. Project Introduction**

The aim of this On-Highway Market Analysis Project is to provide the ETI with an improved understanding of the current activities and trends currently occurring in the On-Highway Heavy Duty Vehicle arena. Furthermore, future technologies and legislation will be assessed to further enhance the ETI's knowledge of the existing market and anticipated future market state.

Using outputs of this Project, the ETI will be able to ensure that the monies that it is investing are generating innovative technologies. The ETI will also be able to assess the potential impact of the outcome of the Programme, based on this Project's Deliverable(s).

#### **3.2. Project Objectives**

This Project aims to provide the ETI with evidence and knowledge about the worldwide On-Highway market for the current to 2030 timeframe. The knowledge will be utilised to understand the potential market attractiveness and value of the current and future ETI HDV projects.

#### **3.3. Project Scope**

The Project is to include the following On-Highway vehicle types (as a minimum):

- Buses and Coaches (both single and double decker):
  - split into urban and extra urban usage.
- Medium Goods Vehicles (7.5 – 17 tonnes);
- Heavy Goods Vehicles (both rigid and articulated):
  - rigid split into 17 – 25 tonnes and >25 tonnes;
  - articulated split into <33 tonnes and >33 tonnes.
- Other vocational vehicles above 3.5 tonnes:
  - split into appropriate sectors e.g. Service/Delivery, Urban, Municipal, Regional, Long Haul and Construction.

It will cover the following markets / territories (as a minimum):

- North & South America;
- Western & Central Europe; and
- Asia Pacific (including China, Japan & India).

The Project will focus on the above markets for the timeframe 2015 to 2030.



## 4. PROJECT DELIVERY REQUIREMENTS

### 4.1. Detailed Requirements

The Project will provide the ETI with justified predictions regarding the anticipated future market, legislative drivers, vehicle / market trends, likely technologies as well as providing evidence of the existing Original Equipment Manufacturer (OEM) activities and technology status.

Specifically, the ETI anticipates the Deliverable(s) will cover 3 specific areas of interest:

OEM activities:

- market share split into the segments listed in Section 3.3;
- market and OEM volumes;
- product ranges;
- alliances with other OEMs and Tier 1 suppliers;
- globalisation trends; and
- potential new market entrants.

Technology:

- A view of the low carbon technologies that are expected to be available in the 2015 – 2030 timescale. Where feasible an estimation of costs and benefits (efficiency / CO<sub>2</sub> saving) should be made:
  - alternative fuels (CNG, LNG);
  - fuel injection;
  - engine boosting;
  - exhaust aftertreatment (including EGR);
  - transmission type (i.e. manual, auto, powershift, dual clutch, CVT);
  - powertrain hybridisation (including energy storage);
  - lubrications / cooling technologies; and
  - parasitic reduction technologies.
- A qualitative assessment of future technologies aimed fuel economy and emissions legislation.

Market / Legislation:

- Quantitative production forecast split by:
  - vehicle segment and weight / use category (as per 3.3); and
  - powertrain – Fuel type, Engine Displacement and Transmission type.
- Qualitative assessment of:
  - noxious emissions, fuel economy and CO<sub>2</sub> trends;
  - market trend (total cost of ownership vs up-front cost); and
  - legislative trends.

### 4.2. Project Deliverables

It is anticipated that there will be a single Deliverable, in the form of a report, from this Project and that will be delivered to the ETI towards the end of the Project. The Deliverable will provide the ETI with all the required information and explain how the data was derived including details of the original source data (see Section 5.4).

### 4.3. Project Review Meetings

The ETI expects there to be 1 (one) Project review meeting, shortly after the submission of the (final) Deliverable report. This Project review will occur at the ETI's premises and shall be delivered in a single day.

A Project kick-off meeting can be held, at the request of the selected Participant. The purpose of this meeting will be to review the scope of the Project, planned timescales, Deliverable(s), and the Participant's proposed way of working and interfacing with the ETI. This meeting will take no longer than 1 (one) half day.

## 5. COMMERCIAL AND LEGAL REQUIREMENTS

### 5.1. Project Contract

Following selection (see Section 6), the preferred Respondent will be invited to enter into a contract with the ETI to deliver the Project.

The Project will be governed by a contract substantially in the terms of the draft Consultancy Agreement appended to this RfP at Appendix C, subject to the inclusion of provisions specific to the delivery of the Project. The Consultancy Agreement will be finalised during the Project Shaping and Contract Negotiation Stage of the Project Commissioning Process (see Section 6.2), following selection of the preferred Respondent (see Section 6.1.3).

**Any issue a Respondent has with the terms of the draft Consultancy Agreement must be set out in the Statement of Compliance provided as part of its Proposal (see Appendix A, Annex A3). The extent to which a Respondent accepts the terms of the draft Consultancy Agreement is one of the Selection Criteria against which that Respondent's Proposal will be evaluated (Section 6.1.4).**

### 5.2. Participant Contracting Structure.

For this Project, the ETI requires that a single Respondent will enter into the Consultancy Agreement with the ETI and undertake the Project. Respondents may propose either of the following contracting structures:

- a) **Sole Contractor:** where the Respondent has satisfied the ETI that it has the skills, capability and capacity to undertake and deliver the Project fully and entirely within its organisation (without the involvement of Subcontractors); or
- b) **Prime Contractor:** with specified parts of the Project being performed by Subcontractors (including, as appropriate, companies within the same group as the Respondent). The ETI will require that there are Subcontracts in place between the Prime Contractor and its Subcontractors that are consistent in all material respects with the Consultancy Agreement. The appointment and use of Subcontractors by the Prime Contractor will be subject to prior ETI approval and the ETI reserves the right to approve the terms of Subcontracts prior to the Prime Contractor entering into the Subcontract.

### 5.3. Project Payment Structure

The ETI is an investor in technology, not a grant awarding body. The ETI anticipates that it will be the sole source of investment funding for this Project.

The ETI's investment will be on a fixed price basis. It is anticipated that the ETI will make a single payment for the whole of the contract value at the completion of the Project, following the ETI's acceptance of the Deliverable(s) (see Section 4.2). The ETI understands that this may not be the preference of small and medium-sized enterprises. Should this be an issue to Respondents, please discuss this with the ETI prior to submitting your Proposal..

**Each Respondent must in its Proposal clearly identify the proposed ETI Investment.**

Respondents may include an element of financial profit in their proposed costs, noting that it is not anticipated that the selected Respondent(s) will be granted rights to Project results/outputs or Arising IP.

### 5.4. Intellectual Property

#### Arising IP

For this Project, the ETI will own all Arising IP and shall use and exploit the Arising IP and results/outputs of the Project at its discretion (including, without limitation, by licensing ETI Members and other third parties, and by publication).

The ETI does not anticipate granting rights to the Sole/Prime Contractor (whether by licence or sub-licence) to use or exploit Project results/outputs or Arising IP, or otherwise.

In the event that a Respondent proposes to request a licence of the (or any) Arising IP, this should be discussed with the ETI prior to submission of its Proposal.

The ETI does not generally grant Arising IP rights to Subcontractors.

### **Background IP**

Where a licence of Background IP is required to carry out the Project and/or for the subsequent exploitation of any Arising IP / Project results/outputs, the Sole/Prime Contractor (and Subcontractor(s), where appropriate) are expected to make this Background IP available on a non-exclusive, royalty-free basis.

If Participants (or their proposed Subcontractors) fail to meet this expectation, the attractiveness to the ETI of the relevant Proposal may be adversely affected.

Due diligence on Background IP will be required both in the Proposal (as requested in Section 4 of Appendix A of this RfP) and during the Project Shaping and Contract Negotiation Stage (see Annex A1, Section 2).

### **Third Party IP**

The ETI anticipates that Third Party IP will be required to carry out the Project and for the subsequent exploitation of any Arising IP / Project results/outputs.

As with Background IP, due diligence will be required to ensure that any required Third Party IP will be identified and, if appropriate, the necessary rights secured.

**In this Project, the ETI is particularly concerned to ensure that it has the necessary rights in relation to (i) data owned by any third party and (ii) any derived data that the ETI does not own (as Arising IP).**

### **5.5. Due Diligence**

The ETI requires Respondents to provide due diligence information at two stages of the Project Commissioning Process: (i) as part of a Proposal and (ii) for the selected Respondent(s), during the Project Shaping and Contract Negotiation Stage of the Project Commissioning Process (see Section 6.2).

Further details of the ETI's due diligence requirements are set out in Appendix A / Annex A1.

Please note that successful completion of all elements of the required due diligence is a pre-requisite for selection of a Proposal. Failure to meet due diligence requirements at any stage may result in exclusion of a Proposal from the ETI's Project Commissioning Process.

### **5.6. Project Health, Safety and Environmental (HSE) Management**

The ETI's approach to the management of HSE in a specific project depends upon the nature and content of the project. For this Project, it is anticipated that all work to be undertaken by the Participant (and any Subcontractors) will be entirely desk-based.

In the event that a Respondent anticipates that any Project-related work will not be desk-based then, if selected to proceed to the Project Shaping and Contract Negotiation Stage (see Section 6.2), the preferred Respondent will be required to participate in an appropriate HSE competency assessment exercise.

The ETI's requirements for Respondents' Proposals are set out in Appendix A, Section 7.

## 6. PROJECT COMMISSIONING PROCESS AND ESTIMATED TIME SCALES

The ETI is using a two-stage approach to commission the Project:

Stage 1 - RfP issue, receipt of Proposals and selection of preferred Respondent(s); and

Stage 2 - Project Shaping and Contract Negotiation.

### 6.1. Stage 1: RfP Issue, Proposal Receipt and Respondent Selection

#### 6.1.1. Questions and Clarifications

Following the issue of this RfP, potential Respondents may request a short (maximum 1 hour) conference call with the ETI to (i) discuss the Project, and/or (ii) advice or clarifications in relation to the RfP / Project. Any advice on 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. Should a potential respondent wish to discuss technical or Project information of a confidential nature with the ETI, the Respondent should submit an approved NDA to the ETI prior to disclosure of this information.

#### 6.1.2. NDA and submission of Proposals in response to the RfP

Respondents are required to submit their Proposals (in electronic format) to the ETI no later than the closing date specified on the front page of the RfP (hard copies will be accepted up to 1 week after the date stated on page 2 of this RfP). The required form and contents of Proposals are set out in Appendix A. Prior to or when submitting the Proposal, the Respondents are required to provide the ETI with a Non-Disclosure Agreement in the form provided at Appendix B, signed and returned to the ETI in accordance with the instructions at Appendix B; Respondents are requested to follow the instructions carefully in order to avoid unnecessary delays.

**Proposals submitted to the ETI must consist of 1 (one) bound hardcopy and 1 (one) electronic copy, the latter being provided in both .pdf and Microsoft WORD formats. Postal and email addresses for submission of hardcopies and electronic copies, respectively, are set out on the front page of the RfP.**

#### 6.1.3. Both documents must be received by the ETI no later than the closing date specified in the Summary on the second page of the RfP. Selection Process

Following the closing date for submission of Proposals, the ETI will convene a Selection Panel as part of its evaluation process to recommend to the ETI which (if any) Respondent(s) should proceed to the Project Shaping and Contract Negotiation Stage.

Respondents may be requested to make a presentation to the Selection Panel to support information provided in their Proposal. The ETI and/or the Selection Panel may also request further clarifications prior to and/or following the meeting of the Selection Panel and/or as part of the Project Shaping and Contract Negotiation Stage.

Recommendations of the Selection Panel are made to the ETI's executive management team for consideration and ratification. All Respondents will be notified of the final ETI decision once it is confirmed. Prior to this notification, no information will normally be provided to Respondents concerning the Selection Panel recommendations, (except to the extent that further information may be requested by the ETI and/or Selection Panel to clarify certain aspects of some or all of the Proposals, as outlined above).

### 6.1.5. Selection Criteria

The ETI expects that the capabilities and experience listed below will be critical to the successful execution of the Project. Respondents are free to identify additional capabilities and experience which they consider to be critical or important to success or to provide reasoned arguments why capabilities identified by ETI are not required.

The ETI's experience of evaluating Proposals has shown that specific and objective evidence of capabilities and experience is more convincing than general statements about previous projects executed by the organisation.

Proposals will be reviewed and judged primarily against the criteria listed below and the supporting evidence supplied. Failure to meet minimum standards in any criterion may result in the ETI marking down and/or rejecting a Proposal. The expected capabilities and experience to be detailed in the Respondent's Proposal include:

a) Generic Criteria:

- willingness of Respondent(s) to materially comply with the terms and conditions of the proposed draft Consultancy Agreement appended to this RfP (Appendix C);
- willingness of Respondent(s) to support (i) the Project Shaping and Contract Negotiation Stage process as laid out in Section 6.2 and (ii) the Consultancy Agreement execution target date as specified in the Project information summary on the second page of the RfP;
- completeness of information content, structure and quality of the Proposal (against the areas listed in Appendix A);
- track record and ability in quality, timely and on-budget delivery (of similar activities) to the full satisfaction of the main stakeholders; and
- the extent to which there may be Background IP and/or Third Party IP which would prevent the Project proceeding or the Arising IP / Project results/outputs being exploited.

b) Technical Criteria:

- Respondent's ability to provide complete data for all the requested applications, technologies, markets and territories, as listed in Section 4.1 (Detailed Requirements).

c) Commercial Criteria:

- the amount of the proposed ETI Investment; and
- access to (licence rights to) the underlying data (and other Background IP and/or Third Party IP) upon which the Deliverable(s) will be based.

### 6.2. Stage 2 - Project Shaping and Contract Negotiation

Following selection, the ETI will invite the preferred Respondent(s) to enter into negotiations with the ETI to shape the Project and finalise the terms of the Consultancy Agreement. An overall period of 3 (three) weeks has been allowed for this Project Shaping and Contract Negotiation Stage.

The target date for execution of the Consultancy Agreement and the anticipated Project start and finish dates are set out in the Project information summary at the second page of this RfP.

**The ETI may decide to negotiate with more than one Respondent or group of Respondents (as the ETI considers appropriate) to ensure that all key issues are**

**resolved fully and promptly, before making a final selection decision.**

The Project Shaping and Contract Negotiation Stage will include the following activities (as required by the ETI and dependent on the level of detail provided in the Respondent's Proposal):

- a) further intellectual property due diligence (Background IP and Third Party IP, including third party data and databases where appropriate) (see Appendix A, Annex A1 Section 2b);
- b) further due diligence activities as required (see Appendix A, Annex A1 Section 2 and Annex A2);
- c) agreement (and approval as required by the ETI) to terms of any other key contractual arrangements (e.g. Subcontracts); and
- d) gaining all necessary Respondent and ETI approvals to undertake the Project.

Following selection, the preferred Respondent(s) is (are) required to commit the legal, technical, commercial and legal resources necessary to achieve the Consultancy Agreement execution target date (see page 2 of the RfP).

An overly protracted Project Shaping and Contract Negotiation Stage will delay commencement of the Project. The ETI reserves the right to conduct discussions with other parties and/or cancel the commissioning of the Project, including should it appear to the ETI that this date may not be achieved.



## **7. IMPORTANT NOTICES**

- 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 Project Commissioning 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 issue of the RfP is not an agreement or offer to purchase goods or services, and the ETI is not bound to enter into any contract with any Respondent. By responding to this RfP, a 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 under the terms of the Non-Disclosure Agreement (Appendix B), subject to any agreement to the contrary. No part of a Proposal, or other documents provided by Respondents, shall be returned.
- e) The ETI reserves the right at any time to (i) withdraw the RfP and/or terminate the Project Commissioning Process; (ii) change the basis, timetable, and /or requirements of, and/or the procedures for, the Project Commissioning Process, including the timetable or closing date for receipt by the ETI of Proposals, (iii) make modifications to, or alter any of the information within, the RfP, (iv) reject any or all of the Proposals received, and (v) not invite any Respondent(s) to proceed further.
- 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 RfP or of any other information made available during the Project Commissioning 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 RfP independently, having taken professional advice if necessary. Each Respondent will be deemed to have examined all the documents enclosed with this RfP 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 RfP. Each 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 RfP. The ETI shall not be responsible for, and shall not pay, any costs and expenses which may be incurred by a Respondent (or by any third party, including proposed Subcontractors) in connection with its participation in the Project Commissioning Process, including but not limited to any costs or expenses incurred up to and including the execution of the Consultancy Agreement.
- i) The ETI may, at its discretion, shortlist Respondents for the next stage of the Project Commissioning Process (the Project Shaping and Contract Negotiation Stage). 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 (and/or any invitation to any Respondent(s) to proceed to the next stage) shall not constitute any actual or implied agreement between the ETI and the Respondent.
- j) The copyright in the documentation and any other materials supplied by the ETI and/or its advisers in this Project Commissioning 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 Project Commissioning Process. All documentation supplied by the ETI in relation to this Project Commissioning Process must be returned on demand, without any copies being retained by the Respondent.

- k) In this RfP, any phrase introduced by the term “include”, “including”, “in particular”, “for example”, “such as” or similar expression shall be construed as illustrative and shall not limit the sense of the words preceding that term.
- l) This RfP, 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).
- m) 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 Section 7 (Important Notices), either expressly or impliedly, may result in a Respondent being disqualified.

## APPENDIX A - PROPOSAL CONTENT AND FORMAT

The Proposal must:

- be arranged according to the structure set out in this Appendix A and shall explicitly include all the information, together with all required supporting information/documents and appendices, listed in this Appendix A (including Annexes A1, A2 and A3);
- be written in a succinct manner and must not include imprecise statements, generalities or repetition;
- be easily readable with appropriate margin widths and font sizes (10pt or larger);
- **not exceed a maximum of 9 (nine) pages** (excluding required appendices); and
- be accompanied by a complete and accurate Statement of Compliance (Appendix A, Annex A3).

The required Proposal structure is as follows:

### 1. EXECUTIVE SUMMARY (approximately 1 page).

A summary of the Proposal, describing briefly:

- the organisation(s) undertaking the Project work and the Project organisation structure;
- the proposed ETI Investment;
- the proposed outline Project approach, including but not limited to the likely database(s) and other data sources that will or may be utilised;
- summary description of the Deliverable(s); and
- confirmation that the Proposal is fully compliant with the RfP and draft Consultancy Agreement or, where this is not the case, a summary of (i) the exceptions/deviations from the RfP requirements and (ii) the proposed deletions, exceptions and/or other amendments to the draft Consultancy Agreement.

### 2. PROJECT PARTICIPANTS AND STRUCTURE (approximately 2½ pages, plus appendices).

#### 2.1. Project Participant / Subcontractor(s) (approximately 1 page).

Respondents should identify (by legal name, company number and registered office address) and provide a brief description of the proposed Participant (Sole / Prime Contractor) organisation, together with any proposed Subcontractor(s) organisation(s), including: -

- the key skills, knowledge, experience and previous track record (of each relevant organisation) in the area; and
- in the case of a proposed Prime Contractor, the proposed role(s) of each organisation to be involved in the Project.

#### 2.2. Key Individuals and Critical Roles (approximately ½ page).

This section of the Proposal should identify all key roles and all associated key individuals proposed by the Respondent. The proportion of each individual's proposed time dedicated to the Project should be identified and their expertise briefly summarised.

#### 2.3. Participant Contracting Structure (maximum 1 page).

This section should briefly explain the intended contracting/Project organisational structure, ie either a Sole or Prime Contractor (see Section 5.2 of the RfP).

In the case of a proposed Prime Contractor structure, the proposed Prime Contractor organisation should be clearly identified as such, as should each Subcontractor organisation

proposed to be involved in the Project.

An organisation diagram showing the organisations and their roles (complete with key individuals) should be included.

Respondents should identify in their Proposal any foreseen issues or difficulties in executing Subcontracts or license agreements.

### **3. PROJECT APPROACH AND PROGRAMME OF WORK** (approximately 2 pages).

#### **3.1. Project Approach** (approximately 1 page).

Respondents should provide a summary of the overall approach to the Project, including any key tasks / activities, their interdependencies and how they contribute to the overall Project outcome.

Any issues or assumptions in defining the schedule (including any data / database / license access or other intellectual property issues) should be explicitly stated. Any relevant activities related to but not included within this Project, and the relationships with these activities, should also be described.

#### **3.2. Project Schedule** (approximately 1 page, plus appendices).

Respondents should provide a summary time schedule for the Project, highlighting:

- Tasks (including duration, inputs required from the ETI or other parties, other external dependencies, timing for required permissions and consents);
- work on and delivery of the sole Deliverable of the Project; and
- Project review(s).

### **4. INTELLECTUAL PROPERTY** (approximately 2 page).

Respondents should read Section 5.4 (Intellectual Property) of the RfP before completing this section.

#### **Arising IP**

Respondents should provide a brief overview of anticipated Arising IP and the nature of such anticipated Arising IP, including the form of the anticipated intellectual property rights arising. This should expressly include reference to development of any existing technology, any innovations, any results/outputs, any know-how and any data/database(s).

Respondents are reminded that, in this Project, the ETI expects to own (and have all rights in and to) all Arising IP. It is not anticipated that licences of Arising IP will be granted to the Participant (or to any Subcontractor).

Respondents should highlight any Arising IP (including data/database(s)/derived data) where it anticipates there may be any issue with the ETI owning absolutely such Arising IP.

#### **Background IP and Third Party IP**

Respondents should identify and describe any and all Background IP and Third Party IP (e.g. patents, proprietary data / databases, computer algorithms, know how or other intellectual property), respectively, that:

- is or may be needed (whether by the ETI, or to be licensed from the Participant to a Subcontractor, or to be licensed by a Subcontractor to the Participant or to another Subcontractor, or otherwise) to carry out the Project or which may be used during the Project; and/or

- is or may be needed by the ETI to use and/or exploit any of the Arising IP and/or results/outputs of the Project (including the Deliverable).

The description of such Background IP and Third Party IP, respectively, should detail:

- the nature of the relevant intellectual property (including the legal nature of the intellectual property right);
- the rights to that intellectual property that are or may be required and by whom;
- the ownership and control of the relevant intellectual property, whether this is by the Project Participant, a Subcontractor, or by any third party;
- whether there is any reason that such Background IP or Third Party IP (as appropriate) will not be made available as and to the extent needed to carry out the Project and/or use and exploit the Arising IP and/or Project results/outputs; and
- the proposed terms for making available such Background IP and (where known at the date of Proposal submission) Third Party IP to the extent needed to carry out the Project and/or to enable the ETI, the ETI Members and other licensees of the ETI to use and exploit the results/outputs of the Project and the Arising IP.

In the case of any (and all) data and database(s) identified as Background IP or Third Party IP, please provide the required information specified above in tabular form (for example, as set out overleaf), together with any other information that may be relevant to (i) the use in the Project and (ii) subsequent use/exploitation, of the data/datasets/derived data (as appropriate).

Description of data / database.	Will data be derived from the data/database in the Project (ie derived data)? If so please describe.	Ownership / control (legal entities) of data / database / derived data (as appropriate).	Rights required (to data/database/derived data) and by whom for (i) the purposes of Project and (ii) the use and exploitation of Project results.	Restrictions of the availability and/or use of the data / database / derived data.	Proposed terms for making available the data/ database/derived data.

## 5. GENERAL DUE DILIGENCE REQUIREMENTS (appendices - not part of page count).

The ETI's general due diligence requirements for this Project are set out at Annex A1, Section 1 (Submission of Proposal) of this Appendix A.

Respondents should note that, if selected to proceed to the Project Shaping and Contract Negotiation Stage, further due diligence will be required, including as set out in Annex A1, Section 2 of this Appendix A.

## 6. PLAN FOR PROJECT SHAPING AND PROJECT CONTRACT NEGOTIATION (approximately 1 page).

Respondents should, in this section, identify key issues to resolve during the Project Shaping and Contract Negotiation Stage, before Consultancy Agreement execution, for example:

- detailing of the technical proposal: what further actions are needed;
- Consultancy Agreement – key risks and issues/provisions to be resolved (based on draft Consultancy Agreement; see Section 5.1 of RfP body and Appendix C); this must be consistent with the required Statement of Compliance (and Appendix A, Annex A3);
- timing sequences for the setting up of the proposed Project organisational structure (e.g. subcontracts), including any dependencies and other factors which could impact or delay the Project commencement;
- internal approvals - confirm what internal approvals will be required for the Respondent and any Subcontractor(s) to enter into the Consultancy Agreement;
- **any required licensing rights for required Background IP and/or Third Party IP (including data/databases); if relevant, any required licensing rights for Arising IP (for example, where the Arising IP is derived data and where the owner/licensor of the original data (being Background IP or Third Party IP) asserts ownership of such derived data).**

Respondents should explicitly confirm that all key technical, commercial and legal resources, across the Participant and any Subcontractors, required to meet the Consultancy Agreement execution target date (see the Project information summary at the second page of the RfP) will be available to achieve a signed contract by that date.

A table should be included providing names and contact details (phone and email addresses) of the Respondent's (proposed Sole / Prime Contractor's) key contacts for the Project Shaping and Contract Negotiation Stage. This should include the Respondent's main technical, legal/commercial and finance contacts.

Following selection, the preferred Respondent(s) are required to commit the legal, technical, commercial and legal resources necessary to achieve the Consultancy Agreement target execution date (see page 2 of the RfP).

## 7. HEALTH SAFETY AND ENVIRONMENTAL MANAGEMENT (approximately ½ page).

Respondents should confirm that all work undertaken in the Project will be entirely desk-based, or clearly state the nature of any exceptions to this (e.g. site visits, field trials, experimental or laboratory work).

In the event that a Respondent anticipates that any work will not be desk-based then, if selected to proceed to the Project Shaping and Contract Negotiation Stage, the preferred Respondent will be required to participate in an appropriate HSE competency assessment exercise.

## 8. STATEMENT OF COMPLIANCE

Respondents are reminded that they are required to provide with their Proposal a Statement of Compliance in accordance with Appendix A, Annex A3 .

## APPENDIX A

### ANNEX A1 - DUE DILIGENCE INFORMATION REQUIREMENTS

The ETI requires due diligence information during two stages of the Project Commissioning Process:

- Submission of the Proposal; and
- the Project Shaping and Contract Negotiation Stage.

#### 1. SUBMISSION OF THE PROPOSAL

All Respondents and Subcontractors (except, in each case, ETI Members, 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, are required to provide general due diligence Information to the ETI according to the table in Annex A2 of Appendix A.

This is in addition to any due diligence required elsewhere in Appendix A (see, for example, Section 4 of Appendix A in relation to intellectual property).

#### 2. PROJECT SHAPING AND CONTRACT NEGOTIATION STAGE

This further due diligence is only required if a Proposal is selected to proceed to the Project Shaping and Contract Negotiations Stage, and may include:

- a) a health and safety competency assessment will only be required by the ETI where a Respondent's proposed scope of work under the Project is not entirely desk-based, to assess each Participant and Subcontractor organisation's health & safety management systems and specific technical competence to manage the risks in the Project. Further details can be provided where it appears that not all Project work will be entirely desk-based;
- b) further intellectual property due diligence, which may include an intellectual property questionnaire to identify Background IP and Third Party IP (including data / databases) relevant to the Project and use/exploitation of Project results/outputs and/or Arising IP. Participants and Subcontractors (if any) may be asked to provide evidence of ownership or rights to use the relevant intellectual property for the Project and/or for exploitation of the Project results/outputs and/or Arising IP. Further information will be provided as appropriate during the Project Shaping and Contract Negotiation Stage; and
- c) any other information that the ETI reasonably requires in order to invest in the proposed Project including any information necessary to meet State aid requirements.

## APPENDIX A

### ANNEX A2 - GENERAL DUE DILIGENCE REQUIREMENTS

A standalone 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.
Claims of Litigation
Please provide (and attach if necessary) details of any claims or litigation against the organisation in the last 3 years (including any which are outstanding) and/or any anticipated claims.



## APPENDIX A

### ANNEX A3 - STATEMENT OF COMPLIANCE

Each Respondent shall provide a Statement of Compliance which confirms:

- that the Respondent has full authority to submit a Proposal on the basis of this Request for Proposal;
- that the Proposal has been appropriately reviewed by the Respondent's technical, commercial, financial and legal representatives; and
- the level of internal approval obtained by proposed Subcontractors (if any) in order to make the Proposal (letters of support from each key Subcontractor should be included).

With respect to the RfP, each Respondent must provide in the Statement of Compliance a statement expressly confirming either:

- that the Proposal is fully compliant with all aspects of the RfP; or
- that the Proposal is fully compliant with all aspects of the RfP subject to proposed exceptions, deviations, alternative approaches and/or additions to the requirements of the RfP; in this case each of the proposed exceptions, deviations, alternative approaches and/or additions (as appropriate) must be clearly stated and be accompanied by a commentary clearly setting out the reasons for each of the proposed exceptions, deviations, alternative approaches and/or additions.

With respect to the terms and conditions of the draft Consultancy Agreement (Appendix C), each Respondent must provide in the Statement of Compliance either:

- express confirmation that the Proposal is made on the basis of the terms and conditions of the draft Consultancy Agreement ; or
- express confirmation that the Proposal is made on the basis of the terms and conditions of the draft Consultancy Agreement subject to proposed clarifications and exceptions. In these circumstances, the Respondent must include in their Proposal:
  - a copy of the draft Consultancy Agreement, marked up with the Respondent's proposed clarifications and exceptions; and
  - a separate commentary against each of the proposed clarifications and exceptions clearly setting out the reasons for each of those clarifications and exceptions.

Please note that the ETI may reject a Proposal if a material issue (including a non-compliance with the terms and conditions of the draft Consultancy Agreement) is identified by a Respondent at any stage during the Project Commissioning Process.

## APPENDIX B - 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

**A separate electronic version of the NDA is available on the ETI Website ([http://www.eti.co.uk/request\\_for\\_proposals](http://www.eti.co.uk/request_for_proposals)) for completion and signature by Respondents in accordance with the following 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 the 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 Heavy Duty Vehicle Efficiency Programme known as “On-Highway Market Analysis Project”;

“**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 28<sup>th</sup> 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, subcontractors, proposed subcontractors, 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, 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 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, subcontractors 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 trade marks 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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SUBJECT TO CONTRACT

**APPENDIX C – CONSULTANCY AGREEMENT**



**DATED** \_\_\_\_\_ **2014**

**ENERGY TECHNOLOGIES INSTITUTE LLP**

**CONSULTANCY AGREEMENT<sup>1</sup>**

**HEAVY DUTY VEHICLE EFFICIENCY PROGRAMME**

**ON-HIGHWAY MARKET ANALYSIS PROJECT**

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<sup>1</sup> Initial draft agreement based on ETI template, for information only; subject to review following selection of preferred Respondent, consideration of proposals, due diligence etc.

SUBJECT TO CONTRACT

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SUBJECT TO CONTRACT

**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 ("**ETI**"); and
- (2) **[TBA]**, a [company] registered in [England and Wales (Company no. [tba])] whose registered office is at [tba] (the "**Consultant**");

being the "**Parties**" and each a "**Party**" to this Agreement.

**WHEREAS:**

- (A) The ETI wishes to engage a consultant to undertake the ETI project known as the "On-Highway Market Analysis Project", as part of the ETI's Heavy Duty Vehicle Efficiency Programme
- (B) The Consultant has expertise in [tba]. The Consultant has been selected by the ETI to deliver the aforementioned project further to a request for proposals issued by the ETI on 28<sup>th</sup> October, 2014.
- (C) The ETI and the Consultant have agreed that the Consultant shall deliver the aforementioned project on the terms and conditions of this Agreement.

**IT IS AGREED:**

**1. SERVICES**

- 1.1. In consideration of payment by the ETI of the fixed price fee in the sum shown in the table below (the "**ETI Investment**"), together with VAT at the applicable rate, the Consultant shall provide to the ETI the following services on the terms and conditions of this Agreement:

Services	ETI Investment
Undertaking and delivering to the ETI the ETI project known as the "On-Highway Market Analysis Project" as described in and in accordance with Annex 1 of this Agreement.	£##,000 ([words] thousand pounds sterling), to be paid subject to and in accordance with the terms and conditions of this Agreement.

(the "**Services**").

- 1.2. The Consultant shall provide the Services to the ETI exclusively through the individuals identified as Consultant Personnel in Annex 1 Part 3 ("**Consultant Personnel**"). The Consultant shall ensure that each of the Consultant Personnel shall be available to the ETI at such times from the Commencement Date and at such locations as the ETI may require for the provision of the Services.
- 1.3. Prior to any Services (or part thereof) being undertaken, the ETI shall confirm the requirement for such Services in a purchase order from the ETI.

**2. DURATION**

This Agreement shall commence with effect from [date, 2014] (the "**Commencement Date**") and shall expire on the completion of the Services on [date, 2015] (the "**Termination Date**"), subject to earlier termination as provided in the terms and conditions set out in Annex 2.

## SUBJECT TO CONTRACT

### 3. TERMS AND CONDITIONS

- 3.1 The Terms and Conditions for Consultancy Services attached at Annex 2 shall form part of this Agreement insofar as they are not inconsistent with the specific terms and conditions set out in this Agreement.
- 3.2 The Consultant's standard terms and conditions of business shall not apply to this Agreement.

### 4. MANAGEMENT AND COMMUNICATIONS

- 4.1 The Consultant shall perform the Services under the direction of the ETI. Any direction by the ETI may be given by [David Butler] or such other person as is notified by the ETI to the Consultant in writing from time to time.

### 5. INVOICING AND PAYMENT

- 5.1. In consideration of the Consultant providing the Services to the satisfaction and requirement of the ETI and submitting [a] valid VAT invoice[s]<sup>2</sup> to Doug Erskine, Head of Finance, at the ETI in accordance with Condition 5.2, below, the ETI shall pay to the Consultant the [appropriate amount of the] ETI Investment within 30 days of such receipt of such invoice[s].
- 5.2. The Consultant shall invoice the ETI in accordance with Section 4.3 (Invoicing) of Annex 1 Part 1, Section 4 (Deliverables, Acceptance and Invoicing).
- 5.3. The ETI Investment is an all-inclusive, total, maximum amount. In no event shall the ETI be obliged to pay to the Consultant (and/or to any third party) more than the amount of the ETI Investment in aggregate (i) in relation to the Services, and/or (ii) under or pursuant to this Agreement.
- 5.4. The amount of the ETI Investment payable by the ETI is exclusive of value added tax, sales and similar taxes of any kind.

### 6. SUBCONTRACTING<sup>3</sup>

- 6.1 The ETI agrees that the Consultant shall subcontract the carrying out of Services to [subcontractor legal name and company number tba] (the "**Subcontractor**"), where and to the extent provided for in [Section 6 of] Annex 1 Part 1; the Consultant shall procure that such Subcontracted Services shall be carried out exclusively by the individuals identified against such Services as Subcontractor Personnel in Annex 1 Part 3 ("**Subcontractor Personnel**").
- 6.2 The Consultant shall:
  - a. ensure that the terms of engagement of the Subcontractor are consistent with, and enable the Consultant to comply fully with its obligations under, this Agreement;
  - b. procure compliance by [the][each] Subcontractor (and each of the Subcontractor Personnel) with the terms of this Agreement as if the Subcontractor (and each of the Subcontractor Personnel) were the Consultant and Party to this Agreement; the Consultant shall be liable to the ETI for all acts and omissions of each of the Subcontractor and such persons (and each of them) as if those acts or omissions were those of the Consultant; and
  - c. for the avoidance of doubt, be solely responsible for payment of the Subcontractor and the Consultant acknowledges that the ETI has no liability in this respect whether under this Agreement or otherwise.

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<sup>2</sup> Payment structure and invoicing to be agreed with selected Respondent(s) during the Project Detailing and Contract Finalisation Stage – see RfP Section 4.4 p17.

<sup>3</sup> To be included if there is an approved Subcontractor (or Subcontractors).

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**7. INTELLECTUAL PROPERTY / CONFIDENTIALITY<sup>4</sup>**

7.1 Without prejudice to any other provision of this Agreement, the Consultant shall ensure that:

- (a) the use and/or exploitation by the ETI (or any third party) of the Deliverables (as defined in Section 4.1 (Deliverables) of Annex 1 Part 1, Section 4 (Deliverables, Acceptance and Invoicing)) or other results or outputs of the Services will not infringe any Intellectual Property owned by the Consultant or by any third party [(including the Subcontractor[s])];
- (b) as between the Consultant and the Consultant Personnel, [the Subcontractor, the Subcontractor Personnel] and/or any other third party, the Consultant shall ensure that it owns all legal and beneficial interest in all Intellectual Property created in the course of the Services; the Consultant shall (and shall procure that all such aforementioned persons shall) do all things necessary to give full effect to the provisions of Condition 8 (Intellectual Property) of Annex 2 (including without limitation to ensure that all Intellectual Property created in the course of the Services which subsists now or at any time in the future shall without limitation vest in and be the absolute property of the ETI); and
- (c) the Consultant has (and the Consultant shall maintain and comply with the terms and conditions of) all necessary consents, licences, permissions, exemptions and similar approvals (“Consents”) and other rights required in relation to the provision of the Services (including in relation to the use of third party models, tools, data sources, any data derived from any such data sources, and other materials) by the Consultant. The Consultant shall notify the ETI in writing as soon as is reasonably practicable of any and all such Consents and rights and provide such details thereof as may be reasonably requested by the ETI.

7.2 Without prejudice to Condition 7.1a. above or to any other right or remedy of the ETI, in the event that, in the reasonable opinion of the ETI, a licence of any Intellectual Property owned by the Consultant or by any third party is or may be required to use and/or otherwise exploit the (or any) Deliverables and/or other results and/or outputs of the Services, the Consultant shall upon the request of the ETI promptly grant and/or where appropriate procure the grant to the ETI of an irrevocable, perpetual, non-exclusive, worldwide, free (including royalty-free) licence (with the right to grant sub-licences) under such Intellectual Property, to use and otherwise exploit such Deliverables and/or other results and/or outputs.<sup>5</sup>

7.3 Nothing in this Agreement shall affect the ownership of Intellectual Property owned or controlled by a Party before the Commencement Date or later created other than in the course of the Services.

7.4 For the avoidance of doubt, all Intellectual Property, results, outputs, deliverables, documentation, conclusions and other information created in or otherwise arising from or in relation to the Services, and other Project-related information, shall be the Confidential Information of the ETI (including for the purposes of Condition 6 of Annex 2 of this Agreement).

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

**ENERGY TECHNOLOGIES INSTITUTE LLP**

**[TBA] LIMITED**

By: \_\_\_\_\_

By: \_\_\_\_\_

<sup>4</sup> Subject to due diligence; tbc when extent of any required Background and/ or third party rights is known.

<sup>5</sup> To be considered / reviewed / included where Background IP and/or third party IP is or may be relevant.

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Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## SUBJECT TO CONTRACT

### ANNEX 1 - SERVICES<sup>6</sup>

#### ANNEX 1 PART 1 - PROGRAMME OF WORK

##### 1. PROJECT BACKGROUND AND OBJECTIVES

The ETI has commissioned a project [entitled][known as] “HDV On-Highway Market Analysis Project” (the “**Project**”). The aim of the Project is to [tba]. Further information is provided at Section 3 of the Request for Proposals for the Project, issued by the ETI on [date] 2014 (the “**RfP**”).

This Agreement governs the delivery of the Project by the Consultant to the ETI. The Consultant shall deliver the Project no later than the Termination Date and in accordance with this Agreement, including this Annex 1.

[background description of work to be inserted, based, inter alia, on the RfP and (to the extent agreed by the ETI) the preferred Respondent’s proposal].

The key objectives of the Project (the “**Project Objectives**”) are to:

- [tbd, based inter alia on the RfP and (to the extent agreed) the preferred Respondent’s proposal]
- [];
- [];
- [];
- []; and
- [].

The Consultant shall deliver, as the main outputs from the Project, [the deliverables as specified and described in Section 4 of this Annex 1 Part 1, below].

##### 2. WORK PROGRAMME<sup>7</sup>

The Project will comprise the following work packages:

###### **Work Package WP1: [Title tbc; (Deliverable D1)]**

In Work Package WP1, the Consultant shall [tbc] (*Deliverable D1*).

[detailed descriptions of work to be carried out and deliverable(s) to be inserted here]

###### **Work Package WPn: [Title tbc; (Deliverable Dn)]**

In Work Package WPn, the Consultant shall [tbc] (*Deliverable Dn*).

[detailed descriptions of work to be carried out and deliverable(s) to be inserted here]

The Consultant shall commence, conduct and complete the Project, including each work package and delivery of the Deliverables (D1 and ... Dn) as described in Section 4.1 (Deliverables) of this Annex 1 Part 1, Section 4 (Deliverables, Acceptance and Invoicing), below in accordance with the timescales set out in Annex 1 Part 2 of this Agreement.

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<sup>6</sup> Provisional for information only; to be completed following selection of preferred Respondent/proposal, based (as appropriate) on RfP, the Proposal and/or further discussions.

<sup>7</sup> Placeholder. To be completed – based on sections 3.4 and 3.5 of RfP and (to the extent considered appropriate by the ETI) the preferred Respondent’s proposal.

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3. **REPORTING<sup>8</sup>**

[The Consultant shall provide to the ETI (to David Butler and/or such other individual as may be notified by the ETI in writing from time to time) project progress reports [frequency / dates of submission tbd]; each such progress report shall detail the following matters:

- [tba]; and
- [tba].

4. **DELIVERABLES, ACCEPTANCE AND INVOICING<sup>9</sup>**

4.1 **Deliverables**

The Consultant shall provide the following deliverables (together the “**Deliverables**” and each a “**Deliverable**”) to the ETI on or before the specified Deliverable Due Date for each Deliverable:

Deliverable No.	Deliverable Title	Deliverable Description	Deliverable Due Date
D1			[tba], 2014
Dn		[tba] including: <ul style="list-style-type: none"><li>• [tbd]</li><li>• [tbd]</li><li>• [tbd]</li><li>• [etc]</li></ul>	[tba], 2014

**Table 1 – Deliverables and Deliverable Due Dates**

4.2 **Acceptance<sup>10</sup>**

The ETI shall communicate in writing its acceptance or otherwise of each Deliverable within 20 business days after the later of the relevant Deliverable Due Date, as set out in Table 1 above, and the date of actual receipt by the ETI of the relevant Deliverable; such acceptance shall not be unreasonably withheld, conditioned or delayed by the ETI provided that, in any event, the ETI shall not be obliged to accept the (or any) Deliverable where and for so long as such Deliverable does not meet the description and other requirements set out in this Agreement and/or the Services have not been provided to the satisfaction and requirement of the ETI in accordance with the terms and conditions of this Agreement (including where the Project Objectives and/or the relevant [Task objectives] [and/or outcomes] have not been met).

In the event that the ETI does not accept a Deliverable, the ETI shall provide to the Consultant written details of the reasons for its decision. The Consultant shall re-submit the relevant Deliverable to the ETI within 10 working days of receipt by the Consultant of such written details. The ETI shall communicate in writing its acceptance (or otherwise) of such a re-submitted

<sup>8</sup> Placeholder – to be proposed / negotiated / agreed.

<sup>9</sup> To be reviewed, amended and updated as appropriate following selection of preferred Respondent.

<sup>10</sup> Example mechanism – tbd.



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Deliverable within 20 business days after its receipt by the ETI. The ETI shall only be obliged to allow re-submission of a Deliverable on one occasion.

The Parties agree that, notwithstanding condition 12.10 of Annex 2 of this Agreement, the written acceptance (or otherwise) by the ETI of each Deliverable (and the reasons for any non-acceptance) may be communicated by the ETI to the Consultant by email.

### 4.3 Invoicing<sup>11</sup>

Following written notification to the Consultant by the ETI of the ETI's acceptance of [all] Deliverables [(D1, ...Dn)] in accordance with Section 4.2, above, of this Annex 1 Part 1, the Consultant may submit to the ETI (to Doug Erskine, Head of Finance) [a] valid VAT invoice[s] for the [corresponding] amount of the ETI Investment (being £[tba] ([tba/in words] pounds sterling)). ]

### 5. HEALTH, SAFETY AND THE ENVIRONMENT (HSE)<sup>12</sup>

The Consultant shall not (and shall procure that each of the Subcontractors shall not) carry out any activities under or in relation to any part of the Services and/or the Project (a) which are not desk based, and/or (b) which constitute "design" under the Construction (Design and Management) Regulations 2007, without (in each case) the prior consent of the ETI, which consent shall not be unreasonably withheld or delayed but which may be subject to reasonable conditions including (i) the provision of information to enable a competency assessment to be carried out before any such consent may be given and (ii) the Prime Contractor and/or Subcontractors, as appropriate, being assessed by (or on behalf of) the ETI as competent to perform such activities.

The Consultant shall comply with the ETI's Project Incident Protocol (as provided and updated by the ETI from time to time), including by reporting Reportable Incidents (as defined in the Project Incident Protocol) to the ETI in accordance with the timings required by the ETI.

### 6. SUBCONTRACTED SERVICES<sup>13</sup>

[The Consultant shall, subject to Condition 6 (Subcontracting) of the body of this Agreement, subcontract the following work/Services to the Subcontractor[s]:

- [tba];

such work/Services being the "**Subcontracted Services**"

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<sup>11</sup> Payment / invoicing schedule to be discussed / agreed with selected Respondent(s) and provision amended accordingly.

<sup>12</sup> Subject to review and amendment following selection of preferred Respondent/proposal.

<sup>13</sup> If/to the extent agreed, set out agreed subcontractor(s) work, roles and responsibilities.

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**ANNEX 1 PART 2 - PROJECT TIMESCALES**

[GANTT CHART]

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**ANNEX 1 PART 3 - CONSULTANT / SUBCONTRACTOR PERSONNEL**

**CONSULTANT PERSONNEL**

The Consultant shall provide the Services exclusively through the following named individuals (the "Consultant Personnel") each performing their identified role:

[name] [title/role]

[name] [title/role]

**SUBCONTRACTOR PERSONNEL**

The Consultant shall ensure that the Subcontractor shall provide the Subcontracted Services exclusively through the following individuals (the "Subcontractor Personnel") each performing their identified role [in relation to the specified Subcontracted Services]:

[name] [title/role] [Subcontracted Services description]

[name] [title/role] [Subcontracted Services description]

[name] [title/role] [Subcontracted Services description]

[name] [title/role] [Subcontracted Services description]

## SUBJECT TO CONTRACT

### ANNEX 2 - TERMS AND CONDITIONS FOR CONSULTANCY SERVICES

#### 1 INTERPRETATION

1.1 In this Agreement the following words shall have the following meanings:

“**Agreement**” means this agreement and any Annexes;

“**Arising IP**” means any Intellectual Property generated by, under or pursuant to the Services;

“**Background IP**” means any Intellectual Property owned by, licensed to or controlled by the Consultant or later developed or otherwise acquired by the Consultant, any of its Affiliates and/or any of its Sub-contractors other than through participation in the Services or with the ETI generally;

“**business day**” means a day, other than a Saturday or a Sunday, on which the banks are open for business in London;

“**Commencement Date**” has the meaning ascribed in the main body of this Agreement;

“**Confidential Information**” means, in relation to a Party, all information and data of a confidential and/or commercially sensitive nature (in whatever form or medium, including written, oral, visual or electronic form) directly or indirectly belonging to or relating to that Party (including its personnel, business and/or affairs) disclosed to or otherwise obtained by the other Party, including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information, (and references to Confidential Information of a Party, or similar, shall be construed accordingly);

“**ETI’s Equipment**” means any equipment, systems, cabling or facilities provided by the ETI and used directly or indirectly in the provision of the Services;

“**Fee**” means the ETI Investment payable by the ETI to the Consultant, as set out in the front of this Agreement;

“**Intellectual Property**” means all inventions, patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), rights in confidential information (including know-how and trade secrets), rights in data, rights in databases, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and all future rights of such nature;

“**Services**” means the services to be undertaken by the Consultant as specified in the main body and Annex 1 of this Agreement and such other services consistent with the Services as the ETI may require of the Consultant from time to time;

“**Term**” means the duration of this Agreement, as described at Condition 2 below.

“**Termination Date**” means the date on which this Agreement will expire as set out in the main body of this Agreement;

“**Third Party IP**” means any IP owned by any third party (excluding Background IP).

1.2 In the Agreement, unless otherwise specified or the context otherwise requires words importing the singular only shall include the plural and vice versa; words importing the whole shall include any part thereof; and words denoting any gender shall include all other genders.

1.3 Any phrase in the Agreement introduced by the term “include”, “including”, “in particular” or similar expression shall be construed as illustrative and will not limit the sense of the words preceding that term.

1.4 Headings used in this Agreement are for reference only and shall not affect its construction or interpretation.

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### 2 TERM

This Agreement shall commence with effect from the Commencement Date and shall expire on the Termination Date (and the Term shall be deemed to be inclusive of each of the Commencement Date and Terminations Date), subject to earlier termination in accordance with Condition 9 of this Annex 2 of the Agreement.

### 3 SERVICES

- 3.1 The Consultant shall provide the Services and such other services consistent with the Services as the ETI may require of the Consultant from time to time.
- 3.2 The Consultant shall comply with all reasonable instructions from time to time given to it by the ETI in connection with the performance of its responsibilities although the manner by which the Consultant carries out these instructions shall be within its own discretion. The Consultant shall keep the ETI regularly informed and shall give to the ETI such information regarding the provision of Services as the ETI may require.
- 3.3 The Consultant shall keep the ETI reasonably informed of the whereabouts of the Consultant Personnel and telephone numbers or other means by which the Consultant Personnel can be contacted easily at short notice.
- 3.4 The Consultant shall be responsible for completing the Services including returning all drawings, designs, plans, documents, paper, models, materials, computer media, or any other property belonging to the ETI and/or clients of the ETI. The Consultant will complete all documentation which may be necessary to comply with Condition **Error! Reference source not found.** below.

### 4 DUTIES OF THE CONSULTANT

- 4.1 The Consultant shall use reasonable skill and care in the performance of the Services.
- 4.2 The Consultant shall perform the Services with due diligence and in a safe and competent manner. The Consultant shall acquaint itself with and comply with any working practices rules or procedures at any location where the Consultant is performing the Services (whether or not at the ETI's premises). The Consultant shall also comply with all applicable laws.
- 4.3 The Consultant shall act in, and use its best endeavours to protect and promote, the interests of the ETI in accordance with the general policy and directions of the ETI.
- 4.4 The Consultant shall provide the full benefit of its knowledge, expertise, technical skill and ingenuity in connection with the provision of the Services and devote its full time, attention and abilities at such times as may be necessary for the proper performance of the Services.
- 4.5 The Consultant shall before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all the relevant legislation in relation to (i) the Services and any associated information and materials provided by the Consultant in connection with the Services, including computer programs, data, reports and specifications; and (ii) the use of the ETI's Equipment.
- 4.6 Without prejudice to the generality of Condition 4.2 above, the Consultant shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- 4.7 The Consultant shall comply with the ETI's Business Principles which are available on the ETI's website [www.eti.co.uk](http://www.eti.co.uk) as updated from time to time and the ETI's Anti-Corruption and Bribery Policy as may be updated by the ETI from time to time.
- 4.8 The Consultant shall have and maintain in place throughout the term of this Agreement its own policies and procedures to prevent corruption and bribery, including but not limited to adequate procedures under the Bribery Act 2010 and shall enforce such policies and procedures where appropriate.

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### 5 FEES

- 5.1 The ETI shall pay the Fee to the Consultant within thirty working days of receipt of a valid VAT invoice sent to the ETI in accordance with this Agreement, but time for payment shall not be of the essence.
- 5.2 Without prejudice to any other right or remedy, the ETI reserves the right to set off any amount owing at any time from the Consultant to the ETI against any amount payable by the ETI to the Consultant under this Agreement.

### 6 CONFIDENTIAL INFORMATION

- 6.1 The Consultant shall:
- 6.1.1 use Confidential Information of the ETI only for the proper performance of its duties under this Agreement;
  - 6.1.2 not without the ETI's written consent disclose or make available (or permit the disclosure or making available of) Confidential Information of the ETI to any third party;
  - 6.1.3 only make such copies of Confidential Information of the ETI as are strictly necessary for the proper performance of its duties under this Agreement and clearly mark all copies as confidential;
  - 6.1.4 take all necessary and proper security precautions (and at least as great as those it takes to safeguard its own Confidential Information) to safeguard every part of the Confidential Information of the ETI to prevent it from being disclosed or otherwise made available to any third party except as expressly permitted by this Agreement, and
  - 6.1.5 without keeping any copies (except that one copy may be kept solely for archive or regulatory purposes), delete or deliver to the ETI, within three (3) days of receipt of a request to do so made at any time, all copies of Confidential Information of the ETI.
- 6.2 The Consultant may disclose Confidential Information of the ETI to those of [its employees, officers and professional advisers<sup>14</sup>] who need to have access to it for the proper performance of its duties under this Agreement, provided that before disclosure is made, the Consultant shall have obtained from such [employees, officers and professional advisers] binding obligations of confidence no less onerous than those set out in this Agreement. The Consultant undertakes to enforce such undertakings and to be responsible to the ETI for breaches of the undertakings by such persons.
- 6.3 The provisions of Condition **Error! Reference source not found.** shall not apply to any Confidential Information that (i) may come into the public domain otherwise than by breach of the Consultant's obligations under this Condition **Error! Reference source not found.**; (ii) is disclosed to the Consultant by a third party who has not received it either directly or indirectly from the ETI or a client of the ETI; (iii) must be disclosed in accordance with any applicable law, to the extent of such required disclosure. The Consultant shall notify the ETI promptly if it becomes aware that any of the Confidential Information falls within the provisions of this Condition **Error! Reference source not found.**

### 7 THE ETI'S PROPERTY

All of the ETI's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the ETI to the Consultant shall at all times be and remain the exclusive property of the ETI but shall be held by the Consultant in safe custody at its own risk and maintained and kept in good condition by the Consultant until returned to the ETI and shall not

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<sup>14</sup> Review when extent of Consultant Personnel / Subcontractor Personnel is known.

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be disposed of other than in accordance with the ETI's written instructions, nor shall such items be used otherwise than as authorised by the ETI in writing.

### 8 INTELLECTUAL PROPERTY

- 8.1 As between the Consultant and the ETI, all Arising IP which subsists now or at any time in the future shall without limitation vest in and be the absolute property of the ETI. To the extent that any Arising IP vests in the Consultant by operation of law or otherwise, the Consultant hereby assigns to the ETI with full title guarantee all rights in such Arising IP (including but not limited to all similar and analogous rights in other territories). If it is not possible by operation of law for the Consultant to assign such rights in a territory outside the United Kingdom as a result of differences in national laws, the Consultant shall hold such rights on trust for the ETI and shall execute such documents as may be necessary to effect such disposition of rights to the ETI to the maximum extent permitted by applicable law.
- 8.2 The Consultant undertakes that it will only use and/or incorporate any Background IP, Background Patent and/or any Third Party IP (and/or the subject matter of any of the foregoing) into a Deliverable (a) if it has all rights to do so as necessary for the Consultant to carry out the work on the Services and for any licensee of the Arising IP to use the Deliverable and exploit the Arising IP; and (b) the ETI has agreed in advance and in writing to such use and/or incorporation of Background IP and/or Third Party IP (and/or the subject matter of any of the foregoing), as appropriate.
- 8.3 In the event that the Consultant uses and/or incorporates any Background IP, Background Patent and/or Third Party IP (or the subject matter of any such right) into a Deliverable in breach of Clause 8.2 of this Annex 3, the Consultant will grant or procure the grant of an irrevocable, perpetual, worldwide, non-exclusive, royalty free licence (including the right to sub-licence to Licensees) under that Background IP and/or Third Party IP (as appropriate) to the ETI in order that the ETI and any licensees may exercise their rights to results and Arising IP. The Parties agree that any licensees of the Arising IP are entitled to enforce, enjoy and benefit from this Clause 8.3 of Annex 3 under the Contracts (Rights of Third Parties Act) 1999.
- 8.4 All embodiments of Arising IP in whatever form and all records relating to such Arising IP (in all media) shall be the property of the ETI. The Consultant shall surrender these to the ETI on termination of the Agreement or at the request of the ETI at any time during the term of this Agreement and the Consultant shall keep no copies.

### 9 TERMINATION

- 9.1 At any time during this Agreement, the ETI may terminate this Agreement on giving not less than 14 days prior written notice to the Consultant.
- 9.2 This Agreement may be terminated immediately by the ETI on written notice if the Consultant:
- 9.2.1 is in material breach of a material obligation under this Agreement and in the case of any breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so. A material breach of this Agreement shall include, but is not limited to, a breach of Conditions 4.6 to 4.8 of this Annex 2 of the Agreement; or
- 9.2.2 being a body corporate, (i) is unable to pay its debts as they fall due, (ii) passes a resolution for winding up (other than for the purposes of a solvent amalgamation or reconstruction) or if a court of competent jurisdiction makes an order to that effect, (iii) enters into a composition or scheme of arrangement with its creditors or if a receiver, manager, administrator or administrative receiver is appointed over any of its assets, (iv) ceases or threatens to cease to do business; or (v) an analogous event occurs to the Consultant in any jurisdiction; or
- 9.2.3 being an individual, (i) is subject to a bankruptcy petition or order made against him, or enters into any composition or arrangement with or for the benefit of his creditors, or (ii) if a receiver (including fixed charge or court appointed), manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part

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of the undertaking, property or assets of the Consultant; or (iii) fails or neglects to efficiently and diligently perform the Services; or (iv) is unable or unwilling properly to perform his duties by reason of accident or ill-health or becomes of unsound mind.

- 9.3 Upon termination of this Agreement for whatever reason the Consultant shall deliver to the ETI all books, documents, computer media, papers, materials and other property relating to the business of the ETI or its clients which may then be in its possession or under its power or control.
- 9.4 Termination or expiry of this Agreement for any reason shall be without prejudice to the accrued rights and liabilities of the Parties on the date of such termination or expiry. Conditions **[Error! Reference source not found., Error! Reference source not found., 8, 9, Error! Reference source not found., Error! Reference source not found. and Error! Reference source not found.** of this Annex 2, Section 3 (Reporting) of Annex 1 Part 1], and Condition[s] 7 (Intellectual Property/Confidentiality on pages 2 and 3) of this Agreement, shall survive the termination or expiry of this Agreement<sup>15</sup>.

## 10 LIABILITY AND WARRANTIES

- 10.1 The Consultant shall be responsible for, and indemnify the ETI in respect of, any damage, loss or liability (whether criminal or civil) of or suffered by (including costs and expenses properly incurred in connection with any claim) the ETI, its officers, employees, agents and subcontractors in connection with any act or omission of the Consultant.
- 10.2 The Consultant warrants to the ETI that it is not bound by any legally enforceable obligations owed to any third party which would prevent the Consultant from complying with the terms of this Agreement, and that it shall not in the provision of Services under this Agreement infringe any intellectual property rights of any third party or breach any obligations of confidentiality owed to any third party.
- 10.3 The Consultant shall throughout the period of the Agreement maintain with a reputable insurance company at its own cost:
- 10.3.1 being a body corporate, employer's liability insurance in accordance with any legal requirement for the time being in force where it is carrying out Services on behalf of the ETI; and
- 10.3.2 a comprehensive policy or policies of insurance providing an adequate level of cover in respect of all risks that may be incurred by the Consultant, arising out of the Consultant's performance of the Agreement, in respect of any act or default for which the Consultant may become liable to indemnify or compensate the ETI including in respect of death or personal injury, or loss of or damage to property. The policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Consultant, but shall not relieve the Consultant of any liabilities under the Agreement. It shall be the responsibility of the Consultant to determine the amount of insurance cover that shall be adequate to enable the Consultant to satisfy any liability referred to in this Condition **Error! Reference source not found..**
- 10.4 The Consultant shall produce to the ETI on request copies of all insurance policies referred to in this Condition **Error! Reference source not found.** or other evidence confirming the existence and extent of cover given by these policies, together with receipts or other evidence of payment of the premiums under these policies.
- 10.5 The total aggregate liability of the ETI to the Consultant arising out of or in connection with this Agreement shall not exceed an amount equal to the ETI Investment (being £#,000 ([number in words] pounds sterling). Except in respect of (i) Condition 7 (on pages 2 and 3) of the body of this Agreement, (ii) Condition 6 of this Annex 2 and (iii) Condition 10.2 of this Annex 2, the total aggregate liability of the Consultant to the ETI arising out of or in connection with this Agreement

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<sup>15</sup> Clause to be reviewed and updated as required prior to contract execution.



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shall not exceed [£1,000,000 (one million pounds sterling)]; in no circumstances shall either Party be liable to the other in respect of any indirect or consequential loss or damage.

- 10.6 For the avoidance of doubt, nothing in this Agreement limits or excludes either Party's liability for:
- 10.6.1 death or personal injury caused by its negligence;
  - 10.6.2 fraud or fraudulent misrepresentation; or
  - 10.6.3 any other liability that, by law, cannot be limited or excluded.

## 11 POST-TERMINATION RESTRICTIONS

- 11.1 The Consultant covenants with the ETI that it will not at any time either during the continuance of this Agreement or for a period of six months after its termination in competition with the ETI either on its own behalf or jointly with or for any other person firm company (whether indirectly or directly):
- 11.1.1 canvass, solicit, interfere with or endeavour to entice away from the ETI any Client (defined below) in respect of the Services being provided by the ETI and with whom the Consultant was actively involved in the six months preceding the termination of this Agreement; or
  - 11.1.2 seek to do business or deal with any Client (defined below) in respect of the services similar to the Services being provided by the ETI and with whom the Consultant was actively involved in the six months preceding the termination of this Agreement.
- 11.2 "**Client**" means any person, firm, company or other organisation with whom the ETI has provided services at any time in the six months preceding the termination of this Agreement.
- 11.3 The Consultant covenants with the ETI that it will not at any time during the continuance of this Agreement and for a period of six months after the termination of this Agreement, solicit or endeavour to solicit whether directly or indirectly any senior employee of the ETI to leave and with whom at any time during the period of six months prior to such contract was actively involved (whether in breach of the terms of their contract or not).

## 12 GENERAL

- 12.1 Except as otherwise stated in this Agreement, the rights and remedies of each Party under this Agreement are in addition to any other rights or remedies under the general law, and may be waived only in writing and specifically. Delay in exercising or non-exercise of any right or a partial exercise of any right under this Agreement is not a waiver of that or any other right under this Agreement. 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.
- 12.2 If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction of any other provision of the Agreement or the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Agreement. The Parties shall negotiate in good faith to modify any such provisions so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provisions.
- 12.3 This Agreement (including its Schedules) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.
- 12.4 Each Party acknowledges to the other that it has not been induced to enter into this Agreement by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other Party or any other person save for those contained in this Agreement. Accordingly, each of the Parties acknowledges and agrees that

## SUBJECT TO CONTRACT

the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of Agreement under the terms of this Agreement. Nothing in this Agreement shall exclude liability for fraud or fraudulent misrepresentation. Each Party also agrees that it shall have no remedies or claims under this Agreement for any innocent or negligent misrepresentation based upon any statements made prior to the date of this Agreement.

- 12.5 Nothing contained in this Agreement shall be construed or have effect as constituting any relationship of employer and employee or partners between the ETI and the Consultant.
- 12.6 The Consultant, if an individual, will be responsible for the payment of any remuneration payable to and benefits provided to himself and any national insurance, income tax and any other form of taxation or social security cost in respect of any payments made to the Consultant under the terms of this Agreement except as prohibited by law. The Consultant will indemnify the ETI in respect thereof (including any interest or penalties imposed on the ETI in respect thereof).
- 12.7 During the term of this Agreement the Consultant shall not, without the advanced written consent of the Chief Executive of the ETI, hold itself out as in any way authorised to bind the ETI. In particular, the Consultant shall not pledge the credit of the ETI nor sign any documents, enter into any agreements nor make any promises on behalf of the ETI unless the Consultant has been expressly authorised by the ETI.
- 12.8 The Consultant will not directly or indirectly accept any commission, discount, gratuity or other benefit from any person who has or is likely to have a business relationship with the ETI.
- 12.9 The Consultant will not assign this Agreement to any person; nor will the Consultant subcontract or delegate to any person any of the Consultant's obligations under it (except where and to the extent expressly permitted by and in accordance with this Agreement).
- 12.10 Any notice or other document to be served under this Agreement may be delivered or sent by first class post to the address for the each Party detailed in the front page of this Agreement. Unless the contrary is proved, any such notice or other document shall be deemed to have been served if delivered by hand, on the day of delivery; if by first class post, on the second working day after the day it was posted;.
- 12.11 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 12.12 This Agreement and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation or otherwise) shall be governed by and construed in accordance with the laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

## APPENDIX D - 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.
Consultancy Agreement	The Project contract, as described in Section 5.1 (and a draft of which is provided at Appendix C), to be entered into between the ETI and the Participants (Sole/Prime Contractor).
Deliverable(s)	The (anticipated) Project deliverable(s), including as referred to at Section 4.2 of the RfP.
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 Investment	The total amount to be made available by the ETI on a fixed price basis in respect of the costs of the Project (payable under and subject to the terms of the Consultancy Agreement).
Heavy Goods Vehicle	A vehicle having (i) the primary purpose of transporting goods and/or materials and (ii) a gross vehicle weight rating greater than or equal to 11,794kg.
Her Majesty's Government / UK Government	Her Majesty's Government, including but not limited to all of its departments and executive agencies and the devolved administrations of Scotland, Wales and Northern Ireland.
HSE	Health, Safety and Environment.
Medium Goods Vehicle	A vehicle having (i) the primary purpose of transporting goods and/or materials and (ii) a gross vehicle weight rating greater than 3500kg and less than 11,794kg.
Member	The ETI's industry members (as identified on the ETI's website from time to time - <a href="http://www.eti.co.uk/about-us/membership/">http://www.eti.co.uk/about-us/membership/</a> ), including affiliates of such members, and Her Majesty's Government (including but not limited to those public sector members identified on the ETI's website (above) from time to time).
Non-Disclosure Agreement	A non-disclosure agreement in the form provided at Appendix B.

Term	Definition
OEM	Original Equipment Manufacturer.
Participant	The Sole Contractor or Prime Contractor, as appropriate.
Platform Technologies	Technologies (and their associated interfaces) that can be efficiently implemented into a wide range of products (in this case a machine, vehicle or its powertrain). These machines, vehicles or powertrains will vary in scale and use and therefore, Platform Technologies must scale efficiently and be robust to a wide range of noise factors.
Prime Contractor	A sole organisation which contracts with the ETI to perform the Project, together with (subject to ETI approval) Subcontractors.
Programme	The ETI Heavy Duty Vehicle Efficiency Programme that includes the Project.
Project	The ETI project entitled the Oh-Highway Market Analysis Project, for which the purpose, scope of work and other details are described in this Request for Proposals.
Project Commissioning Process	The ETI's process for commissioning the Project, including as described at Section 6.
Project Shaping and Contract Negotiation Stage	The Project shaping and Consultancy Agreement negotiation stage of the Project Commissioning Process, as described at Section 6.2.
Proposal	The Proposal for the Project submitted to the ETI, in response to this Request for Proposals.
RfP	This Request for Proposals.
Respondent	The organisation(s) submitting a Proposal to the ETI (i.e. a proposed Sole/Prime Contractor).
Review Point	A Project review involving Project Participants and ETI representatives at which the overall progress in Project will be critically reviewed and following which a formal decision will made on the future Project programme.
Selection Criteria	The criteria against which Proposals are assessed by the ETI and/or Selection Panel, including the criteria set out in Section 6.1.4 of the RfP.
Selection Panel	The selection panel described at Section 6.1.3.

Term	Definition
Sole Contractor	A sole organisation which contracts with the ETI to perform the Project on its own (without Subcontractors).
Statement of Compliance	The statement of compliance required by the ETI, as described at Appendix A, Annex A3.
Subcontract	A contractual arrangement between a Participant and another organisation to which work for the Project has been subcontracted.
Subcontractor	An organisation which has a Subcontract.
Task	A significant activity or group of activities which results in completion of a Deliverable or a significant part of one, or which represents a significant step in the process towards one.
Third Party IP	Intellectual property owned by a third party (including Subcontractors and any company in the same group as the Respondent / Participant).