

**MULTI-PARTY CONFIDENTIALITY**

**AGREEMENT**

**THIS AGREEMENT** is made on \_\_\_\_\_ of \_\_\_\_\_ 2011

**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 the Purpose. The Parties agree to receive such Information, which shall be treated as confidential information, for the Purpose on the following terms and conditions.

**IT IS AGREED:**

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

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

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

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

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

“**Hosting Services**” means the provision of services that include hosting the WDG and any related services by the Licensee.

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

“**Licence Agreement**” means the terms under which the WDG will be made available by the ETI and for the Hosting Services.

“**Licensee**” means the successful Respondent that enters into a Licence Agreement.

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

**“Purpose”** means:

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

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

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

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

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

**“RFP”** means the request for proposals relating to the Licence Agreement, issued by the ETI on *[insert date of RFP]*; and

**“WDG”** means web-enabled database produced by a previous ETI project.

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 is required to be disclosed or made available by the Receiving Party pursuant to any applicable law, governmental regulation, or decision of any court or tribunal of competent jurisdiction or any government body, agency or regulatory body.
- 4 If a Receiving Party believes it is required by law to disclose any Information under clause 3(d) above, the Receiving Party shall (in each case and to the extent not prohibited in law):
- a provide the Disclosing Party with prompt written notice of such requirement or obligation, (together with a copy of any relevant access request, court order or other evidence giving rise to such belief) to enable the Disclosing Party to seek appropriate protective relief and/or to take other steps to resist or narrow the scope of any required disclosure;
  - b where it is not permitted in law to notify the requirement for disclosure in advance of the required disclosure, notify the Disclosing Party as soon as reasonably practicable after the disclosure confirming the nature of and extent of the disclosure; and
  - c co-operate with the Disclosing Party with respect to such matters,
- and in any event disclose only such Information as it has ascertained, after taking advice, it is legally compelled to disclose.
- 5 ETI shall be entitled to disclose or make available any Information it receives from the Respondent to such of the ETI Affiliates, and either the ETI's or the ETI Affiliates' employees, officers, secondees, agents, consultants, sub-contractors, proposed sub-contractors, professional advisers and proposed professional advisers where such disclosure is necessary for the Purpose, provided that in the case of disclosure of Information to ETI Affiliates, that this is limited to disclosure as is reasonably necessary for the purpose of ETI's governance of the Procurement and the Project.
- 6 ETI shall be entitled to disclose or make available any Information it receives from the Respondent to the Department of Business, Innovation and Skills (or other relevant Government department) and to the European Commission and their advisers as is necessary to seek advice in relation to the application of state aid, to notify or as part of any detailed assessment of state aid in the Project.
- 7 ETI shall ensure that all such persons to whom any Information under clause 5 of this Agreement is disclosed are bound by obligations of confidentiality and ETI shall be responsible for breaches of the obligations by such persons.
- 8 Each Respondent shall be entitled to disclose or make available any Information it receives from the ETI to such of its employees, officers, consultants, 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 disclosing Information shall be responsible for breaches of the obligations by such persons.
- 9 The Receiving Party expressly agrees and accepts that except in the case of fraud, no representation or warranty, express or implied, is made by the Disclosing Party as to the accuracy, completeness, reasonableness or otherwise in respect of the use of the Information, and that neither the Disclosing Party or any of its affiliates nor any of its or their respective employees, officers, secondees, agents, consultants, sub-contractors and

professional advisers (as applicable) shall have any liability to the Receiving Party as a result of the Receiving Party's possession or use of the Information.

- 10 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.
- 11 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.
- 12 This Agreement represents the entire agreement between the Parties in relation to the subject matter contained herein and supersedes all other agreements and representations, whether oral or written. This Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each Party. Each Party also agrees that it shall have no remedies or claims under this Agreement for any innocent or negligent misrepresentation based upon statements made prior to the date of this Agreement.
- 13 Neither Party will make any public announcements, statements or otherwise publicise the subject matter of this Agreement (or its existence) without the prior written consent of the other Party and neither Party will use the business names or trade marks of the other Party in any way without that Party's prior written consent.
- 14 This Agreement shall come into force on the Effective Date and shall continue in full force and effect, notwithstanding the completion of the Purpose, for a period of seven years from the Effective Date unless extended or superseded by a subsequent written agreement.
- 15 It is not intended that a third party (other than an ETI Affiliate) should have the right to enforce a provision of this Agreement pursuant to Contracts (Rights of Third Parties) Act 1999.
- 16 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.
- 17 If any provision of this Agreement is or become illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
  - a the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - b the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

- 18 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 19 Except as provided otherwise, no person may assign any of its rights under this Agreement or any document referred to in it.
- 20 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.
- 21 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:<br>Company No:<br>Address of Company: | By: _____<br>Name: _____<br>Title: _____ |