

Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED

4 June 2010

Dear Sir/ Madam,

**Northern Ireland Authority for Utility Regulation (NIAUR) Technical and Financial Consultancy Support for Northern Ireland Electricity (NIE) Transmission & Distribution (T&D) Price Control (RP5)**

**OJEU Reference: 2010/S110-167235**  
**NIAUR Contract Reference: CON/03/10**

The Northern Ireland Authority for Utility Regulation (the Utility Regulator) invites you to tender for the above project, which is detailed in the attached Consultancy Brief. The Consultancy Brief describes the requirement for a Framework Agreement for Consultancy support for the next NIE T&D price control (RP5). The framework will have 2 categories of service relating to technical and financial assessments of the NIE T&D business.

The Framework Agreement should help simplify the tendering process for both the successful Tenderer(s) and the Utility Regulator. Please note that there can be no guarantee of volume of work throughout the term of the Framework Agreement that successful Tenderers might expect to have commissioned from them. The Framework will run for two years and also offers the Utility Regulator the flexibility to extend the arrangement for a further twelve months if required. Further details regarding the operation of the Framework Agreement are included in Part 2, The Framework.

Please note the following forms which are contained in subsequent parts of the paperwork further below **MUST** be signed, completed and returned if you wish to enter a tender for this project:

	<u>Part</u>	<u>Section</u>
Schedule of Costs	5	-
Form of Tender	6	A
Certificate of Bona Fide Tendering	6	B
VAT Registration	6	C
Fair Employment Declaration	6	D
Freedom of Information	6	E
Authorised Representative	6	F

The closing date for the return of tenders is **no later than** 5.00pm on 30 July 2010. The Utility Regulator plans to select the winning tender during August 2010 and we would expect the assignment to commence in October 2010. Late bids will not be admitted and it is your responsibility to ensure that your bid is received on time.

Please read Part 3, Instructions to Tenders, carefully since failure to comply with the procedures contained therein may invalidate your Response. Evaluation of tenders will be carried out on the basis of the most economically advantageous tender. However, please note that the Utility Regulator is not obliged to accept the lowest or any tender.

Thank you for your interest and response.

Yours faithfully

Kevin O'Neill  
Utility Regulator

Tel: 0044 2890 311575  
E-mail: [Kevin.Oneill@uregni.gov.uk](mailto:Kevin.Oneill@uregni.gov.uk)

**Northern Ireland Authority for Utility Regulation  
(NIAUR)**

**INVITATION TO TENDER FOR**

**Technical and Financial Consultancy support for  
Northern Ireland Electricity (NIE) Transmission &  
Distribution (T&D) Price Control (RP5)**

**OJEU Reference: 2010/S110-167235**

**NIAUR Contract Reference: CON/03/10**

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# **Part 1**

# **Background**

## Part 1: Background

### A. Background to the Utility Regulator

The Northern Ireland Authority for Utility Regulation (Utility Regulator) is a Non-Ministerial Government Department. It is headed by a Board of Directors, comprising seven non-executive Directors and one executive Director – the Utility Regulator’s Chief Executive. The Chairman is Peter Matthews. It is not a policy-making department of government and its role is to ensure that the utility industries in Northern Ireland are regulated and developed within the strategic policy parameters determined by Ministers.

The Utility Regulator is also the National Competition Authority for the industries which it regulates (holding concurrent competition powers with the OFT). The Utility Regulator also holds a number of customer service functions, is a quasi-judicial dispute resolution authority, and is responsible for certain environmental enforcement matters in the sewerage sector. It has seen its legislative remit grow exponentially in recent years, and along with this comes extra statutory powers, duties and functions.

The Utility Regulator was formally created by the Energy (Northern Ireland) Order 2003 on 1 April 2003, and was previously known as the Northern Ireland Authority for Energy Regulation. This remained the case until 1<sup>st</sup> April 2007, when it changed its name to the Northern Ireland Authority for Utility Regulation and took on responsibilities for water regulation.

Prior to 1<sup>st</sup> April 2003, electricity and gas regulation were carried out by the offices of the Director General of Electricity Supply and the Director General of Gas for Northern Ireland. The Energy Order amended the Electricity (Northern Ireland) Order 1992 and the Gas (Northern Ireland) Order 1996 and transferred most of the functions described in those Orders to the Utility Regulator, and in addition transferred the assets and liabilities of the Director General to it.

Within the executive office of the Utility Regulator, there are approximately 70 staff and its budget is around £8m this year.

#### **Utility Regulator Objectives**

##### *Energy*

The Utility Regulator’s various energy functions are set out primarily in the Energy (NI) Order 2003. It has two main objectives:

- To protect the interests of electricity consumers of electricity supplied by authorized suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission or supply of electricity.

- To promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland.

The Utility Regulator also places a high priority on sustainability and promotes measures which will most effectively support renewable, CHP and energy efficiency.

The main statutory framework for the Utility Regulator's work in electricity is set out in the Electricity (Northern Ireland) Order 1992, the Energy (Northern Ireland) Order 2003 and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007. Our principal objective is to protect consumers' interests, wherever appropriate by promoting effective competition, and we have a series of further objectives relating to universal service, financeability, sustainability and vulnerable customers.

Northern Ireland has around 805,000 electricity consumers with load split around 92% domestic customers and 8% non-domestic customers. This electricity is generated by three main power stations, plus an increasing number of renewable and other types of small generating stations. Significant volumes of electricity are imported from Scotland through the 450MW Moyle interconnector, and there is a 500MW transmission link to the Republic of Ireland. Electricity generation on the island of Ireland is around 60% gas-fired, with peat, coal and wind also being significant fuels.

Northern Ireland belongs to the all-island Single Electricity Market (SEM). This is the only regional market in Europe with fully integrated arrangements for regulation, scheduling, and dispatch, as well as a high level of harmonisation in system operation and network tariff arrangements. The SEM is regulated by the SEM Committee which consists of three members from the North, three from the Irish Republic's Commission for Energy Regulation (CER) and an independent member.

Northern Ireland's gas infrastructure is still under construction. With power generation as anchor-load, transmission lines have been constructed from Belfast to the North-West and from the border to the Belfast area. There are around 120,000 gas customers in Northern Ireland. These are mostly in the Greater Belfast area, on the Phoenix network that has been under construction since 1996. In recent years 10 towns near the two main transmission lines have also seen the construction of gas distribution networks, by firmus Energy.

The fragmentation of our gas industry is mirrored across the island. The regulators are now engaged in a programme of work to design common arrangements for gas (CAG). These should simplify system operation, strengthen supply security and provide a sound basis for future investments in gas infrastructure.

### *Water*

The Water Directorate was established on 1 April 2007 with the specific responsibility for the economic regulation of the water and sewerage industries in Northern Ireland. Our principal role is to regulate Northern Ireland Water Ltd (NIW) in a



way that provides incentives and encourages the company to achieve the highest possible service for customers in terms of both quality and value.

The Utility Regulator's duties with respect to water and sewerage are broadly in line with the role currently discharged by Ofwat in England and Wales; although somewhat wider in one or two instances (e.g. we have wider functions in relation to treatment of land disposals).

### *Other Work Streams*

The Utility Regulator holds concurrent competition law powers and is Northern Ireland's competition authority for the industries it regulates.

We are uniquely placed as the UK's only cross-utility regulator, and Northern Ireland's only non-ministerial government department. These facts create challenges and opportunities in equal measure which the Utility Regulator is keen to address over the coming years.

The Utility Regulator is also responsible for certain aspects of the Government's "green" agenda and works daily on administrative and monitoring aspects of Northern Ireland's Renewables Obligation (with assistance from Ofgem on an agency basis), via the issuance of Renewables Obligation Certificates. It also has a guiding role to play with the Northern Ireland's Energy Efficiency Levy. The Utility Regulator also has a role in working with the regulated companies to deliver Social Action Plans.

## **B. Background to NIE T&D**

NIE T&D are the Transmission and Distribution business and a subsidiary of the Viridian Group plc. They own the transmission and distribution lines in Northern Ireland, therefore creating a monopoly position. They are responsible for the planning, development, construction and maintenance of the transmission and distribution network and for the operation of the distribution network. The transmission network is operated by the System Operation, SONI.

The NIE T&D network comprises a number of interconnected networks of overhead lines and underground cables which are used for the transfer of electricity to approximately 810,000 customers via a number of substations. There are approximately 2,100km of the transmission system, of which some 80km are underground; approximately 42,900km of the distribution system, of which some 13,100km are underground; and approximately 240 major substations. NIE T&D's transmission system is connected to the transmission system in the Republic of Ireland through 275kV and 110kV interconnectors and to the transmission system in Scotland via the Moyle Interconnector.

NIE T&D have an obligation through their licensing requirements to obtain regulatory approval for their expenditure programmes. Since privatization four price controls for NIE T&D have been set. The Utility Regulator is in the preliminary stages of initiating work to define the principles for a fifth price control for the period beginning 1 April 2012 (to be known as RP5).

## **C. Background to Price Controls**

A price control provides a regulated company with a level of revenue that is adequate to finance an efficient business and cover tax liabilities, and presents incentives for the company to meet its licence obligations. The level of revenue should enable the company to earn a return for shareholders commensurate with the riskiness of the business, and pass efficiency gains of the current period on to customers in the form of price reductions. In practice, each component of a price control is a mixture of facts and judgments. As part of the arrangements to re-structure the electricity industry in Northern Ireland following privatisation in 1992, regulated price control periods have been set for NIE T&D. Each price control period since then has run for a five year period.

The amount of revenue which NIE T&D earns will be subject to the fifth price control (RP5), set by the Utility Regulator. Allowed revenue is based on an estimate of the costs which the company faces in running the business, including Operating expenditure, Capital expenditure, and financing costs. Operating expenditure (Opex) includes the day-to-day costs of running the network, such as staff costs, repairs and maintenance. For any price control, an assessment needs to be made of the level of operating costs that the company should be allowed to recover during the price control period. Capital expenditure (Capex) covers spending on assets, such as overhead lines, underground cables etc. The benefits of capital expenditure are expected to last over a number of years, so companies recover these costs over the assumed financial life of the asset. Regulated revenue includes an element to cover such costs over the price control period.

As well as the revenue components of the price control, recent government policy and legislation will have an impact on the context of RP5.

NIE T&D are required to submit answers to a Questionnaire, sent to them by the Utility Regulator, in advance of implementation of the Price Control. The responses to this Questionnaire form a Business Plan. A Utility Regulator project team is already in place to carry out internal analysis on the following proposals from NIE T&D:

- Future projects, to ensure they align with local and European government policies and are consistent with environmental targets.
- Opex and Capex expenditure.
- Rate of return, to ensure the business can be financed appropriately and run in an efficient manner.

- Incentives to be introduced to improve the efficiency of the company and bring additional benefits to consumers.

The company has also been requested to provide a Network Development Plan to show the long-term development requirement they foresee.

# **Part 2**

# **The Framework**

## **Part 2: The Framework**

### **A. Objectives of the Framework**

The purpose of this tender exercise is to establish a Framework Agreement for the provision of Consultancy services.

The objective of the project is to have expert external consultants to assist the Utility Regulator in the effective regulation and setting the NIE T&D price control required from 2012 onwards under the Framework Agreement.

The Framework Agreement will establish a process whereby the Utility Regulator can access services as required, sets a maximum rate and a guaranteed level of service to be provided by the successful Tenderers throughout the term of the Framework Agreement. There can be no guarantee of volume of work throughout the term of the Framework Agreement that successful Tenderers might expect to have commissioned from them.

### **B. Benefits of the Framework**

When requirements for relevant services arise, the Framework will enable the Utility Regulator to order the required services from one or more of the appointed Contractors, or enter into a bidding exercise within the Framework Agreement in order to ensure that best value for money is achieved. This further competition may entail the Contractors bidding within their maximum charges referred to in their Tender.

The Framework Agreement should help simplify the tendering process for both the successful Tenderer(s) and the Utility Regulator.

Benefits for the Utility Regulator and Tenderers include:

- Increased efficiency of procurement: Use of a framework decreases the time and costs associated with a full competitive procurement. The Utility Regulator has the ability to call-off urgent requirements quickly if required;
- Tenderers also benefit from reduced bidding costs through a simplified and mutually understood procurement process with reduced timescales;
- Competitive fee rates;
- Quality of service provision: The experience, expertise and commitment to quality of a Tenderer are assessed at the time of initial competition. Contractor's performance and customer satisfaction is monitored on an ongoing basis;
- One set of terms and conditions which need not be redrafted and/or renegotiated for each procurement undertaken.

## **C. Framework Agreement**

If a Tenderer is awarded a Framework Agreement it will be required to enter into a separate agreement. The Framework Agreement sets out the overall relationship between appointed Contractors and the Utility Regulator. The agreement provides for the circumstances in which the agreement may be suspended or terminated.

The Framework also includes a standard set of terms upon which the Utility Regulator will order services from the appointed Contractors. Under all circumstances the contractor has to adhere to the Utility Regulator's standard terms and conditions in Part 7. Potential contractors must be prepared to sign up to the Utility Regulator's standard Terms and Conditions as a condition of the agreement. The Terms and Conditions may also be augmented or amended (within limits) by the addition of Special Terms to deal with differing requirements of the Utility Regulator. Where the Utility Regulator elects to include Special Terms, a further competition must be undertaken.

The Framework Agreement constitutes a contract between the parties. However each Services Order placed by the Utility Regulator with a Contractor under the Framework Agreement will be a separate and independent contract. The terms and conditions relating to any Services Contract will be the Terms and Conditions of Service, the provisions of the Services Order (including any Terms of Reference in the Consultancy Brief, any Alternative Clauses, any Additional Clauses, any Special Terms agreed between the Utility Regulator and the Contractor and the Contractor's Proposal where a proposal is issued by the Contractor).

## **D. Operation of the Framework**

Tenderers are advised that the Utility Regulator will not be bound to order any of the services referred to in this document, and not to accept or pay for any services other than those actually ordered. Furthermore, the Utility Regulator cannot provide a forecast of the likely demand during the period of the Framework Agreement and there can be no guarantee that any orders will arise.

Tenderers should note that the Utility Regulator reserves the right to invite competitive bids and/or place orders elsewhere for the same, other or complementing services during the period of the Framework Agreement.

The Utility Regulator may call off services under the Framework Agreement if and when they have an appropriate project requirement. This will be done by issuing an invitation to bid letter. Where a Call-off is exercised, the Utility Regulator shall select a Contractor based on the staff rates provided at Primary Competition and on the confirmed availability of suitably qualified and competent resource.

The Utility Regulator will determine the most appropriate procurement approach to adopt depending on the nature of the requirement. Where the Utility Regulator is able to determine from the terms laid down in the Framework which Contractor represents the most economically advantageous tender for its requirement, the Utility Regulator will select the Contractor on that basis and will contact them to check whether they have the available resources for the project and to discuss with them the requirements. Where the Utility Regulator cannot determine from the terms laid down in the Framework which Contractor represents MEAT for its requirement, the Utility Regulator will undertake a further competition by issuing an invitation to bid to all Contractor's capable of providing the services. Irrespective of the route taken, a letter of award and standard Terms & Conditions would need to be signed by the Contractor.

Contractors will be asked to submit a written Contractor's Proposal including a quotation and a breakdown of the Charges for each project or task. Where a quotation is given and accepted, this will become the agreed capped fee for the appointment. Under no circumstances, a Contractor would be paid amounts in excess of the agreed capped amount unless the terms of reference for the work undertaken change from those originally envisaged at the time of the tender. The agreed fee will not be exceeded without consent from the Utility Regulator, which will only be given if there is a change in the original terms of reference in the Consultancy Brief which will be dealt with a contract variation notice. The additional work under the contract variation notice will also be capped at a figure set out in the variation notice.

A fresh appointment letter will be issued for each project or task. Any Special Terms agreed with the Contractor will be expressly stated in this. The Utility Regulator contract reference number must be quoted on invoices and management information submitted by the Contractor. Failure to supply the contract reference will result in the invoice being returned to the Contractor for amendment.

A binding contract will be formed between the parties when the Utility Regulator serves a Services Order on the Contractor in accordance with the ordering procedures set out in the Framework Agreement.

In the event of and only to the extent of any conflict between the Services Order, the Contractor's Proposal and the relevant Terms of the Consultancy Brief:

- the Terms of the Consultancy Brief will prevail over the Contractor's Proposal;
- the provisions of the Services Order will prevail over the Terms of the Consultancy Brief and the Contractor's Proposal, unless and only to the extent that the Contractor's Proposal expressly states that a particular requirement specified in the Consultancy Brief cannot or will not be met, in which case that particular requirement will not apply to that Services Order.

# **Part 3**

## **Instructions to Tenderers**



## Part 3: Instructions to Tenderers

### A. Instructions to Tenderers

#### 1. Completion and Submission of Tender Documentation

- i. Responses, completed as directed, should be returned by post to:

Kevin O'Neill  
Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED

- ii. Proposals must be received at the Utility Regulator by 5.00pm on 30 July 2010.
- iii. Tenderers should include one original hard copy and 2 photocopies of the tender to be delivered to the address above before 5.00pm on the closing date. Tenders will not be accepted by fax or e-mail. A soft copy of all documentation should also be provided on CD/ memory stick.
- iv. Where documentation is bulky, suppliers must ensure that the packaging is strong enough to secure the documents. Envelopes or packages should bear no marks indicating the identity of the supplier, but should clearly identify the tender reference.
- v. Tenders sent by post should be registered or sent by Recorded Delivery or Datapost. The envelope containing tender documents shall be clearly marked 'TENDER SUBMISSION – Contract Number CON/03/10'.
- vi. Each copy of the tender documentation must be either heat sealed or spiral bound and there should be no amendments to the original documentation save for the elements that the Tenderer has to sign.
- vii. Tenderers are advised that manually delivered tenders can only be accepted during normal office hours, which are between 9.00am and 5.00pm (Monday to Friday) and that a receipt stamped with the date and the time of acceptance should be requested. Tenders sent by special delivery or delivered by hand will not be accepted on either weekends or on Northern Ireland Public and Statutory Holidays.
- viii. The Utility Regulator cannot accept responsibility for postal or delivery delays.
- ix. Late tenders will not be considered.
- x. All submissions must be in the English language.

- xi. Tenders must be fully compliant with the requirements detailed in the tender documentation.
- xii. All prices entered in the pricing schedule or other documents must be exclusive of VAT and in pounds sterling.
- xiii. Tenders may be rejected if the required information is not given at the time of tendering.

## **2. Costs and Expenses**

Tenderers will not be entitled to claim from the Utility Regulator any costs or expenses which may be incurred in preparing their tender whether or not it is successful.

## **3. Period of Validity**

Tenderers are required to keep their tenders valid for acceptance for a period of one hundred and twenty days from the closing date.

## **4. Confidentiality**

Tenderers should treat the tender documents as private and confidential between the tenderer and the Utility Regulator. Tenderers should note that Utility Regulator shall use the tender documents for the purposes of evaluation.

## **5. Official Amendments**

If it is necessary for the Utility Regulator to amend the tender documentation in any way, prior to receipt of tenders, all tenderers in receipt of documents will be notified simultaneously. If deemed appropriate, the deadline for receipt of tenders will be extended.

## **6. Canvassing**

Any tenderer who directly or indirectly canvasses any official of the Utility Regulator concerning the award of contract or who directly or indirectly obtains or attempts to obtain information from such official concerning the proposed or any other tender will be disqualified. This should not, however deter any supplier seeking clarification in relation to the tender.

## **7. Assumptions**

Tenderers must not make assumptions that the Utility Regulator has experience of their organisation or their service provision even if on a current or previous contract. Tenderers will only be evaluated on the information provided in their response.

## **8. Compliance**

Tenders must be submitted in accordance with these instructions. Failure to comply may result in a tender being rejected by the Utility Regulator.

## **9. Freedom of Information Act (FOIA)**

The Tenderer should treat the tender documents as private and confidential between themselves and the Utility Regulator. Tenderers are advised that as a public body, the Utility

Regulator must ensure full compliance with the Freedom of Information Act. Please note that unless an exemption provided for under the Act is applicable in relation to any particular information, a public authority will be obliged to disclose that information in response to a request regardless of the terms of any contract.

Tenderers are asked to consider if any of the information supplied in the course of this tender competition should not be disclosed because of its sensitivity. Tenderers must complete the “Freedom of Information Statement contained at Part 6 (E) “Forms and Certificates: Freedom of Information Statement” identifying which information is considered commercially sensitive and specify the reasons for its sensitivity. The Utility Regulator will consult with you about sensitive information before making a decision on any Freedom of Information requests received.

### **10. Relationship between the Utility Regulator and Successful Provider(s)**

Relationships must be centred on the need for mutual confidence, understanding of role, co-operation and where necessary confidentiality / sensitivity of information. We need to ensure that the consultants are able to provide quality expertise, advice and delivery of a high quality consultation paper that can withstand robust analysis. The successful provider(s) must ensure that all services provided respect the highly sensitive nature of the specialist work of the Authority and the need for the highest quality level of content.

Considerable communication will be required between the winning consultant(s) and the Utility Regulator personnel. This needs to be a fundamental aspect of the assignment. To aid this, the project will be led by a project manager within the Utility Regulator.

### **11. Reporting Requirements**

The Utility Regulator shall be entitled to establish such monitoring and budgetary arrangements in relation to the operation of the contract as the Utility Regulator acting reasonably may deem appropriate. The winning Tenderer will be required to provide such assistance and co-operation as necessary. As a minimum, the Utility Regulator will require monthly reports detailing the work completed and cost accrued.

### **12. Timetable**

This consultancy assignment is scheduled to commence in October 2010. The consultant(s) should plan for a number of briefing sessions with key internal staff during October 2010 to discuss the initial award and progress any work issues, to collate data, and to ensure good communication and allow for delivery of a quality end-product.

### **13. Hospitality and Gifts**

Consultants working for the Utility Regulator shall be bound by the terms of the Statement on Acceptance and Provision of Gifts and Hospitality. A copy will be provided to the winning

tenderer at the time of commencement of the contract. The fundamental principles underlying the Statement are defined as;

- corruptly accept any gift or consideration as an inducement or reward for doing, or refraining from doing, anything in that capacity; or
- showing favour or disfavour to any person; or
- receiving money, gifts or consideration from a person or organisation holding or seeking to obtain a Government contract

A breach of any part of the Statement will be reported to the directors or other senior management of the winning Tenderer and the Utility Regulator reserves the right to consider the future of the contract in these circumstances.

#### **14. Format of response**

Tenderers must submit plans detailing how and where they will deliver the entire requirement taking account of the Framework Lots specified in Part 4 (A) and (B).

#### **15. Conflict of Interest**

Tenderers must confirm in their proposals that there would be no conflict or perceived conflict of interest in relation to their servicing this contract. A statement to confirm this should be made in the covering letter sent with the completed tender documentation.

#### **16. Liability**

See paragraph 28 in Part 7, Terms and Conditions.

#### **17. Formal Contact and Communication**

If Tenderers require further information or wish to clarify any points of doubt or difficulty relating to the tender documentation before submitting their tender, for the purposes of this contract the contact point is: -

Leigh Smyth  
Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED

Tel: 02890 31 1575

Email: [Leigh.Smyth@uregni.gov.uk](mailto:Leigh.Smyth@uregni.gov.uk)

## B. Evaluation Criteria

### 1. Stage 1 - Selection Criteria

#### Information to be supplied by Service Provider

Tenders will be examined initially by reference to the following:

- Prospective tenderers must comply with the information requirements set out in Part 3(A), “Instructions to Tenderers” section of this tender. Failure to do so in full will result in the tender being rejected.
- Stated ability of the Tenderer to meet all the requirements specified in Part 4 of this document.

In addition, the tender is required to provide the following

- Demonstration of overall turnover for the past 3 years – audited accounts or statement from auditor.  
*Minimum: Tenderers must demonstrate turnover of at least £600,000 for each of the past 3 years.*
- Details of organisation including manpower levels, skills base etc.  
*Minimum: Tenderers must demonstrate evidence of an adequate organisational structure.*
- Previous Contracts (Projects over the past 3 years).  
*Minimum: Tenderers must demonstrate the successful delivery of at least 3 contracts of £50,000, including client name, contract value, description of contract role and delivery dates.)*

Only those tenders who satisfy conditions in relation to the above will be eligible for inclusion in the award process as this is assessed on a pass or fail basis.

### 2. Stage 2 - Award Criteria

Please note that because of the potential value of this contract, it is subject to the EU procurement Directives. Accordingly, we wish to advise that the contract award criteria will be based on the most economically advantageous tenders in accordance with the criteria set out in the tender documents. The EU Award Procedure to be used is the Open Procedure.

Tenders that meet the selection criteria in *stage 1* will go forward to the tender evaluation *stage 2* and will be assessed using the following criteria:

Criteria	Award Criteria	Weighting
<b>1</b>	<b><i>Expertise, knowledge and depth of experience of the proposed staff in meeting the requirements of the tender</i></b>	<b>40%</b>
	Technical skills and qualities which enable you to understand and deliver the requirements of each of the lots for which a bid is submitted	20%
	Evidence of methodology and approach taken to previous work on Transmission and/ or Distribution Price Controls	15%
	Evidence of application of skills and knowledge in an international context	5%
<b>2</b>	<b>Approach /Methodology in delivering the services.</b>	<b>30%</b>
	Description of approach planned by Tenderer including guaranteed monthly reports on work progress and expenditure	15%
	Estimate of time commitments of each proposed consultant	10%
	Approach to management of response time to queries and delivery	5%
<b>3</b>	<b><i>Ultimate Cost of providing service</i></b>	<b>30%</b>

Each evaluation criterion has an overall weighting reflecting the relative importance of each criterion to the Utility Regulator and is described as a percentage. The sub-total of marks for each criterion will be added together to produce a final score for each Tenderer.

### Criteria 1

In relation to Criteria 1, Tenderers must demonstrate that they have experience of administering and delivering a programme of a similar nature. Each sub-lot of the Framework, outlined in Part 4 of this document, requests evidence of a relevant piece of work and methodology.

All consultants must possess the following basic competencies:

- A high level of initiative and commitment;
- Good interpersonal and communication skills, both written and verbal;
- Sound knowledge of their relevant discipline;
- Broad understanding of current regulatory developments and issues; and

- Qualifications and experience relevant to the sub-lot applied for.

The grading definitions applicable to consultants are detailed below and consist of five levels: Partner/ Director, Principal Consultant, Senior Consultant, Consultant and Junior Consultant. For the purposes of standardisation, Tenderers' responses must reflect these grading definitions thus assisting evaluation. Tenderers must note that the requirements in the table below are intended to be a minimum standard.

<b>GRADE OF ADVISER</b>	<b>REQUIREMENTS</b>
Partner/Director or equivalent	<p>Educated to Degree level or equivalent</p> <p>Experience: Substantial (10 years plus) recent and relevant experience. Significant experience at senior management level in either the public or private sector. Extensive knowledge of regulated utilities and current regulatory issues.</p>
Principal Consultant or equivalent	<p>Educated to Degree level or equivalent</p> <p>Experience: 7 to 10 years' recent and relevant experience. Sound knowledge of regulated utilities and current regulatory issues. Previous experience as project manager on at least three major projects.</p>
Senior Consultant or equivalent	<p>Educated to Degree level or equivalent</p> <p>Experience: 5 to 7 years' recent and relevant experience. Detailed knowledge and experience of specific aspects of the functional area. Familiarity with the issues/problems facing regulatory organisations. Previous experience of senior consulting role on at least three projects within the functional area.</p>
Consultant or equivalent	<p>Educated to Degree level or equivalent</p> <p>Experience: 4 to 5 years' recent and relevant experience. Detailed knowledge and experience of specific aspects of the functional area. General input on projects either singularly or as part of a team.</p>

Junior Consultant or equivalent	<p>Educated to Degree level or equivalent</p> <p>Experience: 2 to 4 years' recent and relevant experience. Detailed knowledge and experience of specific aspects of the functional area. Acting in a supporting role to a consulting team.</p>
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**Criteria 2**

Criteria 2 must include how the Tenderer will work with the Utility Regulator to understand their requirements and offer a flexible, value for money service. The Tenderer must set out proposed ways of working with the Utility Regulator to ensure that the provider understands the Utility Regulator’s needs and can deliver robust services. The Tenderer must also demonstrate how they plan to ensure knowledge transfer to Utility Regulator staff throughout the duration of the Framework agreement.

Costs for carrying out and delivering services by the Tenderer, according to the Consultancy Brief must be clearly set out according to the form required in the pricing schedule (part 5 to this documentation). Please note that this includes likely out of pocket expenses incurred in delivering the service. The Utility Regulator will require that value for money is achieved in all aspects of this project including the payment of reasonable expenses. Where travel is necessary (the office has video conference facilities which may be used as an alternative wherever possible) the most economical means of travel MUST be booked and the type of flight etc that you propose to book must be specified in the expenses section of the tender. In the event that the winning bidder fails to comply without good reason, the Utility Regulator reserves the right to cut the expenses that will be paid. Estimated expenses relating to the following should be included in the Tenderer’s proposal, including unit costs for Flights, accommodation, and per diem costs.

The Utility Regulator will evaluate each sub-lot of the Framework separately. The actual number of Tenderers appointed per sub-lot may vary from one sub-lot to another, but the maximum number of contractors is not expected to exceed four. If it is deemed necessary by the Utility Regulator to award more than four Framework Agreements to any particular sub-lot, the Utility Regulator reserves the right to do so.

**Criteria 3**

Tenderers are required to submit a schedule of costs as requested in Part 5. Ultimate Cost includes all costs, including expenses.



### **3. Award of the Framework**

The Authority will inform all Tenderers in writing of any intention to award a Framework Agreement. Following a minimum standstill period of 10 calendar days, subject to there being no substantive challenge to that intention, a Framework Agreement will be formally awarded to the successful Tenderer(s).

# **Part 4**

## **Consultancy Brief**

## Part 4: Consultancy Brief

### A. The Consultancy Project

During the upcoming fifth price control period for NIE T&D (RP5), there is likely to be significant investment in the current network and in infrastructure expansion by NIE T&D. As well as this, investment will be required to support government targets for carbon reduction. Consequently, a robust technical and financial assessment of NIE T&D's plans is required. It is recognized that the knowledge required to complete a detailed technical and financial assessment does not exist within the internal project team. Therefore, in addition to the work outlined above, the Utility Regulator requires external expertise by means of a Consultancy Project to cover the following areas:

- A technical assessment of the NIE T&D Business Plan to ensure best practice, least cost and value for money for consumers.
- A financial assessment of NIE T&D Business Plan to assist in specific areas such as Pension, Tax treatment and financial incentives.

In addition, there are a number of other price control projects ongoing within the Utility Regulator in the Gas and Water Directorates. Whilst this framework is primarily intended to support the NIE Transmission and Distribution price control, there may be occasions where service orders will be issued by the Water and Gas Directorates where the requirement falls within the lots set out below.

The Services sought under the Framework Agreement will be sub-divided into 2 specific lots. These are as follows:

- Lot 1: Technical Assessment of Price Control
- Lot 2: Financial Assessment of Price Control

The lots are further divided into sub-lots as set out below:

#### Lot 1: Technical Assessment of Price Control

Sub-lot 1.a.	Review of RP4 Capex projects to check for efficient delivery based on risk analysis and project prioritization by NIE T&D
Sub-lot 1.b.	Review of NIE T&D Business Case for RP5 in relation to Capex requirements for load related and asset replacement expenditure and Renewables Integration.

Sub-lot 1.c.	Review of NIE T&D Business Case for RP5 in relation to Metering including Smart metering.
Sub-lot 1.d.	Review of NIE T&D Business Case for RP5 required in relation to Opex
Sub-lot 1.e.	Assessment of Innovation schemes proposed by NIE T&D.
Sub-lot 1.f.	Assessment of Performance metrics and Incentive options
Sub-lot 1.g.	Assessment of cost reflectivity of tariffs for the RP5 price control

## **Lot 2: Financial Assessment of Price Control**

Sub-lot 2.a.	Review of policies in relation to Regulatory Asset Base (RAB) treatment and Depreciation.
Sub-lot 2.b.	Determination of WACC for NIE T&D price control
Sub-lot 2.c.	NIE T&D Pension treatment
Sub-lot 2.d.	Assessment of tax treatment within NIE T&D in relation to the price control and overall company structure.
Sub-lot 2.e.	Assessment of financing options for the delivery of large Transmission projects

The detailed descriptions given in this Consultancy Brief for each sub-lot are intended to provide guidance on the scope of such sub-lot and are not an exhaustive list, unless explicitly stated otherwise. Tenderers are required to provide a comprehensive description of their services with sufficient information to facilitate tender evaluation. Without the prior consent of the Utility Regulator, the Contractor will not be allowed to sub-contract any part of their service.

The Utility Regulator expects Contractors to provide appropriate skills transfer to its in-house teams and, where required, help them to implement the recommendations, processes and tools that have been developed.

Contractors should be able to work at the Utility Regulator's offices or their own. The decision on where to work from will be at the sole discretion of the Utility Regulator. Contractors should be able to provide staff who can work within the Utility Regulator's teams for short periods and/ or to address specific issues as and when the need arises.

Contractors may be required to work on collaborative projects involving multiple companies/ industry groups/ other regulators/ government bodies.

## **B. Lot 1 – Technical Assessment of Price Control**

The areas of consultancy support identified below are critical to the success of the regulatory scrutiny of the NIE T&D price control. It is imperative that the Utility Regulator ensures that a robust assessment of NIE T&D's plans are carried out from technical and financial points of view.

For each of the sub-lots in **Lot 1**, the following expertise is likely to be required:

- Equipment and asset replacement expertise will be required in the areas of plant, cables, lines, civil, protection and smart grid development works.
- Planning expertise will be required for both load and generation impacts on electrical flows on the network.
- The ability to consider safety, environmental and customer driven impacts on investment decisions will also be necessary.

### **Sub-lot 1(A):**

#### **Review of RP4 Capex projects to check for efficient delivery based on risk analysis and project prioritization by NIE T&D**

##### **Background**

The RP4 price control runs from April 2007 to March 2012. NIE T&D submits Capital Investment Reports annually to the Utility Regulator for review. These Capital Investment Reports were incorporated as part of the set-up of the current price control, RP4, as the Capex component of the price control was based on actual rather than forecast Capex and a Capex Efficiency Incentive was introduced. The Capital Investment Report provides a snapshot of NIE T&D's position in relation to Capex. The Utility Regulator analyses the information within the Capital Investment Report to check for variance between the capital expenditure initially stated and the capital expenditure actually incurred. The Capital Investment Report also highlights projects which have been deferred outside of the original time period agreed for completion.

##### **The Requirement**

In relation to the review of Capex requirements for RP4:

1. Study and review all actual capital expenditure (and projected for any remaining years) within the present price control period against the capital expenditure proposed by NIE and approved by the Utility Regulator in setting the RP4 price control.
2. Review the NIE T&D approach to project prioritization and the reasons for the levels of expenditure being incurred by NIE;
3. Examine the reasons for the difference between actual and forecast expenditure;
4. Examine the relationship between capital expenditure, repairs and maintenance expenditure and quality of supply, with a view to establishing a value relationship between these factors;
5. Study the replacement and refurbishment policy on the age profile of the network and network performance at the end of the review period and beyond, based on the data provided by NIE; A review of the approach used by NIE T&D to assess the quality of assets and how to prioritize for replacement.
6. Assessment of the use of NIE T&D internal resources on Capex Projects and treatment within the Regulatory Asset Base (RAB) and allowed revenues;
7. Assessment of approach to risk (eg. Mitigation of commodity price fluctuations and evidence of efficiencies achieved);
8. Assessment of whether any expenditure on Capex for RP4 was unnecessary or where delay or reduction in expenditure could be accommodated without affecting NIE's ability to fulfil its licence duties.

### **Output**

This sub-lot covers a review of the processes followed by both NIE T&D and the Utility Regulator relating to RP4 Capex and deferral of projects. A detailed report on the areas highlighted in the Requirement section, including recommendations on the approach to take in closing out the RP4 Capex plan is required.

### **Specimen case**

Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.

### **Sub-Lot 1(B):**

**Review of NIE T&D Business Case for RP5 in relation to Capex requirements for load related and asset replacement expenditure and Renewables Integration.**

### **Background**

The UK Renewable Energy Strategy (RES) was published in July 2009. It has a legally binding target to generate 15% of energy from renewable sources by 2020, with more than 30% of electricity being generated from renewables. It recognizes that increasing renewables will have implications for grid investment, grid technology and grid connection policy. To stimulate sufficient renewable electricity, better and faster connection application decisions will be needed for large renewable energy projects, as well as faster provision of connection on the network for new renewable energy projects.

A draft of the (DETI) Strategic Energy Framework (SEF) was published in July 2009, proposing a 40% target for electricity generation from renewable. It recognizes the implications for grid investment and refers to the grid development proposals currently being developed by NIE, including smart meters and smart grids.

The above policies will have an affect on the Capex investment required by NIE T&D to ensure that the network is updated for the integration of renewables. In addition to this, there will be a requirement to maintain the existing network and a program of asset replacement is expected during the next price control period.

The Utility Regulator will issue a Questionnaire to NIE T&D to complete during the preliminary planning stages for RP5. This will be returned to the Utility Regulator in the form of a Business Plan. Requests for costs to be recovered for all activities are submitted within the Business Plan. This gives the Utility Regulator an initial view of proposed projects and expenditure to be incurred within the next price control period.

### **The Requirement**

1. A detailed review of Capex required in RP5 in relation to the following areas is needed:
  - a. Transmission load related expenditure;
  - b. Transmission Asset Replacement Expenditure;
  - c. Renewables Integration Expenditure (for both Transmission and Distribution);
  - d. Distribution Load Related Expenditure;
  - e. Distribution Asset Replacement Expenditure;
  - f. IT Related Expenditure;
  - g. Connections expenditure;
  - h. Smart metering and Smart grids expenditure.
2. An assessment of Renewables Integration and if the policy objectives are fully considered;
3. An assessment of whether the Capex alternatives considered by NIE T&D are appropriate and acceptable in terms of the recent legislative requirements and the RP5 price control;
4. An assessment of the NIE T&D Business Case should determine whether the

<p>costs provided are the least cost option and if not, an appropriate Capex allocation should be recommended;</p> <ol style="list-style-type: none"> <li>5. Advice on treatment of assets, particularly in relation to areas where investment overlaps between support of renewable integration and asset replacement, or affects other costs to customers such as losses;</li> <li>6. Recommendations on where expenditure may be considered unnecessary or where delay or reduction in expenditure can be accommodated without affecting NIE's ability to fulfil its licence duties;</li> <li>7. Assessment of whether the proposals constitute sufficient investment to meet 2020 targets in the RES and IME3.</li> </ol>
<p><b>Output</b></p> <p>A detailed report on Capex expenditure for the upcoming price control, RP5, an assessment of whether least cost options were chosen, and a review of the approach used to assess quality of assets and prioritisation for replacement. A detailed report on the areas highlighted in the Requirements section and recommendations on the appropriate scope and costs proposed in NIE T&amp;D Business Case will be needed.</p>
<p><b>Specimen case</b></p> <p>Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.</p>
<p><b>Sub-Lot 1(C):</b></p> <p><b>Review of NIE T&amp;D Business Case for RP5 in relation to Metering including Smart metering.</b></p>
<p><b>Background</b></p> <p>NIE T&amp;D are responsible for meter reading for all customers in Northern Ireland, irrespective of who the supplier is. As part of RP5, there is a high likelihood of a requirement to start the roll out of smart metering. A smart meter is an advancement on traditional meters and intends to provide customers and electricity supply companies with accurate real-time information on the amount of electricity being used. This is in line with EU legislation.</p>
<p><b>The Requirement</b></p> <ol style="list-style-type: none"> <li>1 A review of the proposed approach to metering used by NIE T&amp;D;</li> <li>2 An assessment of NIE T&amp;D planned expenditure on metering;</li> <li>3 An assessment of the approach used for Smart Metering requirements to ensure least cost option and mitigation of stranded assets.</li> </ol>



<p><b>Output</b></p> <p>A detailed report will be required with recommendations on the appropriate scope and costs proposed in NIE T&amp;D’s Business Case in relation to Metering and Smart metering.</p>
<p><b>Specimen case</b></p> <p>Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.</p>
<p><b>Sub-Lot 1(D):</b></p> <p><b>Review of NIE T&amp;D Business Case for RP5 required in relation to Opex</b></p>
<p><b>Background</b></p> <p>The Business Case which will be submitted by NIE T&amp;D to the Utility Regulator in advance of the implementation of RP5 will include a section relating to the planned operational expenditure needed for the RP5 period. The Utility Regulator intends to use a bottom-up approach to the analysis of required Opex to ensure a detailed breakdown and assessment of the requirements. .</p>
<p><b>The Requirement</b></p> <ol style="list-style-type: none"> <li>1 A bottom-up analysis of Opex requirements for RP5 and determination of unit costs;</li> <li>2 Benchmarking unit costs against other T&amp;D type businesses;</li> <li>3 Benchmarking of a subset of unit costs against other utilities (Gas and Water) where appropriate;</li> <li>4 Identification of efficiencies that could be introduced in the Opex proposal.</li> </ol> <p>Note that a series of meetings with NIE T&amp;D may be required.</p>
<p><b>Output</b></p> <p>A detailed report will be required with recommendations on the appropriate scope and costs proposed in NIE T&amp;D’s Business Case in relation to Opex.</p>
<p><b>Sub-Lot 1(E):</b></p> <p><b>Assessment of Innovation schemes proposed by NIE T&amp;D.</b></p>
<p><b>Background</b></p>

NIE T&D's SMART Programme was initiated during RP3, the third price control period, and has two themes which are 'Smart 1' and 'Smart 2'.

'Smart 1' includes projects such as solar water heating, biomass generation and heating, small scale wind generation and tidal generation, and seeks to stimulate near market renewable technologies through the finding of programmes of renewable installations.

Through the 'Smart 2' programme, NIE T&D has sought to encourage, identify and support renewable energy and energy efficient alternatives to conventional network reinforcement. Where a renewable based alternative to conventional network reinforcement is confirmed and the support mechanism can be capitalised, it was agreed that it would be funded from NIE T&D's network capital investment plan at a 1% (pre tax) additional rate of return.

Another innovative scheme which exists is NISEP (Northern Ireland Sustainable Energy Programme), formerly known as the EEL (Energy Efficiency Levy). The EEL was introduced in 1997/8 in order to implement energy efficiency schemes for domestic and non-domestic customers with the aim of reducing carbon emissions. In 2002 consultations resulted in the majority of funding (80%) being targeted at alleviating fuel poverty. The programme will continue for at least three years and will then be subject to review.

The Utility Regulator requires an assessment to be made of any potential innovation programmes suggested in the NIE T&D Business Plan.

### **The Requirement**

- 1 An assessment of any innovation schemes proposed by NIE T&D (eg. SMART)
- 2 Advice on the appropriateness of innovation schemes and a review of whether additional value is provided for customers.
- 3 A review in relation to current NISEP scheme to ensure no duplication.

### **Output**

A detailed report will be required with recommendations on the appropriate scope and costs proposed in NIE T&D's Business Case.

### **Specimen case**

Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must

be for a piece of work relevant to this sub-lot.

### **Sub-Lot 1(F):**

#### **Assessment of Performance metrics and Incentive options**

##### **Background**

Currently, incentives which have been in place for the first three years of the RP4 price control include a rolling mechanism for controllable Opex (ie. The operating costs which are within NIE T&D's control). Under the rolling mechanism it was proposed that the actual controllable Opex in each year of the current price control period is rolled forward with RPI indexation to become the controllable Opex allowance for the corresponding year in the next period. The aim of the rolling approach was to simplify the Opex calculation process yet still incentivise the company to reduce costs as they would be able to benefit from efficiency gains. Savings would then automatically be passed back to customers in due course.

A Capex efficiency incentive was introduced for RP4, based on procurement and labour efficiencies. With this approach, the difficult issue of Capex underspend was avoided and the incentive to achieve efficiencies within the capital programme were strengthened so that customers would benefit through the savings in Regulated Asset Base (RAB) financing costs. The efficiency incentive involved NIE T&D retaining 38.9% of every £1m of efficiency savings, with customers retaining the remaining 61.1%. Capex efficiencies are calculated outside the RAB and the incentive is added to the overall revenue entitlement in the year after the efficiency is realised.

A Revenue Protection program and a profit-share scheme for one of NIE T&D's associated activities also exists by way of incentivisation for RP4.

Further incentives are currently under consideration for the remaining two years of RP4 and possibly for RP5.

Before the Utility Regulator imposes any further incentive-type agreements on NIE T&D or decides to continue with the current treatment of Opex and Capex, the current arrangement will need to be evaluated.

##### **The Requirement**

- 1 An assessment of NIE T&D Performance Metrics and comparison with similar networks worldwide;
- 2 Advice on options for incentivizing improvements and how these could be measured.
- 3 A detailed proposal on how Network losses could be incentivized and how this could be implemented in NIE T&D.
- 4 Details of other incentive mechanisms that have been implemented worldwide.
- 5 Advice on the options available to the Utility Regulator in relation to incentive

<p>options for NIE T&amp;D. This should include whether Menu Regulation should be considered.</p>
<p><b>Output</b></p> <p>An analysis and detailed report and recommendations on the approach taken to incentivisation will be required.</p>
<p><b>Specimen case</b></p> <p>Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.</p>
<p><b>Sub-Lot 1(G):</b></p> <p><b>Assessment of cost reflectivity of tariffs for the RP5 price control</b></p>
<p><b>Background</b></p> <p>The Utility Regulator will require assistance in assessing the current cost reflectivity model used by NIE T&amp;D for the calculation of Distribution Use of System tariffs.</p> <p>This will require knowledge of ‘Reference models’ used to assess the costs of the network build and to ensure that assumptions used in the model are in line with international best practice. In addition, an assessment will be required of the modelling process used to allocate costs to various voltage levels and customer groups</p>
<p><b>The Requirement</b></p> <ol style="list-style-type: none"> <li>1. Assessment of the current cost reflectivity model used by NIE T&amp;D for the calculation of Distribution Use of System tariffs.</li> <li>2. Assessment of the modeling process used to allocate costs to various voltage levels and customer groups.</li> </ol>
<p><b>Output</b></p> <p>The outcome will be report detailing the assessment carried out including recommendations on improvements or enhancements to the current process.</p>
<p><b>Specimen case</b></p> <p>Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.</p>

## Lot 2 – Financial Assessment of Price Control

For each of the sub-lots in **Lot 2**, the following expertise is likely to be required:

- Expertise regarding the economic background of regulatory price controls and their impact on financial statements, with experience in benchmarking costs;
- Pensions knowledge, particularly with relevance to their classification in price controls will be required;
- Tax expertise and the ability to consider tax computations within a price control will be required.

**Sub-Lot 2(A):**

**Review of policies in relation to Regulatory Asset Base (RAB) treatment and Depreciation.**

**Background**

The weighted average cost of capital (WACC) for NIE T&D for RP4 aligned with UK regulatory precedent for Transmission and Distribution. Currently the RAB is split with 18% allocated to Transmission and 82% to Distribution. Depreciation on assets is based on the assumed asset-lives. Recent developments in legislation and government policy mean that the integration of renewables in the energy market will need to be accounted for. At present, there is no separate RAB for Transmission and Distribution in RP4 but the Utility Regulator is aware that this may be a required option for RP5. Full separation of Transmission and Distribution RABs is a possibility for RP5 so the impact on the RAB of investment proposals will need to be considered.

**The Requirement**

- 1 An assessment of the separation of NIE T&D RAB into a Transmission RAB and a Distribution RAB;
- 2 An assessment of NIE T&D RAB and approach to depreciation and asset disposals;
- 3 Advice on appropriate depreciation options for current assets and Renewables Integration.

**Output**

An analysis and detailed report, including recommendations will be required relating to the approach taken by the Utility Regulator to RAB treatment and depreciation.

**Specimen case**

Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.

## **Sub-Lot 2(B):**

### **Determination of WACC for NIE T&D price control**

#### **Background**

The Utility Regulator set the WACC for RP4 using UK precedent. The WACC figure applied by the Great Britain regulator Ofgem was used by the Utility Regulator for RP4 (the fourth NIE T&D price control), with a 0.35% adjustment (based on 18% of the business being transmission). In addition to this, a provision was added in the licence for the review of the alteration on 1<sup>st</sup> April 2010 to the applied value calculated for the distribution companies in Great Britain, This means that for the final two years of the price control the WACC has been reduced. Further details of this can be found in the Final Proposals Paper for RP4, published in September 2006<sup>1</sup>.

#### **The Requirement**

- 1 A detailed analysis of WACC parameters, and recommendation of level of WACC that is appropriate for NIE Transmission and Distribution business and whether separate WACCs should be used.
- 2 The analysis will need to take account of options in relation to Incentives and/ or Menu regulation options, as well as additional RAB items and Gearing at both company and group level.
- 3 An analysis of the WACC approach taken for RP4 (post tax) and whether a similar approach should be maintained for RP5.

#### **Output**

An analysis and detailed report, including recommendations will be required relating to the approach taken by the Utility Regulator to WACC. Back-up to the approach needs to be documented in detail.

#### **Specimen case**

Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.

## **Sub-Lot 2(C):**

### **NIE T&D Pension treatment**

#### **Background**

The position and treatment of NIE T&D's pension scheme in relation to the price control will have to be assessed. Currently, employer pension contributions are treated

<sup>1</sup> [http://www.uregni.gov.uk/uploads/publications/TD\\_Final\\_proposals\\_Sept\\_06.pdf](http://www.uregni.gov.uk/uploads/publications/TD_Final_proposals_Sept_06.pdf)

as part of the Opex of the price control, which is line with regulatory precedent. However, there is no uniform treatment of pension deficit amongst regulators. The Utility Regulator is aware that the introduction of the Pensions Act, The Pensions Regulator, the Pension Protection Fund (PPF) and changes in mortality levels and investment yield assumptions are outside of NIE T&D's control, but options to deal with a pension fund deficit need to be analysed.

### **The Requirement**

- 1 An analysis of NIE T&D Pension liability;
- 2 Advice on how to treat any pension deficit within the price control will be required.

### **Output**

An analysis and summary report and recommendations on approach taken will be required.

### **Specimen case**

Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.

### **Sub-Lot 2(D):**

#### **Assessment of tax treatment within NIE T&D in relation to the price control and overall company structure.**

### **Background**

Within NIE T&D's licence conditions, the company has a limitation of tax benefit of increasing their gearing level. They also have an obligation to submit an annual tax report, setting out their calculation of the tax capital allowances and the tax computation used in the calculation of Tax. Financeability has been of great concern to Regulators and the Utility Regulator is aware of work at both company and group level by other Regulators in relation to financeability, gearing and tax treatment.

### **The Requirement**

1. Review of Tax Reports provided by NIE T&D during RP4;
2. Review of tax treatment by NIE T&D and how this fits into the company group structure;
3. Review of gearing levels at both company and group level;
4. Recommendation on best practice of tax treatment for price control;

5. Review of financeability of the company.

**Output**

An analysis and summary report and recommendations on approach taken will be required, to include proposals for ongoing monitoring and structure of reports.

**Specimen case**

Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.

**Sub-Lot 2(E):**

**Assessment of financing options for the delivery of large Transmission projects**

**Background**

In order to ensure security of supply for electricity customers, to facilitate operation of the Single Electricity Market (SEM), and to support the development of renewable generation, investment in additional infrastructure will be necessary. At present, a planning submission has been made for an electricity interconnector between Northern Ireland and the Republic of Ireland is underway. An interconnector is a cable or overhead line connecting two separate control areas each with its separate system operator.

There is currently an interconnector which runs from Tandragee in Northern Ireland to County Louth in the Republic of Ireland. In October 2004, a second interconnector was recommended by the regulatory authorities in Ireland and Northern Ireland. The energy ministers in both jurisdictions endorsed this recommendation. This second interconnector, known as the North-South interconnector (NSIC), will run from County Tyrone in Northern Ireland to County Cavan in the Republic of Ireland and is expected to more than double the current cross-border electricity trading capacity.

The planning and design of the NSIC has been undertaken by NIE. The NSIC will be added to the NIE T&D RAB and the cost of construction, if funded by NIE, and will automatically be applied to electricity bills. However, the construction phase of the project may be open to other alternatives such as mutualisation or a public-private partnership. Estimated construction costs are £120million. These costs depend on the final route selection and subsequent design decisions. NIE have indicated that this is the first of many new infrastructure projects required to facilitate renewable development.

**The Requirement**



1. Assessment of possible financing options for future large-scale transmission projects;
2. Analysis of the pros and cons of each financing option with a recommendation of the most feasible and appropriate for future transmission projects;
3. An assessment of the impact of financing options on the NIE T&D price control where applicable.

**Output**

A summary report of the advantages and disadvantages of each financing option for affected stakeholders will be required, with a recommendation of the financing option which is most appropriate for future transmission projects.

**Specimen case**

Please provide the Utility Regulator with an anonymised version of a methodology for a piece of work you have performed in the last three years. The methodology must be for a piece of work relevant to this sub-lot.

In the case of each sub-lot, a final report should be presented to the Utility Regulator at the end of the consultancy period. The Consultants final report must be discussed with the Utility Regulator in draft form. The consultant will be required to discuss conclusions with NIE T&D and to take NIE T&D's further views into account before finalising the report and submitting it to the Utility Regulator. The Utility Regulator will hold copyright of the report and the report will be provided on a confidential basis.

Provision of further assistance to the Utility Regulator may be necessary to support study conclusions in further dialogue with NIE T&D and, if necessary, with the Competition Commission and Consumer Council.

At the end of the Consultancy project, an exit meeting will be held with the consultants where a lessons-learnt exercise will be completed and two-way feedback can be provided on the success of the project.

# **Part 5**

## **Pricing Schedule**

**A: Pricing Schedule** (Please also provide a copy of this Pricing Schedule in Microsoft Excel)

<b>Pricing Schedule: Fees - Projects/Activities</b>							
<b>Consultant (name)</b>						<b>Total Days (£)</b>	<b>Total Activity Cost (£)</b>
<b>Grade</b>							
<b>Rate per day/hour</b>							
<b>Key Activities/Tasks</b>	<b>Consultancy Days</b>						
<b>1</b>							
<b>2</b>							
<b>3</b>							
<b>4</b>							
<b>5</b>							
<b>6</b>							
<b>7</b>							
<b>8</b>							
<b>9</b>							
<b>10</b>							
<b>11</b>							
<b>12</b>							
<b>Total Days/consultant</b>							

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(Please also provide a copy of this Pricing Schedule in Microsoft Excel)

<b>Pricing Schedule: Fees - Call Off Contracts</b>						
<b>Consultant (name)</b>						
<b>Grade</b>						
<b>Call Off Specialism</b>		<b>Call Off Rate Per Hour</b>				
<b>1</b>						
<b>2</b>						
<b>3</b>						
<b>4</b>						
<b>5</b>						
<b>6</b>						
<b>7</b>						
<b>8</b>						
<b>9</b>						
<b>10</b>						
<b>11</b>						
<b>12</b>						

(Please also provide a copy of this Pricing Schedule in Microsoft Excel)

<b>Pricing Schedule: Expenses</b>							
<b>Consultant (name)</b>							<b>Total Expenses (£)</b>
<b>Grade</b>							
<b>Key Activities/Tasks</b>		<b>Consultancy Days</b>					
<b>1</b>							
<b>2</b>							
<b>3</b>							
<b>4</b>							
<b>5</b>							
<b>6</b>							
<b>7</b>							
<b>8</b>							
<b>9</b>							
<b>10</b>							
<b>11</b>							
<b>12</b>							
<b>Total Days/consultant</b>							

## B: Worked Example

1. Consultancy firms 'ABC Consulting', 'MNO Consulting' and 'XYZ Consulting' are all invited to tender for Lot 3. The prices tendered by the three firms are shown below, with the ADR calculated. ABC Consulting has the highest ADR (£1,824.97) and XYZ Consulting the lowest ADR (£1,045.53).

Weighting applied  
 11%      5%              30%              32%              21%

	Junior Consultant	Consultant	Senior Consultant	Principal Consultant	Director/ Partner	Average Daily Rate (ADR)
ABC Consulting	£767	£1,234	£1,698	£2,123	£2,334	£1,824.97
MNO Consulting	£734	£995	£1,310	£1,727	£2,197	£1,537.50
XYZ Consulting	£534	£747	£907	£1,278	£1,278	£1,045.53

The discounts tendered by the three firms are shown below. ABC Consulting offers the most competitive discounts on the higher duration assignments.

	Duration Band Discounts						
	< 20 days	20 – 49 days	50 – 99 days	100 – 149 days	150 – 249 days	250 – 499 days	500 or more days
ABC Consulting	0%	0%	5%	7%	10%	10%	15%
MNO Consulting	0%	0%	0%	5%	7.5%	10%	10%
XYZ Consulting	0%	1%	2%	3%	4%	5%	5%

The level of discount tendered for each Duration Band is applied to the ADR, to give an Effective Daily Rate (EDR) for each Duration Band.

Effective Daily Rate (ADR less appropriate discount)							
	< 20 days	20 – 49 days	50 – 99 days	100 – 149 days	150 – 249 days	250 – 499 days	500 or more days
ABC Consulting	£1,824. 97	£1,824. 97	£1,733. 72	£1,697. 22	£1,642 .47	£1,642 .47	£1,551 .23
MNO Consulting	£1,537. 50	£1,537. 50	£1,537. 50	£1,460. 63	£1,422 .19	£1,383 .75	£1,383 .75
XYZ Consulting	£1,045. 53	£1,035. 08	£1,024. 62	£1,014. 16	£1,003 .71	£993.2 5	£993.2 5

3. The EDR for each Duration Band is multiplied by the percentage of all Consultant-days falling into that Band. The figures for each Duration Band are summed, to calculate the Overall Representative Price (ORP).

Weighting applied from Table III							
	4%	11%	29%	6%	10%	20%	21%
<b>EDR x % Consultant -days in band</b>							
	< 20 days	20 – 49 days	50 – 99 days	100 – 149 days	150 – 249 days	250 – 499 days	500 or more days
ABC Consulting	£7,299. 88	£20,074. 67	£50,277. 88	£10,183. 32	£16,424. 70	£16,424. 70	£32,575. 83
MNO Consulting	£6,150. 00	£16,912. 50	£44,587. 50	£8,763.7 8	£14,221. 90	£27,675. 00	£29,058. 75
XYZ Consulting	£4,182. 12	£11,385. 88	£29,713. 98	£6,084.9 6	£10,037. 10	£19,865. 00	£20,858. 25

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	<b>Overall Representative Price (ORP)</b>
ABC Consulting	£153,260.98
MNO Consulting	£147,369.43
XYZ Consulting	£102,127.29



# **Part 6**

## **Forms and Certificates**

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## Part 6: Forms and Certificates

The following forms are contained in this section and must be completed in full to ensure your tender is valid:

Form of Tender	(Sign and return)
Certificate relating to Bonafide Tender	(Sign and return)
VAT Registration	(Sign and return)
Fair Employment and Treatment (Northern Ireland) Order 1998	(Sign and return)
Freedom of Information Statement	(Sign and return)
Authorised Representatives	(Sign and return)

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**A: Form of Tender - CONTRACT FOR: Northern Ireland Authority for Utility Regulation (NIAUR) Consultancy Support for Northern Ireland Electricity (NIE) Transmission & Distribution (T&D) Price Control (RP5)**

I/We the undersigned hereby tender for the above contract in accordance with the attached Conditions of Contract and Specification at the prices quoted in the Schedule forming part of my/our tender response.

I/We agree that this Tender together with your written acceptance thereof shall constitute a binding contract in relation to the whole or such part of the Tender as may be specified in your written acceptance.

I/We have read, accept and agree to abide by the attached Conditions of Contract which take precedence now and for the life of this Contract over any terms, conditions, stipulations or provisos which may accompany or be contained in any correspondence submitted by me/us in connection with this Contract. We acknowledge and agree that any reference to, or submission of, our standard terms and conditions of business (whether in whole or in part (e.g. our disclosure protocols) or whether signed or unsigned by you) shall be for information only, and shall not bind you above and beyond your obligations under the attached Conditions of Contract.

I/We understand that the Utility Regulator does not bind itself to accept the lowest or any tender submitted in response to this enquiry and may accept the whole or part of any tender.

I/We understand the Utility Regulator reserves the right to discontinue the award procedure in the event of irregular tenders or in the absence of appropriate tenders and in such circumstances may use the negotiated procedure without a further call for competition.

I/We warrant that I/we have all the requisite corporate authority to sign this tender.

Dated this _____ day of _____ 20____	
Signed by/on behalf of the tenderer	
Printed	
Full name of tenderer or in the case of a partnership the full names of all partners (block capitals)	
Registered address	

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## B: Certificate Relating to Bona Fide Tender

The essence of tendering is that the client shall receive bona fide competitive tenders from all firms tendering. In recognition of this principle, we certify that this is a bona fide tender intended to be competitive and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangements with any other person.

We also certify that we have not:

- communicated to a person other than the person calling for these tenders the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of this tender;
- entered into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted;
- offered or paid or given or agreed to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

We undertake that we will not do any of the acts mentioned in paragraphs 2a, 2b or 2c above at any time before the acceptance or rejection of this tender.

In this certificate the word “person” includes any persons and anybody or association, corporate or unincorporate and “any agreement or arrangement” includes any such transaction, formal or informal and whether legally binding or not.

Dated this _____ day of _____ 20__	
Signed	
Printed	
For and on behalf of:	

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## C: VAT Registration

Part 1 or Part 2 and Part 3 to be completed as appropriate by the Tenderer and returned with Tender Documents:-

<b>Part 1</b>	
My/Our VAT registration number is:	
Signed by:	
For and on behalf of:	
Dated this _____ day of _____ 20__	

<b>Part 2: I/We are “exempt” from VAT under the terms of the Value Added Tax Act 1994</b>	
My/Our VAT registration number is:	
Signed by:	
For and on behalf of:	
Dated this _____ day of _____ 20__	

<b>Part 3: Please indicate which of the following best describes the economic status of your company/organisation</b>	
Small and Medium Sized Enterprise	Y/N
Social Economy Enterprise	Y/N
Voluntary and Community Organisation	Y/N
If other please specify	

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**D: Fair Employment and Treatment (Northern Ireland) Order 1998**

1. Article 64 of the Fair Employment and Treatment (Northern Ireland) Order 1998 provides inter alia that a public authority shall not accept an offer to execute any work or supply any goods or services where the offer is made by an unqualified person in response to an invitation by the public authority to submit offers. Article 64(4) also provides that the public authority shall take all such steps as are reasonable to secure that no work is executed or supplies or services supplied for the purposes of such contracts as are mentioned above by an unqualified person.
2. For the purposes of Articles 64-66 of the Order, an unqualified person is a person on whom a notice has been served under Article 62(2) or Article 63(1) of the Order and which has not been cancelled.
3. Mindful of the Order, the Utility Regulator has decided that it shall be a condition of tendering that a contractor shall not be an unqualified person for the purpose of Articles 64-66 of the Order.
4. Contractors are therefore asked to complete and return the form endorsed hereon, with their tender, to confirm that they are not unqualified persons and to undertake that no work shall be executed or supplies or services supplied by an unqualified person for the purposes of any contract with the Utility Regulator to which Article 64 of the Order applies.

**Fair Employment and Treatment (Northern Ireland) Order 1998**

- 1) I/We hereby declare that I am/we are not unqualified for the purposes of the Fair Employment and Treatment (Northern Ireland) Order 1998.
- 2) I/We undertake that no work shall be executed or supplies or services supplied by any unqualified person for the purposes of any contract with NIAUR, to which Article 64 of the Order apply.

Signed by:	
Duly authorised to sign for and on behalf of:	
Date:	

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## E: Freedom of Information Statement

**With reference to Section 5 of the Instructions to Tenderers and Clause 24 of the Terms and Conditions of Contract, please complete where appropriate.**

I/We consider that:

The information in this tender is sensitive\*.

The information in this tender is not sensitive\*.

### **\*Delete as Appropriate**

If the information supplied in this tender is considered sensitive, please state which information should not be disclosed and provide reasons.

Please state the period for which information should remain commercially sensitive.	
Signed	
Block Capitals	
For and on behalf of:	
Date	

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**F: Authorised Representatives**

**The Authorised Representative of the Utility Regulator for the purposes of the Contract is:**

***Kevin O'Neill***  
***(Electricity Directorate)***

Signature: .....

Date: .....

**The Authorised Representative of the Contractor for the purpose of the Contract is:**

***Your Company Name***

\_\_\_\_\_

Signature: .....

Date: .....

**The Authorised Representative of the Utility Regulator for the purposes of the Contract is:**

**The Authorised Representative of the Contractor for the purpose of the Contract is:**



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## **Part 7**

# **Terms and Conditions of Contract**

**CONDITIONS OF CONTRACT**

**FOR**

**SERVICES**

**FOR**

**Northern Ireland Authority for Utility Regulation  
(The Utility Regulator)**

**Consultancy Title: Northern Ireland Authority for Utility  
Regulation (NIAUR) Technical and Financial Consultancy  
Support for Northern Ireland Electricity (NIE) Transmission &  
Distribution (T&D) Price Control (RP5)**

**Contract Reference: CON/03/10**

**OJEU Reference: 2010/S110-167235**

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## **CONTENTS OF CONDITIONS OF CONTRACT**

### **Introduction**

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3. Period of Contract
4. Services/Appointment of Contractor

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- 
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Appendix A to Part 5: Variation to Contract

## 1. Interpretation

1.1. In these Conditions the following words shall have the following meanings except where the context otherwise requires:

a	Amendments	The amendments (if any) to the Contract which may be agreed by the Contractor and the Utility Regulator [in writing]
b	Authorised Representative	The nominated representative of the Utility Regulator:  Kevin O'Neill, Electricity Directorate
c	Commencement Date	1st October 2010
d	Conditions	The terms and conditions set out herein.
e	Sensitive Information	An overarching term for information that may be security classified as protected or above by the Utility Regulator, the Contractor or any aspect of their respective businesses, the Contract, its contents or the transactions contemplated by it and the negotiations relating to the Contract.
f	Contract	The tender completed by the counterparty to these Conditions and to which these Conditions relate, these Conditions; any specification or operational requirements; any drawings, any schedule of prices or rates or lump sum as submitted by the accepted tenderer, any letter of acceptance issued by the Utility Regulator to the accepted tenderer together with such correspondence, if any, between the accepted tenderer and the Utility Regulator, as may be agreed by both parties to form part of the Contract.
g	Contractor	The person, firm or corporate body whose tender shall have been accepted by the Utility Regulator and who is a counter party to these Conditions and shall include the Contractor's personal representatives, successors, and permitted assigns.
h	Contractors' Staff	Employees, sub-contractors, employees and agents or any representatives of both Contractor and sub-contractor of the Contractor.
i	Utility Regulator	Northern Ireland Authority for Utility Regulation (NIAUR)
j	Equipment	All materials, plant, equipment, and consumables other than the Utility Regulator's property to be used by the

k	Intellectual Property	Contractor in the provision of the Services.  All patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade, dress or get-up, rights in goodwill or to sue for passing off, rights in design, rights in computer software, information sets collected and database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
l	Premises	Land or buildings where the Services are performed.
m	Services	The services to be provided by the Contractor as set out in this document, together with any other services which the Contractor provides or agrees to provide to the Utility Regulator.

1.2. Words importing the singular shall also include the plural, and importing the masculine shall also include the feminine and vice versa where the context requires.

1.3. A reference to any statute, enactment, order, regulations or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted.

1.4. A reference to a law:

1.4.1. includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgement, rule of common law or equity;

1.4.2. is a reference to that law as amended, consolidated, supplemented or replaced; and

1.4.3. is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law

1.5. A reference to a document (including these conditions) is a reference to that document (including any schedules, annexures and appendices) as amended, consolidated, supplemented, novated or replaced.

## 2. Entire Agreement

2.1. The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations,

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agreements, communication, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

2.2. This Contract takes precedence now and for the life of this Contract over any terms, conditions, stipulations or provisos which may accompany or be contained in any correspondence submitted by the Contractor in connection with the Contract or any part thereof. The Contractor acknowledges and agrees that any reference to, or submission of, its standard terms and conditions of business (whether in whole or in part (e.g. disclosure protocols) or whether signed or unsigned by the Utility Regulator) shall be for information only, and shall not bind the Utility Regulator above and beyond its obligations under these Conditions of Contract.

### **3. Period of Contract**

3.1. The Contract shall take effect on the Commencement Date and shall remain in force from October 2010 to October 2012 but with the written agreement of both parties may be extended for a further year, unless it is otherwise terminated in accordance with the provisions of these Conditions.

### **4. Services/Appointment of Contractor**

4.1. The Utility Regulator hereby appoints the Contractor to provide the Services during the term of the Contract, and the Contractor shall act in that capacity subject to the Contract.

4.2. Requests to provide the Services may be transmitted by the Utility Regulator in writing by post, fax or other electronic means as may be agreed by both parties. In cases of urgency verbal instructions may be given by the Utility Regulator pending written confirmation.

### **5. Conditions Affecting Provision of Services**

5.1. The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the means of communication with and access to the Premises, the supply of and conditions affecting labour, the suitability of the Utility Regulator's property and the equipment necessary for the performance of the Services, subject to all such matters being discoverable by the Contractor.

### **6. Contractor Status**

6.1. Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Utility Regulator and the Contractor.

### **7. NIAUR'S Property**

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- 7.1. All NIAUR's property shall remain the property of the Utility Regulator and shall be used in the performance of the Contract and for no other purpose unless the prior approval of the Utility Regulator is obtained.
- 7.2. On receipt of any item of the Utility Regulator's property the Contractor shall subject it to a visual inspection and such additional inspection and testing as may be necessary to check that it is not defective; within 14 days of receipt of any item of the Utility Regulator's property, or such other period as may be agreed by the parties, the Contractor shall notify the Utility Regulator in writing of any defects discovered; within 14 days after receiving such notification, the Utility Regulator shall inform the Contractor of the action to be taken
- 7.3. The Utility Regulator shall be responsible for the repair or replacement of the Utility Regulator's property unless the need for repair or replacement is caused by the Contractor's failure to comply with Condition 7.5, or by the negligence or default of the Contractor.
- 7.4. The Contractor shall be responsible for his own costs resulting from any failure of the Utility Regulator's property, unless he can demonstrate that the Utility Regulator's had caused undue delay in its replacement or repair.
- 7.5. The Contractor shall maintain all items of the Utility Regulator's property in good and serviceable condition, fair wear and tear excepted, and in accordance with the manufacturer's recommendations.
- 7.6. The Contractor shall be liable for any loss of or damage to any the Utility Regulator's property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Utility Regulator.
- 7.7. The Contractor shall not in any circumstances have a lien on any of the Utility Regulator's property and shall take all steps necessary to ensure that the title of the Utility Regulator and the exclusion of any lien are brought to the attention of any third party dealing with any of the Utility Regulator's property.
- 7.8. The Contractor undertakes the due return of all re-useable Utility Regulator property and will be responsible for all loss thereof or damage thereto from whatever cause. Deterioration in such property resulting from its normal and proper use in the performance of the Contract shall not be deemed to be loss or damage, except in so far as the deterioration is contributed to by any want of maintenance and repair by the Contractor.

## **8. Equipment**

- 8.1. The Contractor shall provide and maintain the equipment in good and serviceable condition.
- 8.2. The Equipment shall be at the risk of the Contractor and the Utility Regulator shall have no liability for any loss of or damage to the equipment unless the Contractor



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is able to demonstrate that such loss or damage was caused by the negligence or default of the Utility Regulator..

8.3. The Contractor shall provide for the haulage or carriage of the equipment to the premises and its off-loading and removal when no longer required.

8.4. The Utility Regulator may at its option purchase any item of equipment from the Contractor at any time, if the Utility Regulator considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Utility Regulator shall be the fair market value.

## **9. Staff**

9.1. The Contractor warrants and represents that all staff assigned to the performance of the Contract shall possess such skill and experience as is necessary for the proper performance of the Contract.

9.2. Where the Contract provides that the work shall be done by named staff the Contractor undertakes to take all reasonable steps to ensure that his staff remain for the full period of the Contract. Unavoidable changes in the Contractor's staff proposed by the Contractor and agreed by the Authorised Representative shall be subject to not less than one month's written notice.

9.3. If for any other reasons changes in the Contractor's staff become necessary in the opinion of the Authorised Representative such changes shall be subject to 1 week's written notice by the Authorised Representative to the Contractor.

9.4. In the event that the Contractor is unable to provide replacement staff acceptable to the Authorised Representative within sufficient time to enable the Contractor to complete the work on time then the Utility Regulator may obtain replacement staff from other sources or terminate the Contract at its discretion.

## **10. Co-ordination**

10.1 The Contractor shall co-ordinate his activities in the provision of the Services with the Utility Regulator (including the Authorised Representative) personnel and other contractors engaged by the Utility Regulator.

## **11. Use of the Utility Regulator's Premises**

11.1 Where the Services are performed on the Utility Regulator's premises the Contractor shall have use of the NIAUR's premises without charge as a licensee and shall vacate those premises on completion or earlier termination of the Contract.

11.2 The Contractor shall not use the Utility Regulator's premises for any purpose or activity other than the provision of the Services unless given prior approval by the Utility Regulator.

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- 11.3 Should the Contractor require modifications to the Utility Regulator's premises, such modifications shall be subject to the Utility Regulator prior approval and shall be carried out by the Utility Regulator at the Contractor's expense. The Utility Regulator shall undertake approved modification work as soon as reasonably practicable. Ownership of such modifications shall rest with the Utility Regulator.
- 11.4 The Contractor shall not deliver the equipment to the Utility Regulator's premises outside normal working hours without its prior approval. The Contractor shall maintain the equipment and its place of storage within the Utility Regulator's premises in a safe, serviceable and clean condition.
- 11.5 On the completion or earlier termination of the Contract, the Contractor shall, subject to the provisions of Condition 8.5, remove the equipment and shall clear away the Utility Regulator's premises all waste arising from the performance of the services and shall leave the Utility Regulator's premises in clean and tidy condition.
- 11.6 Whilst on the Utility Regulator's premises, all Contractors staff shall comply with such rules, regulations and other requirements as may be in force in respect of the conduct of persons attending and working on the Utility Regulator's premises.

## **12. Right of Access**

- 12.1. The Utility Regulator's reserves the right to refuse to admit to any premises occupied by or on behalf of itself or the Crown any person employed by the Contractor, or by a sub-contractor, whose admission would be, in the opinion of the Utility Regulator's undesirable.
- 12.2. The Contractor shall comply with the requirements of the Utility Regulator in regard to ensuring the identity and bonafides of all workers and other persons requiring to be admitted to any officially occupied premises in connection with the Contract.
- 12.3 If the Contractor shall fail to comply with condition 12.2 and if the Utility Regulator shall decide that such failure is prejudicial to the interests of the Utility Regulator or the Crown, then the Utility Regulator may terminate the Contract if the Contractor does not comply with such provisions of condition 12.2 within a reasonable time of written notice to do so provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued thereafter to the Utility Regulator.
- 12.4 The decision of the Utility Regulator as to whether any person is to be refused admission to any premises occupied by or on behalf of itself or the Crown and as to whether the Contractor has failed to comply with condition 12.2 shall be final and conclusive.

## **13. Manner of Providing the Services**

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13.1. The Contractor shall perform the Services with all due care, skill and diligence, and in accordance with good industry practice. Timely provision of the Services is of the essence of the Contract.

13.2. The Services shall be performed only on sites previously approved by the Utility Regulator.

13.3. The Contractor shall, upon the instruction of the Authorised Representative:

13.4. remove from the Utility Regulator's premises any materials which are not in accordance with those contained in any standards or quality specified and substitute proper and suitable materials;

13.4.1. remove and properly re-execute any work which is not in accordance with the Contract, irrespective of any previous testing or payment by NIAUR. The Contractor shall at his own expense complete the re-executed work correctly in accordance with the Contract within such reasonable time as the Utility Regulator may specify.

13.5. The signing by the Authorised Representative of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

#### **14. Standards**

14.1. Materials and processes used in connection with the Services shall be in accordance with any standards and quality specified.

14.2. At the request of the Authorised Representative, the Contractor shall provide proof to the Utility Regulator's satisfaction that the materials and processes used or proposed to be used, conform to those standards.

14.3. The introduction of new methods or systems which impinge on the Services shall be subject to the Utility Regulator's prior approval.

#### **15. Overtime Working**

15.1. The Contractor shall not normally be prevented from working reasonable overtime hours on the Utility Regulator's premises if he so desires, provided that he obtains the Utility Regulator's prior approval and it is at no additional cost to the Utility Regulator.

#### **16. Progress Reports**

16.1. If the Utility Regulator requests progress reports the Contractor shall render progress reports at such time and in such form as may be specified or otherwise agreed upon between the parties.

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16.2. The submission and receipt of progress reports shall not prejudice the rights of either party under the Contract.

## **17. Payment**

17.1. The Utility Regulator shall pay the Contractor for work completed at the rates or prices contained in the pricing schedule [or other interest documentation]. Where payment is based upon daily rates the Contractor and his staff will be expected to work 7½ hours per day, exclusive of meal breaks, unless alternative arrangements are agreed with the Utility Regulator.

17.2. In cases where payment is via the Government Purchasing Card, all payments shall be made to Service Providers by the nominated Bank in accordance with the provisions of the scheme.

17.3. In all other cases payment shall be due within thirty (30) days of receipt by the Utility Regulator of a correct application for payment or invoice or as otherwise specified in the Contract.

17.4. The Utility Regulator reserves the right to withhold payment against any invoice which is not submitted in accordance with the Contract or which covers or purports to relate to services which have not been provided in accordance with the Contract and shall forthwith notify the Contractor accordingly in writing.

## **18. Value Added Tax**

18.1. The Utility Regulator shall pay to the Contractor, in addition to the charges due for the work performed under the Contract, a sum equal to the value added tax as may be properly chargeable on the value of the Services provided in accordance with the Contract.

18.2. Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Valued Added Tax Act 1994.

18.3. The Contractor shall, if so requested by the Utility Regulator, furnish such information as may reasonably be required by the Utility Regulator as to the amount of value added tax chargeable on the value of goods and services supplied in accordance with the Contract and payable by the Utility Regulator to the Contractor in addition to the charges for work. Any over payment by the Utility Regulator to the Contractor shall be a sum of money recoverable from the Contractor.

18.4. If the costs of the Contract are increased or decreased any monies thereby payable shall have added to them a sum equal to any appropriate adjustment in respect of value added tax due on the final value of the work.

## **19. Recovery of Sums Due**

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19.1. Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Utility Regulator in respect of any breach of the Contract), the Utility Regulator may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under the Contract or under any other contract with the Utility Regulator or with any other department, office or agency of the Crown.

19.2. The Utility Regulator shall give at least 21 days' notice to the Contractor of its intention to make a deduction under Condition 19.1 giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.

19.3. Any overpayment by the Utility Regulator to the Contractor, whether of the contract price or of value added tax, shall be a sum of money recoverable by the Utility Regulator from the Contractor.

## **20. Price Adjustments**

20.1. Prices quoted shall remain firm for the initial contract period set out in Condition 3.1.

20.2. In the event that the contract period is extended a price review shall take place and any increases or decreases shall be agreed by both parties and recorded as a variation in line with Condition 39. Work arising from any variation will normally be carried out by the contractor at the daily rate quoted in the original tender.

## **21. Intellectual Property Rights - Assignment and Indemnity**

21.1. The Contractor hereby assigns to the Utility Regulator all Intellectual Property Rights owned by the Contractor in any material, including all data and data sets, which are generated by the Contractor and delivered to the Utility Regulator in the performance of the Services and shall waive all moral rights relating to such material. The Contractor shall not reproduce, publish or supply any such material to any person other than the Utility Regulator without prior approval in writing.

21.2. In performing the Services the Contractor shall obtain the Utility Regulator's approval before utilising any material which is or may be subject to any Intellectual Property Rights other than those referred to in Condition 21.1.

21.3. The Contractor shall indemnify the Utility Regulator against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, or the use by the Utility Regulator following delivery by the Contractor, of any material which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.

## **22. Security**

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- 22.1. The Contractor shall take all measures necessary to comply with the provisions of any law or the directions or regulating of any regulatory or governmental authority relating to security which may be applicable to the Contractor in the performance of the Services.
- 22.2. The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that staff have notice that all provisions referred to in Condition 22.1 will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.
- 22.3. Whilst on the Utility Regulator's premises, staff shall comply with all security measures implemented by the Utility Regulator in respect of personnel and other persons attending those premises. The Utility Regulator shall provide copies of its written security procedures to the Contractor on request.
- 22.4. The Utility Regulator shall have the right to carry out any search of staff or of vehicles used by the Contractor at the Utility Regulator's premises.
- 22.5. The Contractor shall co-operate with any investigation relating to security which is carried out by the Utility Regulator or by any person who is responsible to the Utility Regulator for security matters and when required by the Authorised Representative:
- 22.6. Shall use his best endeavours to make any staff identified by the Authorised Representative available to be interviewed by the Authorised Representative, or by a person who is responsible to the Utility Regulator for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by a contractor's representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authorised Representative and any contractor's representative; and
- 22.7. Shall, subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Utility Regulator or by a person who is responsible to the Utility Regulator for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. The Utility Regulator shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

## **23. Confidentiality**

- 23.1. Each party must, and must use its best endeavours to ensure that its officers, employees, agents or professional advisers:
- 23.1.1. treat all sensitive information according to the requirements of its security classification and safeguard it accordingly; and
  - 23.1.2. not disclose any sensitive information to any other person without the prior written consent of the other party, except to such persons and to

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such extent as may be necessary for the performance of the contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

23.2. The contractor shall take all necessary precautions to ensure that all sensitive information obtained from the Utility Regulator under or in connection with the contract is given only to such officers, employees, agents or professional advisors engaged to advise it in connection with the contract as is strictly necessary for the performance of the contract and only to the extent necessary for the performance of the contract;

23.2.1. the contractor shall ensure that its officers, employees, agents or professional advisers are aware of the contractor's confidentiality obligations under this contract.

23.3. The contractor shall not use any sensitive information it receives from the Utility Regulator otherwise than for the purposes of the contract.

23.4. The provisions of conditions 23.1 to 23.4 shall not apply to any sensitive information received by one party from the other:-

23.4.1. which is or becomes public knowledge (otherwise than by breach of this condition);

23.4.2. which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

23.4.3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

23.4.4. is independently developed without access to the sensitive information; or

23.4.5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to condition 24.3 (Freedom of Information)

23.5. Nothing in this Condition shall prevent the Utility Regulator disclosing any sensitive information for the purpose of:

23.5.1. the examination and certification of the Utility Regulator's accounts; or

23.5.2. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Utility Regulator has used its resources; or

23.5.3. disclosing any sensitive information obtained from the Contractor; or

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23.5.4. to any government department or any other contracting authority; or

23.5.5. to any person engaged in providing any services to the Utility Regulator for any purpose relating to or ancillary to the Contract.

All government departments or contracting authorities receiving such sensitive information shall be entitled to further disclose the sensitive information to other government departments or other contracting authorities on the basis that the information is sensitive and is not to be disclosed to a third party which is not part of any government department or any contracting authority.

23.6. Provided that in disclosing information under sub paragraph 23.5 the Utility Regulator discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

23.7. Nothing in this Condition 23 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of confidential information or an infringement of Intellectual Property Rights.

23.8. In the event that the Contractor fails to comply with this Condition 23, the Utility Regulator reserves the right to terminate the Contract by notice in writing with immediate effect.

23.9. The provisions under this Condition are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

## **24. Freedom of Information**

24.1. The Contractor acknowledges that the Utility Regulator is subject to the requirements of the Freedom of Information Act 2000 (the "FOIA") and the Environmental Information Regulations 2004 and shall assist and cooperate with NIAUR (at the Contractor's expense) to enable the Utility Regulator to comply with these information disclosure requirements.

24.2. The Contractor shall and shall procure that its sub-contractors shall:

24.3. Transfer the Request for Information to the Utility Regulator as soon as practicable after receipt and in any event within two working days of receiving any Request for Information;

24.4. Provide the Utility Regulator with a copy of all information in its possession or power in the form that the Utility Regulator's requires within five working days (or such other period as the Utility Regulator may specify) of the Utility Regulator requesting that Information; and

24.5. Provide all necessary assistance as reasonably requested by the Utility Regulator to enable the Utility Regulator to respond to a Request for Information within the



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time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations as the case may be].

24.6. The Utility Regulator shall be responsible for determining at its absolute discretion whether any commercially sensitive information and/or any other information:-

24.6.1. is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;

24.6.2. is to be disclosed in response to a Request for Information, and

24.6.3. in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Utility Regulator.

24.7. The Contractor acknowledges that NIAUR may be obliged under the FOIA, or the Environmental Information Regulations 2004 to disclose Information:

24.7.1. without consulting with the Contractor, or

24.7.2. following consultation with the Contractor and having taken its views into account.

24.8. The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Utility Regulator to inspect such records as requested from time to time.

24.9. The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Utility Regulator may nevertheless be obliged to disclose Confidential Information in accordance with Clause 24.4.

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## **25. Publicity**

25.1. The Contractor shall not make any public statement relating to the existence or performance of the Contract without prior approval of the Utility Regulator, which shall not be unreasonably withheld.

## **26. Right of Audit**

26.1. The Contractor shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the parties, full and accurate records of the Services, all expenditure reimbursed by the Utility Regulator and all payments made by the Utility Regulator.

26.2. The Contractor shall grant to the Utility Regulator or its authorised agents, such access to those records as they may reasonably require in compliance with the Contract.

## **27. Data Protection Act 1998**

27.1. The Contractor shall not disclose or allow access to any personal data provided by the Utility Regulator or acquired by the Contractor during the course of tendering for or executing the Contract, other than to a person employed or engaged by the Contractor or any sub-contractor, agent or other person concerned with the same.

27.2. Any disclosure of or access to personal data allowed under Condition 27.1 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Contract.

27.3. The Contractor shall store or process such personal data only at sites specifically agreed in writing, in advance, with the Utility Regulator.

27.4. If the Contractor fails to comply with any provision of this Condition then the Utility Regulator may summarily terminate the Contract by notice in writing to the Contractor provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Utility Regulator.

27.5. If the Contractor or any employee, servant agent or sub contractor of the Contractor, having obtained without the consent of the Utility Regulator personal data within the meaning of the Data Protection Act 1998, directly or indirectly discloses or publishes the data to any other person or allows improper access to the data, or in any event directly or indirectly causes the loss, damage, or destruction of such data, he shall indemnify the Utility Regulator against all claims, proceedings, costs and expenses in respect of any damage or distress suffered whereby by any person.

27.6. The decision of the Utility Regulator upon matters arising under this Condition 27 shall be final and conclusive.

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## **28. Indemnity and Insurance**

- 28.1. The Contractor shall indemnify the Utility Regulator to a limit of £1,000,000 (one million pounds sterling) against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury or loss of or damage to property which is caused directly or indirectly by any act or omission of the Contractor. This Condition 28.1 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his staff or sub-contractors, or by any circumstances within his or their control.
- 28.2. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 28.3. The Contractor shall hold employer's liability insurance in accordance with any legal requirement for the time being in force.
- 28.4. The Contractor shall produce to the Utility Regulator's Representative, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 28.5. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in this Condition.

## **29. Corrupt Gifts and Payments of Commission**

29.1. The Contractor shall not:

- 29.1.1. offer or give or agree to give any person in Her Majesty's Service or who is an agent or employee of the Utility Regulator any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or any other contract for Her Majesty's Service and/or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract for Her Majesty's Service or the Utility Regulator;
- 29.1.2. enter into this Contract or any other contract with the Utility Regulator or any government department in connection with which commission has been paid or agreed to be paid by him, or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such

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commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Utility Regulator; or

29.1.3. act in any manner which is contrary to the Utility Regulator's Statement on Hospitality and Gifts.

29.2. Any breach of this Condition by the Contractor, the Contractors staff or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor, the Contractors staff and or the Utility Regulator) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf, (either with or without the knowledge of the Contractor, the Contractor's staff and or the Utility Regulator) under the Prevention of Corruption Acts, 1889 to 1916, in relation to this Contract or any other contracts for Her Majesty's Service, shall entitle the Department to determine the Contract and recover from the Contractor, the Contractors staff and or the Utility Regulator the amount of any loss resulting from such determination and/or to recover from the Contractor the Contractors staff and or the Utility Regulator the amount or value of any such gift, consideration or commission.

29.3. Any dispute, difference or question arising in respect of either the effect or the interpretation of this condition or the amount recoverable hereunder by the Utility Regulator from the Contractor or the right of the Utility Regulator to determine the Contract, or the amount or value of any such gift, consideration or commission shall be decided by the Utility Regulator whose decision shall be final and conclusive.

### **30. Statutory and Other Regulations**

30.1. The Contractor shall be deemed to have acquainted himself with any and all laws, regulations, recommendations, guidance or practices as may affect the Services.

30.2. The Contractor shall be deemed to have acquainted himself with British/European Standards, and relevant codes of practice as may be relevant to this Contract.

30.3. The Contractor shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practical the standards and codes of practice are observed.

### **31. Equality of Opportunity**

31.1. The Contractor shall comply with all applicable fair employment, equality of treatment and anti-discrimination laws, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and the Employment Rights (Northern Ireland) Order 1996 and shall use his best endeavours to ensure that in

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his employment policies and practices and in the delivery of the services required of the Contractor under this agreement he has due regard to the need to promote equality of treatment and opportunity between:

1. Persons of different religious beliefs or political opinions;
2. Men and women or married and unmarried persons;
3. Persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave);
4. Persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
5. Persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
6. Persons of different ages; and
7. Persons of differing sexual orientation

31.2. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition 31.1 by all officers, agents, employees, consultants and sub-contractors of the Contractor.

## **32. Health and Safety**

32.1. The Contractor shall comply with all relevant environmental and safety law and shall comply with all legal requirements from time to time in force in relation to the Services. The Contractor's attention is drawn to the provision of the Health and Safety at Work (Northern Ireland) Order 1978 and in particular to Article 4 "General Duties of Employers to their Employees".

32.2. The Contractor shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practicable, the health and safety of all persons who may be affected by the Services. Before commencing work on the Contract the Contractor, shall prepare a written policy of the health and safety of staff employed in connection with the Contract together with written organisational arrangements for carrying out the policy.

## **33. Social Security System**

33.1. The Contractor shall not employ any person whom he knows or ought to know is by reason of his employment engaged in any unlawful procurement of social security benefits or tax exemptions and the Contractor shall not make, facilitate or participate in the procurement of, any unlawful payments whatsoever, whether in the nature of social security fraud, or evasion of tax, or otherwise.

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33.2. The Contractor shall prepare and maintain such records of his staff and all other persons engaged in the performance of this Contract by the Contractor as NIAUR may from time to time require.

33.3. Without prejudice to Condition 33.2 the Contractor shall forthwith on demand by the Utility Regulator furnish the Utility Regulator with the names, addresses and national insurance numbers of all persons employed by him under the contracts of service and shall forthwith on demand furnish the Utility Regulator with the names, addresses, periods of employment and exemption certificates of all persons employed by him under contracts for services.

33.4. The Contractor shall permit the Utility Regulator, its servants or agents at all reasonable times to enter on any premises of the Contractor for the purpose of inspection and investigation of the employment, social security and tax records of any person employed by the Contractor or engaged by him to carry out any works under the Contract.

#### **34. Conflict of Interest**

34.1. Provided that there shall be no conflict of interest and the Contractor shall fulfil his obligations to the Utility Regulator the Contractor shall be at liberty to enter into agreement with other public sector organisations elsewhere in the United Kingdom for the provision of services.

34.2. The Contractor warrants that he is not at the date hereof retained by any interest that could be in conflict with the work of the Utility Regulator and that for the duration of this Contract he will not accept instructions from any such interest either directly or indirectly nor do any other act which may give rise to conflict of interest.

#### **35. Official Secrets Act**

35.1. The provisions of the Official Secrets Act 1911 - 1989 in general and the provisions of the Official Secrets Act 1989 in particular shall apply to the Contractor, the staff and all persons engaged whether as agents or sub-contractors by the Contractor on any work under the Contract, and shall continue to apply without limitation of time after the expiry or termination of the Contract, and the Contractor shall bring to the notice of each and every such person the provisions of the said Acts.

35.2. If the Utility Regulator shall at any time so direct, a declaration of knowledge of these provisions in such terms as the Utility Regulator shall require shall be signed by every such person as the Utility Regulator shall direct and be delivered to the Utility Regulator by the Contractor.

#### **36. Transfer, Sub Contracting and Assignment**

36.1. The Contractor shall not transfer, assign or in any way dispose of the Contract or a part thereof and shall not sub-contract any part of the provision of the Services without the prior written consent of the Utility Regulator.

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36.2. It is a condition of such consent that the sub-contractor must undertake directly to perform the terms of the Contract in respect of the sub-contracted services as if he were the Contractor.

36.3. Any consent to sub-contract will not release the Contractor from any liability to the Utility Regulator in respect of the sub-contracted section and the contractors shall be responsible for the acts, defaults or neglect of any sub-contractor or its officers, agents or employees in all respects as they were the acts, defaults or neglect of the Contractor or its officers, agents, or employees.

36.4. Where the Contractor enters a sub-contract with the Contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

36.5. The Utility Regulator may assign or in any other way dispose of its rights and obligations under the Contract or any part of it to any Department, office or agency of the Crown or any other body provided that any such assignment or other disposal shall not increase the burden of the Contractors obligations under this Contract.

### **37. Severability**

37.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

### **38. Waiver**

38.1. The failure of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

38.2. No waiver shall be effective unless it is communicated to the other party in writing.

38.3. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

### **39. Variations**

39.1. The Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out at Appendix A.

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39.2. In the event of an emergency the Utility Regulator shall have the right to vary the Contract by oral instructions given by the Utility Regulator's Authorised Representative, which shall be confirmed by the issue of a Variation to Contract Form within 7 days.

39.3. The Utility Regulator shall have the right to vary the Services at any time, subject to the variation being related in nature to the Services being provided, and no such variation shall vitiate the Contract.

39.4. The Contractor may request a variation provided that:

39.4.1. the Contractor shall notify the Authorised Representative in writing of any additional or changed requirement which it considers should give rise to a variation within 7 days of such occurrence first becoming known to the Contractor;

39.4.2. any proposed variation shall be fully supported by a quotation as detailed in Condition 39.5

39.5. The Contractor, within 14 days of being requested by the Utility Regulator's Authorised Representative or where requesting a Variation pursuant to Condition 39.4, shall submit a quotation to the Utility Regulator, such quotation to contain at least the following information:

39.5.1. a description of the work together with the reason for the propose variation;

39.5.2. the price, where applicable;

39.5.3. details of the impact, if any, on other aspects of the Contract.

39.6. The price for any variation shall, unless otherwise agreed between the parties, be calculated in the following order of precedence:

39.6.1. using the prices or rates;

39.6.2. prices pro-rata to the prices or rates;

39.6.3. prices based on the prices or rates.

39.7. The Utility Regulator shall either approve or reject any variation proposed by the Contractor.

39.8. In the event that the Contractor disputes any decision by the Utility Regulator to reject a proposed variation or contends that a proposed variation is outstanding or continues to be required, the Contractor shall update the information contained in his quotation for the proposed variation every month and shall send the updated information to the Utility Regulator.

## **40. Performance Monitoring**



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- 40.1. The performance of the Contractor will be subject to monitoring and review against agreed quality aspects.
- 40.2. Where applicable, performance and or price indices may be applied by the Utility Regulator to measure the performance of the Contractor.
- 40.3. The Contractor shall ensure that information, records, and documentation necessary to monitor effectively the performance of the Contract are maintained and are available at all times to the Authorised Representative.

#### **41. Force Majeure**

- 41.1. Neither party shall be liable to the other party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the party concerned to avoid such failure or delay.
- 41.2. If either party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue.
- 41.3. For the purposes of this Condition, “Force Majeure” means any event or occurrence which is outside the control of the party concerned and which is not attributable to any act or failure to take preventive action by the party concerned, but shall not include any industrial action occurring within the Contractor’s organisation or within any sub-contractor’s organisation.
- 41.4. Any failure or delay by the Contractor in performing his obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.

#### **42. Bankruptcy**

- 42.1. In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for the purpose of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders or any debentures secured by a floating charge of any property comprised in or subject to the floating charge, the Utility Regulator may at its discretion forthwith terminate this Contract.

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### **43. Termination on Default**

43.1. The Utility Regulator may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:

43.1.1. the Contractor has not remedied the default to the satisfaction of the Utility Regulator within 30 days, or such other period as may be specified by the Department, after service of written notice specifying the default and requiring it to be remedied; or

43.1.2. the default is not capable of remedy; or

43.1.3. the default is a fundamental breach of the Contract

### **44. Break**

44.1. The Utility Regulator shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 3 months' written notice to the Contractor. The Utility Regulator may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

### **45. Consequences of Termination**

45.1. If the Utility Regulator terminates the Contract under Condition 43, or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, the Utility Regulator shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Utility Regulator throughout the remainder of the term of the Contract. Where the Contract is terminated under Condition 43, no further payments shall be payable by the Utility Regulator until the Utility Regulator has established the final cost of making those other arrangements.

45.2. If the Utility Regulator terminates the Contract, or terminates the provision of any part of the Services, under Condition 44, the Utility Regulator shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce equipment and labour costs as appropriate.

45.3. For the purposes of Condition 45.2 the Contractor shall submit to the Authorised Representative, within 14 working days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the

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Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.

45.4. The Utility Regulator shall not be liable under Condition 45.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.

## **46. Arbitration**

46.1. All disputes, differences or questions between the parties to the Contract with respect to any matter arising out of or relating to the Contract, other than a matter of things as to which the decision of the Department is under the Contract to be final and conclusive, shall after written notice by either party to the Contract to the other be referred to a single arbitrator agreed for that purpose or in default of such agreement within twenty-one (21) days, appointed at the request of either party by the President of the Law Society of Northern Ireland. The decision of such arbiter shall be final and binding on the parties of the Contract.

46.2. The provision of the Arbitration Act 1996 shall apply to any arbitration under this contract and such arbitration shall be conducted solely within Northern Ireland.

## **47. Law**

47.1. The Contract shall in all respects be governed by and construed in accordance with the laws of Northern Ireland and the parties hereby agree that the Courts of Northern Ireland shall have exclusive jurisdiction to hear and determine any dispute arising out of or in connection with the Contract.

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**Appendix A**

(See Condition 39.1 of Contract)

**Variation to Contract Form (to be completed by the Utility Regulator only)**

**Contract Title: Utility Regulator – Consultancy Support for Northern Ireland Electricity (NIE) Transmission & Distribution (T&D) Price Control (RP5)**

**Contract Reference: CON/03/10**

The Contract is varied as follows.

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Words and expressions in this Variation shall have the meaning/s given to them in the Contract.

The Contract, including any previous Variation(s), shall remain effective and unaltered except as amended by this Variation.

<b>Signed</b>			
<b>For the Utility Regulator</b>		<b>For Contractor</b>	
By		By	
Full Name		Full Name	
Grade		Title	
Date		Date	