

FRAMEWORK AGREEMENT

Between

THE EUROPEAN COMMUNITY

and

THE FUEL CELLS AND HYDROGEN JOINT UNDERTAKING

**FOR THE PROVISION OF SERVICES BY THE JOINT RESEARCH CENTRE
TO THE FCH JOINT UNDERTAKING**

The European Community, represented by the European Commission, represented for the purpose of signing this agreement by Dr. Roland SCHENKEL, Director-General of the Joint Research Centre, hereinafter referred to as 'JRC', duly entitled to sign,

On the one part,

and

the Fuel Cells and Hydrogen Joint Undertaking" established by Council Regulation No 521/2008¹ (hereinafter referred to as "FCH Joint Undertaking"), represented for the purpose of signing this agreement by Mr/Mrs(insert name)..., Executive Director, duly entitled to sign,

On the other part,

Hereafter referred to individually as 'the Party' or collectively as 'the Parties'

WHEREAS:

¹ Council Regulation (EC) no 521/2008 of 30 May 2008 setting up the Fuel Cells and Hydrogen Joint Undertaking , OJEU L 153, 12.6.2008, p.1

1. The FCH Joint Undertaking is set up under Article 171 of the Treaty establishing the European Community. Its objective is to contribute to the implementation of the Seventh Framework Programme (2007-2013) of the European Community for research, technology development and demonstration and in particular the Specific Programme "Cooperation" with its themes for "Energy", "Nanosciences, Nanotechnologies, Materials and New Production Technologies", "Environment (including Climate Change)", and "Transport (including Aeronautics)".

2. The FCH Joint Undertaking aims in particular at:

(a) placing Europe at the forefront of fuel cell and hydrogen technologies worldwide and at enabling the market breakthrough of fuel cell and hydrogen technologies, thereby allowing commercial market forces to drive the substantial potential public benefits.

(b) supporting Research, Technological development and Demonstration (hereinafter referred to as "RTD") in the Member States and countries associated to the Seventh Framework Programme (hereafter referred to as "Associated countries") in a coordinated manner to overcome the market failure and focus on developing market applications and thereby facilitate additional industrial efforts towards a rapid deployment of fuel cells and hydrogen technologies;

(c) supporting the implementation of the RTD priorities of the JTI on Fuel cells and Hydrogen, notably by awarding grants following competitive calls for proposals;

(d) encouraging increased public and private research investment in fuel cells and hydrogen technologies in the Member States and Associated countries;

3. The JRC mission is to provide customer driven scientific and technical support for the conception, development implementation and monitoring of European Union policies. It functions as a reference centre for science and technology for the Union. It serves the common interests of the Member States of the European Union while being independent of special interests. Through its Institute for Energy in Petten, its Institute for Environment and Sustainability in Ispra and its Institute for Prospective Technological Studies in Sevilla, the JRC conducts research in the field of fuel cells and hydrogen.

4. Through joint efforts of the FCH Joint Undertaking and the JRC, new approaches can be identified and developed in the areas of fuel cell and hydrogen technology, thus working to the mutual benefit of both organisations in the achievement of their objectives.

5. The Parties have expressed their mutual desire to co-operate in the field of fuel cell and hydrogen technology, in particular by the provision of services by the JRC to the FCH Joint Undertaking, and are for that purpose signing the present Framework Agreement;

HAVE AGREED AS FOLLOWS:



ARTICLE 1 – OBJECTIVES OF THE AGREEMENT

- 1.1 The general objective of this Framework Agreement is to enhance the understanding and resolving of scientific issues in the field of fuel cell and hydrogen technology by, in particular, regulating the contribution of the JRC to the FCH Joint Undertaking. This Agreement is without prejudice of the participation of the JRC in FCH JU's indirect actions.
- 1.2 In order to fully achieve the objectives of this Framework Agreement, the collaboration between the Parties will be developed along the lines laid down in Annex A. In addition, the JRC annual contribution to the FCH JU Annual Implementation Plan ("AC-AIP") will be agreed between the Parties describing the direct contribution by the JRC to the FCH Joint Undertaking.
- 1.3 If the activities agreed in accordance with Article 1.2 so warrant, the Parties may, prior to commencing these activities and on a case-by-case basis, either conclude a specific written agreement detailing the specifics of the joint project and which shall in particular cover any necessary technical, administrative, legal and financial aspects. If there is any conflict between the provisions of the Specific Agreements and this Framework Agreement, the provisions of the Framework Agreement will prevail, unless otherwise explicitly agreed in the Specific Agreement.

ARTICLE 2 – LIABILITY

- 2.1 Any loss, damage or injury suffered by one Party in connection with the performance of this Agreement shall be borne exclusively by it.
- 2.2 Each Party shall be exclusively liable for any loss, damage or injury caused by them to third parties, arising out of the performance of the Agreement.
- 2.3 The JRC providing information to the FCH Joint Undertaking does not warrant or guarantee the accuracy, completeness or usefulness for any particular purpose of any information which it furnishes pursuant to this Agreement. It shall not be liable for the use made by the FCH JU of such information.

ARTICLE 3 – STEERING MEETING

- 3.1 The Parties shall meet at least once a year to evaluate past activities, develop detailed plans for future co-operative projects, and discuss any matter concerning the implementation of the present Framework Agreement. In particular, they will agree upon the AC-AIP under Article 1.2 which will be the contribution for the year covered by it and which will become effective upon approval by the Governing Board of the FCH Joint Undertaking.

- 3.2 To this end, the FCH Joint Undertaking and the JRC will each designate one (1) person to serve as its co-ordinator with responsibility for the respective planning. The coordinators will equally be free to nominate any other members to represent them or to attend meetings. The meetings are prepared by the coordinators.
- 3.3 All notifications and correspondence under this Agreement shall be sent to the co-ordinators.
- 3.4 The Parties shall communicate to each other in writing the name of the designated coordinator and any changes with regard to them.

ARTICLE 4 – PROGRESS OF THE WORK, MEETINGS

- 4.1 The FCH Joint Undertaking shall have the right to check on the spot the progress of the work performed by the JRC forming the subject matter of this Agreement and to make any observation or suggestion, which it may deem appropriate.
- 4.3 The Parties shall attend any meeting convened by mutual agreement in order to establish the state of progress of work already completed and, where appropriate, to change the subsequent course of the work in the light of the results achieved.

ARTICLE 5 – FUNDS

- 5.1 All activities conducted pursuant to this Framework Agreement shall be subject to the availability of appropriated funds, personnel and other resources as well as to the applicable laws and regulations, policies and programmes of each Party.
- 5.2 The JRC shall bear the cost of any expenditure it incurs relating to the performance of its tasks under this Agreement.

ARTICLE 6 - PROTECTION OF INFORMATION AND INTELLECTUAL PROPERTY

- 6.1 All information and intellectual property owned by the JRC – hereinafter referred to as Background Information, provided by it to the FCH Joint Undertaking, will remain the JRC's property. All information and intellectual property generated by the JRC in the course of the implementation of this Agreement, hereafter referred to as Foreground Proprietary Information, shall be the JRC's property.
- 6.2 The JRC shall provide the above Background and Foreground Information to the FCH Joint Undertaking, to the extent the said information and intellectual property are contributing to a given activity identified in the AC-AIP and are necessary to accomplish the objective of the activity, and on a royalty-free basis.

- 6.3 Where the JRC provides Background and Foreground Information to the FCH Joint Undertaking, the latter shall not use such information for any purpose other than for the implementation of the activity for which it was provided. However, except as otherwise agreed in writing between the Parties, the FCH Joint Undertaking may disclose or disseminate Background and Foreground information, provided by the JRC, to the participants in indirect actions which have concluded a grant agreement with the FCH Joint Undertaking to the extent necessary to perform project work, provided the grant agreement contains appropriate provisions on the protection of third parties' proprietary information.
- 6.4 The commitments imposed upon the Parties under this Article shall remain in effect notwithstanding the withdrawal of a Party from an activity or termination of this Agreement, unless otherwise stated in writing by the providing Party.

ARTICLE 7 – CONFIDENTIALITY

- 7.1 The Parties undertake to keep confidential any information communicated to them as confidential or the disclosure of which may be prejudicial to the other Party, until, or unless, the content legitimately becomes publicly available through other parties or through work or actions lawfully performed outside, and not based on activities under this Agreement, or has been made available to the disclosing Party by another party without any confidentiality restrictions. In this context, the JRC will indicate whether such information communicated by it to the FCH Joint Undertaking is confidential and the FCH Joint Undertaking shall respect such confidentiality.
- 7.2 Each Party will take all appropriate measures in accordance with this Article to protect Background and Foreground Information provided by the other Party pursuant to this Agreement against unauthorized use or disclosure.
- 7.3 Confidentiality of information exchanged in connection with this Agreement shall be maintained for a period of 5 (five) years following the expiry or termination of this Agreement.

ARTICLE 8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 8.1 This Agreement shall be governed by Community law, complemented, where necessary, by the law of Belgium.
- 8.2 In case of any dispute or difference between the Parties arising out of or in connection with this Agreement, the Parties hereto shall settle it by mutual agreement. Such effort shall be deemed to have failed when one of the Parties so notifies the other in writing. In

that case, each Party may initiate proceedings before the Court of First Instance of the European Communities in Luxembourg.

ARTICLE 9 – ENTRY INTO FORCE AND DURATION

- 9.1 This Agreement shall enter into force on the date of its signature by the last Party and it will remain in force until 31st December 2013. This Agreement may be extended or amended only by written agreement signed by the duly authorised representatives of both Parties.
- 9.2 Either Party may terminate this Agreement at any time upon 3 (three) months prior written notice to the other Party explaining the reasons of the termination. This shall inter alia be the case where research programmes and budget allocations are no longer compatible with the continuation of the working relationship. Activities in progress on the date of such written notice and the rights and obligations ensuing from them shall proceed to completion, unless the Parties otherwise agree in writing.
- 9.3 The Parties shall evaluate the implementation of this Agreement after it has been in force for 2 (two) years. On the basis of this evaluation, the Parties may make modifications for the purpose of better fulfilling the objectives of this Agreement.

ARTICLE 10 - ANNEX

The following annex shall form an integral part of the present Agreement:

Annex: JRC Contribution to the FCH JU

Signed in Brussels in two originals in the English language.

THE FCH JOINT UNDERTAKING

EUROPEAN COMMISSION's JRC

BY: Philippe VANNSON

BY: Roland SCHENKEL


Interim Executive Director

Director General of the
Commission's Joint Research Centre

(i) Experimental contribution on pre-normative research

4. The JRC PNR work on hydrogen and fuel cells is articulated in two main areas:

- developing and improving harmonised approaches for reliable assessment of relevant properties of new materials, technologies and products (including evaluation of safety criteria). This activity includes quantification of the accuracy, reproducibility and sensitivity of the test methods through own R&D and organising international inter-laboratory exercises.
- assessing and quantifying the performances of new technologies and products in terms of emissions, safety, reliability and efficiency, thus allowing evaluating their contribution to the EU policy objectives.

The output of this PNR work feeds into international standardisation and regulatory activities to which JRC actively participates. Continued JRC involvement in these activities, under guidance of the FCH JU advisory bodies, will benefit the FCH JU.

5. JRC will offer the results of its PNR activities as in-kind contribution to the FCH JU. This may also apply to other cross-cutting activities within the JRC work programme which are linked to PNR (education and training, etc.). In practical terms, any result generated by the JRC in-kind contribution, such as data deliverables and documents, will be accessible and free for use by the Governing Board and the Programme Office.
6. Where possible and relevant, JRC will tailor the scope and content of its PNR activities in the area of fuel cells and hydrogen to best meet the FCH JU programme priorities.

(ii) Support to individual FCH JU projects in the role of reference laboratory

7. JRC's independence of commercial and national interests, combined with its scientific-technical expertise can usefully be exploited to provide the services of a reference laboratory to FCH JU projects in a transparent and impartial way (especially in the areas of hydrogen storage, sensor performance, fuel cell performance and hydrogen safety).
8. The involvement of JRC as a reference laboratory – outlined below – is on a voluntary basis at the level of individual projects, in particular regarding acceptance of the results.
9. The functions of JRC as a reference laboratory include:
- independent assessment and verification of whether the results of FCH JU projects meet their planned targets (including expected contribution to the EU policy objectives).
 - identification and quantification of relevant parameters that affect the performance of technologies and products under demonstration.
 - advice to FCH JU projects on standardisation or regulatory issues and on how the results are best fed into the international standardization and regulatory processes.

Annex to the Framework Agreement between the European Community and the Fuel Cells and Hydrogen Joint Undertaking

Joint Research Centre (JRC)'s contribution to the Fuel Cell and Hydrogen Joint Undertaking (FCH JU)

Background and Rationale

1. The Regulation establishing the FCH JU² for the implementation of the Joint Technology Initiative (JTI) explicitly foresees the possibility for JRC to contribute in-kind to the FCH JU activities. The JRC offers to the FCH JU additional competences, expertise and facilities free of charge.

Scope of the JRC in-kind contribution

2. The JRC has a considerable expertise in fuel cells and hydrogen technologies and in particular in the following areas:
 - development of characterisation and assessment methodologies and tools for (i) high pressure gas and solid state hydrogen storage, (ii) performance evaluation of hydrogen sensors, (iii) performance evaluation of fuel cell stacks (in particular PEMFC) and systems under simulated service conditions, and
 - numerical modelling of safety scenarios.
3. The JRC's contribution in the aforementioned areas covers the following activities (separately or in a combined way):
 - (i) experimental contribution to pre-normative research (PNR),
 - (ii) support to individual FCH JU projects providing the services of a reference laboratory,
 - (iii) support, upon request of the Governing Board, to the formulation and implementation of the FCH JU strategy

These three types of activities are described below.

² Council Regulation (EC) No 521/2008 of 30 of May 2008

10. Within its own programme, JRC also performs a reference function on energy-related topics that extends beyond the area of fuel cells and hydrogen technologies. This activity consists of: collecting, validating and harmonising data sets; forecasts and scenarios on energy technologies and markets; developing and validating assessment and modelling tools (e.g., Life Cycle Assessment). At project level, these data can assist benchmarking the progress of FCH JU activities against the performance of competing technologies.

(iii) Support, upon request, to formulate and implement the FCH JU strategy

11. In view of its mission to support EU policy-making, JRC is knowledgeable about the major EU policy drivers and initiatives. It can therefore provide the industry-led FCH JU advice on formulating and updating the FCH JU strategy and work programme in order to align it with the EU policy agenda (including in policy-areas which may be of less direct relevance to the overall FCH JU objectives). The independent and institutional role of JRC will ensure transparency, objectivity and confidentiality in performing these tasks.
12. Activities in support of strategic programming to which JRC can contribute include: advice in shaping and coordinating Regulations, Codes and Standards (RCS) activities; awareness, education and dissemination activities; policy-oriented socio-economic research; commenting on the scope and details of technology roadmaps; advising on the consistency and possible synergies with relevant activities of other European Technology Platforms or JTIs; providing information on international activities and developments (e.g., signalling “hot” issues, etc.).
13. The JRC support to the FCH JU programme implementation exploits its experience with technology assessment, validation and road-mapping in non-EU countries. The contribution of an independent technology validation and assessment framework will support reviewing the progress and setting the priorities of the FCH JU.
14. Examples of additional support at programme level are: consolidation, repository and dissemination of data generated within FCH JU projects; the establishment of data collection and validation protocols for demonstration projects; technology assessment not only at component level but through the value chain.

JRC participation to FCH JU-funded projects

15. The fact that JRC contributes in-kind to the FCH JU does not rule out participation to competitive calls for proposals and involvement in FCH JU-funded projects. However, successful execution of any reference laboratory and programme support function requires that the JRC independence is unchallenged. To ensure this and avoid any ambiguity:
 - JRC will not act as project beneficiary in areas that are covered by its contribution (which is financed through its own institutional budget).

Document FCH JU 2009.002
Final Version of 21 January 2009
Adopted by the FCH JU Governing Board on 30 January 2009

- JRC will only contribute to technology validation and assessment activities for topics in which it is not involved as a project partner.

