



EUROPESE COMMISSIE
GEMEENSCHAPPELIJK ONDERZOEK CENTRUM

Afdeling Resource Management Petten

Petten, 24 June 2016

By E-mail and post

**The Nuclear Research and c
Consultancy Group**

Westerduinweg 3
1755 LE Petten

Betreff: C600437, JRC-IET Facilities And Services Transfer (JFAST) Agreement

Contact person:

Geachte

Bij deze stuur ik U het origineel van bovengenoemd contract.

Met vriendelijke groet,

Contract manager

Bijlagen:

1 x JRC-IET Facilities And Services Transfer (JFAST) Agreement

1 x Annex I



EUROPEAN COMMISSION
JOINT RESEARCH CENTRE

Resources
Resource Management Petten

JRC-IET FACILITIES AND SERVICES TRANSFER (JFAST) AGREEMENT no. 600437

The European Atomic Energy Community (Euratom), represented by the European Commission, hereinafter referred to as "the Commission", represented for the purpose of signing this contract by
Director of the Institute for Energy and Transport,
Joint Research Centre, Westerduinweg 3, 1755 LE Petten, The Netherlands, hereinafter referred to as "the JRC-IET",

on the one part,

and

The Nuclear Research and consultancy Group v.o.f, established at Westerduinweg 3, 1755 LE Petten, The Netherlands, represented for the purpose of signing this contract by
Director, hereinafter referred to as "NRG",

on the other part,

hereinafter referred to as "the Parties",

PREAMBLE

1. WHEREAS, through an Agreement signed on 25 July 1961 ("the Site Agreement") the Kingdom of the Netherlands has placed at the disposal of the JRC a High Flux Reactor, "HFR", situated in Petten;
2. WHEREAS, the HFR is (amongst others) used for the execution of the European Union's Framework Programmes for Research, and Technical Development and Demonstration Activities and / or Training Activities, the Supplementary Research Programmes and other experiments and scientific research projects related to the European Union's programmes, as well as for irradiation services, including the services for the production of radio-isotopes ordered by third parties;
3. WHEREAS, on 20 June 1967 the JRC and Stichting Energieonderzoek Centrum Nederland, referred to as "ECN", then called Stichting Reactor Centrum Nederland, referred to as "RCN", have concluded Co-operation Contract No. 054-68-1 PET N with regard to the operational management of the HFR at the HFR Site;
4. WHEREAS, on 17 September 1998 NRG, itself being part of ECN with which it forms a corporation, became ECN's legal successor, as party to that Contract, as subsequently amended, the last two times on 22 December 2003 (Amendment No. 7) and on 7 December 2007 (Amendment No. 8), the latter two remaining both effective to date, having due regard to Articles 20 (Effective Date) and 21 (Interpretation) of Amendment No. 8;
5. WHEREAS, on 10 January 2005 a new Nuclear Licence for the operation of the HFR has been granted to NRG;
6. WHEREAS the HFR irradiation chain of NRG is dependent on facilities including installations and equipment owned and services currently provided by the JRC;
7. WHEREAS the JRC has decided to discontinue these services as from Transfer / Transition Date (as defined below), the facilities concerned including installations and equipment and the provision of services shall be transferred to NRG under the conditions set out in this Agreement;
8. WHEREAS the Parties therefore intend to enter into the present Agreement in order to achieve the following objectives:
 - to transfer to NRG the necessary facilities including installations and equipment and provision of services, entailing a transfer of ownership for Items A and C as well as a partial transfer of ownership, with the exception of JRC-Building 113 itself, of Item B and the grant of other rights as relevant for the HFR-irradiation chain; and
 - to lay down the terms and conditions of that transfer, the rights and obligations of NRG and JRC corresponding thereto and all its operational requirements, as well as the JRC's future access and use rights concerning the transferred items;
9. WHEREAS both Parties want to accomplish these objectives by entering into and implementing this Agreement in accordance with its following terms;
10. WHEREAS in order to guarantee business continuity, the transfer of Item A has started on 6 January 2012 (Transition Date for this item), its use having been subject to Item A first being entered into a license held by ECN from which NRG can benefit. The transfer of this item shall now be formalized subject to the terms and conditions set out in this Agreement, considering that by Ministerial Decree No. 2011/2626-06 dated 12 March 2012 Item A has been included within the scope of the license held by ECN which is based on the Act on Nuclear energy (Kernenergiewet) and the Decree on Radiation protection (Besluit stralingsbescherming); and that by letter dated 31 August 2012 addressed to the JRC, the municipality of Zijpe has informed the latter that the environmental permit held by it has been amended so as to exclude Item A from its scope.

THE PARTIES HEREWITH AGREE AS FOLLOWS:

Definitions

"Items"

Item A, B, and C concern the entirety of any installation, equipment, rights and ancillaries as defined for each of these items in Article 1 of and Annex I to this Agreement.

"JFAST"

JFAST is the JRC-IET Facilities And Services Transfer project as detailed in Annex I.

"Licences"

Licences are all necessary permits held by JRC-IET for Item A at the Transition Date (6 January 2012; Item A having been part of the environmental license held by the JRC until 31 August 2012); and, for Item B at the Transfer Date (as defined below) as well as all necessary permits which NRG (or ECN to the benefit of NRG) must hold for each of these two items at the Transfer Date in order for the transfer to become effective for each of these two items. As regards Item A, the required license held by ECN (to the benefit of NRG) is No. 2011/2626-06 dated 12 March 2012. As regards Item B, the nuclear license for the HFR currently held by NRG must first be amended, before the transfer with regard to Item B can become effective. In any case, NRG shall prove having obtained this license until 31 December 2016 at the latest. Items C, and its components, is not subject to any license requirements.

"Transfer Date"

The Transfer Date shall be the point in time at which JRC-IET shall ultimately cease, with the exception of JRC-Building 113 itself, to be owner and NRG shall become the owner of the Items (entitled to use JRC-Building 113), subject to all necessary licenses being held by NRG (or by ECN to the benefit of NRG). - For Item A: regardless of the Transfer Date being the date of signature of this Agreement, for that Item, the JRC-IET has already ceased to be legally responsible and liable on 6 January 2012 and NRG has become legally responsible and liable for that item on that date.

- For Item B: subject to Article 1.1 B of this Agreement, this date is agreed between the Parties to be the date on which NRG (or ECN to the benefit of NRG) has obtained all necessary licenses (but in any case not later than 31 December 2016).

- For item C: this date is agreed between the Parties being the date of signature of this Agreement.

"Transition Date (Item A)"

The Transition Date concerning Item A is agreed between the Parties to be 6 January 2012 at which date the risk of the JRC-IET is considered to have been taken over by NRG.

"HFR Shutdown"

For the purpose of this Agreement, the HFR Shutdown is the point of time of the final shutdown of the HFR as determined by the decision of the competent authorities to withdraw the license to operate the HFR.

Article 1 – Transfer of facilities / granting of rights – scope

1.1 Unless specified otherwise, effective as of the Transfer Date, the following facilities including installations, equipment and services, including their ownership or rights of use, as appropriate, shall be transferred / granted by JRC-IET to NRG:

Item A) the Sodium filling station (required for certain irradiation experiments) including ownership of the installation and equipment as specified in Annex I.

Item B) the X-ray installation and equipment (for X-ray and neutron radiography analysis), including ownership thereof, present in the 'NDO bunker' in JRC-IET-Building 113 as well as the exclusive right to use JRC-IET-Building 113 itself, not including ownership thereof, as specified in Annex I, subject to the following:

- Item B is to be covered by the legally required license (yet to be granted to NRG) as from the date on which the nuclear license for the HFR currently held by NRG has been validly amended. As long as, after the Transfer Date, the required license has not been granted, NRG cannot invoke its rights with regard to Item B. In this case, NRG may temporarily - until 31 December 2016 at the latest - avail of the possibility and subject to a separate contractual agreement with the JRC-IET, to have JRC-IET-staff provide required services including training (Article 5) against payment, based on the applicable rate (salary + overheads) per half-day of the member of JRC-IET-staff concerned;

- After NRG's nuclear license has been validly amended, any responsibility and liability regarding use and maintenance of Item B in its entirety as well as any part thereof including any cost related thereto shall be for and at the expense of NRG which shall guarantee its uninterrupted functionality until HFR Shutdown. NRG shall maintain the installation and equipment in the NDO bunker, the NDO bunker itself as well as the entire building clean (i.e., in a conventional sense and clean from radiation / contamination) at its own cost in accordance with the applicable law and any applicable security, safety, public health, environmental and quality standards. Before the transfer of the NDO Bunker in the JRC-IET Building 113 a reference test will be performed in order to establish whether the building is clean from radiation and contamination. This reference test will be performed by NRG and NRG will produce a report which specifies the radiation level. If the NRG concludes that the radiation level is above normally acceptable standards, JRC-IET will have the right to obtain a contra expertise report. In case no agreement can be reached on the basis of the NRG report and the contra expertise report, the parties will together appoint a third party expert which will establish the level of radiation at the moment of transfer. After HFR Shutdown, NRG shall return JRC-IET-Building 113 to the JRC-IET clean and in the same state in which it has been taken over from the JRC-IET (not including ownership thereof) - and as established in the reference report - on the Transfer Date.

Item C) all components of the Commissioning Lab (for services concerning the commissioning of experiments) including ownership thereof in their entirety as specified in Annex I;

- 1.2 Items A, B, and C under Article 1.1 of this Agreement as specified in Annex I shall be deemed transferred on an *as-is* basis, as on the Transfer Date involving, with the exception of JRC-IET-Building 113 itself, a transfer of ownership from JRC-IET to NRG, subject to the terms and conditions laid down in the following provisions. Under the exclusive responsibility, liability and authority of NRG, Item A and all components of Item C shall be placed at the business premises of ECN, the legal entity with which NRG forms a corporation. NRG has obtained the written agreement of ECN that the latter shall host Items A and C on its business premises in accordance with any requirements under the applicable laws and regulations.
- 1.3 In consideration of the transfer of ownership for Items A; B (with the exception of JRC-Building 113 itself); and C; NRG shall pay the JRC the total amount of
- 1.4 The exclusive right to use JRC-IET-Building 113 under Article 1.1 of this Agreement as specified in Annex I shall be granted on an *as-is* basis, free of charge, not involving a transfer of ownership to that building, subject to the terms and conditions laid down in the following provisions. Having regard to Articles 2 and 8 of this Agreement, the installation and equipment forming part of Item B shall remain present in JRC-IET-Building 113.
- 1.5 The exclusive right to use JRC-Building 113 granted under the present Agreement shall not entitle NRG to grant use rights to any other legal entity than the JRC-IET, unless prior written authorisation by JRC-IET to do so under the same conditions as agreed between the Parties, which shall not be unreasonably withheld, has been obtained to that effect from the JRC, following a respective written request.

- 1.6 All costs of the transfer of Items A and C, the transfer of Item B not entailing any costs, are at the expense of NRG.
- 1.7 All Annexes to this Agreement shall form integral parts to the Agreement itself. The Agreement and its Annexes shall be mutually explanatory. In case of contradictions, the text of the Agreement shall take precedence over all Annexes.

Article 2 – Warranties and Liabilities

2.1 The Parties have full cognition of Items A-C (specified in Annex I to this Agreement) within the scope of this Agreement. Until the Transition Date for Item A and the Transfer Date for Items B and C all items were respectively are operational and, with regard to Items A and B (no such requirements being applicable to Item C), fully covered by valid licences held by the JRC-IET entitling it to provide all services relevant for the HFR irradiation chain of NRG. As from the Transfer Date, NRG shall hold or benefit from any licenses required to operate Items A and B under this Agreement, subject to Article 1.1.B, first indent of this Agreement. As from the Transfer Date for Items B and C, the JRC-IET does not accept, subject to Article 1.1.B, first indent, any warranties for the items under this Agreement. With regard to Item A, the JRC-IET does not accept any warranties as from the Transition Date, 6 January 2012. In particular, having regard to Article 8 of this Agreement, the final disposal of items (any parts thereof), with the exception of JRC-IET-Building 113 itself as specified in Article 1.1 B, second indent of this Agreement, shall be the responsibility and liability of NRG.

2.2 Without prejudice to Article 2.4 neither Party shall be liable to the other Party in respect of acts or omissions of itself, its employees and agents in the execution of its tasks and obligations under this Agreement, except in the event of gross negligence, intent or purpose, provided always that in such an event:

a) any liability shall not extend to claims for any indirect, punitive, special, incidental or consequential damages including loss of business, revenue, profits, use or economic advantage; and

b) neither Party shall claim any indemnification from the other Party's employees or agents, even if entitled by law to such claim.

2.3 As from the Transfer Date, subject to Article 1.1.B, first indent of this Agreement, NRG is the only Party responsible for the items under this Agreement. As from that date, NRG shall ensure the uninterrupted functionality of all facilities and services at its own expenses (including for maintenance and building maintenance concerning Item B as specified in Article 1.1.B, second indent of this Agreement).

2.4 As from the Transfer Date for Items B, subject to Article 1.1.B, first indent of this Agreement, and Item C, and as from the Transition Date for Item A, NRG is liable towards the JRC-IET or any third parties for and shall indemnify the JRC-IET or any third party for and hold harmless from any costs, expenses, loss, damage or financial consequence of whatever nature incurred by the JRC-IET or any third party after the Transfer Date / Transition Date for Item A and arising out of or resulting from:

a) a breach by NRG of any representation, warranty or covenant made by it in or in relation to this Agreement;

b) a claim (including, but not limited to, third party suits and administrative or regulatory proceedings) regarding the facilities transferred as specified in Annex I under this Agreement and their operation;

c) a claim for which NRG may be held liable as operator of the facilities transferred under this Agreement (including, but not limited to undue or inadequate operation and / or maintenance of the facilities transferred under this Agreement); and

d) this Agreement including liabilities and / or related Licences required under the applicable laws and regulations;

2.5 As from the Transfer Date for Items B, subject to Article 1.1.B, first indent of this Agreement, and C and as from the Transition Date for Item A, the JRC-IET shall not accept any liability towards NRG or any third party regarding or related to the items under this Agreement. In particular, JRC-IET shall not be liable towards NRG for any damage caused by any object at or in the facilities and shall not accept any claim for compensation or repairs in respect of any such damage, unless caused by gross negligence, intent or purpose of the JRC-IET or its employees.

Article 3 – Licences

On the Transition Date for Item A and the Transfer Date for Items B, subject to Article 1.1.B, first indent of this Agreement, and C, NRG is respectively considered to have taken over / shall take over the risk for all items under this Agreement and benefit from them.

Subject to Article 1.1 B, first indent of this Agreement, NRG shall under its own responsibility and costs apply in a timely manner for any licences (their extension, renewal, etc.) as required under the applicable laws and regulations and to be granted by the competent national, regional and local Dutch authorities to guarantee that it holds or benefits from any required licenses until the Transfer Date and beyond, for the entire duration of this Agreement.

Article 4 – Operation of facilities by NRG, Business continuity, Access, use and inspection rights of JRC-IET, Conditions of use

4.1 As from the Transfer Date and subject to Articles 1.1.B, first indent, 3, 5 and 8 of this Agreement, NRG shall operate Items A, B and all components of C at its own expenses.

4.2 As from the Transfer Date, JRC-IET shall enjoy free access and free of charge use rights (neither fees nor charges shall be applicable for their use and the JRC-IET shall not in any way contribute to maintenance incurred by respectively NRG or ECN) to and of Items A, B as well as all components of C under Article 1.1 of this Agreement.

4.3 JRC-IET shall be entitled to make use of these rights at preferential terms within usual working and operating times at NRG, via a single contact point – namely the JRC-IET account manager at NRG - subject to the programming and operating authority of NRG, under the supervision of responsible and competent personnel of respectively NRG or ECN as required under the relevant licenses held by them.

4.4 With regard to its own experiments conducted or prepared in and on Items A and B, JRC-IET shall, as from the Transfer Date, subject to Article 1.1.B of this Agreement, enjoy inspection rights within 48 hours from request via the single contact point, subject to consent by NRG, which shall not be unreasonably withheld, in accordance with the programming and operating authority of NRG and under the supervision of responsible and competent personnel of respectively NRG or ECN as required under the relevant licenses held by them.

Article 5 – Training

Having regard to Articles 1.1.B, 4 and 6 of this Agreement and with a view to enabling NRG to fully ensure business continuity as soon as possible after the Transfer Date, the JRC-IET shall, subject to availability of competent JRC-IET staff remaining in active service and based on a contractual agreement separate from this Agreement, provide training to NRG and its competent staff to the extent required to build up the necessary human resources capacity for NRG to operate Item B in a professional, safe, secure and legally correct manner. Provision of such training shall end on 31 December 2016 at the latest.

Article 6 – Transfer arrangements

With regard to the physical transfer arrangements (removal, transport, changes to infrastructure, etc.) of Items A-C, the responsible services of both parties shall agree in writing on all practical details.

Article 7 – Communication and amendment

Any communication between the Parties shall be in writing, make reference to this Agreement and be addressed to the following contact points:

For NRG:

For technical issues

For administrative issues

For JRC-IET:

For technical issues:

For administrative issues:

Any amendment to this Agreement or its Annexes shall be in writing and subject to signature by both Parties through their duly authorised representatives.

Article 8 – Entry into force, duration and termination

8.1 This Agreement enters into force and effect on the date on which the last contracting Party has signed it. It shall continue in force and effect until the HFR Shutdown and beyond that, subject to PALLAS becoming operational, unless stated otherwise in this Agreement or it is terminated earlier by mutual agreement. Termination shall not entail a transfer back to the JRC-IET of the Items, unless explicitly agreed between the Parties in a separate written agreement.

8.2. Without prejudice to the provisions of book 6 of the Dutch Civil Code on default, the JRC-IET or NRG respectively shall be deemed to be in default by law if and when one of the following situations occur:

- a) it fails or refuses to perform any of its obligations hereunder, after having been notified of its default by the other Party by written notice in the form of registered mail with proof of receipt, specifying the reason and stating the Party's intention to terminate the Agreement within three months following receipt of that notice;
- b) NRG does not, subject to Article 1.1 B, first indent of this Agreement, hold or benefit from the required licences in order to operate the facilities or the HFR (bringing the NRG in default);
- c) NRG ceases to carry out business in the nuclear sector or its core business changes significantly;
- d) NRG makes an assignment for the benefit of, or a composition with its creditors, or another arrangement of similar impact, goes bankrupt or into liquidation.

8.3 Should any Party have the intention to terminate this Agreement in accordance with Article 8.1 and 2, the Parties to this Agreement shall consult one another within the Directors Meeting, mentioned under Article 7 of Amendment no. 8 to Co-operation Contract 054-068-1 PET N between the Parties, with a view to aiming at a smooth termination of this Agreement.

8.4 Termination of this Agreement shall not release either Party thereto from any liability, right or obligation that at the time of termination has already accrued to either Party thereto or may accrue to it thereafter in respect of any act or omission prior to termination.

Article 9 – Disputes and applicable law

The Court of Justice of the European Union shall have exclusive jurisdiction in case of dispute between the Parties to this Agreement.

This Agreement shall be governed by EU law complemented where necessary by Dutch law.

Article 10 – Invalidity

Should any provision of this Agreement be invalid or unenforceable or should something appear to be omitted in the opinion of the Parties, the remaining provision of the Agreement shall remain in force. In case of an invalid provision, a valid provision is presumed to be agreed between the Parties which is economically closest to the one actually agreed upon. In case of an omission, the same principle shall apply to overcome it.

Article 11 – Confidentiality

This Agreement and any information related thereto are confidential. If any Party is requested to make any disclosure, it shall respectively ask the other Party's prior permission or express such consent, any disclosure remaining subject to an undertaking of the third party concerned to respect the confidentiality of this Agreement and any information related thereto.

Done in Petten on24/6/2016, in duplicate, in the English language

Signatures:

For NRG



For JRC-IET



/Director



JRC-IET FACILITIES AND SERVICES TRANSFER (JFAST) AGREEMENT

ANNEX I

1 Scope

This Annex to the JFAST Agreement defines the Agreement's actual scope, per Item (A-C) concerned, based on inventories listing all items to be included, presented as follows:

- the Sodium filling station – Item A (section 2);
- all components of the Commissioning Lab – Item C (section 3);
- the X-ray installation and equipment in JRC-IERT-Building 113 (NDO building) as well as the right to use that building – Item B (section 4);

2 Sodium filling station – Item A

3 Commissioning lab – Item C

4 NDO building – Item B

Part of the JFAST project concerns the installation and equipment in (including ownership thereto) as well as the use of the NDO building (not including ownership thereof). This section lists installation and equipment in the NDO building to be transferred to NRG.

	NDO Building	Installation and equipment to be transferred
1	X-ray bunker	X-ray 200 keV Andrex Micro focus including accessories (i.e. voltage generators, coolers, table, vacuum pump, camera)
2	X-ray bunker	X-ray 300 keV Balteau Backup (including table)
3	X-ray bunker	X-ray 450 keV Philips (i.e. voltage generators, coolers, table)
4	X-ray bunker	X-ray 1 & 3 MeV Varian LINATRON Dual energy
5	X-ray bunker	LINATRON Positionersysteem + motorized rotating table
6	X-ray bunker	Dedicated tooling and equipment (reference image quality indicators, dedicated lead blocks, lifting magnet, lifting slings and shackles etc.)
7	X-ray bunker	Crane 5ton
8	Dark room	Filmontwikkelaar NDT-S Agfa
9	Dark room	Koelkast Filmvoorraad
10	Dark room	Furniture (i.e. tables, cutting machine)
11	Inspection room	Diverse film viewers ("lichtbakken")
12	Inspection room	Densitometers (flimdensitometer Greta MacBeth D200-II+ 2 spare
13	Inspection room	50 micron Scanner Kodak
14	Inspection room	Perkin Elmer Microdensitometer
15	Inspection room	Scan Software
16	Inspection room	Hoog contrast Monitor
17	Inspection room	Airco ivm continu temperatuur
18	Inspection room	Furniture (tables, cabinets, dedicated computer for scanner)
19	Inspection room	Dedicated tooling and equipment
20	Inspection room	Electronic copy of computers concerning HFR experiments (neutron and X-ray scans), app. 200 GB of data
21	Inspection room	Cabinet with neutron radiographs of HFR experiments
22	Technical room	Schaduwvrije digitale fotografie voor documentatie
23	Technical room	Chemical cabinet including chemicals
24	Technical room	Furniture (i.e. tables, cabinets, workbench)
25	Technical room	Dedicated tooling and equipment
26	Technical room	High voltage power supply (including cooler) for the LINATRON
27	Control room	Control panel LINATRON
28	Control room	Furniture (i.e. tables, cabinets)
29	Control room	Dedicated tooling and equipment
30	Office	Furniture (i.e. tables and cabinets)