

# CONNECTICUT HYDROGEN AND FUEL CELL COALITION/CLUSTER

## ARTICLES OF COLLABORATION (Revised 5-6-08)

**THIS AGREEMENT** is made and entered into by and between Connecticut Center for Advanced Technology, Inc., an independent, non-stock, tax-exempt Connecticut corporation, with offices at 222 Pitkin Street, Suite 101, East Hartford, CT 06108 (“CCAT”); Connecticut Clean Energy Fund, located at 200 Corporate Place, 3<sup>rd</sup> Floor, Rocky Hill, CT 06067; Proton Energy Systems, located at 10 Technology Drive, Wallingford, CT 06492; FuelCell Energy, located at 3 Great Pasture Road, Danbury, CT 06813; GenCell Corporation, located at 1432 Old Waterbury Road, Southbury, CT 06488; GrowJobs CT, located at 365 New Britain Road, Kensington, CT 06037; Infinity Fuel Cell and Hydrogen, Inc., located at 431A Hayden Station Road, Windsor, CT 06095; International Association of Machinists and Aerospace Workers, located at 365 New Britain Road, Kensington, CT 06037; and UTC Power, a United Technologies Company, with offices at 195 Governor’s Highway, South Windsor, CT 06074, which shall hereinafter be referred to individually as “Party” or “Member” and collectively as the “Parties,” the “Members” or the “Coalition/Cluster,” and shall be effective as of the full execution of these Articles by all forming Members of the Coalition/Cluster;

**WHEREAS** the Parties executed “Connecticut Hydrogen and Fuel Cell Coalition Articles of Collaboration” on October 27, 2005, and the Parties now intend to amend and replace, in their entirety, the aforementioned executed Articles with this agreement, effective upon the last date this document is executed by all Parties;

**WHEREAS** the Parties have similar research, technology, business and/or educational interests and wish to collaborate in order to enhance economic growth through the development, manufacture, and deployment of fuel cell and hydrogen technologies and associated fueling systems in Connecticut and;

**WHEREAS** the Parties hereby establish the “Connecticut Hydrogen and Fuel Cell Coalition” (hereinafter “the Coalition/Cluster”) for the purposes and on the terms and conditions stated herein and;

**WHEREAS** the Parties wish to set forth their understanding and agreements with respect to the manner in which the Coalition/Cluster is conducted, including the technical effort, governance, administration, funding, and the rights and obligations of the parties relating to information and expertise in support of the Coalition/Cluster;

**NOW THEREFORE**, the Parties agree as follows:

### 1. DEFINITIONS

The following definitions are applicable throughout this Agreement:

1.1 Anticompetitive: Shall mean all activities that offend antitrust law by having a negative impact on the competitiveness of hydrogen and fuel cell companies including but not limited to agreements to fix prices or limit output, sharing or dividing markets, interference with competitors, collusion, and infliction of harm to quality or innovation of other competitors.

1.2 Procompetitive: Shall mean all activities that have an overall positive effect on the competitiveness of hydrogen and fuel cell companies including but not limited to increasing efficiency, lowering prices, attracting new competitors and improving the desire for products from the industry.

1.3 The Coalition/Cluster: Shall mean the cooperative effort of the Parties to this Agreement in completing each of the specific tasks set forth in the Statement of Work.

1.4 Market Participant: Shall mean any company, organization or individual engaged in marketing, production, research, consumption or other activities in the hydrogen or fuel cell industries in the United States.

## **2. THE COALITION/CLUSTER**

2.1 Formation: The Parties hereby establish the “Connecticut Hydrogen and Fuel Cell Coalition/Cluster” for the purposes and on the terms and conditions stated herein. Each signatory on this Agreement is an “Inaugural Member,” which become a Member of the Coalition/Cluster upon signing this Agreement.

2.2 Board of Governors: The Inaugural Members of the Coalition/Cluster shall comprise the Board of Governors, which shall guide and direct the policies and programs of the Coalition/Cluster. Should the membership of an Inaugural Member terminate for any reason, a majority vote of the remaining Members of the Board of Governors is required to allow another Member of the Coalition/Cluster to fill the seat on the Board of Governors. The Board of Governors’ membership shall be considered at every Board of Governors meeting, and shall be realized by a standing line item on every Board agenda.

2.3 Legal Status: The Parties to this Agreement hereby create the Coalition/Cluster as a voluntary, association of incorporations for the purposes set forth hereafter. The Coalition/Cluster shall not constitute a legal entity. The Coalition/Cluster will conduct its activities through the contractual powers of its Members. This Agreement is not intended to be, nor shall it be construed as a joint venture, partnership, or other formal business organization. Notwithstanding any corporate affiliations between the Parties, no Member of the Coalition/Cluster can bind any other Member or create any relationship of principal or agent except as specifically provided herein. Nothing in this Agreement shall grant to any Member the right to make future commitments of any kind for or on behalf of the other Members. No Member shall have any liability for any activities of any other Member or the Coalition/Cluster.

2.4 Coalition/Cluster Membership: General membership to the Coalition/Cluster is open to any and all individuals, corporations and organizations whose fuel cell and hydrogen activities are aligned with the Coalition/Cluster’s goals, as per Section 3.1. All members, except Ex Officio, are expected to remain current with their membership dues. All members are expected to abide by the bylaws of the Coalition/Cluster, which are consistent with this Agreement. Only members of the Board of Governors hold voting rights to direct the Coalition/Cluster’s goals and activities. General membership in the Coalition/Cluster is effective upon receipt of the appropriate membership dues, as provided in Exhibit B.

### **3. OBLIGATIONS OF THE PARTIES**

3.1 Coalition/Cluster Goals: To enhance economic growth through the advancement of research, business, education and deployment of fuel cell and hydrogen technologies and associated fueling systems in Connecticut.

3.2 Lobbying: The Coalition/Cluster will not engage in lobbying activities, as defined by the Internal Revenue Service, the federal government or the State of Connecticut. Rather, the Coalition/Cluster will engage in general educational and advocacy activities with regard to the Coalition/Cluster's goals and objectives. The Coalition/Cluster will strive to make available to the general public all Coalition/Cluster informational materials. While the Coalition/Cluster as an organization shall not engage in lobbying activities, the individual members of the Coalition/Cluster are permitted to actively engage in lobbying activities, as each deems appropriate.

3.3 Antitrust: The Coalition/Cluster will engage in activities that are designed to have a neutral or procompetitive effect on the competitiveness of the hydrogen and fuel cell industries. More specifically, the Coalition/Cluster's activities will be targeted to benefit the fuel cell and hydrogen industry and its consumers as a whole. The Coalition/Cluster, individually or together with another Member/s, will not engage in activities that are anticompetitive, as defined in section 1.1.

3.4 Management: The management of the Coalition/Cluster and the rights and obligations of the individual Members shall be as set forth in Article 4, "Management and Operation."

3.5 Grant Agreements: By execution of these Articles of Collaboration, each Member authorizes CCAT to serve as the administrative manager of the Coalition/Cluster, to negotiate with possible funding organizations, to execute any and all funding agreements on behalf of the Coalition/Cluster, subject to Board of Governors' consent, and further agrees to be bound by the terms and conditions as stated in any executed funding agreements.

3.6 Term: This Agreement shall be effective as of the full execution of this Agreement by all Inaugural Members and shall continue unless and until terminated pursuant to Article 6, "Termination, Dissolution."

3.7 Special Activities: The Coalition/Cluster may from time to time engage in special activities as approved by the Board of Governors. Special Activities would be funded by sources outside the membership dues.

### **4. MANAGEMENT AND OPERATION**

4.1 Coalition/Cluster Management: Subject to the terms and conditions stated herein, the Coalition/Cluster will be governed by the Board of Governors, and administered by CCAT. CCAT's responsibilities shall include all those administrative and financial efforts normally expected of a fiduciary agent.

4.2 Board of Governor Meetings: Each Member of the Board of Governors will appoint one voting representative and will meet in regular committee meetings at least every three (3)

months at locations chosen on a rotating basis by the Board of Governors. Such representative may appoint by written proxy another person to act for and in place of such representative. Each representative may be accompanied by other representatives of the Member organization, notwithstanding the Board of Governor's reserved right to call at any time an executive session of voting Members only. Any Board Member may request a special meeting of the Board of Governors, in writing through the Chairman, provided that such Member has the written support of two (2) other Board Members. At least twice annually the Board of Governors meetings shall be open to any and all members of the Coalition/Cluster.

4.3 Board Chairman: The Board of Governors shall have a Chairman, who shall be a member of the Board of Governors and selected in a manner and frequency as agreed upon by the Board of Governors. The Chairman shall have the authority to sign on behalf of the Board of Governors and the Coalition/Cluster, and shall further direct CCAT staff to conduct the meetings, keep the other members of the Coalition/Cluster informed of developments, and ensure that minutes of the meetings are recorded and distributed to the Members.

4.4 Financial Officer: CCAT will appoint a Financial Officer to the Coalition/Cluster who will attend the Board of Governors meetings upon the request of any Member and who will serve as a single point of contact for all financial matters of Board Members, including an annual report to the Board of Governors when requested.

4.5 Responsibilities of the Board of Governors: The responsibilities of the Board of Governors are as listed below. All matters acted on pursuant to these functions and responsibilities require, as specified below, either a unanimous vote of all members of the Board of Governors, in person or by proxy, or an affirmative vote of a majority of the Members of the Board of Governors present, whether in person or by proxy. A proxy must have the express written authorization of the Board Member appointing him or her to vote on matters requiring a unanimous vote.

(a) Matters Requiring a Unanimous Vote of the Board of Governors of those present:

- (i) Change or modify the legal status of the Coalition/Cluster.
- (ii) Revise these Articles of Collaboration.

(b) Matters Requiring a Majority Vote of those present:

- (i) Act on any issue not requiring a unanimous vote and declared by a Member to be of importance.
- (ii) Delegate any responsibility requiring a majority vote of the Board of Governors to the Chairman or Financial Officer.
- (iii) The addition of Board of Governors member.
- (iv) Address disputes between Members under Sections 7.1 and 7.2.
- (v) Removal of Coalition/Cluster Member, subject to Section 6.2.
- (vi) Replacement of Board of Governors member, subject to Section 2.2.
- (vii) Authorize the Coalition/Cluster Board of Members to engage in Special Activities, pursuant to Section 3.7.

4.6 Quorum: A quorum is required in order for the Board of Governors to hold a meeting where the decisions made are valid and binding on all members of the Board of Governors. A quorum is met when 50% (rounding down) of the Board of Governors is present or participating via teleconference call.

4.7 Voting: Each Member of the Board of Governors, current in its Membership Dues, has one (1) equal vote. The Chairman does not cast a vote unless and until there is a tie. Ex officio and General Members of the Coalition/Cluster do not have voting rights in the Board of Governors. Any member of the Board of Governors is permitted to recuse themselves or abstain from participating in any vote of the Board of Governors. Such recusal or abstention shall not be considered when determining a majority vote.

## **5. FINANCIAL OBLIGATIONS AND PAYMENT**

5.1 Obligations of All Members: The Inaugural Members and the General Members individually agree to pay Membership Dues in accordance with Attachment B, "Coalition/Cluster Membership Dues." Ex Officio members are the only members not required to pay membership dues, but all Ex Officio member is welcome at any and all Board of Governors meeting.

5.2 Payment: The Financial Officer will receive funds from members, deposit such funds in a secure account, as required by government funders, disburse such funds as directed by the Board of Governors, and advise the Board of Governors on the finances of the Coalition/Cluster.

## **6. TERMINATION AND DISSOLUTION**

6.1. Resignation: Any Member may resign at will from the Coalition/Cluster after it has provided written notice to the Chairman ten (10) days in advance of the effective date of the resignation. No refund of dues shall be given.

6.2 Committee Initiated Resignation: The Coalition/Cluster may, by majority vote of those Members of the Board of Governors in attendance, force a Member to resign if that Member has acted against the interests of the Coalition/Cluster as expressed herein. The Board of Governors shall not vote to terminate a Member until such Member has been given a detailed written notice of his deficiencies and thirty (30) days after receipt of such notice in which to cure them.

6.3 Termination: This Agreement shall terminate only upon mutual agreement in writing of all of the Members of the Board of Governors to terminate.

## **7. DISPUTES RESOLUTION**

7.1 Disputes between Any and All Members: Any dispute between or among two or more of the Members relating to this Agreement (including any allegation that a Member has failed to comply with any provision of this Agreement) or with any direction of the Coalition/Cluster shall be referred to the Chairman for resolution, and the Chairman, after hearing all Parties to the dispute, shall mediate the dispute, and make recommendations to include termination of the violating Member's participation in the Coalition/Cluster, as promptly as practicable. If the

dispute relates to a technical or business matter which does not involve expense or liability in excess of \$2,500.00, the decision of the Chairman, after making every reasonable effort to resolve the dispute, shall be final. If the dispute, as decided by the Chairman, could cause a Member to incur expense or liability in excess of \$2,500.00, and a disputing Member disagrees with the decision of the Chairman, or the dispute involves the Chairman and/or the Connecticut Center for Advanced Technology, the Member shall seek an independent opinion from the Board of Governors. If the disputing Member disagrees with the independent opinion of the Board of Governors, the Member shall make every reasonable good faith effort to resolve the dispute by use of such alternate dispute resolution (“ADR”) techniques as mini-trial or mediation, utilizing the Senior Management of the disputing Members to the maximum practicable extent to facilitate the success of the ADR. In no event shall any action at law respecting any such dispute be commenced until the expiration of at least thirty (30) days after the decision of the Chairman. All costs, including all internal and external costs, associated with the resolution of any dispute between the Members, whether the technical or business dispute involves expense or liability in excess of \$2,500.00 or not, shall be solely borne by the disputing Member found to be at fault. Thereafter, any action shall proceed within the provision of Section 5.4 herein.

7.2 Damages: All Members expressly agree that in no event will special, consequential or punitive damages be applicable or awarded with respect to any dispute that may arise between or among the Members or as between any Member and the Coalition/Cluster in connection with this Agreement, whether such damages arise from breach of contract, negligence, strict liability, or any other legal or equitable theory.

## **8. NOTICES**

Any notices or other communications required or permitted hereunder shall be sufficiently given if sent by Fax, E-Mail or by registered or certified mail, postage prepaid, addressed as follows:

Connecticut Center for Advanced Technology, Inc.  
222 Pitkin Street, Suite 101  
East Hartford, CT 06108  
Attn: Joel Rinebold  
Telephone: (860) 291-8832  
Fax: (860) 291-8874  
E-mail: [jrinebold@ccat.us](mailto:jrinebold@ccat.us)

Connecticut Clean Energy Fund  
200 Corporate Place, 3<sup>rd</sup> Floor  
Rocky Hill, CT 06067  
Attn: Lise Dondy, President  
Telephone: (860) 563-0015  
Fax: (860) 563-6978  
E-mail: [Lise.dondy@ctinnovations.com](mailto:Lise.dondy@ctinnovations.com)

Proton Energy Systems  
10 Technology Drive  
Wallingford, CT 06492  
Attn: Robert Friedland, President & COO  
Telephone: (203) 678-2144  
Fax: (203) 949-8016  
E-mail: [r.friedland@protonenergy.com](mailto:r.friedland@protonenergy.com)

FuelCell Energy , Inc.  
3 Great Pasture Road  
Danbury, CT 06813  
Attn: Frank Wolak, VP, Eastern Region  
Telephone: (413) 357-9060 or (203) 825-6036  
Fax: (413) 357-9062 or (203) 825-6079  
E-mail: [fwolak@fce.com](mailto:fwolak@fce.com)

GenCell Corporation  
1432 Old Waterbury Road  
Southbury, CT 06488  
Attn: Daniel R. Connors, CEO  
Telephone: (203) 264-2515  
Fax: (203) 264-0466  
E-mail: [drc@gencellcorp.com](mailto:drc@gencellcorp.com)

GrowJobs CT  
365 New Britain Road  
Kensington, CT 06037  
Attn: John W. Harrity, Director  
Telephone: (860) 828-0359  
Fax: (860) 828-9542  
E-mail: [iamjh@sbcglobal.net](mailto:iamjh@sbcglobal.net)

Infinity Fuel Cell and Hydrogen, Inc.  
431A Hayden Station Road  
Windsor, CT 06095  
Attn: William F. Smith, President  
Telephone: (860) 688-6500  
Fax: (860) 688-6511  
E-mail: [wsmith@infinityfuel.com](mailto:wsmith@infinityfuel.com)

International Association of Machinists & Aerospace Workers  
365 New Britain Road  
Kensington, CT 06037  
Attn: Everett Corey, Directing Business Representative  
Telephone: (860) 828-0359  
E-mail: [ecorey@iamaw.org](mailto:ecorey@iamaw.org)

UTC Power  
195 Governor's Highway  
South Windsor, CT 06074  
Attn: Michael O. Brown, VP, Business Development and General Counsel  
Telephone: (860) 727-7905  
Fax: (860) 727-7922  
E-mail: [Michael.brown@utcpower.com](mailto:Michael.brown@utcpower.com)

or such other addresses or E-Mail or fax numbers as shall be furnished by like notice by such party. Any such notice or communication given by mail shall be deemed to have been given three (3) business days after the date so mailed, and any such notice or communication given by Fax or E-Mail shall be deemed to have been given when sent and the appropriate acknowledgment received.

## **9. DISCLAIMERS WARRANTIES LIABILITIES**

All Members disclaim any warranties, including without limitation any implied warranty for merchantability or fitness for a particular purpose, to each other, to any agency, and to third parties for actions, omissions, products, non-conformities, defects, liabilities or infringement arising out of the Coalition/Cluster. All Members hereto agree to indemnify and hold the Coalition/Cluster and all other Members, their directors, officers and employees harmless, from and against third party claims of any kind arising out of its negligent acts or omissions in the performance of the Indemnifying Member's work under these Articles of Collaboration as well as any third-party claims of any kind arising out of its manufacture, use or sale of any technology developed under these Articles of Collaboration, including but not limited to liability for injury to persons, damage to property or employment-related claims arising out of work performed by such Member under these Articles of Collaboration, and any and all expenses, costs, attorneys fees, settlements, judgments or awards incurred by a Member in the defense of such claim or lawsuit. Each Member shall promptly notify the negligent Member in writing of any such claim or lawsuit and such Member may, at its sole discretion, elect to assume the sole defense thereof. The Members disclaim any liability and, as against the other parties, waive any claim for consequential, indirect, or special damages under all legal and equitable theories, including without limitation breach of contract, negligence and strict liability, except as to the obligation to indemnify contained in this paragraph. Any Member may waive any right, breach or default which such Member has the right to waive, provided that such waiver shall not be effective against the waiving Member unless it is in writing, is signed by such Member and specifically refers to this Agreement. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof nor of any other agreement or provision herein contained.

## **10. MISCELLANEOUS**

**10.1 Non-Assignability:** Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable without the prior written consent of the Coalition/Cluster except to a Member's wholly or majority owned subsidiaries. Any attempt to do so shall be void. Should any Member be the subject of merger or any other form of reorganization or should it sell or transfer all or a substantial part of its business which includes the part of its business to which this Agreement relates, this Agreement may be assigned by such

Member to its successor in law provided that such successor in law obtains the prior written consent of the Chairman, which shall not be unreasonably withheld, and agrees in writing to be bound by the terms and conditions of this Agreement.

10.2 Precedence: Should there be any conflict between the terms and conditions of this Agreement and other Agreements, this Agreement shall take precedence.

10.3 Other Documents: The Parties shall further execute and conduct all such further deeds, documents and acts as may be reasonably required to enable the Parties freely and fully to pursue their agreed objectives set forth herein.

10.4 Governing Law: These Articles shall be governed by the laws of the United States and the State of Connecticut.

10.5 Severability: If any provision of this Agreement, or part thereof, is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions or parts thereof shall not in any way be affected or impaired.

10.6 Entire Agreement: This Agreement and its attachments constitute the entire agreement of the Parties and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof.

10.7 Amendments: No amendment or modification of this Agreement shall be valid unless epidemic and riots; power failure; water shortage; or adverse weather conditions; or other causes beyond the control of the Parties. In the event of any of the foregoing, the time for performance shall be equitably adjusted. The Parties shall resume the completion of work under this Agreement as soon as possible subsequent to any delay due to force majeure.

10.9 Definition of Days: Any reference to “days” in this Agreement shall be to calendar days unless otherwise specified.

10.10 Headings: Headings contained in this Agreement are included for convenience only and form no part of the agreement among the Members.

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed by its duly authorized representatives on the respective dates entered below.

**Connecticut Center for Advanced Technology, Inc.**

Signature: \_\_\_\_\_

Printed Name: Elliot A. Ginsberg

Title: President and Chief Executive Officer

Date: \_\_\_\_\_

**Connecticut Clean Energy Fund**

Signature: \_\_\_\_\_

Printed Name: Lise Dondy

Title: President

Date: \_\_\_\_\_

**Proton Energy Systems**

Signature: \_\_\_\_\_

Printed Name: Robert Friedland

Title: President and COO

Date: \_\_\_\_\_

**FuelCell Energy**

Signature: \_\_\_\_\_

Printed Name: Frank Wolack

Title: Vice President, Eastern Region

Date: \_\_\_\_\_

**GenCell Corporation**

Signature: \_\_\_\_\_

Printed Name: Daniel R. Connors

Title: CEO

Date: \_\_\_\_\_

**GrowJobs CT**

Signature: \_\_\_\_\_

Printed Name: John W. Harrity

Title: Director

Date: \_\_\_\_\_

**Infinity Fuel Cell and Hydrogen, Inc.**

Signature: \_\_\_\_\_

Printed Name: William F. Smith

Title: President

Date: \_\_\_\_\_

**International Association of Machinists & Aerospace Workers**

Signature: \_\_\_\_\_

Printed Name: Everett Corey

Title: Directing Business Representative

Date: \_\_\_\_\_

**UTC Power**

Signature: \_\_\_\_\_

Printed Name: Michael O. Brown

Title: Vice President, Business Development and General Counsel

Date: \_\_\_\_\_

**ATTACHMENTS**

Attachment A: Coalition/Cluster Statement of Work

Attachment B: Coalition/Cluster Membership Dues

ATTACHMENT A  
TO ARTICLES OF COLLABORATION

**COALITION/CLUSTER STATEMENT OF WORK**

On an ongoing basis, the Coalition/Cluster shall work collaboratively to enhance economic growth through the development, manufacture, and deployment of fuel cell and hydrogen technologies and associated fueling systems in Connecticut.

Specific objectives to be completed under this agreement are:

1. Create public awareness with industry, academia, and government regarding the benefits and uses of fuel cell and hydrogen technologies to reduce transmission congestion, reduce emissions of controlled pollutants and global warming gases, increase fuel use efficiency, reduce dependence on imported energy, and sustain and increase Connecticut employment.
2. Facilitate identification, communication, and management of key information among users, manufacturers, infrastructure managers, and supply chain entities associated with fuel cell and hydrogen technology.
3. Strengthen Connecticut's fuel cell and hydrogen industry through academic and government involvement.
4. Define and assist in the development of industry and government policy, standards, and goals to advance and demonstrate fuel cell and hydrogen technologies.
5. Provide a forum for discussing common issues and for developing joint projects.
6. To be the state-recognized leader for economic development in the hydrogen and fuel cell sector through collaboration to respond to the challenges of competing states and countries.
7. Other objectives to be determined by the Members.

ATTACHMENT B  
TO ARTICLES OF COLLABORATION

**COALITION/CLUSTER MEMBERSHIP DUES**

The following tabulation shows the funding anticipated to be received from members as part of the Coalition/Cluster Articles of Collaboration. These figures are essentially those submitted by each organization to CCAT for administration of Coalition/Cluster activities.

Premier, minimum	\$2,500
Industry (Based on total employees)	
Large (>300 total employees)	\$1,500
Medium (100-300 total)	\$750
Small (<100 total)	\$375
Academic	\$375
Non-Profit/Other	\$375
Government (ex officio)	N/A

The above dues will be provided to CCAT on an annual basis, in advance with no invoices needed but provided as requested, for administration of Coalition/Cluster activities.