SCIENTIFIC AND TECHNOLOGICAL COOPERATION

Protocol Between the

UNITED STATES OF AMERICA

and CHINA

Amending and Extending the
Agreement of January 31, 1979,
as Amended and Extended

Signed at Beijing
September 17 and 22, 2018

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

CHINA

Scientific and Technological Cooperation

Protocol amending and extending the agreement of January 31, 1979, as amended and extended.
Signed at Beijing September 17 and 22, 2018;
Entered into force September 22, 2018;
With effect from August 27, 2018.

PROTOCOL AMENDING AND EXTENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON COOPERATION IN SCIENCE AND TECHNOLOGY

The Government of the United States of America and the Government of the People's Republic of China,

Recognizing that the Agreement Between the Government of the United States of America and the Government of the People's Republic of China on Cooperation in Science and Technology signed at Washington on January 31, 1979, as amended and extended (hereinafter referred to as "the Agreement"), terminated on August 26, 2018, and,

Acting pursuant to paragraph 1 of Article 11 of the Agreement;

Have agreed as follows:

Article I

Annex I of the Agreement shall be amended to read:

ANNEX I – INTELLECTUAL PROPERTY

I. General Obligation

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements*. Rights to such intellectual property shall be allocated as provided in this Annex.

[*Footnote]: For greater clarity, the 2009 "Protocol between the Department of Energy of the United States of America and the Ministry of Science and Technology and the National Energy Administration of the People's Republic of China for Cooperation on a Clean Energy Research Center," including Annex I-Intellectual Property thereto (the "CERC Protocol"), is an implementing arrangement subject to this Agreement. The CERC Protocol as an implementing arrangement is in effect concurrently with this Agreement.

II. Scope

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees. Nothing in this Annex is intended to govern cooperative or other activities by the Parties, or any other entities, that are not undertaken pursuant to this Agreement.

B. For purposes of this Agreement, "intellectual property" shall mean the subject matter listed in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967 and may include other subject matter as agreed by the Parties.

C. Each Party shall ensure, through contracts or other legal means with its own participants, if necessary, that the other Party and its participants can obtain the rights to intellectual property allocated in accordance with this Annex. To promote greater certainty regarding this commitment, the Parties shall ensure that the allocation of intellectual property rights occurs according to this Annex as may be further elaborated in the agreements between the participants of each Party according to this Annex. If the science and technology cooperation, including research cooperation, carried out under the Agreement generates intellectual property, including those involving projects with potential technology trade, measures of either Party governing inbound technology licensing transactions shall not impede the Parties and the participants of the project of both sides from obtaining the allocation of rights set out in this Annex. This Annex does not otherwise alter or prejudice the allocation between a Party and its participants, which shall be determined by that Party's laws and practices.

D. Except as otherwise provided in this Agreement, disputes concerning intellectual property arising under this Agreement shall be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

III. Allocation of Rights

A. Each Party shall be entitled to a worldwide, non-exclusive, irrevocable, royalty-free license to translate, reproduce, and publicly distribute monographs, scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this Agreement shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in paragraph III.A above, shall be allocated as follows:

(1) Prior to participation in cooperative activities under this Agreement by a visiting researcher, the host Party or its designee and the Party or its designee employing or sponsoring the visiting researcher may discuss and determine the allocation of rights to any intellectual property created by the visiting researcher. The Parties further warrant and shall ensure that any such determinations as to the allocation of rights to any intellectual property are not inconsistent with any measure, including present or future measures addressing inventor remuneration for service inventions. Absent such a determination, visiting researchers shall receive rights, awards, bonuses and royalties in accordance with the policies of the host institution. For purposes of this Agreement, a visiting researcher is a researcher visiting an institution of the other Party (host institution) and engaged in work planned solely by the host institution.

(2) (a) Any intellectual property created by persons employed or sponsored by one Party under cooperative activities other than those covered by Paragraph III.(B)(1) shall be owned by that Party. Intellectual property created by persons employed or sponsored by both Parties shall be jointly owned by the Parties. In addition, each creator shall be entitled to awards, bonuses and royalties in accordance with the policies of the institution employing or sponsoring that creator.

(b) Unless otherwise agreed in an implementing or other arrangement, each Party shall have within its territory a right to exploit and allow others to exploit intellectual property created in the course of the cooperative activities.

(c) The rights of a Party outside its territory shall be determined by mutual agreement considering, for example, the relative contributions of the Parties and their participants to the cooperative activities, the degree of commitment in obtaining legal protection and licensing of the intellectual property and such other factors deemed appropriate.

(d) Notwithstanding paragraphs III.B(2)(a) and (b) above, if either Party believes that a particular project is likely to lead to or has led to the creation of intellectual property not protected by the laws of the other Party, the Parties shall immediately hold discussions to determine the allocation of rights to the intellectual property. If an agreement cannot be reached within three months of the date of the initiation of the discussions, cooperation on the project in question shall be terminated at the request of either Party. Creators of intellectual property shall nonetheless be entitled to awards, bonuses and royalties as provided in paragraph III.B(2)(a).

(e) For each invention made under any cooperative activity, the Party employing or sponsoring the inventor(s) shall disclose the invention promptly to the other Party together with any documentation and information necessary to enable the

other Party to establish any rights to which it may be entitled. Either Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights in the invention. Unless otherwise agreed in writing, the delay shall not exceed a period of six months from the date of disclosure by the inventing Party to the other Party.

IV. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, and the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

Article II

The Agreement shall be extended for five years, effective from August 27, 2018. In doing so, the implementing accord and protocols that are coterminous with the Agreement also shall be extended for five years.

Article III

This Protocol shall enter into force on the date of the last signature.

DONE, in duplicate, in the English and Chinese languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Place: Beijing

Date: 9/22/2018

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

Zhang Jiangyu

Place: Beijing

Date: 2018.9.17

美利坚合众国政府和中华人民共和国政府
关于修订和延期两国政府科学技术
合作协定的议定书

美利坚合众国政府和中华人民共和国政府，鉴于1979年1月31日在华盛顿签订并经修订和延期的《美利坚合众国政府和中华人民共和国政府科学技术合作协定》（以下简称“协定”）于2018年8月26日到期，且根据协定第十一条第一款，达成共识如下:

第一条

协定的附件一应修改为:

附件一　知识产权

一、一般义务

双方保证对该协定和有关实施协议下产生或者提供的知识产权给予充分、有效的保护*。依据本附件对此类知识产权进行分配。

【*脚注】: 为了更加明确，2009年签署的《美国能源部与中国科学技术部、国家能源局关于美中清洁能源联合研究中

心合作议定书》及其附件一知识产权（“清洁能源联合研究中心议定书”）是遵从该协定的执行协议。作为执行协议，清洁能源联合研究中心议定书和该协定同时有效。

二、范围

（一）本附件适用于根据协定开展的所有合作活动，但双方或者其指定的机构另有专门协议的除外。本附件的内容不适用于双方或其他实体在该协定以外开展的合作或其他活动。

（二）协定所称的“知识产权”是指1967年7月14日在斯德哥尔摩缔结的《建立世界知识产权组织公约》第二条所包含的内容，也可包括其他双方一致同意的内容。

（三）任何一方应保证另一方及其参与者能获得根据本附件享有知识产权的权利，必要时可以通过与己方参与者之间订立合同或者其他法律手段。为了确保该承诺有更大的确定性，双方应确保根据本附件对产生的知识产权进行分配，可以根据本附件在双方参与者的协议中进一步阐明这种权利分配。如果在协定下进行的包括研究合作在内的科学技术合作产生了知识产权，包括涉及产生潜在技术贸易项目的科技合作，任何一方的技术进口许可交易治理措施不能阻碍双方及合作双方参与者获得本附件所列的权利分配。一方与其参与者之间的权利分配应由该方的法律和惯例来决定，本附件不会改变或影响此权利分配。

（四）除非在协定中另有规定，该协定下知识产权争议应当由参加合作的机构之间，或如有必要，由双方或者其指派单位通过协商解决。经双方同意，应将争议提交仲裁法庭根据适用的国际法规则进行有约束力的仲裁。除非双方或其指定机构另有书面协议，仲裁适用联合国国际贸易法委员会的仲裁规则。

（五）该协定终止或者期满不影响本附件下的权利或义务。

三、权属分配

（一）在该协定的合作中直接产生的专著、科技刊物论文、报告和书籍，各方在世界范围内享有非独占的、不可撤销的、免交使用费的翻译权、复制权、和公开发行权。所有根据该协定公开发行的版权作品应注明作者姓名，除非作者明确放弃署名权。

（二）除第三条（一）中规定的权利外，各种形式的知识产权按照以下规定分配:

1.在访问研究人员参与协定下的合作活动之前，接待方或其指定单位可与雇佣或资助该访问研究人员的一方或其指定单位讨论决定该访问研究人员创造的任何知识产权的权利分配。双方进一步担保并应确保对任何知识产权权利分配的决定，应与任何解决发明者职务发明薪酬的措施保持一致，包括现行的

措施和未来的措施。若无此决定，访问研究人员应依据接待单位的政策获得权利、奖励、奖金和版税。协定所称的“访问研究人员”指访问对方的一个机构（接待单位）并按照接待单位独自制定的计划参与工作的研究人员。

2.（1）除上述第三条（二）1.中所涵盖的知识产权，合作活动中一方雇佣或资助的人员创造的任何知识产权应归该方所有。双方共同雇佣或资助的人员创造的知识产权应归双方共同所有。此外，根据雇佣或资助该知识产权创造者的机构所采取的政策，每名创造者有权获得奖励、奖金及版税。

（2）除非在执行协议或其他协议中另有共识，各方有权在本国领土内使用在合作活动过程中产生的知识产权，并准许他人使用。

（3）一方在本国领土以外的权利由双方商定，例如考虑到各方对合作活动的相对贡献和参与、获取法律保护和知识产权许可的努力程度，以及其他双方认为合适的因素。

（4）尽管有上述第三条（二）2（1）和（2）的规定，如果任何一方认为某一特定项目可能导致或已导致知识产权的创造未受到另一方法律的保护，双方应立即讨论决定该知识产权的权利分配。如果自讨论之日起三个月内未达成一致，应任何一方的申请，存在问题的合作项目应终止。但是知识产权的

创造者应该有权获得第三条（二）2（1）中规定的奖励、奖金和版税。

（5）对于任何合作活动下的每一项发明，雇佣或资助发明者的一方应及时向另一方公开该发明以及必要的文件和信息，使另一方能确认该方有权获得的权利。出于保护本方在发明中的权利的目的，任何一方可以书面形式要求另一方延迟此类文件和信息的出版和公开披露。除非以书面形式另行达成共识，自发明方向另一方公开该发明之日起，延迟不得超过六个月。

四、商业秘密信息

在本协定下提供或者产生的信息被及时确认为商业秘密的情况下，各方及其参加合作者应根据所适用的法律、法规和行政惯例对其进行保护。符合以下条件的信息可以认定为商业秘密：该信息的拥有者可以从中获得经济利益或者据此取得对非拥有者的竞争优势；该信息是非公知的或者不能从其他公开渠道获得；该信息的所有者未曾在没有及时作出保密义务安排的情况下将其提供给他人。

第二条

协定延期五年，有效期自 2018 年 8 月 27 日算起。同时，与协定相关的执行协议和议定书也相应延期五年。

第三条

本议定书自最后签署之日起生效。

本议定书一式两份，每份均用英文和中文写成，两种文本具有同等法律效力。

美利坚合众国政府	中华人民共和国政府
代　表	代　表
	张建国
地点：Beijing	地点：北京
日期：9/22/2018	日期：2018年9月17日