SCIENTIFIC COOPERATION

Energy Sciences

Protocol Between the
UNITED STATES OF AMERICA
and CHINA

Signed at Washington January 18, 2011

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 Cooperation: Energy Sciences

Protocol signed at Washington January 18, 2011;
Entered into force January 18, 2011.

PROTOCOL
BETWEEN
THE DEPARTMENT OF ENERGY OF THE UNITED STATES OF AMERICA
AND
THE CHINESE ACADEMY OF SCIENCES
FOR COOPERATION IN ENERGY SCIENCES

The Department of Energy of the United States of America and the Chinese Academy of Sciences (hereinafter referred to as the "Parties"):

Desiring to facilitate and promote cooperation in research and development in a broad range of energy sciences, to advance scientific discoveries and promote scientific and technological cooperation beneficial to both Parties; and

Acting pursuant to Article V of the Agreement Relating to Scientific and Technical Cooperation between the Government of the United States of America and the Government of the People's Republic of China, signed at Washington January 31, 1979, as amended and extended (hereinafter referred to as the "S&T Agreement");

Have agreed as follows:

ARTICLE 1
OBJECTIVE AND SCOPE

1. The objective of this Protocol is to establish a framework for promoting scientific and technological cooperation for peaceful purposes between the Parties in high energy physics, nuclear physics, nuclear energy sciences, basic energy science, biological science, and environmental science research and development in order to enhance the Parties' capabilities to make positive contributions in these scientific fields for their mutual benefit.

2. This Protocol is subject to and governed by the S&T Agreement. In the event of any conflict between the provisions of the S&T Agreement and the provisions of this Protocol, the provisions of the S&T Agreement shall control.

ARTICLE 2
FORMS OF COOPERATION

Forms of cooperation under this Protocol may include: conduct of joint or cooperative research projects and programs; exchange of technical information, data and experience; exchange of technical and managerial personnel for visits and short-term assignments; exchange of equipment, materials and instrumentation; joint conferences, seminars or workshops; and such other forms of cooperation as the Parties may agree in writing.

ARTICLE 3
PROJECT ANNEXES

1. Cooperative activities under this Protocol may be undertaken by the Parties or, as appropriate, by laboratories or contractors of the Parties. Each cooperative activity that may involve the sharing of costs or that may give rise to the creation of intellectual property shall be set forth in writing in a Project Annex, which shall be subject to and refer to the terms of this Protocol.

2. Each Project Annex shall include detailed provisions for carrying out the specific forms of cooperation, including such matters as technical scope, exchange of business-confidential information, intellectual property rights, management, total costs, cost sharing and schedule.

ARTICLE 4
MANAGEMENT

1. Each Party shall designate a Principal Coordinator to supervise activities under this Protocol. The Principal Coordinators shall jointly plan and coordinate cooperative activities, co-chair joint meetings, and prepare an annual Program of Cooperation. Each Principal Coordinator may appoint a Technical Coordinator for each cooperative activity.

2. The Principal Coordinators shall meet on an annual basis or as otherwise mutually agreed, alternately in the United States and in the People's Republic of China, in other locations as mutually agreed, or by teleconference. The host Party will choose the meeting site and bear the costs for the arrangements associated with the meeting. Representatives from each Party attending the meetings will be responsible for their own travel and lodging expenses. At these meetings, the Principal Coordinators shall review and assess the progress of activities and the next year's plans for continuation of cooperation under this Protocol.

3. The Principal Coordinators shall jointly prepare a written report of each meeting. Each Party shall have the right to disseminate the written meeting report without prior notification to the other Party, after the record has been approved for release by both Parties.

4. The Principal Coordinators may invite representatives of other organizations within their countries to attend meetings and to serve as advisors to assist in planning the annual meetings and evaluating the progress of cooperative activities under this Protocol.

ARTICLE 5
ADDITIONAL ORGANIZATIONS

The Parties may each invite additional organizations in the public and private sectors within their countries to participate in cooperative activities under this Protocol, at those organizations' own expense and subject to such other terms and conditions as the Parties may specify.

ARTICLE 6
EXCHANGE OF PERSONNEL

Unless otherwise agreed in writing, the following provisions shall apply to assignment or exchange of personnel under this Protocol:

1. Each Party shall ensure the selection of qualified personnel with skills and competence necessary to conduct the activities planned under this Protocol.

2. Each Party shall be responsible for the salaries, insurance, and allowances to be paid to its staff or its contractors.

3. Each Party shall pay for the travel and living expenses of its staff or its contractors when on assignment to the other Party.

4. The receiving Party shall assist in arranging for adequate accommodations for the sending Party's staff and contractors (and their families) on a mutually agreeable, reciprocal basis.

5. The receiving Party shall provide all necessary assistance to the staff of the other Party and its contractors (and their families) as regards administrative formalities, such as making travel arrangements and obtaining work permits.

6. The sending Party's staff and its contractors shall conform to the general rules of work and safety regulations in force at the host establishment.

ARTICLE 7
EXCHANGE OF EQUIPMENT

By mutual agreement, a Party may provide equipment to be utilized in a joint activity. In that event, the following provisions shall apply:

1. The sending Party shall supply, as early as possible, a detailed list of the equipment to be provided, together with the relevant specifications and appropriate technical and informational documentation related to use, maintenance, and repair of the equipment.

2. Title to the equipment and necessary spare parts supplied by the sending Party for use in joint activities shall remain with the sending Party, and the property shall be returned to the sending Party upon completion of the joint activity, unless otherwise agreed.

3. Equipment provided pursuant to this Protocol shall be brought into operation at the host establishment only by agreement of the Parties.

4. The host establishment shall provide the necessary premises and shelter for the equipment; utilities such as electric power, water and gas; and normally, shall provide materials to be tested, in accordance with all technical requirements, as mutually agreed.

5. Responsibility for expenses, safekeeping, and insurance during the transport of equipment from the original location in the country of the sending Party to the place of entry in the country of the receiving Party shall rest with the sending Party. If the sending Party elects to have the equipment returned, it shall be responsible for expenses, safekeeping, and insurance during the transport of the equipment from the original point of entry in the country of the receiving Party to the final destination in the country of the sending Party.

6. Responsibility for expenses, safekeeping, and insurance during the transport of equipment from the place of entry in the country of the receiving Party to the final destination in the country of the receiving Party shall rest with the receiving Party. If the sending Party elects to have the equipment returned, the receiving Party shall be responsible for expenses, safekeeping, and insurance during the transport of the equipment from the final destination in

the country of the receiving Party to the original point of entry in the country of the receiving Party.

7. Responsibility for expenses, safekeeping, and insurance during the time period that the equipment is in use in the country of the receiving Party shall rest with the receiving Party, unless otherwise agreed in writing.

8. Equipment provided by the sending Party for carrying out joint activities shall be considered to be scientific, not having a commercial character, and the receiving Party shall work toward obtaining duty free entry for such equipment.

ARTICLE 8
EXCHANGE OF INFORMATION AND EQUIPMENT

1. Any information transmitted by one Party to the other Party under this Protocol and any related Project Annexes shall be accurate to the best knowledge and belief of the transmitting Party. Any equipment transferred by one Party to the other Party under this Protocol and any related project annexes shall be suitable for its intended use to the best knowledge and belief of the transmitting Party. The transmitting Party does not warrant the suitability of the information transmitted or equipment transferred for any particular use or application by the receiving Party or by any third party.

2. Information developed jointly by the Parties shall be appropriate and accurate. Scientific equipment shall be suitable for its intended use, to the best knowledge and belief of both Parties. Neither Party warrants the accuracy of the jointly developed information, or the appropriateness of equipment, nor its suitability for any particular use or application by either Party or by any third party.

ARTICLE 9
INTELLECTUAL PROPERTY; BUSINESS-CONFIDENTIAL INFORMATION

1. Scientific and technological information (other than business-confidential information) resulting from cooperation under this Protocol shall be made

available to the world scientific community, unless otherwise agreed in writing by the Parties.

2. The protection and allocation of intellectual property, and the treatment of business-confidential information, shall be governed by Annex I (Intellectual Property) to the S&T Agreement.

ARTICLE 10
CONTRACTS

In the event that a Party awards contracts for the acquisition of articles and services to implement this Protocol, such contracts shall be awarded in accordance with the laws and regulations of that Party.

ARTICLE 11
GENERAL PROVISIONS

1. Each Party shall conduct the activities carried out under this Protocol in accordance with the laws and regulations to which it is subject, and subject to the availability of personnel, appropriated funds, and other resources.

2. Unless otherwise agreed in writing, all costs resulting from collaboration under this Protocol shall be the responsibility of the Party that incurs them.

3. Any questions of interpretation or implementation relating to this Protocol arising during its term shall be resolved by consultations between the Parties.

4. All activities conducted under this Protocol shall be exclusively for peaceful purposes.

ARTICLE 12
ENTRY INTO FORCE, AMENDMENT, AND TERMINATION

1. This Protocol shall enter into force upon signature by the Parties and remain in force so long as the S&T Agreement remains in force, unless terminated pursuant to paragraph 3 of this Article.

2. This Protocol may be amended by written agreement of the Parties.

3. This Protocol may be terminated by both Parties at any time in writing; or at the discretion of either Party upon six (6) months' written notice to the other Party.

4. All ongoing joint activities, projects, and experiments not completed at the expiration or termination of this Protocol may be continued until their completion under the terms of this Protocol.

DONE at Washington, in duplicate, this 18th day of January 2011, in the English and Chinese languages, each text being equally authentic.

FOR THE DEPARTMENT OF ENERGY OF THE UNITED STATES OF AMERICA:

1/18/11

FOR THE CHINESE ACADEMY OF SCIENCES:

1/18/11

美利坚合众国能源部与中国科学院能源科学合作议定书

美利坚合众国能源部与中国科学院（以下简称“双方”）：

希望支持并推动在能源科学广泛领域的研究与开发合作，以促进科学发现并推动互惠互利的科学与技术合作；

依据 1979 年 1 月 31 日在华盛顿签署并于其后修订和延期的《美利坚合众国与中华人民共和国政府间科技合作协定》（以下简称“《科技协定》”）第五条；

双方达成如下协议：

第一条 目标与范围

1. 本议定书旨在建立合作的框架，用以推动双方在高能物理、核物理、核能科学、基础能源科学、生物科学与环境科学研发方面出于和平目的的科技合作，并提高双方为了相互的利益在这些科学领域做出积极贡献的能力。
2. 本议定书内容受《科技协定》的约束和管辖。若《科技协定》的条款与本议定书的条款有任何冲突，则以《科技协定》的条款为准。

第二条 合作形式

本议定书下的合作形式可包括：开展联合或合作研究项目和计划；交换技术信息、数据和经验；安排技术和管理人员的互访和短期派驻；交换设备、材料和仪器；联合举办学术大会、研讨会或讲习班；以及双方书面同意的其它合作形式。

第三条 项目附件

1. 本议定书下的合作活动可由双方或酌情由下属实验室、承包商执行。涉及费用分担或可能产生知识产权产出的每项合作活动均须以签署项目附件的方式阐明。项目附件内容受本议定书约束并参照本议定书的条款。

2. 每个项目附件须包括执行具体形式合作的详细规定，包括技术范围、商业机密信息的交换、知识产权、项目管理、总费用、费用分担和项目进度等内容。

第四条 管理

1. 双方将各指定一名首席协调员监督本议定书下的活动。双方首席协调员将共同计划与协调合作活动，共同主持联席会议，并制订年度合作计划。首席协调员可为每项合作活动任命一名技术协调员。
2. 双方首席协调员会议每年举办一次或按双方商定择期举办，会议轮流在美利坚合众国和中华人民共和国或在双方商定的其它地点举行，或以电话会议方式进行。会议主办方将选择会议地点，并承担会议安排相关的费用。参加会议的双方代表承担各自的旅费和住宿费用。双方首席协调员在这些会议上须回顾和评估合作活动的进展，并审议和评估本议定书的下一年度的合作计划。
3. 双方首席协调员将联合准备每次会议的书面报告。会议书面报告记录经双方同意可公开后，双方均有权发布会议书面报告，无需事先通知对方。
4. 首席协调员可邀请其本国其它机构的代表参加会议，作为顾问协助规划年度会议和评估本议定书下合作活动进展。

第五条 其它机构

双方可各自邀请其本国公共和私营部门的其它机构根据双方可能提出的其它具体条件参与本议定书下的合作活动，其所需费用由参与机构自行负担。

第六条 人员交换

除非另行书面约定，以下条款适用于本议定书下的人员派驻或交流：

1. 双方均须确保挑选具有必要技能和能力的合格人员从事本议定书计划下的活动。
2. 双方均须承担各自员工或承包商的工资、保险和津贴等费用。
3. 双方各自承担其所属其员工或承包商派驻另一方期间所发生的旅费和生活费用。
4. 接待方将在双方均同意且对等的前提下协助安排派遣方的员工和承包商（及其家属）的住宿。
5. 接待方将为另一方的员工和承包商（及其家属）在行政手续方面提供一切必要的协助，如旅行安排、获取工作许可等。
6. 派遣方的员工和承包商在接待方的工作场所需遵守接待方实行的工作守则和安全规定。

第七条 设备交换

经双方同意，一方可提供用于联合活动的设备。以下条款将适用于此类情况：

1. 设备提供方须尽早提供其所交送设备的详细清单以及与设备的使用、维护和修理相关的参数、技术和信息文件；
2. 设备提供方为联合活动所提供的设备及其必要的备用部件的所有权仍归提供方，除非双方另有约定，这些资产将在联合活动结束之后归还提供方。
3. 根据本议定书由一方所提供的设备，只有经双方同意后方可在在接收方机构投入使用。
4. 接收方须为设备提供必要的场地和遮蔽物以及电、水、气等公用服务;通常还须提供所有技术要求所需的、经双方商定的测试材料。
5. 设备在从提供方所在国的始发地运送到接收方所在国入境地点的过程中发生的费用和保管及保险责任由提供方承担。如果提供方选择将设备收回，提供方须承担设备从接收方所在国原入境点运输到提供方所在国的最终目的地发生的费用和保管及保险责任。
6. 设备在从接收方所在国入境地点运送到接收方所在国最终目的地过程中发生的费用和保管及保险责任由接收方承担。如果提供方选择将设备收回，接收方需承担将设备从接收方所在国最终目的地运送到接收方所在国原入境地点的过程中发生的费用和保管及保险责任。
7. 除非另行书面约定，设备在接收方所在国使用过程中所发生的费用

和保管及保险责任均由接收方承担。

8. 设备提供方为联合活动所提供的设备须被视为科学研究用品，不具有商业性质，接收方须努力为这些设备办理免税入关许可。

第八条 信息和设备交换

1. 一方根据本议定书和其相关项目附件提供给另一方的信息须为提供方所知所信的准确信息。一方根据本议定书和其相关附件移交另一方的设备须为提供方所知所信的、符合其原本使用意图的设备。提供方不保证此类信息或设备适用于接收方或任何第三方的特定用途或应用。

2. 双方联合开发获取的信息均须适当和准确。科学设备须为双方所知所信的符合其原本使用意图的设备。双方均不保证联合开发信息的准确性、设备的适当性，也不保证设备适用于一方或第三方的特定用途或应用。

第九条 知识产权；商业机密信息

1. 除非双方另行书面约定，本议定书下合作所产生的科学技术信息（非商业机密信息）将对全世界的科学界公开。

2. 本议定书下合作活动所产生的知识产权的保护和分配，以及对商业机密信息的处理将受《科技协定》附件一（知识产权）的约束。

第十条 合同

一方为执行本议定书而签署采购物品和服务合同时，这类合同须符合该方相关的法律和规定。

第十一条 总则

1. 任何一方在本议定书下开展的活动均须遵守其相关法律和规定，并取决于人力、已拨经费和其它资源是否到位。
2. 除非另行书面约定，本议定书下合作所产生的费用均由发生费用的一方承担。
3. 在议定书有效期内，任何关于本议定书的解释或执行的问题均由双方通过协商解决。
4. 本议定书下所开展的一切活动均仅限于和平目的。

第十二条 生效、修订和终止

1. 本议定书自双方签字之日起生效，并在《科技协定》有效期内将一直有效，除非任一方根据本条第三款予以终止。
2. 本议定书经双方书面同意可予以修订。
3. 本议定书可在任何时候由双方以书面形式终止；或者由任一方提前六个月书面通知对方予以终止。
4. 在本议定书到期或终止时，所有业已启动但尚未完成的活动、项目和实验均可按照本议定书的条款继续进行，直至其最后结束。

本议定书于 2011 年 1 月 18 日在华盛顿签署，英中文版本各一式

两份，两种文本同等作准。

美利坚合众国能源部	中国科学院
Steven Koonin	江绵恒
1/18/11	1/18/11