

SCIENTIFIC AND TECHNICAL COOPERATION

**Protocol Between the
UNITED STATES OF AMERICA
and MALAYSIA**

**Amending and Extending the Agreement of
November 2, 2010**

Signed at Kuala Lumpur October 26, 2021

Entered into force October 26, 2021

With effect from November 2, 2020



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.”

**PROTOCOL AMENDING AND EXTENDING THE MEMORANDUM OF
UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF MALAYSIA
ON SCIENCE AND TECHNOLOGY COOPERATION**

The Government of the United States of America and the Government of Malaysia (the "Parties"),

Recognizing that the Memorandum of Understanding Between the Government of the United States of America and Government of Malaysia on Science and Technology Cooperation signed at Putrajaya on November 2, 2010, (hereinafter referred to as "the Agreement") expired on November 2, 2020 and,

Desiring to amend and extend the Agreement,

Have agreed as follows:

Article 1

1. The title of the Memorandum of Understanding is amended to read "Agreement between the Government of the United States of America and the Government of Malaysia on Science and Technology Cooperation."
2. All references to "Memorandum of Understanding" or "MOU" in the text of the Agreement shall be replaced with "Agreement."

Article 2

Article II shall be divided into two separate articles, and the text of Article II shall be replaced with the following text:

**ARTICLE II
AREAS OF COOPERATION**

Each Party shall endeavor to encourage and promote cooperation in the areas of science and technology, with all such activities conducted in accordance with the laws, rules, regulations and national policies in force in each country, and each Party shall take steps to ensure that entities and individuals acting on their behalf act consistently with the terms set out in this Agreement.

The new Article III shall read as follows:

ARTICLE III FORMS OF COOPERATION

The Parties mutually agree that cooperation under this Agreement shall be carried out through the following means:

- a) joint research, development and design projects, including mutual exchange of research findings, scientific and technical information and documentation;
- b) exchange of personnel, scientists, specialists and researchers taking part in joint projects;
- c) organizing joint science and technology conferences, symposia, courses and seminars;
- d) common use of research devices, facilities and equipment in the joint projects; and
- e) any other areas of cooperation in the field of science and technology to be mutually agreed upon by the Parties.

Article 3

The following Articles shall be subsequently renumbered as follows:

Article IV – Designated Authority
Article V – Implementation
Article VI – Joint Committee
Article VII – Facilitation of Cooperation
Article VIII – Financial Arrangements
Article IX – Participation of Third Parties
Article X – Dissemination of Information and Protection of Intellectual Property Rights
Article XI – Protection of Information and Technology Transfer
Article XII – Revision, Modification and Amendment
Article XIII – Consultation and Settlement of Disputes
Article XIV – Entry into Force, Duration and Termination

Article 4

Paragraph 5 of Article VII – Facilitation of Cooperation, shall be replaced with the following text:

The Parties do not foresee the provision of foreign assistance under this Agreement. If they decide otherwise with respect to a particular activity, the relevant implementing agreement or arrangement shall be consistent with the requirements of laws of Malaysia and the United States of America that regulate activities related to foreign assistance.

Article 5

Article VIII – Financial Arrangements, shall be replaced with the following text:

The financial arrangements to cover expenses for the cooperative activities undertaken within the framework of this Agreement shall be mutually agreed upon by the respective Parties on a case-by-case basis subject to the availability of funds and resources. This Agreement does not constitute any obligation of the provision of funds by either Party.

Article 6

Paragraph 1 of Article XI – Protection of Information and Technology Transfer, shall be replaced with the following text:

Unless otherwise agreed in a relevant implementing agreement or arrangement, information or equipment that has been classified for reasons of national security in accordance with the applicable national laws, rules, regulations, and national policies shall not be provided under this Agreement. In the event that such information or equipment which is known or believed to require such protection is identified in the course of cooperative activities undertaken pursuant to this Agreement, it shall be brought immediately to the attention of the appropriate officials and designated authorities and the Parties shall consult concerning the need for and level of appropriate protection to be accorded to such information or equipment.

Article 7

The text of Article XIII – Consultation and Settlement of Disputes, shall be deleted and replaced with the following text:

Without prejudice to the procedure provided in Annex 1 for disputes relating to intellectual property, any difference or dispute between the Parties arising out of the interpretation, implementation, or application of any of the provisions of this Agreement shall be settled amicably through mutual consultation or negotiations between the Parties through diplomatic channels, without reference to any third party or international tribunal.

Article 8

1. Paragraph 1 of Article XIV shall be replaced with the following text:

This Agreement shall enter into force on the date of signing and shall remain in force until November 2, 2030.

2. Paragraph 2 of Article XIV shall be deleted and the subsequent paragraphs in Article XIV shall be re-numbered as paragraphs 2 and 3.

Article 9

Annex I of the Agreement shall be replaced with the following text:

ANNEX I

INTELLECTUAL PROPERTY RIGHTS

I. General Obligation

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

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.
- 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 can obtain the rights to intellectual property allocated in accordance with 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 2010 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. 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 agreement 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, rules, 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 10

This Protocol shall enter into force on the date of signature of both Parties. The provisions of this Protocol shall be effective from November 2, 2020.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at ^{KUALA} LUMPUR on OCTOBER 26, 2021, in duplicate in the English language.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
MALAYSIA:

