

TECHNOLOGY MANAGEMENT PLAN

(Regarding the exploitation of Intellectual Property Rights)

for the Clean Energy Research Center Advanced Coal Technology Consortium (ACTC)

中美清洁能源研究中心清洁煤技术联盟（ACTC）

关于知识产权利用的

技术管理计划

I. PREAMBLE

一、前言

1 The Chinese members of the ACTC (hereinafter, China ACTC) and the United States of America members of the ACTC (hereinafter, U.S. ACTC) agree to the following Technology Management Plan (TMP) regarding the exploitation of intellectual property rights pursuant to paragraph II.B.2.(d) of Annex I - Intellectual Property (hereinafter "IP Annex") of the Protocol for Cooperation on a Clean Energy Research Center (hereinafter "CERC Protocol"), signed on the 17th day of November, 2009, by the Department of Energy (DOE) of the United States of America, the Ministry of Science and Technology (MOST) and the National Energy Administration (NEA) of the People's Republic of China, (hereinafter "Signatories to the CERC Protocol").

1. 清洁煤技术联盟中方成员（以下简称“中方 ACTC”）和清洁煤技术联盟美方成员（以下简称“美方 ACTC”）根据美利坚合众国能源局（DOE），中华人民共和国科学技术部（MOST）和国家能源局（NEA）（以下简称“CERC 议定书缔约双方”），于 2009 年 11 月 17 日签署的关于中美清洁能源联合研究中心合作议定书（简称“CERC 议定书”）以及附件 I 知识产权（简称“IP 附件”）第二节第 2 条第 2 款第 4 项就以下技术管理计划（TMP）关于利用知识产权的条款达成共识。

2. This TMP is applicable to all CERC-ACTC Cooperative Activities undertaken pursuant to the CERC Protocol and its IP Annex, except as otherwise agreed to by the Signatories to the CERC Protocol or their respective designees in writing.

2. 本计划适用于根据 CERC 议定书以及 IP 附件开展的所有 CERC-ACTC 合作活动，但 CERC 议定书缔约双方或其书面指定的各自代表机构另有专门协议除外。

Comment [SB1]: Note: I.A. in the Protocol authorizes the Parties or their designee to agree to exclude cooperative activities. Pursuant to that provision, Sec. V.4 and V.5 authorize the respective US and China Directors of the ACTC (signatories to this TMP) to agree to exclude projects from those provisions or amend those provisions as they apply to a project (or particular Project IP).

Comment [I2]: 依据 CERC 议定书知识产权附件一（一），授权双方（中国科技部&能源局、美国能源部）或其指定的代表机构通过协议将一些合作活动排除在本计划适用范围之外。依据本条款，中美 ACTC 主任（此 TMP 的缔约双方代表）可通过协议将某些研究项目排除在此 TMP 适用范围之外。

3. This TMP considers the exploitation of intellectual property rights as described in the CERC Protocol and paragraph II.B.2.(b) and (c) of IP Annex. The IP rights of visiting researchers set forth in paragraph II.B.(1) of the IP Annex are hereby superseded, notwithstanding paragraph II.B.(1). This TMP also considers the relative contributions of the Signatories to the CERC Protocol and their Participants to the particular Jointly-Funded Research Project, the benefits of licensing by territory, or for fields of use, and other factors deemed appropriate for the particular technology which is the subject matter of the Jointly-Funded Research Project.

3. 本计划考虑了在 CERC 议定书及 IP 附件第二节第 2 条第 2 款第 2 项和第 3 项所述的知识产权的利用问题。尽管有 IP 附件之第二节第 2 条第 1 款之规定，附件中第二节第 2 条对来访研究人员利用知识产权的规定在此被取代。本计划还考虑到 CERC 议定书缔约双方及其参与者对专项联合资助研究项目所做的相应贡献、根据区域或者根据应用领域授予许可的益处，以及被视为适合于作为联合资助研究项目主旨的特定技术的其它因素。

4. This TMP complements, supplements, and implements the IP Annex, considering intellectual property management and information sharing, and is subject to and governed by the CERC Protocol, its IP Annex and all CERC governing documents, including applicable contractual IP provisions of the Signatories to the CERC Protocol.

4. 本计划旨在完善、补充和贯彻 IP 附件中有关知识产权管理和信息共享等未尽事宜，并以遵守 CERC 议定书、其 IP 附件及所有 CERC 管理文件，包括有关 CERC 议定书缔约双方签署的知识产权合同的管辖。

5. The purpose of this TMP is to facilitate joint research and development on clean energy by teams of scientists and engineers from the United States and China by specifying intellectual property rights in greater detail than the Protocol's IP Annex; and encourage information sharing and technical communication in this project to the utmost degree between the Signatories to the CERC Protocol.

Comment [SB3]: The mission of the CERC is to facilitate *joint* research and development and encourage information sharing. It is important to keep this in mind as you develop your projects and draft your contracts.

5. 本计划宗旨是通过促进中美双方科学家和工程师团队在清洁能源领域的联合研究和开发，在知识产权方面做出比议定书之 IP 附件更具体化的内容，并最大程度地鼓励 CERC 议定书缔约双方在该项目合作领域内的技术交流和信息共享。

Comment [I4]: CERC 的任务是促进联合研究和开发，并且鼓励信息共享。当您开展项目研究和起草合同时请注意这一点。

6. The CHINA ACTC and U.S. ACTC have agreed that each Cooperative Activity shall be described in a work plan that includes:

- (1) A Description of the Research Objective;
- (2) Background and Technical Approach;
- (3) Task Statements;
- (4) Roles and Responsibilities of Leads, Performers, Partners and Other Participants;
- (5) Equipment, Resources, Sites, Facilities, Materials to be Supplied;

- (6) Work Schedule, with Interim Milestones (or Decision Points);
- (7) Deliverables and Dates;
- (8) Budgets, Funding or Estimated Costs (indicating Level of Effort, or Person-Hours Equivalents);
- (9) Reporting Requirements (Interim Reports, Final); and
- (10) Technical Management Plan (TMP)

This TMP satisfies point 10, thereof.

6. 中方 ACTC 和美方 ACTC 已经同意对于每一合作活动应在工作计划中予以说明，包括：

- (1) 研究目标说明；
- (2) 背景与技术方法；
- (3) 任务说明；
- (4) 牵头人、执行人、合伙人及其他参与者的职能和责任；
- (5) 拟提供的设备、资源、场地、设施、材料；
- (6) 工作时间表及期间的节点（或决定点）；
- (7) 可交付成果及日期；
- (8) 预算、资金或估算成本（包括人员投入水平或对应的工时）；
- (9) 报告要求（期间的报告及最终报告）；及
- (10) 技术管理计划（TMP）

本技术管理计划因此满足第（10）项的要求。

II. DEFINITIONS

二、定义

1. “Intellectual Property” shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, Signed at Stockholm on July 14, 1967 and as amended on September 28, 1979, and may include other subject matter as agreed to by the Signatories to the CERC Protocol.

1. “知识产权”应具有 1967 年 7 月 14 日在斯德哥尔摩缔结并于 1979 年 9 月 28 日修订的《建立世界知识产权组织公约》第二条所指含义，并可以包括 CERC 议定书缔约双方同意的其它标的。

Comment [SB5]: When drafting project or IP-related contracts, you may want to review these definitions for the purpose of drawing on or cross referencing them for the definitions in your agreements.

It is recommended that in drafting project agreements, the Participants include any applicable definitions and other provisions in the actual contracts and not incorporate them by reference to the TMP. It is always clearer to have a stand-alone contract with all of the provisions in the actual document. This is because sometimes the documents incorporated by reference may change, be amended, etc.

Comment [I6]: 当起草项目合同或者知识产权相关协议时，您可能需要回顾这些定义，以便在您的合同或协议起草中沿用或引用这些定义。

建议在起草项目合同时，参与者直接将适用的定义和相关规定放入实际的合同中，并且不要采取引用 TMP 条款的方式。一个独立的，拥有具体条款的合同通常更加清晰。这是因为有时候包含有引用条款的文本可能会改变，被修订，等等。

2. “Background Intellectual Property,” as used in this TMP, shall mean intellectual property created or invented **outside the scope** of the Joint Work Plan for Research on Clean Coal Including Carbon Capture and Storage (hereinafter ACTC Joint Work Plan), dated 18 January 2011.

2. 本计划中“背景知识产权”是指在2011年1月18日对清洁煤包括碳捕捉及储存的联合工作计划(以下简称ACTC联合工作计划)**范围以外**创造或发明的知识产权。

3. “Project Intellectual Property” shall mean Intellectual Property created or invented by a Participant in performance of work **within the scope of the ACTC Joint Work Plan**.

3. “项目知识产权”是指在**ACTC联合工作计划范围之内**从事工作的参与者创造或发明的知识产权。

4. “Cooperative Activities,” as used in this TMP, shall mean any research and development work within the scope of the ACTC Joint Work Plan.

4. 本计划中“合作活动”是指ACTC共同工作计划范围之内的任何研究和开发工作。

5. “Jointly-Funded Research Project,” as used in this TMP, shall mean Cooperative Activities whose **scope of work/work plan** involves Signatories to the CERC Protocol from BOTH countries providing collaborating research performers employed or sponsored by them and/or joint funding (including in-kind contributions) of such scope of work/work plan.

5. 本计划中“共同资助研究项目”是指其**工作范围、工作计划**涉及中美CERC议定书缔约双方及其雇佣或资助合作研究执行者,和/或共同为前述工作范围、工作计划出资(包括实物捐赠)的合作活动。

6. “Participant(s),” as used in this TMP, shall mean an entity or entities performing or providing funding or in-kind support for the performance of any of the research and development work in a particular Cooperative Activity, or administration thereof, within the scope of the ACTC Joint Work Plan agreed upon under the CERC Protocol, and includes, but is not limited to, contractor(s), subcontractor(s), awardee(s), sub-awardee(s), of MOST, NEA or DOE, or any other entity that provides significant funding or in-kind support as herein set forth.

6. 本计划中“参与者”是指执行下列事项或为执行下列事项提供资金或实物支持的主体:根据CERC议定书约定的ACTC共同工作计划范围内的专项“合作活动”中的任何研究和开发工作或上述工作的管理,而且还包括但不限于, MOST、NEA或DOE的承包商、分包商、中标人、分中标人,或提供大量资金或实物支持的任何其他主体。

Comment [SB7]: Many people assume that Background IP has to be created “before” the contract, whereas it can be created during the period of the contract, thus, it is very important to be clear what is within the scope of work. Contracts regarding Background IP should contemplate improvements or future developments of that Background IP.

Comment [I8]: 很多人认为背景知识产权必须是在合同签订前产生的,但事实上它同样可以在合同生效期内产生,因此,必须明确背景知识产权是在工作范围中产生的,这一点非常重要。针对背景知识产权的合同条款应当认真考虑对于背景知识产权的改进或将来的改进(权力归属利用等问题)。

Comment [SB9]: “Project Intellectual Property” is that which the creation of which is described (in the description of the project) in the ACTC Joint Work Plan. However, in the spirit of supporting the CERC Mission, where a Project Agreement describes creating IP in the project, project Participants may agree that such IP will be treated as “Project Intellectual Property” under this TMP.

Comment [I10]: “项目知识产权”是由ACTC联合工作计划项目描述中所规定工作的创新而产生。然而,根据CERC的精神,当一个项目所签署的合同描述“项目中创造的IP”时,项目参与者应当同意该IP被作为“本TMP所规定的项目知识产权”来对待。

Comment [SB11]: This refers to the project agreement, in what ever form it takes. This could include the 10-Point Plan for the project.

Comment [I12]: 此处指的是项目协议中的工作范围、工作计划,而无论其以什么形式出现。它可以包括该项目的十点工作计划。

Comment [SB13]: Note: The term “Participant” includes any entity providing funding, in-kind contributions or in-kind performance to a CERC ACTC project (or the CERC ACTC, as contemplated by the inclusion of the term “administration thereof”). Such contributions could be those made to CERC for purposes beyond the ACTC (such as contributions that benefit all three CERC ...

Comment [I14]: “参与者”包括任何向CERC ACTC项目提供资金或实物支持(in-kind performance)的实体,或者CERC ACTC的管理机构,该支持可以是超越ACTC针对CERC提供的(比如对CERC所有三个联盟的一个总体的支持)。

III. Ownership of Intellectual Property

三、知识产权的所有权

1. The owner(s) of Background Intellectual Property shall retain all right, title, and interest in their own Background Intellectual Property. The Signatories to the CERC Protocol have acknowledged that nothing herein shall be construed as requiring such an owner or owners to license, assign or otherwise transfer its Background Intellectual Property, and that any use of Background Intellectual Property authorized by its owner may require an appropriate license to such Background Intellectual Property.

1. 背景知识产权所有者保留对其拥有的背景知识产权所享有的所有权利、所有权及利益。CERC 议定书缔约双方认为本文中的任何事项均不得解释为要求该权利所有者许可、转让或以其他方式转移其所享有的背景知识产权，任何经权利所有者授权的背景知识产权的使用都可能要求获得合适的许可证。

2. Inventorship of Project Intellectual Property will be determined in accordance with respective applicable patent, trademark and copyright law, and any applicable national or state laws and regulations regarding service inventions and confidentiality.

2. 项目知识产权的发明人身份须根据各自国家适用的专利法、商标法和版权法以及关于职务发明和保密的任何适用的全国性或州法律法规予以确定。

3. A Participant or Participants (and/or MOST, NEA or DOE, in accordance with the laws and practices of the territory of such ministry, agency or department) shall retain ownership, in all countries, of Project Intellectual Property created or invented by such Participant(s) (including the right to file a patent application).

3. 一个或多个参与者（和/或 MOST、NEA、DOE，依据其所在地域法律和惯例的相应部委、机构或部门）应当在世界各国保留对其（参与者）所创造或发明的知识产权的所有权（包括专利申请权）。

IV. Management of Intellectual Property and Information Sharing

四、知识产权管理和信息共享

1. Participants in Cooperative Activities may list all relevant intellectual property that they assert as Background IP for the purpose of seeking to distinguish Background Intellectual Property from Project Intellectual Property. Participants in a particular Jointly-Funded Research Project or Cooperative Activity, and contributors of Background Intellectual Property to that Project or Activity, may agree in writing to the scope and nature of the Background Intellectual Property.

1. 合作活动的参与者可列出其宣称为背景知识产权的所有相关知识产权，以便对背景知识产权和项目知识产权加以区分。专项共同资助研究项目或者合作活动的参与者及该项目或活动的背景知识产权提供者可以书面约定背景知识产权的范围和性质。

Comment [SB15]: Participants and others that provide "Background IP" to a project may want to license that IP to the project. The terms of such a license are entirely in the discretion of the licensor of the background IP, subject to applicable law.

Comment [I16]: 项目的参与者以及提供“背景知识产权”的其他人可能会想要在该项目中许可该知识产权。背景知识产权持有人对该类许可享有绝对的自由，但要遵守相关法律。

Comment [SB17]: The laws of each country apply with regard to the rights to any Project IP. It is important that you understand the laws of the country, including government contracting laws and regulations that may apply to your intellectual property, state owned assets laws, export/import restrictions, anti-competition law, etc. as well as patent, trademark and copyright law.

Comment [I18]: 根据各自国家的适用的法律确定项目知识产权的发明人身份。所以了解该国的法律至关重要，包括专利法、商标法、版权法以及有可能涉及到您的知识产权的合同法及相关法规，国有资产法，进出口限制，反不正当竞争法等。

Comment [SB19]: Although the general rule for CERC projects is that the inventor owns the invention, there are provisions in law that may give other institutions or the respective governments rights in CERC Project IP. For example, prime contractors may have rights arising from the applicable sub-contract, or a government may have rights arising because the Project IP was created using government funding or the government has a financial interest or management and control of a ...

Comment [I20]: 虽然 CERC 项目总的规则是由发明人享有知识产权，但是根据所在地法律有可能赋予其它机构或者各自政府享有 CERC 的项目知识产权的部分权力或全部权力。例如，总承包人（主签约人）可以依据分包合同享有某些权力；政府也可能享有 ...

Comment [SB21]: Subject to applicable laws and regulations, parties to a project can enter agreements asserting their respective Background IP (describing what they agree they will consider the Background IP). The ...

Comment [I22]: 根据相关法律法规，项目缔约方可通过协议声明各自的背景知识产权（描述他们同意将其认定为背景知识产权的权力）。这些协议无需政府批准。参与者可能想要通过项目协议或者背景知识产权协议明确，哪些是背景知识产权，哪 ...

2. It is the intent of the China ACTC and U.S. ACTC to encourage sharing of data and other information related to the Project Work, both sides shall make regular **publicly available reports** to the respective Signatories to the CERC Protocol (except for that which cannot be disclosed to the public in accordance with applicable national or other laws and regulations regarding secrecy, confidentiality or the need to preserve the novelty of an invention for purposes of patenting), generally describing research data produced, project progress and periodical achievement.

Comment [SB23]: It is expected that Participants shall provide regular, public, general reports. For example, the US CERC ACTC is publishing quarterly reports and US and China CERCs jointly publish an annual report.

It is anticipated that some projects will independently produce public reports on their progress, findings or results, as appropriate.

2. 中方 ACTC 和美方 ACTC 意在鼓励共享与项目工作有关的数据和其他信息，双方应定期向各自 CERC 议定书缔约方就项目所产生的研究数据、项目进度和阶段性成果进行概括性**汇报并公开**（依照各自国家法律法规及其他有关保密条例，以及为保护专利申请新颖性的需要不得公开的除外）。

Comment [I24]: 这里要求参与者定期提供公开的、概括性的报告。例如，美方 CERC ACTC 发布季度报告，中美 CERC 联合发布年度报告。

预计有些项目会酌情独立公开发布报告，报告其项目进展、新发现或者结果。

3. Each, the China ACTC and U.S. ACTC, shall use its best efforts to make available to the other early access to technical reports resulting from such cooperative activities that are not “business-confidential”, prior to such reports becoming publicly available.

Comment [SB25]: Project or IP Agreements should include a provision to address this clause.

3. 中方 ACTC 及美方 ACTC，每一方应尽力使对方能够在公众能够获知之前，尽早获得在上述合作活动中产生的、非属商业机密的技术报告。

Comment [I26]: 项目合同或项目知识产权协议应当包含相应的条款，以界定什么是为执行专项共同资助研究项目/工作计划。

4. For “Jointly-Funded Research Projects,” subject to the provisions of the IP Annex, each Signatory to the CERC Protocol, and its Participant(s) as may be necessary, shall have access to, and a free right to use such Intellectual Property created or invented during this cooperative activity, **for purposes of execution of the project/work plan** for the particular Jointly-Funded Research Project.

Comment [SB27]: If your project involves confidential information (including trade secret or protected data), such should be described in your Project Agreement and you should put in place the appropriate Non-Disclosure Agreements. We recommend that you set out procedures for handling confidential information in and among the Participants involved in your project. Your institution likely has such procedures. It is recommended you have a training and audit process in place to ensure researchers and others in your organization understand how to comply with the NDA and indeed, do. Furthermore, other laws (e.g., Export Controls or national security laws) may restrict the disclosure or sharing of information.

4. 就“共同资助研究项目”而言，在遵守 IP 附件规定的前提下，CERC 议定书缔约双方及其参与者（如有必要）**为执行专项共同资助研究项目/工作计划**，应有权无偿使用此合作活动中创造或发明的知识产权。

Pursuant to IV.6, access to confidential information can be restricted to only certain of the Participants in a project.

5. As appropriate, a Participant may execute a mutually agreeable **confidentiality agreement**, to protect the confidentiality of Intellectual Property, other business-confidential information, or protected research data.

5. 参与者可视情况签署一份双方同意的，以对知识产权、其他商业机密信息或对研究数据保密的**保密协议**。

Comment [I28]: 如果你的项目包含保密信息（包括商业秘密或者需要包含的数据），在您的项目合同中应该包括保密条款，描述需要保密的内容，并订立恰当的保密协议。我们建议在项目参与者中间制定处理保密信息的流程。您所在的机构有可能已经有类似的流程。建议您设置培训和审计程序，来保证您机构里的研究人员和相关人员明白如何切实遵守并贯彻执行保密协议。此外，需要注意，其它法律（如，出口管制或者国家安全法）可能会限制信息的公开和共享。...

6. In accordance with paragraph III of the IP Annex, for greater clarity, and subject to the IP Annex and this TMP, the Signatories to the CERC Protocol (or their designees) and its Participants may enter into agreements with respect to their business-confidential information, including trade secrets or protected data that restricts access to such information to only certain of the Participants.

6. 根据 IP 附件第三节，为使之更加明晰，在遵守 IP 附件和本计划的前提下，CERC 议定书缔约双方（或其指定机构）及其参与者可就各自的商业机密信息，包括商业秘密或保密数据达成协议，以限定特定参与者接触此类机密信息。

7. Participants may, where appropriate, plan and apply for national and international technology standard on condition that the research results have already been patented.

7. 在研究成果已经获得专利权的前提下，参与者可视情况规划并申报国内和国际技术标准。

V. SHARING AND PROTECTION OF INTERESTS IN INTELLECTUAL PROPERTY RIGHTS

五、知识产权权益的共享与保护

1. Where the domestic law of the territory of each, China ACTC or U.S. ACTC, prohibits the use, disclosure or permitting of others to use or disclose intellectual property or any research data or other information, this TMP supports such law.

1. 如果中方 ACTC 或美方 ACTC 其中一方的国内法规定禁止使用、披露或者允许他人使用或披露知识产权或任何研究数据或其他信息，本计划予以支持。

2. The rights allocation described in this TMP related to the Project Intellectual Property are consistent with the principles of the CERC Protocol, IP Annex and all CERC governing documents.

2. 本计划中所述的有关项目知识产权的权利分配，依据 CERC 议定书、IP 附件及所有 CERC 管理文件中的原则进行。

3. Project Intellectual Property created or invented jointly by employees of and/or those sponsored by Signatories to the CERC Protocol from BOTH territories, shall be jointly owned by the respective Signatories to the CERC Protocol (or their Participant(s) in accordance with the laws and practices of the signatory's territory) and subject to each such owner having an undivided interest in the same.

3. 由中美两国 CERC 议定书缔约双方雇员和/或被资助的人员共同发明或创造的项目知识产权，需由各自 CERC 议定书缔约方（或遵守所在国相应法律和惯例的参与者）共同享有所有权，且以每一所有方对该知识产权享有不可分割的权益为前提。

4. For "Jointly-Funded Research Projects," unless otherwise agreed by the China ACTC and the U.S. ACTC—

4. 就“共同资助研究项目”而言，除非中方 ACTC 及美方 ACTC 另有约定—

4.1. An owner or owners from one territory, of Project Intellectual Property arising from such a project (and where necessary, Signatories to the CERC Protocol with an interest in such intellectual property) shall agree to negotiate in good faith terms of a nonexclusive license, to the other territory's Participants in such particular "Jointly-Funded Research Project", to make, have made, use, sell or otherwise practice such intellectual property. Such licenses shall be subject to negotiation on favorable terms agreeable to the entities that have ownership of such Intellectual Property.

Comment [SB29]: With regard to unlawful disclosure, particularly of government sensitive information or information regulated under export controls, make sure your contracts address confidentiality, limit access to the information appropriately, and use Non-Disclosure Agreements with all persons who may have access to restricted or confidential information. Be sure you understand how confidential information is to be handled by your colleagues and their institutions. If necessary, jointly establish protocol for managing protected information.

Comment [I30]: 对于非法揭露，特别是政府敏感信息或者出口控制所禁止的信息，请确保在您的合同中有对其尽保密义务的相关规定，有限制接触此类机密信息的条款，并且确保对于所有能够接触到机密信息的人能够适用该保密协议。确保自己能够知晓您的同事和其所在机构是如何在处理这些机密信息。如有必要，可以联合起草框架协议来管理这些受保护的信息。

Comment [SB31]: In the case of Jointly-Funded Research Projects, be sure to state clearly the rights associated with the jointly-owned Project Intellectual Property (with each owner having an undivided interest). In the case of joint ownership, you should also address rights and responsibilities, for example, rights to exploit the IP, territorial scope, to what extent each party will be responsible for obtaining IP protection, who will make enforcement decisions, pay for enforcement.

Comment [I32]: 对于共同资助研究项目，确保阐明关于共同享有的项目知识产权（每一所有方享有不可分割的权益）。对于共同所有权，您应该规定权利和义务，例如，开发利用该知识产权的权力，地域范围，在什么程度上一方有义务获取知识产权保护，谁做出决定实施该知识产权，谁支付实施所需的费用。

Comment [SB33]: Please provide in your project or IP-specific contracts for a non-exclusive license to Jointly-Funded Research Project IP that comports with this provision.

Recognizing that it is difficult to set terms and conditions before the Project IP is made or created, an alternative would be to include a provision in your contract that the IP owner(s) of any Project IP that may arise will negotiate in good faith with the other party(ies) to give the other party(ies) a nonexclusive license.

4.1 产生于“共同资助研究项目”的项目知识产权的一国所有权人（并在必要时，对该知识产权享有某种利益的 CERC 议定书缔约方）应同意基于诚信条款来谈判一项普通许可协议，许可另一国的参与者在该项“共同资助研究项目”中制作、委托制作、使用、出售或以其他方式实施该知识产权。此类许可应以对拥有该知识产权的主体有利和可接受的条款为前提。

Comment [I34]: 请在您的项目合同或知识产权协议中针对共同资助研究项目规定项目知识产权的普通许可协议，以符合本条规定。认识到在项目知识产权产生之前很难对许可条件其制定条款，因此您可以在合同中规定任何项目知识产权的所有权人应同意与其他各方基于诚信条款授予一个普通许可。

4.2. The China ACTC and U.S. ACTC hereby agree that any licenses to “Jointly-Funded Research Project” Project Intellectual Property granted to third-parties that are not Participants in the particular “Jointly-Funded Research Project”, shall be non-exclusive and based upon fairly negotiated arms-length commercial terms and compensation which contemplate the commercial benefits of the technology and the investment in the development of the technology, the benefits of licensing by territory, or for fields of use, and other factors deemed appropriate for the particular technology which is the subject of the “Jointly-Funded Research Project.” Unless otherwise required by law (or, consistent with applicable law, otherwise agreed by the owners of the particular Project Intellectual Property), an owner of “Jointly Funded Research Project” Project Intellectual Property shall have no obligation of accounting to the co-owners of such Project Intellectual Property or to the Signatories of the CERC Protocol for any such arms-length licenses to third parties.

Comment [SB35]: Please provide in your project or IP-specific contracts for a non-exclusive license to Jointly-Funded Research Project Project IP that comports with this provision.

Again, recognizing that it is difficult to set terms and conditions before the Project IP is made or created, an alternative would be to include a provision in your contract that the IP owner(s) of any Project IP that may arise will negotiate in good faith with the other party(ies) to give the other party(ies) a nonexclusive license.

4.2 中方 ACTC 和美方 ACTC 特此同意，授予第三方（指在专项“共同资助研究项目”中的非参与者）的“共同资助研究项目”项目知识产权的任何许可应是普通许可，且建立在公平协商的公平商业条款和补偿的基础上，上述条款和补偿应考虑下列因素：技术的商业利益及技术研发投入、根据领土或者根据应用领域授予许可的收益，以及其它被视为适合特定技术的因素，特定技术是联合资助研究项目的主旨。除非法律另有规定（或者，根据相关法律项目知识产权所有权人另有约定），“共同资助研究项目”的项目知识产权一方所有权人无义务就该项授予第三方的公平许可向其他共有所有权人，或 CERC 议定书缔约方做出说明。

5. For “Cooperative Activities” that do not include a “Jointly-Funded Research Project”, unless otherwise agreed by the China ACTC and the U.S. ACTC—

5. 对于不包括“共同资助研究项目”的“合作活动”而言，除非中方 ACTC 及美方 ACTC 另有约定

5.1. An owner or owners from one territory, of Project Intellectual Property arising from such a project (and where necessary, Signatories to the CERC Protocol with an interest in such intellectual property) shall agree to negotiate in good faith terms of a nonexclusive license to the other territory’s ACTC Participants, for any invention made under such activities that is not a trade secret, for research and development purposes only.

Comment [SB36]: Please provide in your project or IP-specific contracts for a non-exclusive license to Project IP developed in a Cooperative Activity of only the U.S. or China Participants that comports with this provision.

5.1 产生于一个项目的项目知识产权的一国所有权人（并在必要时，对该知识产权享有某种利益的 CERC 议定书缔约方）应同意基于诚信条款就在该等活动中创造的不属于商业机密的任何发明对另一国的 ACTC 参与者，来谈判一项仅可用于研究开发目的普通许可。

Comment [I37]: 请在您的项目合同或知识产权协议中规定，对于合作活动中产生的项目知识产权一个普通许可，只有美国和中国的参与者适用该规定。

5.2. The China ACTC and U.S. ACTC hereby agree that any licenses granted by an owner or owners of Project Intellectual Property to third parties that are not Participants in “Cooperative

Activities” shall be **nonexclusive** and based upon fairly negotiated arms-length commercial terms and compensation which contemplate the commercial benefits of the technology and the investment in the development of the technology, the benefits of licensing by territory, or for fields of use, and other factors deemed appropriate for the particular technology which is the subject of the “Cooperative Activity.”

Comment [SB38]: Please provide in your project or IP-specific contracts for a non-exclusive license to Project IP developed in a Cooperative Activity of only the U.S. or China Participants that comports with this provision.

5.2 中方 ACTC 和美方 ACTC 特此同意，拥有项目知识产权的所有权人授予第三方（非“合作活动”参与者）的任何许可应是**普通许可**，且建立在公平协商的公平商业条款和补偿之上，上述条款和补偿应考虑下列因素：技术的商业利益及技术研发投入、根据领土或者根据应用领域授予许可的收益，以及其它被视为适合特定技术的因素，特定技术是联合资助研究项目的主旨。

Comment [I39]: 请在您的项目合同或知识产权协议中规定，对于合作活动中产生的项目知识产权一个普通许可，只有美国和中国的参与者适用该规定。

6. Subject to the IP Annex, this TMP, and any terms and conditions of MOST, NEA or DOE’s allocation with its Participants in accordance with the laws and practices of such Participant’s territory, intellectual property rights allocations relating to Cooperative Activities **may be established by Participants** (or MOST, NEA or DOE, in accordance with the laws and practices of the territory of such ministry, agency or department) in sub-agreements, Project Annexes, or separate agreements among Participants engaged in such Cooperative Activities.

Comment [SB40]: This TMP is a framework with certain rights and obligations specified. It is anticipated that for each project, Participants will enter contracts to further establish additional rights and obligations for the Participants (e.g., Background IP and Project IP).

6. 在遵守 IP 附件、本计划以及依据所在国的法律惯例 MOST, NEA 或 DOE 与参与者之间的有关分配的任何条款的前提下，涉及合作活动的知识产权分配，可**由参与者**（或 MOST, NEA 或 DOE，及依据其所在地域法律和惯例的相应部委、机构或部门）在相关补充协议、项目附件或参与该等合作活动的参与者另行订立的协议中加以规定。

Comment [I41]: 本 TMP 是一个框架性的协议，对于某些权力和义务进行了规定。需要预先考虑到的是，对于每一个项目，参与者应通过进一步订立合同来设立其它权力和义务（例如，背景知识产权和项目知识产权）。

VI. Dispute Resolution

六、争议解决

1. **Disputes** concerning intellectual property arising under this Protocol shall be resolved through discussions between the affected Signatories to the CERC Protocol and/or Participants or, if such signatories or Participants are unable to resolve the dispute through such discussions, upon mutual agreement of the Signatories to the CERC Protocol or their designees, a dispute shall be submitted to an arbitral tribunal agreed by the Signatories or Participants for binding arbitration in accordance with the applicable rules of international law. Unless the Signatories to the CERC Protocol or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall govern.

Comment [SB42]: This is the general framework for dispute resolution under the CERC Protocol. Please be aware of this as you write your contract.

1. 本计划下所产生的知识产权**争议**应当由受影响的 CERC 议定书缔约双方和/或参与者通过协商解决，如果上述缔约方或参与者无法通过协商解决争议，应将争议提交经 CERE 议定书缔约双方或其指定机构同意的仲裁庭根据适用的国际法规则进行有约束力的仲裁。除 CERC 议定书双方或者其指定机构另有书面协议外，仲裁适用联合国国际贸易法委员会仲裁规则。

Comment [I43]: 这是基于 CERC 议定书对于争议解决的一个总体的框架性规定。请您在起草项目合同时注意这一点。

2. DONE at _____, in triplicate, on the ____ day of _____, in the English and Chinese language, both texts being equally authentic. Except as otherwise provided in the CERC Protocol and the IP Annex, any questions concerning the interpretation or application of this Technology

Management Plan shall be resolved by consultation between the China ACTC and the U.S. ACTC and the respective Signatories to the CERC Protocol.

2. 本技术管理计划于_____年____月____日在_____签署，一式叁份，每份均用中文和英文写成，两种文本具有同等效力。除非 CERC 议定书和 IP 附件另有规定，任何有关本计划之解释或应用的问题应当由中方 ACTC、美方 ACTC 及双方各自的 CERC 议定书缔约方协商解决。

For the U.S. ACTC

美方 ACTC 代表

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