Technology Management Plan

(Regarding the exploitation of Intellectual Property Rights)

for the U.S.-China Clean Energy Research Center Clean Vehicles Consortium 2016-2020 (CVC2.0)

中美清洁能源研究中心清洁汽车联盟 2016-2020（CVC2.0）

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 CVC2.0 (hereinafter, China CVC2.0) and the United States of America members of the CVC2.0 (hereinafter, U.S. CVC2.0) 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 "U.S.-China 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. 清洁汽车联盟二期中方成员（以下简称"中方 CVC2.0"）和清洁汽车联盟二期美方成员（以下简称"美方 CVC2.0"）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-CVC2.0 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-CVC2.0 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。

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 The IP rights of visiting researchers set forth in paragraph II.B.(1) of the IP Annex are hereby superseded, notwithstanding paragraph II.B.(1).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.

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。

6. The China CVC2.0 and the U.S. CVC2.0 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 Reports); and

(10) Technical Management Plan (TMP)

This TMP satisfies point 10, thereof.

6. 中方 CVC2.0 和美方 CVC2.0 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事项。

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 Vehicles (hereinafter CVC2.0 Joint Work Plan), dated April 7, 2016.

2. 本计划中 "背景知识产权" 是指在 2016 年 4 月 7 日对清洁汽车联合工作计划 (以下简称 CVC 2.0 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 CVC2.0 Joint Work Plan.

3. "项目知识产权"是指在 CVC 2.0 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 CVC2.0 Joint Work Plan.

4. 本计划中"合作活动"是指 CVC2.0 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 CVC2.0 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 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 CVC2.0 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 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。

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. 背景知识产权拥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拥有者许可、转让

或以其他方式转移其所享有的背景知识产权，任何经权利享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, 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、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。

2. It is the intent of the China CVC2.0 and U.S. CVC2.0 to encourage sharing of data and other information related to the Project Work, both sides shall make regularly publically 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.

2. 中方 CVC2.0 和美方 CVC2.0 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）。

3. Each, the China CVC2.0 and U.S. CVC2.0, 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.

3. 中方 CVC2.0 及美方 CVC2.0，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。

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.

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。

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。

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 CVC2.0 or U.S. CVC2.0, 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 CVC 或美方 CVC 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 CVC2.0 and the U.S. CVC2.0-

4. 就"共同资助研究项目"而言，除非中方 CVC 及美方 CVC 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 to have ownership of such Intellectual Property.

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。

4.2 The China CVC2.0 and U.S. CVC2.0 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, unless otherwise required by law, to the Signatories of the CERC Protocol for any such arms-length licenses to third parties.

4.2 中方 CVC2.0 和美方 CVC2.0 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 CVC2.0 and the U.S. CVC2.0 –

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 CVC2.0 及美方 CVC2.0 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 CVC2.0 Participants, for any invention made under such activities that is not a trade secret, for research and development purposes only.

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 CVC2.0 参与者，来谈判一项仅可用于研究开发目的的普通许可。

5.2 The China CVC2.0 and U.S. CVC2.0 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.”

5.2 中方 CVC2.0 和美方 CVC2.0 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。

6. Subject to the IP Annex, this TMP, and any terms and conditions of MOST 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 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.

6. 在遵守 IP 附件、本计划以及依据所在国的法律惯例 MOST 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 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。

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.

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。

2. Done at Beijing in duplicate on the 01st day of July, 2016 in 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 CVC2.0 and the U. S. CVC2.0 and the respective Signatories to the CERC Protocol.

2. 本技术管理计划于 2016 年 7 月 1 日在北京签署，一式两份，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 CVC2.0、美方 CVC2.0 及双方各自的 CERC 议定书缔约方协商解决。

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