

3

**AGREEMENT TO EXTEND AND AMEND
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 (hereinafter referred to as the Parties),

In accordance with the provisions of Article II of the Agreement between the Governments of the two countries on Cooperation in Science and Technology (the Agreement) signed in Washington on January 31, 1979, as extended,

In view of the smooth progress of the cooperation between the Parties, and

In order to develop further scientific and technological cooperation between the two countries,

Have agreed as follows:

1. The Agreement shall be amended to include an annex on the Protection of Intellectual Property (Annex I), which is attached hereto.
2. Article 5 of the Agreement shall be amended to read:
 - "1. Specific arrangements implementing this Agreement may cover the subjects of cooperation; procedures to be followed, funding and other appropriate matters.

With respect to funding, costs shall be borne as mutually agreed. All cooperative activities under this Agreement shall be subject to the availability of funds.

“2. Except as otherwise provided in the specific accords implementing this Agreement, protection of intellectual property and rights thereto will be as set forth in Annex I, which forms an integral part of this Agreement.”

3. Article 8 of the Agreement shall be amended to read:

“Scientific and technological information derived from cooperative activities under this Agreement may be made available to the scientific community through customary channels and in accordance with the normal procedures of the participating entities and to the extent not inconsistent with the Annexes and implementing accords.”

4. The Agreement shall be extended for another five years effective April 30, 1991.

This Agreement shall enter into force upon signature.

Done at Washington this 22nd day of May, 1991

in duplicate, in the English and Chinese languages, both texts being equally authentic.

For the Government of the
United States of America:

/s/

For the Government of the
People's Republic of China:

/s/

3

ANNEX I – INTELLECTUAL PEOPERTY

Pursuant to Article 5 of this Agreement;

The Parties shall ensure adequate and effective protection of intellectual property create or furnished under this Agreement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated, as provided in this Annex.

I. 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 have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.
- C. This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with the Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. Between a party and its nationals, the ownership of rights and

interests in intellectual property will be determined in accordance with that party's national laws and practices.

- D. Disputes concerning intellectual property arising under this Agreement should 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 international arbitration rules. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.
- E. In order to protect copyrighted works created under this Agreement, both Parties shall protect unpublished works against their unauthorized publication and guarantee that, when published, copies of works will be marked with an agreed upon, distinguishing indication as provided in Appendix A to the IPR annex. If one Party, according to its laws, cannot provide protection to the other's works published in non-member countries of the Berne Convention or the UCC, the participating institution of that Party shall make best efforts to assist the other Party in publishing in a Berne or UCC member within 30 days of publication, unless copies of the published work are not received by that institution in a timely manner.
- F. For purposes of this Agreement, the term "published works" means works published with the consent of their authors, whatever may be the means of the manufacture of the copies, provided that the availability of such copies has been

such as to satisfy the reasonable requirements of the public, having regard to the nature of the work.

- G. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.
- H. Provision of any computer program, whether an application program or operating systems format and whether in source or object code, by one Party [the Providing Party] to the other Party [the Receiving Party] under this Agreement is contingent on the availability of copyright protection for that program in the territory of the receiving Party that is generally equivalent to the protection to which it is entitled in the territory of the Providing Party.

II. ALLOCATION OF RIGHTS

- A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute 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 provision 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 Section II [A] above, shall be allocated as follows:
 - 1. Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor shall be entitled to

share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

2.[a] For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own territory. Rights and interests in third countries will be determined in implementing arrangements. If the research is not designated as “joint research” in the relevant implementing arrangements, rights to intellectual property arising from the research will be allocated in accordance with paragraph B [1]. In addition, persons named as inventors shall be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.

[b] Notwithstanding the first paragraph above, if a type of intellectual property is protected under the laws of one Party but not the other Party, unless other allocation arrangements are agreed upon by both Parties, the Party whose laws provide for protection shall be entitled to all rights and interests in the Party’s own territory and in third countries. Persons named as inventors shall nonetheless be entitled to share a portion of any royalties earned by the institution of the Party whose laws provide for protection from the licensing of such property.

3. [a] For inventions made as a result of a program of cooperative activity that involves only the transfer or exchange of information between the Parties, such as by joint meetings, seminars or the exchange of technical reports or papers, the Party whose personnel make the invention (the inventing Party) has the right to obtain all rights and interests in the invention in all countries.

[b] In any country where the inventing Party decides not to obtain such rights and interests, the other Party has the right to do so.

III BUSINESS-CONFIDENTIAL INFORMATION

In the event that information identified in a timely fashion as business-confidential is furnished or created under the Agreement, each Party its participants shall protect such information in accordance with applicable laws, regulations, and administrative practice. 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, 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.

APPENDIX A:

The United States of America marking for the People’s Republic of China works:

“This work [or article, book, computer program, etc. as appropriate] first published (date), in (country), was created in cooperative activities under the Agreement Between the United States of America and the People’s of Republic of China for Cooperation in Science and Technology. The authors authorize reproduction of this work, for scholarship, research, and private study, subject to any licenses granted under the Agreement.”

The People’s Republic of China marking for the United States of America works:

“This copyrighted work [or article, book, computer program, etc. as appropriate] first published (date), at (place), was created in cooperative activities under the Agreement Between the United Sates of America and the People’s Republic of China for Cooperation in Science and Technology.”

