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TERMS AND CONDITIONS FOR PURCHASE ORDER XXXX

SUBRECIPIENT AGREEMENT TERMS AND CONDITIONS BETWEEN The United States Advanced Battery Consortium LLC (USABC LLC), USABC) AND **SUBRECIPIENT NAME** (SUBRECIPIENT)

Subrecipient Name:

Subrecipient DUNS Number:

Subrecipient Unique Entity Identifier (UEI):

This Subrecipient Agreement supports USABC LLC's Cooperative Agreement Award Number (DE-EE0011268) ("TITLE"), CFDA number 81.086, as amended, with the United States Department of Energy (DOE) included as Attachment I and incorporated herein by reference. All references to the "DOE Award" or "Award" herein shall be deemed references to the financial assistance award between USABC LLC (hereinafter USABC) and DOE: DOE Award DE-EE0011268 was awarded to USABC with an effective date of January 1, 2025.

The period of performance for this Subrecipient Agreement is **Date, Year through Date, Year**, consisting of the following Budget Periods:

Budget Period 1	*dates	\$
Budget Period 2		\$
Budget Period 3		\$
Budget Period 4		\$

As provided in the section entitled Termination for Convenience of this Subrecipient Agreement, USABC reserves the right to terminate this Subrecipient Agreement at any time, with or without cause, without further liability to SUBRECIPIENT aside from any obligations set forth in the Termination Sections 19 and 20 as detailed below.

The total cost of this Subrecipient Agreement is \$ **_____** of which SUBRECIPIENT is obligated to provide non-federal cost share of **_____ percent (%)** of total project costs and USABC is obligated to fund up to \$ **_____** as a pass-through of federal funds awarded to USABC under the Award.

SUBRECIPIENT specifically agrees that it is utilizing a federally recognized indirect cost rate negotiated between SUBRECIPIENT and its cognizant agency or that it is utilizing provisional forward pricing rates that will be reconciled to actual rates annually as well as prior to the submission of a final invoice under this Subrecipient Agreement. USABC and SUBRECIPIENT agree that the rates utilized in the formation of the Budget Justification of SUBRECIPIENT are acceptable negotiated rates between USABC and SUBRECIPIENT. SUBRECIPIENT understands that any increase in indirect rates will not be a basis for the receipt of additional funding under this Subrecipient Agreement.

All funding is contingent upon the following: 1) availability of federal funds appropriated by Congress for the purpose of the Cooperative Agreement; (2) the application of federal funds by

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the DOE to the Award in the amount anticipated; 3) USABC's satisfaction with SUBRECIPIENT's technical progress compared to the Statement of Work in Attachment II to this Subrecipient Agreement; 4) SUBRECIPIENT's timely submission of required reports to USABC; 5) SUBRECIPIENT's other compliance with the terms and conditions of this Subrecipient Agreement; 6) the outcome of Go/No-Go decisions under the Award.

In the event that DOE disapproves a continuation application(s) for any Budget Period(s), USABC's maximum liability to SUBRECIPIENT shall be limited to costs incurred by the SUBRECIPIENT in accordance with the termination provisions of Section 18 of this Subrecipient Agreement, which in no case shall exceed the costs proposed for the project up to the point of termination under the original or revised approved project budget, plus any non-terminable expenses. USABC reserves the right to de-obligate any unspent federal or non-federal funds obligated under this Subrecipient Agreement in the event of termination.

This Subrecipient Agreement, including its attachments shall constitute the entire agreement between USABC and SUBRECIPIENT related to USABC's Award, as defined in the first paragraph above. USABC and SUBRECIPIENT are at times referred to individually herein as a "Party" and collectively as the "Parties".

OMB Guidance Regulations at 2 CFR 200 and the DOE supplement thereto included at 2 CFR 910 apply to this Subrecipient Agreement. Subrecipients are subject to the regulations applicable to them based upon the nature of their legal formation (not for profit or for profit) as set forth within these regulations.

SUBPART A: GENERAL PROVISIONS

1. ACCEPTANCE

SUBRECIPIENT has read and understands this contract and agrees that SUBRECIPIENT's written acceptance or commencement of any work or services under this contract shall constitute SUBRECIPIENT's acceptance of these terms and conditions only.

2. SHIPPING AND BILLING

SUBRECIPIENT agrees: (a) to properly pack, mark and ship goods in accordance with the requirements of USABC, the involved carriers, and, if applicable, the country of destination; (b) to route shipments in accordance with USABC's instructions; (c) to make no charge for handling, packaging, storage or transportation of goods, unless otherwise stated as an item on this contract; (d) to provide with each shipment packing slips with USABC's contract and/or release number and date of shipment marked thereon; (e) to properly mark each package with a label/tag according to USABC's instructions; (f) to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with USABC's instructions. SUBRECIPIENT will include on bills of lading or other shipping receipts correct classification identification of the goods shipped in accordance with USABC's instructions and the carrier's requirements. The marks on each package and identification of the goods on packing slips, bills of lading and invoices (when required) shall be sufficient to enable USABC to easily identify the goods purchased. SUBRECIPIENT further agrees: (a) to accept payment based upon USABC's Evaluated Receipt Record/Self Billed Invoice, unless an invoice is requested by USABC; and (b) to accept payment by electronic funds transfer. The payment date is set forth in the Line Item

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Detail of the purchase order that accompanies this Subrecipient Agreement XXXX, currently Net 60 days. USABC may withhold payment pending receipt of evidence, in such form and detail as USABC may direct, of the absence of any liens, encumbrances and claims on the goods or services under Purchase Order XXXX.

3. DELIVERY SCHEDULES

Delivery of goods, and services, under this Subrecipient Agreement shall be in accordance with the Statement of Work (as amended from time to time, the “SOW”) included as Attachment II hereof and incorporated herein by reference. Both Parties shall use commercially reasonable efforts to undertake and complete their services and development in accordance with the target dates set out in the SOW. USABC acknowledges that SUBRECIPIENT’s ability to meet the target dates may depend upon:

- a) USABC providing information to SUBRECIPIENT in a timely manner;
- b) SUBRECIPIENT providing information to USABC;
- c) Other team members providing information to USABC or SUBRECIPIENT in a timely and proper manner;

In the event that a Party believes that the issuance of any of its reports or delivery of its information or material will be delayed, that Party shall notify the affected Party to discuss what reasonable steps may be taken to facilitate the delivery of such reports, information or material.

4. CHANGES

USABC and SUBRECIPIENT agree that either Party may propose to the other Party and give due consideration to any changes to the work required of SUBRECIPIENT under this Subrecipient Agreement. In addition, USABC and SUBRECIPIENT agree any proposed changes to the SOW shall be discussed by the Parties and shall not become a part of this Subrecipient Agreement unless mutually agreed to in writing by the Parties through and Amendment to this Subrecipient Agreement.

Any difference in cost or time for performance resulting from such changes shall be mutually agreed to by the Parties. If any such change causes an increase or decrease in the time required for the performance of any part of the SOW, an equitable adjustment may be made in the SOW delivery schedule, and the SOW shall be modified in writing accordingly. Any changes to this Subrecipient Agreement shall be made in accordance with Section titled “ENTIRE AGREEMENT”.

5. INSPECTION

With reasonable notice, USABC shall have the right to enter SUBRECIPIENT’s facility at reasonable times to inspect the facility, goods, materials and any property covered by this Subrecipient Agreement.

1. All inspection must be performed in a manner that does not unduly interfere with or delay the SOW delivery schedule.

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2. During such inspection, USABC agrees to observe all applicable health and safety rules, and other organizational, security, and housekeeping practices of the visiting location as explained to the USABC visiting employee(s) by SUBRECIPIENT personnel.

3. On-site inspection by USABC may give access to SUBRECIPIENT's technical subject matter that SUBRECIPIENT considers proprietary and that is outside the scope of the Subrecipient Agreement.

- i. For subject matter within the scope of the Purchase Order, Section 19, INTELLECTUAL PROPERTY and Section 16, CONFIDENTIAL INFORMATION apply.
- ii. For any subject matter and activities outside the scope of the Subrecipient Agreement, the following terms and conditions apply:

USABC shall treat as confidential all SUBRECIPIENT's information and data that is outside the scope of the Subrecipient Agreement that is disclosed to USABC by SUBRECIPIENT or its representatives, developed by SUBRECIPIENT, or as otherwise exposed to USABC as a result of having access to SUBRECIPIENT's premises, and refrain from disclosing such information and data to any third party or using such information in any manner whatsoever either in whole or in part except upon written authorization by SUBRECIPIENT. USABC shall not remove any such information from SUBRECIPIENT's premises without the express written permission of SUBRECIPIENT. Furthermore, any such confidential information shall be returned to SUBRECIPIENT or destroyed at the completion of USABC's visit.

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. SUBRECIPIENT must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

6. SITE VISITS BY SUBRECIPIENT

If SUBRECIPIENT performs work on USABC premises or the premises of the Member Companies of USCAR LLC's premises, USABC shall make reasonable workspace available to SUBRECIPIENT during USABC's normal working hours.

1. SUBRECIPIENT agrees to observe all applicable health and safety rules, and other organizational, security, and housekeeping practices of the visiting location as explained to the SUBRECIPIENT visiting employee(s) by USABC personnel.

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2. On-site work activity by SUBRECIPIENT may give access to USABC's technical subject matter that USABC considers proprietary to USABC and that is outside the scope of this Subrecipient Agreement.

- i. For subject matter within the scope of this Subrecipient Agreement, Section 14, INTELLECTUAL PROPERTY and Section 16, CONFIDENTIAL INFORMATION apply.
- ii. For any subject matter and activities outside the scope of this Subrecipient Agreement, the following terms and conditions apply:

SUBRECIPIENT shall treat as confidential all USABC's information and data that is outside the scope of this Subrecipient Agreement that is disclosed to SUBRECIPIENT by USABC or its representatives, developed by USABC, or as otherwise exposed to SUBRECIPIENT as a result of having access to USABC's premises, and refrain from disclosing such information and data to any third party or using such information in any manner whatsoever either in whole or in part except upon written authorization by USABC. SUBRECIPIENT shall not remove any such information from USABC's premises without the express written permission of USABC. Furthermore, any such confidential information shall be returned to USABC or destroyed at the completion of SUBRECIPIENT's visit.

7. WARRANTY

SUBRECIPIENT warrants that the work under this Subrecipient Agreement will be performed in a professional and workman-like manner.

8. FORCE MAJEURE

Any delay or failure of either party to perform its obligations shall be excused if SUBRECIPIENT is unable to produce, sell or deliver, or USABC is unable to accept delivery, buy or use, the goods or services covered by this Subrecipient Agreement, as the result of an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than 10 days thereafter). During the period of such delay or failure to perform by SUBRECIPIENT, USABC, at its option, may purchase goods and services from other sources and reduce its schedules to SUBRECIPIENT by such quantities, without liability to SUBRECIPIENT, or have SUBRECIPIENT provide the goods and services from other sources in quantities and at times requested by USABC, and at the price set forth in this contract. In addition, SUBRECIPIENT at its expense shall take such actions as are necessary to ensure the supply of goods and services to USABC for a period of

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at least 30 days during any anticipated labor disruption or resulting from the expiration of SUBRECIPIENT's labor contract(s). If requested by USABC, SUBRECIPIENT shall, within 10 days, provide adequate assurances that the delay shall not exceed 30 days. If the delay lasts more than 30 days or SUBRECIPIENT does not provide adequate assurance that the delay will cease within 30 days, USABC may immediately terminate this contract without liability.

9. INCONSISTENCY WITH FEDERAL LAW

Any apparent inconsistency between federal statutes and regulations and the terms and conditions contained in this subaward must be referred to the USABC Business Manager for discussion with the DOE award Administrator for guidance.

10. FEDERAL STEWARDSHIP

DOE will exercise normal federal stewardship in overseeing the project activities performed under this subaward. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

11. WHISTLEBLOWER PROTECTIONS

As provided in 2 CFR 200.217, an employee of a recipient or subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections.

12. SUBSTANTIAL INVOLVEMENT

DOE has substantial involvement in work performed under this award. DOE does not limit its involvement to the administrative requirements of this award. Instead, DOE has substantial involvement in the direction and redirection of the technical aspects of the project as a whole. substantial involvement includes the following:

DOE shares responsibility with the recipient for the management, control, direction, and performance of the project;

DOE may intervene in the conduct or performance of work under this subaward for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities;

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DOE may redirect or discontinue funding the project based on the outcome of DOE's evaluation of the project at the Go/No Go decision point;

DOE participates in major project decision-making processes.

13. POST-AWARD DUE DILIGENCE REVIEWS

During the period of performance of the award, USABC and/or the DOE may conduct ongoing due diligence reviews, through USABC and/or Government resources, to identify potential risks of undue foreign influence. In the event a risk is identified, USABC and/or DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the award. As part of the research, technology, and economic security risk review, USABC and/or DOE may contact the recipient project team members for additional information to inform the review.

14. INGREDIENTS DISCLOSURE; SPECIAL WARNINGS AND INSTRUCTIONS

If requested by USABC, SUBRECIPIENT shall promptly furnish to USABC in such form and detail as USABC may direct: (a) a list of all ingredients in the goods; (b) the amount of all ingredients; and (c) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of the goods, SUBRECIPIENT agrees to furnish to USABC sufficient warning and notice in writing (including appropriate labels on the goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, USABC, and their respective employees of how to exercise that measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packing shipped to USABC.

15. INSOLVENCY

USABC may immediately terminate this Subrecipient Agreement without liability in any of the following events: (a) insolvency of SUBRECIPIENT; (b) filing of a voluntary petition in bankruptcy by SUBRECIPIENT; (c) filing of any involuntary petition in bankruptcy against SUBRECIPIENT; (d) appointment of a receiver or trustee for SUBRECIPIENT; or (e) execution of an assignment for the benefit of creditors by SUBRECIPIENT, provided that such petition, appointment or assignment is not vacated or nullified within fifteen (15) days of such event. SUBRECIPIENT shall reimburse USABC for all costs incurred by USABC in connection with any of the foregoing, including, but not limited to, all attorney's or other professional fees.

16. INDEMNIFICATION

If SUBRECIPIENT performs any work on USABC's premises or uses the property of USABC, whether on or off USABC's premises, SUBRECIPIENT shall indemnify and hold USABC harmless from and against any liability, claims, demands or expenses (including attorney's and other professional fees) for damages to the property of or injuries (including death) to USABC, its employees or any other person arising from or in connection with SUBRECIPIENT's

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performance of work or use of USABC's property, except for such liability, claim, or demand arising out of the sole negligence of USABC.

17. INSURANCE

SUBRECIPIENT shall maintain insurance coverage with carriers acceptable to USABC and in the amounts set forth below. SUBRECIPIENT shall furnish to USABC a certificate of insurance showing compliance with these insurance requirements within ten (10) days of USABC's written request. The certificate shall endeavor to provide that USABC will receive thirty (30) days' prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. USABC must be named as an additional insured on the General Liability and Automobile Liability policies. SUBRECIPIENT's furnishing of certificates of insurance or purchase of insurance shall not release SUBRECIPIENT of its obligations or liabilities under this Subrecipient Agreement.

For purposes of this Subrecipient Agreement, the insurance coverages required are as follows:

- (a) Workers' Compensation: statutory limits for the state(s) in which this Subrecipient Agreement is to be performed (or acceptable evidence of authority and capability to self insure);
- (b) Employer's Liability: \$500,000 each accident for bodily injury by accident and \$500,000 each employee for bodily injury by disease;
- (c) Commercial General Liability on an Occurrence Form covering liability arising from premises, operations, independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insured contract: \$5,000,000 each occurrence; and
- (d) Automobile Liability (including owned, non-owned and hired vehicles): \$5,000,000 each accident.

18. LOBBYING RESTRICTION

By accepting funds under this Subrecipient Agreement, SUBRECIPIENT agrees and certifies that none of the funds obligated under Subrecipient Agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in **18 U.S.C. 1913**. This restriction is in addition to those prescribed elsewhere in statute and regulation.

19. TERMINATION FOR BREACH OR NONPERFORMANCE; SALE OF ASSETS OR CHANGE IN CONTROL

The Parties recognize SUBRECIPIENT is a subrecipient under a Cooperative Agreement between the USABC and the U. S. Department of Energy (otherwise herein as "Government"). USABC reserves the right to terminate all or any part of this Subrecipient Agreement, without liability, if SUBRECIPIENT: (a) repudiates or breaches any of the material terms of this Subrecipient Agreement, including SUBRECIPIENT's warranties; (b) fails to perform services, goods, or deliverables as specified by USABC; (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods, services or deliverables; and does

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not correct such failure or breach within thirty (30) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from USABC specifying such failure or breach. In addition, USABC may terminate this Subrecipient Agreement upon giving at least 60 days notice to SUBRECIPIENT, without liability to SUBRECIPIENT, if SUBRECIPIENT sells, or offers to sell, a material portion of its assets. Both Parties hereby agree to make themselves available to discuss a remedy to the alleged breach.

20. TERMINATION FOR CONVENIENCE

In addition to any other rights of USABC to terminate this Subrecipient Agreement, USABC may, at its option, immediately terminate all or any part of this Subrecipient Agreement, at any time and for any reason, by giving thirty (30) days written notice to SUBRECIPIENT. Upon such termination, USABC shall pay to SUBRECIPIENT the following amounts without duplication:

1. The contract price for all goods or services that have been completed in accordance with this Subrecipient Agreement and not previously paid for; and
2. The actual costs of work-in-process and raw materials incurred by SUBRECIPIENT in furnishing the goods or services under this Subrecipient Agreement to the extent such costs are reasonable in amount and are properly allocable or allowable under generally accepted accounting principles and FAR Part 31 to the terminated portion of this Subrecipient Agreement; less, however, the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by SUBRECIPIENT with USABC's written consent, and the cost of any damaged or destroyed goods or material and less any SUBRECIPIENT cost share to date.

USABC will make no payments for finished goods, services, work-in-process or raw materials fabricated or procured by SUBRECIPIENT in amounts in excess of those authorized in delivery releases nor for any undelivered goods that are in SUBRECIPIENT's standard stock or that are readily marketable.

Payments made under this Section shall not exceed the aggregate allowable costs already incurred or to be incurred under noncallable commitments previously approved under lower-tier purchase orders or subrecipient agreements previously approved by USABC USABC.

Except as provided in this Section, USABC shall not be liable for and shall not be required to make payments to SUBRECIPIENT, directly or on account of claims by SUBRECIPIENT's subcontractors or vendors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges from termination of this Subrecipient Agreement unless non-terminable commitments for such charges were approved by USABC prior to the date of termination.

Within sixty (60) days from the effective date of termination, under this Section, SUBRECIPIENT shall submit a comprehensive termination claim to USABC, with sufficient supporting data to permit USABC's audit, and shall thereafter promptly furnish such supplemental and supporting information as USABC shall request.

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USABC or its agents shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim of SUBRECIPIENT.

21. PROPERTY/SUPPLIES

Real property, intangible property, equipment and supplies acquired by SUBRECIPIENT shall be subject to the rules set forth in 2 CFR 200.310 through 200.316 as applicable. For-Profit subrecipients are also subject to 2 CFR 910.360 and 910.362 on DOE awards.

The regulations as set forth in 2 CFR 200.310 through 200.316 and the requirements of this article shall also apply to property in the possession of any team member, sub-recipient or other entity where such property was acquired in whole or in part with funds provided under this Subrecipient Agreement or where such property was counted as cost-sharing.

Subject to DOE rights and to the extent applicable, SUBRECIPIENT agrees that it and all of its subcontractors or vendors shall comply with the provisions of the applicable subpart of 2 CFR 200.310 through 200.316 (suitably modified for the party) relating to equipment purchased as a direct costs under the DOE award, at any tier. SUBRECIPIENT also agrees to send a copy of the required bi-annual inventory to the USABC Buyer.

Equipment

Subject to the conditions provided in 2 CFR 200.313, and 2 CFR 910.360 (as applicable), title to equipment (property) acquired under the federal award will conditionally vest upon acquisition with the recipient or SUBRECIPIENT. The recipient or SUBRECIPIENT must not encumber this property or permit encumbrance without prior written approval of the Grants Officer and must follow the requirements of 2 CFR 200.313 before disposing of the property.

A state must use equipment acquired under a federal award by the state in accordance with state laws and procedures.

Indian Tribes must use, manage, and dispose of equipment acquired under a federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in 2 CFR 200.313.

The recipient or SUBRECIPIENT must use equipment for the project or program for which it was acquired and for as long as needed, whether or not the project or program continues to be supported by the federal award. When no longer needed for the original project or program, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Equipment with a current per unit fair market value of \$10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further responsibility to the federal awarding agency or pass-through entity, as specified in 2 CFR 200.313(e)(1) and 2 CFR 910.360 (as applicable). Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a federal award is no longer needed, the recipient or SUBRECIPIENT must obtain disposition instructions from DOE or pass-through entity. However, pursuant to the FY23 Consolidation Appropriations Act (Pub. L. No. 117-328), Division D, Title III, Section 309, the Secretary, or a designee of the Secretary

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may, at their discretion, vest unconditional title or other property interests acquired under this project regardless of the fair market value of the property at the end of the award period of performance.

Subject to vesting of any property pursuant to Section 309 of the FY23 Consolidated Appropriations Act (Pub. L. No. 117-328), Division D, Title III, disposition will be made as follows: (a) items of equipment with a current fair market value of \$10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further obligation to the federal agency or pass-through entity; (b) the recipient or SUBRECIPIENT may retain title or sell the equipment after compensating the federal agency as described in 2 CFR 200.313(e)(2); or (c) transfer title to the federal agency or to an eligible third Party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a federal award. Also see 2 CFR 910.360 for additional requirements for for-profit recipients. See also 2 CFR 200.439 Equipment and other capital expenditures.

Supplies

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a federal award.

See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

Continued Use of Real Property and Equipment

Real property and equipment purchased with project funds (federal share and recipient cost share) under this award are subject to the requirements at 2 CFR 200.311, 200.313, and 200.316 (recipient or SUBRECIPIENT, except for-profit entities) and 2 CFR 910.360 (for-profit entities). The recipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the recipient and/or SUBRECIPIENT:

1. continues to use the property for the authorized project purposes;
2. complies with the applicable reporting requirements and regulatory property standards;
3. as applicable to for-profit entities, UCC filing statements are maintained; and
4. submits a written Request for Continued Use for DOE authorization, which is approved by the DOE Grants Officer.

The recipient must request authorization from the Grants Officer to continue to use the property for the authorized project purposes beyond the award period of performance ("Request for Continued Use"). The recipient's written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the recipient expects to submit disposition instructions); acknowledgement that the recipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

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When the property is no longer needed for authorized project purposes, the recipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other entities are set forth in 2 CFR 200.310 – 200.316.

Property Trust Relationship

Real property, equipment, and intangible property acquired or improved with the federal award must be held in trust by the recipient or SUBRECIPIENT as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a federal award.

22. REMEDIES

The rights and remedies reserved to each Party in the Subrecipient Agreement shall be cumulative with, and additional to, all other or further remedies provided in law or equity.

23. CUSTOMS, EXPORT CONTROLS

In connection with this Subrecipient Agreement, the Parties agree to comply with all export control, economic sanctions, and other similar laws and regulations of the U.S. (the “Trade Compliance Laws”). Each Party shall not violate, nor cause the other Party to violate, any Trade Compliance Laws (e.g. by transshipping goods through, or supplying goods or services from, sanctioned countries). Each Party shall provide to the other Party the relevant export classifications (e.g., ECCN or USML Category) for any export-controlled software, hardware or services (“Items”) included in this Subrecipient Agreement, as well as, upon request, any other information (e.g., technical details supporting the product’s classification) as may reasonably be requested by a Party to ensure compliance with the Trade Compliance Laws. Rejection of an export-controlled item by either Party shall not constitute breach of this Subrecipient Agreement if exporting or receiving the item may result in a violation of Trade Compliance Laws.

Trade Compliance Laws include, but are not limited to, restrictions on transactions involving certain entities and individuals (e.g., Specially Designated Nationals and parties on the U.S. Entity List) and territories subject to economic sanctions (currently, Cuba, Iran, North Korea, Syria, Crimea, Donetsk, and Luhansk), including prohibitions on transferring, transshipping, and/or procuring the Items to, through, or from such prohibited entities, individuals, or territories.

Whenever any notice is to be given hereunder, it will be in writing and sent to the following addresses:

If to SUBRECIPIENT:	For USABC:
Name:	Name: Ns. Bernadette Renaud
Title:	Title: USABC Business Manager
Address 1:	Address 1: United States Council for Automotive Research
Address 2:	Address 2:

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Address 3:	Address 3:
City, State, Zip:	City, State, Zip: Southfield, Michigan
Phone:	Phone:
Fax:	Fax:
e-mail:	e-mail: Bernadette.renaud@uscar.org

24. COMPLIANCE WITH LAWS; EMPLOYMENT/BUSINESS PRACTICES

SUBRECIPIENT, and any goods or services supplied by SUBRECIPIENT, shall comply with all applicable laws, rules, regulations, orders, conventions, ordinances, required permitting or standards of the country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. SUBRECIPIENT further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under this contract.

At USABC's request, SUBRECIPIENT shall certify in writing its compliance with the foregoing. SUBRECIPIENT shall indemnify and hold USABC harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to SUBRECIPIENT's noncompliance.

By acceptance of the Subrecipient Agreement Terms and Conditions in accordance with this term, SUBRECIPIENT certifies that it has read, understands, and is in compliance with this Section of the Subrecipient Agreement (Compliance with Laws; Employment/Business Practices).

25. NO IMPLIED WAIVER

The failure of either party at any time to require performance by the other party of any provision of this Subrecipient Agreement shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Subrecipient Agreement constitute a waiver of any succeeding breach of the same or any other provision.

26. NON-ASSIGNMENT

Unless otherwise specifically prohibited by applicable law, SUBRECIPIENT may not assign or delegate its rights or obligations under this Subrecipient Agreement without USABC's prior written consent, whose approval will not be unreasonably withheld.

27. RELATIONSHIP OF PARTIES

SUBRECIPIENT and USABC are independent contracting parties and nothing in this Subrecipient Agreement shall make either Party the agent or legal representative of the other for

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any purpose whatsoever, nor does it award either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party.

28. SEVERABILITY

If any term(s) of the Subrecipient Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Subrecipient Agreement shall remain in full force and effect.

29. COMPLIANCE WITH MANDATORY PROCUREMENT PROVISIONS

SUBRECIPIENT shall comply with and provide any required certifications evidencing compliance with the provisions in Appendix II of CFR Part 200.

30. LOWER-TIER PROCUREMENT PROVISIONS

SUBRECIPIENT agrees that it shall, in addition to provisions necessary to define a sound and complete agreement, incorporate the provisions of 2 CFR 200.318 through 200.326, as applicable, in all agreements and/or sub awards. SUBRECIPIENT specifically agrees to incorporate the provisions of Appendix II of CFR Part 200 in all agreements and sub awards, including those less than the small purchase threshold as defined by 41 U.S.C. 403.

31. REPRESENTATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

SUBRECIPIENT represents to the best of its knowledge and belief, obtained after appropriate due diligence that SUBRECIPIENT and its subcontractors or suppliers under this Subrecipient Agreement:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any agency of the United States Government;
- (2) Have not within a three (3)-year period preceding this Subrecipient Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal State or Local) transaction, or contract under a public transaction; violation of Federal or State Antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;

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- (4) Have not within a three (3)-year period preceding the awarding of this Subrecipient Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and
- (5) Will immediately notify USABC in the event any of the conditions recited within subparagraphs (1) through (5) occurs during the period of SUBRECIPIENT's performance under this Subrecipient Agreement.

The certification set forth within this Section constitutes a material part of this Subrecipient Agreement.

32. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

SUBRECIPIENT must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this Subrecipient Agreement.

33. INCORPORATION OF CERTAIN PROVISIONS

SUBRECIPIENT acknowledges that as a Party performing a statement of work on behalf of USABC, SUBRECIPIENT is obligated to comply with all provisions of the DOE Award Number DE-EE00011268 applicable to the work that SUBRECIPIENT is to perform under the Subrecipient Agreement. A copy of the DOE Award is included as Attachment I.

SUBRECIPIENT is bound by the terms of the DOE Award including all the clauses that are in place at that time or any changes that are required by law.

Without limiting the generality of the foregoing, SUBRECIPIENT agrees to fulfill any other requirements recited in the references set forth below, each of which is incorporated herein by reference, with the same force and effect as if they were given in full text:

- a. All portions of the United States Department of DOE OMB Guidance set forth in 2 CFR 200 as applicable to For-Profit, Non-Profit, or Educational Institutions.
- b. 48 CFR Part 31: Cost Principles and Procedures.

SUBRECIPIENT further agrees to incorporate these provisions, suitably modified, in any Agreement, or other legally binding lower-tier relationship established by SUBRECIPIENT as an element of the efforts identified herein, as applicable.

34. INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

- a. SUBRECIPIENT shall immediately, but no later than five (5) days thereafter, notify USABC of the occurrence of any of the following events: (i) SUBRECIPIENT or SUBRECIPIENT's parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) SUBRECIPIENT's consent to the institution of an

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involuntary case under the Bankruptcy Act against SUBRECIPIENT or SUBRECIPIENT's parent; (iii) the filing of any similar proceeding for or against SUBRECIPIENT or SUBRECIPIENT's parent, or SUBRECIPIENT's consent to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over SUBRECIPIENT, under any other applicable state or Federal law; or (iv) SUBRECIPIENT's insolvency due to its inability to pay debts generally as they become due.

- b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph (a); (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this subcontract.
- c. Upon the occurrence of any of the four events described in paragraph a. of this term, USABC reserves the right to conduct a review of SUBRECIPIENT's subcontract to determine SUBRECIPIENT's compliance with the required elements of the subcontract (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the USABC review determines that there are significant deficiencies or concerns with SUBRECIPIENT's performance under the subcontract, USABC reserves the right to impose additional requirements, as needed, including (i) change of payment method; or (ii) institute payment controls.
- a. Failure of the Recipient to comply with this term may be considered a material noncompliance of this Subrecipient Agreement by USABC.

35. RESEARCH TERMS & CONDITIONS (NOVEMBER 12, 2020) AND THE DOE AGENCY SPECIFIC REQUIRMENTS (NOVEMBER 2020)

Research Terms and Conditions and DOE Agency Specific Requirements to be incorporated as award terms in effect on date of award. These requirements can be found at:

<http://www.nsf.gov/awards/managing/rtc.jsp>

36. HUMAN SUBJECTS RESEARCH

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects (subpart A which is referred to as the "Common Rule")*, and 10 CFR Part 745, *Protection of Human Subjects*.

Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals' data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate.

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The recipient shall provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.

No DOE funded research activity involving human subjects, biospecimens, or identifiable private information shall be conducted without:

1. A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and
2. Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance. IRB review may be accomplished by the awardee's institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB.

37. FRAUD, WASTE AND ABUSE

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse, and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

Additionally, the recipient must be cognizant of the requirements of 2 CFR 200.113 Mandatory disclosures, which states:

An applicant, recipient, or subrecipient of a federal award must promptly disclose whenever, in connection with the federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–3733). The disclosure must be made in writing to the federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable). recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with Appendix XII of this part. Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

38. SITE VISITS AND RECIPIENT DUE DILIGENCE AND ADMINISTRATION ORGANIZATIONAL REVIEWS

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38.1: DOE Site Visits: DOE's authorized representatives have the right to make site visits and conduct Recipient Administrative Organizational Reviews to review the project and management control systems and to provide technical assistance, as appropriate. The Recipient must provide, and must require its subrecipients and contractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. DOE will make reasonable efforts to ensure these site visits do not interfere with or unduly delay project work.

38.2: Due Diligence Review: USABC is responsible for conducting due diligence reviews on all subawards, contracts or modifications recommended for approval by the USABC Management Committee that have passed DOE risk review. SUBRECIPIENT specifically assents to a preselection due diligence review that includes evaluation of the following:

- A. A review of the proposed Subrecipients Accounting and financial management system aimed at ensuring compliance with the cost principles applicable to the proposed Subrecipient.
- B. A review of the proposed Subrecipients procurement system aimed at ensuring compliance with the procurement regulations set forth within section 2 CFR 200.316-200.327.

38.3: USABC Site Visits: SUBRECIPIENT understands and specifically assents to the performance of a minimum of two site visits per year aimed at ensuring SUBRECIPIENT compliance with the terms and conditions of the DOE award and this Subrecipient Agreement.

39. CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES

A corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States, but not foreign corporations. It includes both for-profit and non-profit organizations.

By entering to this Subrecipient Agreement, SUBRECIPIENT attests that its corporation has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

SUBRECIPIENT further attests that its corporation does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

40. TRAFFICKING IN PERSONS

A. Provisions applicable to a Subrecipient that is a private entity:

1. Under this award, USABC, its employees, subrecipients under this award, and subrecipient's employees must not engage in:
 - i. Severe forms of trafficking in persons;
 - ii. The procurement of a commercial sex act during the period of time that this award or any subaward is in effect;
 - iii. The use of forced labor in the performance of this award or any subaward; or

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- iv. Acts that directly support or advance trafficking in persons, including the following acts:
 - a. Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
 - b. Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:
 - 1) Exempted from the requirement to provide or pay for such return transportation by the federal department or agency providing or entering into the grant or cooperative agreement; or
 - 2) The employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action.
 - c. Soliciting a person for the purpose of employment, or offering employment, by means materially false or fraudulent pretenses, representations, or promises regarding that employment;
 - d. Charging recruited employees a placement recruitment fee;
 - e. Providing or arranging housing that fails to meet the host country's housing and safety standards.
- i. The prime recipient of the DOE award or the federal agency may unilaterally terminate this Subrecipient Agreement or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if a subrecipient that is private entity under this award is determined to have violated a prohibition in paragraph A.1 above; or
- ii. Has an employee that is determined to have violated a prohibition in paragraph A.1 of this award term through conduct that is either:
 - iii. Associated with the performance under this award; or
 - iv. Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)."

B. Provision applicable to a recipient other than a private entity.

The federal agency may unilaterally terminate this award or take any remedial action authorized by 22 U.S.C. 7104b(c), without penalty, if a subrecipient that is a private entity under this award:

- 1. Is determined to have violated a prohibition in paragraph A.1; or
- 2. Has an employee that is determined to have violated a prohibition in paragraph A.1 through conduct that is either:

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- i. Associated with the performance under this award; or
- ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement).”

C. Provisions applicable to any recipient.

- 1. The SUBRECIPIENT must inform the federal agency and the Inspector General of the federal agency immediately of any information the SUBRECIPIENT receives from any source alleging a violation of a prohibition in paragraph A.1 of this award term.
- 2. The federal agency’s right to unilaterally terminate this sub-award as described in paragraphs A.2 or B of this award term:
 - a. Implements the requirements of 22 U.S.C. 78; and
 - b. Is in addition to all other remedies for noncompliance that are available to the federal agency under this award.
- 3. The SUBRECIPIENT must include the requirements of paragraph A.1 of this award term in any lower-tier subaward it makes to a private entity.
- 4. If applicable, the recipient must also comply with the compliance plan and certification requirements in 2 CFR 175.105(b).

d. Definitions.

For purposes of this award term:

- 1. *Employee* means either:
 - i. An individual employed by the recipient or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of this project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing requirements.
- 2. *Private Entity* means any entity, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.
- 3. The terms “severe forms of trafficking in persons,” “commercial sex act,” “sex trafficking,” “Abuse or threatened abuse of law or legal process,” “coercion,” “debt bondage,” and “involuntary servitude,” have the meanings given at Section 103 of the TVPA, as amended (22 U.S.C. 7102).

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SUBPART B: INTELLECTUAL PROPERTY AND DATA RIGHTS

41. INTELLECTUAL PROPERTY

41.1 Indemnification: SUBRECIPIENT agrees to defend, hold harmless and indemnify USABC, its parent USCAR LLC (USCAR), the Member Companies of USCAR, and their subsidiaries and licensees at any tier, and the successors and customers thereof against any claims of infringement (including patent, trademark, copyright, industrial design right, or any other proprietary right, or misuse or misappropriation of trade secret) and resulting damages and expenses (including reasonable attorney's and other professional fees) arising in relation to the work performed or produced utilizing any work performed under this agreement..

41.2 USABC's Intellectual Property: USABC, the member companies of USCAR or the subsidiaries thereof acting on behalf of USABC as applicable, shall retain all right, title, and interest to all Intellectual Property developed by each of them under the Cooperative Agreement, subject only to the Operating and Intellectual Agreements between the USCAR Member Companies, which for the purposes of this Subrecipient Agreement shall be hereinafter referred to as USABC Intellectual Property. USABC hereby grants to SUBRECIPIENT a royalty-free right to practice any USABC Intellectual Property solely for the purpose of performing work under this Subrecipient Agreement, including the right to sublicense to its affiliates or subcontractors to perform such work solely as a direct requirement of these efforts.

For the purpose of this Subrecipient Agreement, "Intellectual Property" means any letters patent, patented articles, patent applications, designs, industrial designs, copyrights, software, source code, database rights, moral rights, inventions whether or not capable of protection by patent or registration, inventionst, techniques, technical data, and know-how, whether registered or unregistered and including applications, registrations and renewals in connection thereunder for the grant of any such assets or rights of the foregoing descriptions and all rights of forms of protection having equivalent or similar effect anywhere in the world. Intellectual Property shall exclude all brands, trademarks, trade names, slogans and logos unless otherwise expressly agreed in writing between the parties. Additionally, "Subject Invention" means any invention conceived and/or first reduced to practice under this Subrecipient Agreement.

41.3 Rights to Inventions Made Jointly by Recipient Member Companies and SUBRECIPIENT's Employees: USABC and SUBRECIPIENT shall jointly own any and all Intellectual Property made, developed, created, or generated jointly by USABC, the Member Companies of USCAR, USABC, or the subsidiaries thereof acting on behalf of USABC as applicable and SUBRECIPIENT's employees. Each Party shall have full rights to exploit such Intellectual Property as each party desires and without accounting to the other Party (including commercial exploitation). Each Party shall be fully responsible for any claims (including liability) for the use each Party makes of such Intellectual Property beyond the scope of the Subrecipient Agreement.

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41.4 SUBRECIPIENT's Intellectual Property: SUBRECIPIENT shall retain all right, title, and interest to all Intellectual Property developed solely by SUBRECIPIENT under this Subrecipient Agreement. As a joint development collaborator and pass through entity under the DOE Cooperative Agreement, SUBRECIPIENT agrees to absorb at a minimum any required non-federal cost share under the applicable DOE Cooperative Agreement task at the same percentage as USABC. The specific federal and non-federal cost share allocation applicable to this Subrecipient is set forth above in the lead paragraph of this Subrecipient Agreement. In the event that SUBRECIPIENT elects to refrain from the absorption of all or any part of the applicable non-federal contributions for the applicable cooperative agreement task, USABC may, in its sole and absolute discretion, agree to absorb some or all of SUBRECIPIENT's non-federal contributions. In the event of such absorption, SUBRECIPIENT hereby grants to USABC, USCAR LLC, the Member Companies of USCAR LLC, as well as their subsidiaries and/or affiliates, and the commercialization partners of any of the foregoing, an irrevocable, perpetual, worldwide, non-exclusive license and right to make, have made, reproduce, use, sell, and import SUBRECIPIENT's Intellectual Property made, developed, created, or generated under this Subrecipient Agreement and to make, have made, sell, offer to sell, and import products that incorporate such Intellectual Property without additional royalty or payment.

To this end, the clause appearing immediately below is a mandatory flow-down from the Cooperative Agreement and enables the licenses conveyed to USABC within this Section 14.4:

(A) **W (C) 2022-003: PATENT RIGHTS – WAIVER**

Where DOE has granted a waiver of rights to Subject Inventions to SUBRECIPIENT, SUBRECIPIENT may elect to retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S.C. 202 and 203. With respect to any Subject Invention in which SUBRECIPIENT elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

41.5 Invention Disclosures: It is acknowledged and agreed to that SUBRECIPIENT will establish and maintain procedures to identify Subject Inventions made solely and jointly by SUBRECIPIENT and to disclose such Subject Inventions to the Department of Energy in accordance with (i) 2 CFR Part 910, Appendix A of Subpart D Modified Patent Rights or (ii) 37 CFR 401.14 DOE Modified Patent Rights Clause, as applicable (and whichever applicable being incorporated herein via the Award). As follows, SUBRECIPIENT will identify any and all Subject Inventions covered by this Subrecipient Agreement that are made solely and jointly by SUBRECIPIENT. SUBRECIPIENT shall disclose to USABC in writing each Subject Invention made solely by SUBRECIPIENT under this Subrecipient Agreement within two (2) months after SUBRECIPIENT's internal disclosure process is initiated. SUBRECIPIENT shall also ensure contemporaneous disclosure to the DOE in the iEdison system within the time frames required under the terms of the DOE Award. Except for an iEdison number, if SUBRECIPIENT has not obtained the required Identification Information by the two (2) month deadline set forth above, SUBRECIPIENT shall provide all missing information immediately upon attaining such information.

SUBRECIPIENT will also inform USABC of joint Subject Inventions made by SUBRECIPIENT and USABC under this Subrecipient Agreement within two (2) months after

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SUBRECIPIENT's internal disclosure process is initiated, and promptly provide documentation SUBRECIPIENT has created in relation to such joint Subject Inventions (e.g. patent application drafts, invention records, etc.). "Identification Information" means (i) iEdison number; (ii) title, filing date, and number of any filed patent application(s) or registration(s) corresponding to Subject Invention; and (iii) all inventor names on such patent application(s) and/or registration(s).

SUBRECIPIENT must complete and contemporaneously forward to the DOE Patent Counsel and to USABC the Intellectual Property Report (in accordance with the requirements set forth by iEdison) when:

- 1) Disclosing a Subject Invention, including anticipated uses and sales;
- 2) Reporting publications, manuscript submissions, or other public disclosures concerning a subject invention;
- 3) Electing (or declining) to retain title to a Subject Invention;
- 4) Disclosing the filing or termination of patent applications on a Subject Invention (i.e. patent applications disclosing or claiming a subject invention). Patent disclosures must be made for filing the following patent applications: An initial domestic patent application; a domestic divisional or continuation patent application; a domestic continuation-in-part application; and a foreign patent application.
- 5) Discontinuing prosecution of a patent application, maintenance of a patent, or defense in a patent reexamination or opposition proceeding, regardless of jurisdiction;
- 6) Requesting an extension of time to: Elect (or decline) to retain title to a subject invention; and file and initial domestic or foreign patent application.

41.6 Filing of Patent Applications: In the event SUBRECIPIENT declines to file a patent application for any Subject Invention made solely by SUBRECIPIENT's personnel in certain jurisdictions the SUBRECIPIENT acknowledges that the Department of Energy may elect and secure such patent rights.

The Parties shall mutually agree how to manage the filing on Subject Inventions owned jointly under Subsection 19.3. In any event, each Party will fully cooperate with the other, including executing all necessary documents and obtaining the cooperation of its employees or subcontractors in executing such documents, in the preparation and filing of any patent application based upon a joint Subject Invention. For joint Subject Inventions, the Parties shall exercise their best efforts to file a patent application before any time bar prescribed by Title 35 of the United States Code. In addition, unless otherwise agreed, USABC will handle identifying and disclosing such joint Subject Invention to the Department of Energy in accordance with 2 CFR Part 910, Appendix A of Subpart D.

22.7 Patent Expenses and Copies: Unless otherwise agreed, all of the expenses attendant to the filing of any patent application shall be borne by the Party owning the Subject Invention. Any post-filing and post-patent fees shall also be borne by the owning Party. For jointly-owned

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Subject Inventions, both Parties shall evenly share all expenses attendant to the filing of any joint patent application including any post-filing and post-patent fees. Each Party shall provide to the other a copy of each joint patent application it files on Subject Invention(s) made as a consequence of this Subrecipient Agreement, along with the power to inspect and make of all documents retained in the official patent application files of the filing party. In the event that one of the Parties declines to continue to pay its share of a jointly-owned Subject Invention, then the other Party may pick up the declined patent expense and the declining party will assign their interest in the joint Subject Invention to the continuing Party in return for a free, perpetual, non-exclusive license in the assigned Subject Invention back to the non-owning Party.

41.8 Background Technology: Except as expressly provided herein, USABC and SUBRECIPIENT will both retain all right, title and interest in their technology (including all Intellectual Property Rights therein) made prior to or outside of this Subrecipient Agreement (“**Background Technology**”).

41.9 Development Licenses to Background Technology: USABC may use, on a royalty-free basis, SUBRECIPIENT’s Background Technology for the limited purpose of performing work under this Subrecipient Agreement or otherwise under the DOE Cooperative Agreement, including the right to sublicense to its subsidiaries, affiliates, and/or other subcontractors to perform such work. SUBRECIPIENT may use, on a royalty-free basis, USABC’s Background Technology for the limited purpose of performing work under this Subrecipient Agreement or otherwise under the DOE Cooperative Agreement, including the right to sublicense to its subsidiaries, affiliates and/or subcontractors to perform such work.

41.10 Transfers: Each Party will ensure that any transfers, assignments or licensing of the Intellectual Property will be subject to all applicable licenses and license rights set forth in this Subrecipient Agreement.

41.11 Most Favored Customer: SUBRECIPIENT agrees that as consideration for entering into this agreement that it will supply any products utilizing Subrecipient Intellectual Property developed under this Subrecipient Agreement to the Member Companies of USCAR, as well as to their subsidiaries, licensees and /or suppliers, at any tier in volumes necessary to support their production and product service needs according to the following process:

41.11.1. SUBRECIPIENT agrees that products utilizing Subject Inventions will be offered to USCAR Member Companies on a preferred basis prior to the offering of such products to others. SUBRECIPIENT agrees to flow the requirements of this 19.11.1 to any the licensees of any Subject Invention(s) at any tier.

41.11.2. SUBRECIPIENT agrees that products utilizing Subject Inventions will be sold to the Member Companies of USCAR, as well as to their subsidiaries, licensees and /or suppliers, at any tier at preferred volumes, and at prices that are more favorable than the prices offered to other Subrecipient Customers. To this end, SUBRECIPIENT further agrees to promptly flow any price reductions extended to any other customers of essentially similar products in similar

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quantities and under essentially similar terms and conditions to the Member Companies of USCAR as well as to their subsidiaries, licensees and /or suppliers, at any tier as soon as these price reductions are extended to other parties. The obligation under this paragraph shall be for a period of five (5) years. SUBRECIPIENT agrees to flow the requirements of this 19.11.2 to any the licensees of any Subject Invention(s) at any tier.

41.12 Invention Utilization Report (in accordance with the requirements set forth by iEdison): SUBRECIPIENT must provide invention utilization reports for any Subject Inventions. Reports are due one year after the disclosure date of each Subject Invention and must continue to be provided for 10 years after the date of such disclosure. Reports must be supplied to the DOE as mandated in Edison and also to USABC. Failure to submit invention utilization Reports in a timely manner may result in forfeiture of the USABC's or SUBRECIPIENT's rights in the Subject Inventions.

41.13 FAR 52.227-1 Authorization and Consent (Jun 2020)-Alternate I (Apr 1984) (27.201-2 (a) (1)), applicable if Purchase Order exceeds \$150,000, and in such instances incorporated herein via the Award.

41.14 FAR 52.227-2- Notice and Assistance Regarding Patent and Copyright Infringement (Jun 2020 (27.201)), applicable if Purchase Order exceeds \$150,000, and in such instances incorporated herein via the Award.

41.15 RIGHTS IN DATA -GENERAL

In accordance with 2 CFR Part 910, Appendix A of Subpart D Rights in Data (and which is incorporated herein via the Award), SUBRECIPIENT has the responsibility to provide to USABC all data and rights therein necessary to fulfill USABC's obligations to the Government under this Subrecipient Agreement. If SUBRECIPIENT or a sub recipient/contractor to SUBRECIPIENT refuses to accept terms affording the Government such rights, SUBRECIPIENT shall promptly bring such refusal to the attention of the USABC contract manager handling this Agreement and not proceed without further authorization. Moreover, in order for this Subrecipient Agreement to comply with Federal regulations, SUBRECIPIENT understands and agrees that the Department of Energy shall receive a non-exclusive license to all works created under the Statement of Objectives and in accordance with Appendix A of Subpart D of CFR Part 910 (e.g., 2 CFR 910. 362)

41.16 Preference for United States Industry: Notwithstanding any other provision of this section, SUBRECIPIENT agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the SUBRECIPIENT or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

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41.17 U.S. Competitiveness: SUBRECIPIENT agrees that any Products embodying any Subject Invention or produced through the use of any Subject Invention will be manufactured substantially in the United States unless SUBRECIPIENT can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. SUBRECIPIENT further agrees to make the above condition binding on any assignee or licensee or any entity otherwise acquiring rights to any Subject Invention, including subsequent assignees or licensees. Should SUBRECIPIENT or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.

42. COPYRIGHTS

USABC and SUBRECIPIENT each shall own the copyright to their own copyrightable works, including software, developed or delivered under the Subrecipient Agreement (“**Copyrightable Works**”). Copyrightable Works which are co-authored by employees of USABC and employees of SUBRECIPIENT shall be jointly owned by USABC and SUBRECIPIENT without an obligation to account to the other Party. A Party shall mark any Copyrightable Works of such Party with an appropriate copyright notice as prescribed under Title 17 of the United States Code. In the event that a Party’s Copyrightable Works is software required by the other Party for purposes of performance under this Subrecipient Agreement, such software shall be delivered in executable form only.

43. CONFIDENTIAL INFORMATION

Each Party agrees not to use or disclose Confidential Information to any employee or to any third party unless (i) such employee or third party has a need to know such Confidential Information in order the Party to perform its obligations under this Agreement, and (ii) such employee or third party is bound by terms and conditions including confidentiality and use obligations at least as restrictive as those found in this Agreement. For the purposes of this Agreement, “**Confidential Information**” includes all proprietary or non-public information disclosed by either Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) during the course of this Agreement, whether in oral, written, electronic, or any other form, including, but not limited to, invention disclosures for Subject Inventions as well as any other technical or business information that is marked as “proprietary” or “confidential” or that, by its nature, would reasonably be considered confidential. The obligations set forth in this paragraph shall remain in effect for a period of five (5) years after the expiration or termination of this Agreement. At any time, upon written request of the Disclosing Party, the Receiving Party will promptly return or destroy Confidential Information and all copies thereof.

The Parties agree to exercise good business judgement in disclosing only such type and quantity of Confidential Information which is necessary to perform the work required by this Subrecipient Agreement. For example, the Parties shall endeavor to disclose non-Confidential Information rather than Confidential Information wherever possible, and to disclose less sensitive information rather than more sensitive information where the former would suffice for the task at hand.

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Confidential Information does not include information disclosed pursuant to or in connection with this Agreement which: (i) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party; (ii) is or becomes available to the Receiving Party, without confidentiality obligations, from a third party; (iii) was possessed or known by the Receiving Party prior to the disclosure by the Disclosing Party; or (iv) was or is developed by or for the Receiving Party without reference to the Confidential Information. Information disclosed to the DOE as Confidential Information shall not be considered generally available to the public. Information generated and disclosed to DOE under this agreement shall be considered generally available to the public only if it disclosed as a part of a public forum such as a Merit review conducted by DOE that is open to the general public. SUBRECIPIENT specifically acknowledges that USABC regularly discloses information to DOE with the understanding that DOE employees are subject to the Trade Secrets Act and that disclosures are made to DOE with the protection of such act.

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

44. PRESENTATION(S) AND PUBLICATION(S)

SUBRECIPIENT shall not present nor publish any work under this Subrecipient Agreement without USABC's written approval which will not be unreasonably withheld. Should USABC award such approval, SUBRECIPIENT hereby awards USABC the right, without fee, to duplicate, publish, or reprint such presentation or publication.

USABC and SUBRECIPIENT recognize that, as part of this project effort, SUBRECIPIENT may produce public presentations, and/or publications. Internal reports and updates shall not be subject to this section. SUBRECIPIENT will provide USABC 30-day advance notice of any media event or PR activity involving the program. SUBRECIPIENT shall furnish to USABC copies of any proposed presentations, press releases and/or publications thirty (30) days in advance of such proposed presentations, press releases and/or publications, allowing USABC a reasonable period of time to review the material for sensitive subject matter or the inadvertent disclosure of USABC Confidential Information.

SUBRECIPIENT will provide USABC a final copy of all presentations, press releases and/or publications. SUBRECIPIENT hereby awards to USABC the right, without fee, to duplicate, publish, or reprint any report produced by SUBRECIPIENT.

Any approved publication must include an acknowledgement of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

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Acknowledgement: “The information, data, or work presented herein was funded in part by the Office of Energy Efficiency and Renewable energy (EERE), U.S. Department of Energy, under Award Number DE-EE00011269.”

Disclaimer: “The information, data, or work presented herein was funded in part by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

45. PUBLIC RELEASES AND USE OF A PARTY’S LOGO, TRADEMARKS OR PRODUCT IMAGES

Each Party agrees to submit to the other Party for its approval, prior to publication, all promotional and advertising material, or news media releases, regarding the research conducted under this subcontract, and/or that uses the other Party’s logo, or trademarks, images of USABC or USCAR LLC Member Company products used for any research pursuant to this award. Approval will be considered within 14 days, and will not be withheld unreasonably. This requirement does not apply to information/materials that have already been approved by the Parties, or to inter-governmental communications.

46. NO ADVERTISING OR POSTING OF USABC INFORMATION

SUBRECIPIENT shall not, without first obtaining the written consent of USABC, in any manner a) advertise or publish the fact that SUBRECIPIENT has contracted to furnish USABC the goods or services covered by this Subrecipient Agreement, or b) use any trademarks or trade names of USABC in SUBRECIPIENT’s advertising or promotional materials, or c) use USABC information in any form of electronic communication such as web sites (internal or external), blogs, or other types of postings.

SUBPART C: FINANCIAL PROVISIONS

47. AUDITS AND RIGHT TO EXAMINE RECORDS

Audits

A. Government-Initiated Audits

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The SUBRECIPIENT must provide any information, documents, site access, or other assistance requested by DOE or federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the recipient's records relating to this award.

Consistent with 2 CFR part 200 as adopted and supplemented by 2 CFR part 910, DOE may audit or review the recipient's financial records or administrative records relating to this award at any time. Audits or reviews may be performed to determine if the recipient has an adequate financial management system to estimate, bill, and record federal government expenditures in accordance with the criteria in 2 CFR 200.302, Generally Accepted Accounting Principles (GAAP), Generally Accepted Government Accounting Standards (GAGAS), and Standard Form 1408. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the period of performance (or the termination of the award, if applicable). Upon completion of the audit, the recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

B. Annual Independent Audits (Single Audit or Compliance Audit)

The SUBRECIPIENT must comply with the annual independent audit requirements in 2 CFR 200.500 through .521. In the alternative, a for-profit recipient that expends \$1,000,000 or more in federal awards during that entity's fiscal year may have a compliance audit conducted for that year in accordance with 2 CFR 910.500 through 910.521.

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term and must be paid for by the recipient. To minimize expense, the recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.339, Remedies for Noncompliance.

SUBRECIPIENT will comply with all requirements mandated in the DOE Award by applicable law or regulation including 2 CFR 200.331 and 200.336, with respect to access to all pertinent ledgers, payroll data, books, records, correspondence, written instructions, receipts, vouchers, and other documents ("Documents and Records") for the purpose of auditing the charges and/or all allocations related to this Subrecipient Agreement. USABC agrees that any and all information supplied by SUBRECIPIENT for this purpose shall be used exclusively for this purpose and shall not be disclosed or utilized for any other purpose, and specifically to the exclusion of any person or group within USABC charged with assessing the cost structure or cost competitiveness of SUBRECIPIENT technology and/or pricing. SUBRECIPIENT shall maintain its Documents and Records in accordance with the manner used for other government contracts handled by SUBRECIPIENT.

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1. SUBRECIPIENT shall retain all such information that is subject to audit hereunder for a period of three (3) years following final payment under this Subrecipient Agreement.
2. As described in DOE Award, the Government or any of their duly authorized representatives shall have the right upon reasonable notice, to audit the Documents and Records during SUBRECIPIENT's normal business hours.
3. SUBRECIPIENT agrees to flow the requirements set forth herein to all lower tier subrecipients and subcontractors.

48. SUBAWARD AND/OR CONTRACT TO FEDERAL AGENCY

SUBRECIPIENT shall not sub-award or Subrecipient Agreement any part of the approved Subrecipient Agreement to any Federal Department, Agency or Instrumentality, without the prior written approval of USABC.

49. INVOICES

SUBRECIPIENT shall submit invoices to USABC on a monthly basis. SUBRECIPIENT shall provide cost detail for both monthly and cumulative amounts by task and segregated by cost element such as labor, material, outside services, and equipment for the tasks as outlined in the SOW.

Upon submission of invoice, SUBRECIPIENT certifies that the cost charged on the invoice are in accordance with the Subrecipient Agreement terms and conditions, correct and proper for payment, and have not been previously requested.

1. SUBRECIPIENT shall provide any additional cost detail on program invoices as requested by USABC and/or the DOE.
2. SUBRECIPIENT shall provide such detail for both SUBRECIPIENT as well as any subcontractors to SUBRECIPIENT.
3. SUBRECIPIENT shall provide a final billing within sixty (60) days from either
 - a) Completion of the Subrecipient Agreement
 - b) Completion of all assigned tasks, or
 - c) Termination of SUBRECIPIENT in accordance with the terms of this Subrecipient Agreement.

All invoices shall be submitted via email to Ms. Bernadette Renaud at Bernadette.renaud@uscar.org.

Invoices must be typed on company letterhead, reference a unique invoice number, invoice date, the number of this Subrecipient Agreement, the Period of Performance, and the DOE Agreement Number.

All program information records should be retained in accordance with Federal Retention guidelines as outlined in 2 CFR 200.333 through 200.337.

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Per the DOE Award, for-profit/large businesses must provide proof of filing of a UCC Financing Statement Form for any equipment purchased under the project with any Subrecipient invoice under which equipment is claimed as an allowable project cost.

If SUBRECIPIENT is required to finalize indirect rates at the end of the fiscal year, USABC mandates that indirect costs billed using provisional billing rates will be trued-up once indirect rates are finalized for the billing period.

All travel expenses require supporting documentation, including purpose and destination. Foreign travel, where applicable, requires pre-approval.

50. FUNDING

SUBRECIPIENT understands that USABC shall monitor annual funding under the DOE Award and may terminate this Subrecipient Agreement at any time in the event that USABC, in USABC's sole discretion, determines that DOE funding is inadequate to support continued participation of SUBRECIPIENT efforts under the Award.

SUBRECIPIENT specifically agrees to contribute non-federal cost share of (??%) of SUBRECIPIENT's total allowable incurred costs of the project. Non-federal cost share contributions will be supplied at the same percentage in each budget period, as well as on each and every invoice and/or claim submitted under this Subrecipient Agreement.

SUBRECIPIENT must refund any excess payments received from USABC, including any costs deemed expressly unallowable under 2 CFR Part 200 Subpart E cost principles. At any time or times before final payment, USABC may have SUBRECIPIENT's invoices and statements of cost audited by the Government. Any payment may be (i) reduced by amounts found not to constitute Allowable Costs; or (ii) adjusted for prior overpayments or underpayments. Prior to the end of the subcontract period of performance, SUBRECIPIENT shall, upon USABC's request, promptly refund to USABC any excess payments received from USABC under the subcontract. Upon the end of the subcontract period of performance (or the termination of the subcontract, if applicable), the SUBRECIPIENT shall promptly refund to USABC any overpayments.

51. ALLOWABLE COSTS

a. Allowable Costs for For-Profit Entities and Certain Non-Profit Organizations.

For for-profit entities and nonprofit organizations listed in Attachment C to OMB Circular A-122 (codified at 2 C.F.R. Part 230), EERE determines the allowability of costs through reference to the for-profit cost principles in the Federal Acquisition Regulations (48 C.F.R. Part 31).

b. Allowable Costs for Nonprofits.

For nonprofit organizations *not listed* in Attachment C to OMB Circular A-122 (codified at 2 C.F.R. Part 230), EERE determines the allowability of costs through reference to the cost principles for nonprofit organizations in OMB Circular A-122 (codified at 2 C.F.R. Part 230).

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c. Allowable Costs for Institutions of Higher Education.

For institutions of higher education, EERE determines the allowability of costs through reference to OMB Circular A-21, “Cost Principles of Educational Institutions” (codified at 2 C.F.R. Part 220).

d. Project Costs.

All project costs must be allowable, allocable, and reasonable. SUBRECIPIENT must document and maintain records of all project costs, including, but not limited to, the costs paid with federal funds, costs claimed by its Subrecipients or suppliers, and project costs that the SUBRECIPIENT claims as non-federal cost share, including any in-kind contributions. SUBRECIPIENT is responsible for maintaining records adequate to demonstrate that costs claimed, at any tier, have been incurred, are reasonable, allowable and allocable, and comply with applicable cost principles. Upon request, SUBRECIPIENT is required to provide such records to USABC. Such records are subject to audit. Failure to provide USABC adequate supporting documentation may result in a determination by USABC that those costs are unallowable and disallowance from any claim, credit, or recovery.

SUBRECIPIENT must obtain prior written approval from the USABC Business Manager for any foreign travel costs.

If the SUBRECIPIENT earns program income during the period of performance as a result of this award, the program income must be added to the total allowable costs, increasing the overall total amount of the federal award (see 2 CFR 200.307 (b)(2)).

52. ACCOUNTING SYSTEM

SUBRECIPIENT shall have and maintain an established accounting system which complies with the cost principles applicable in 2 CFR 910.352 (For-Profit) or 2 CFR 200.400 through 2 CFR 200.475 (University/Non-Profit). SUBRECIPIENT shall further ensure that appropriate arrangements have been made for receiving, distributing and accounting for all funds received and used by SUBRECIPIENT under the Subrecipient Agreement.

All cost sharing or matching contributions, including cash and third-party in-kind, shall satisfy all criteria of 2 CFR 910.130, including but not limited to the following:

- (1) Are verifiable from recipient’s records.
- (2) Are not included as contributions for any other federally assisted project or program.
- (3) Are necessary and reasonable for proper and efficient accomplishment of the project or program objectives.
- (4) Are allowable under the applicable cost principles.
- (5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.
- (6) Are provided for in the approved budget when required by the Federal awarding agency.

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SUBPART D: FOREIGN ENTANGLEMENT AND NATIONAL SECURITY CONSIDERATIONS

53. NATIONAL SECURITY: CLASSIFIABLE RESULTS ORIGINATING UNDER AN AWARD

a. This Subrecipient Agreement is intended for unclassified, publicly releasable research. SUBRECIPIENT will not be granted access to classified information. DOE does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the Subrecipient Agreement may be required. The DOE may review research work generated under this Subrecipient Agreement at any time to determine if it requires classification.

b. Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If you originate information during the course of this Subrecipient Agreement that you believe requires classification, SUBRECIPIENT must promptly:

1. Notify the USABC Contract Officer.
2. Submit the information by registered mail directly to the USABC Contract Officer.
3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 30 days after receipt by USABC.

c. If you originate information concerning the production or utilization of special nuclear material (i.e. plutonium, uranium enriched in the isotope 233 or 235, and any other material so determined under section 51 of the Atomic Energy Act) or nuclear energy, SUBRECIPIENT must:

1. Notify the USABC Contract Officer.
2. Submit the information by registered mail directly to the USABC Contract Officer.
3. Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 90 days after receipt by the USABC Contract Officer.

d. If it is determined any of the information requires classification, SUBRECIPIENT agrees that the Government may terminate the award by mutual agreement in accordance with 2 CFR 200.339 (a) (3). All material deemed to be classified must be forward to the USABC Contract Officer, in a manner specified by USABC.

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e. If USABC does not respond within the specified time periods, SUBRECIPIENT is under no further obligation to restrict access to the information.

54. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

55. PERFORMANCE OF WORK IN UNITED STATES

a. Requirement.

All work performed under this Award must be performed in the United States. This requirement does not apply to the purchase of supplies and equipment; however, SUBRECIPIENT should make every effort to purchase supplies and equipment within the United States. SUBRECIPIENT must flow down this requirement to its subcontractors.

b. Failure to Comply.

If SUBRECIPIENT fails to comply with the Performance of Work in the United States requirement, the USABC Business Manager may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable SUBRECIPIENT cost share. SUBRECIPIENT is responsible should any work under this Award be performed outside the United States, absent a waiver, regardless of if the work is performed by SUBRECIPIENT, subcontractors, vendors or other project partners.

c. Waiver for Work Outside the United States

There may be limited circumstances where it is in the interest of the project to perform a portion of the work outside the United States. To seek a waiver of the Performance of Work in the United States requirement, SUBRECIPIENT must submit a written waiver request to USABC, which includes the following information:

- The countries in which the work is proposed to be performed;
- A description of the work proposed to be performed outside the U.S.;
- Proposed budget of work to be performed; and
- The rationale for performing the work outside the U.S.

For the rationale, SUBRECIPIENT must demonstrate to the satisfaction of EERE that a waiver would further the purposes of the FOA that the Award was selected under and is otherwise in the interests of EERE and the United States. EERE may require additional information before considering a waiver request.

56. FOREIGN NATIONAL INVOLVEMENT

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A “foreign national” is defined as any person who is not a U.S. citizen by birth or naturalization.

If the SUBRECIPIENT (including any of its subrecipients and contractors) anticipates involving foreign nationals in the performance of the Award, the SUBRECIPIENT must, upon DOE’s request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the Award. The DOE Contracting Officer will notify USABC if this information is required.

USABC and/or DOE may elect to deny a foreign national’s participation in the Award. Likewise, DOE may elect to deny a foreign national’s access to DOE sites, information, technologies, equipment, programs, or personnel. DOE’s determination to deny participation or access is not appealable.

57. PROHIBITION RELATED TO FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT PROGRAMS

a. Prohibition

Persons participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk are prohibited from participating in this Award.

SUBRECIPIENT must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the USABC must notify DOE within five (5) business days upon learning that an owner of the Recipient or subrecipient or individual on the project team is or is believed to be participating in a Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk. DOE may modify and add requirements related to this prohibition to the extent required by law.

b. Definitions

1. Foreign Government-Sponsored Talent Recruitment Program.

An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement

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opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

2. Foreign Country of Risk.

DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

58. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

SUBRECIPIENT is prohibited from obligating or expending project funds (federal and non-federal funds) to:

1. Procure or obtain covered telecommunications equipment or services;
2. Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

As described in section 889 of Public Law 115-232, “covered telecommunications equipment or services” means any of the following:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
3. Telecommunications or video surveillance services provided by such entities or using such equipment;
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or

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services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

When the recipient or SUBRECIPIENT accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or SUBRECIPIENT is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

For additional information, see section 889 of Public Law 115-232 and § 200.471.

59. PARTICIPANTS AND OTHER COLLABORATING ORGANIZATIONS

Prior to award, the recipient was required to provide the information below on participants and other collaborating organizations.

Changes to Previously Submitted Information:

If there are any changes to Participants and Collaborating Organizations information previously submitted to DOE, the recipient must submit updated information within thirty (30) calendar days after the end of the quarterly reporting period in which the change occurred. For changes to covered individuals, please refer to the Current and Pending Support term for additional requirements.

A. What individuals have worked on the project

Provide the following information for individuals at the prime recipient and subrecipient level:

1. All covered individuals;
2. and
3. Each person who has worked or is expected to work at least one person month per year on the project regardless of the source of compensation (a person month equals approximately 160 hours of effort):
 - i. Name;
 - ii. Organization;
 - iii. Job Title;
 - iv. Role in the project;
 - v. Start and end date (month and year) working on the project;
 - vi. State, U.S. territory, and/or country of residence;
 - vii. Whether this person collaborated with an individual or entity located in a foreign country in connection with the scope of this award; and
 - viii. If yes to vii, whether the person traveled to the foreign country as part of that collaboration, and, if so, where and what the duration of stay was.

B. Organizations

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Identify all subrecipients, contractors, U.S. National Laboratories, partners, and collaborating organizations. recipients must also include all foreign collaborators as outlined in the Foreign Collaboration Considerations term of the award Terms and Conditions. For each, provide name, UEI, zip code or latitude/longitude, role in the project, contribution to the project, and start and end date.

60. CURRENT AND PENDING SUPPORT

A. Definitions

For purposes of this term, the following definitions are applicable:

1. Current and pending support –
 - i. All resources made available, or expected to be made available, to an individual in support of the individual's RD&D efforts, regardless of:
 - a. whether the source is foreign or domestic;
 - b. whether the resource is made available through the entity applying for an award or directly to the individual; or
 - c. whether the resource has monetary value; and
 - ii. Includes in-kind contributions requiring a commitment of time and directly supporting the individual's RD&D efforts, such as the provision of office or laboratory space, equipment, supplies, employees, or students. This term has the same meaning as the term Other Support as applied to researchers in NSPM-33: For researchers, Other Support includes all resources made available to a researcher in support of and/or related to all of their professional RD&D efforts, including resources provided directly to the individual or through the organization, and regardless of whether or not they have monetary value (e.g., even if the support received is only in-kind, such as office/laboratory space, equipment, supplies, or employees). This includes resource and/or financial support from all foreign and domestic entities, including but not limited to, gifts provided with terms or conditions, financial support for laboratory personnel, and participation of student and visiting researchers supported by other sources of funding.
2. Malign Foreign Talent Recruitment Program as defined in P.L. 117-167, Section 106384(4) –
 - i. Any program, position, or activity that includes compensation in the form of cash, in-kind compensation, including research funding, promised future compensation, complimentary foreign travel, things of non de minimis value, honorific titles, career advancement opportunities, or other types of remuneration or consideration directly

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provided by a foreign country at any level (national, provincial, or local) or their designee, or an entity based in, funded by, or affiliated with a foreign country, whether or not directly sponsored by the foreign country, to the targeted individual, whether directly or indirectly stated in the arrangement, contract, or other documentation at issue, in exchange for the individual—

- a. engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information owned by a United States entity or developed with a federal research and development award to the government of a foreign country, or an entity based in, funded by, or affiliated with a foreign country regardless of whether that government or entity provided support for the development of the intellectual property, materials, or data products;
- b. being required to recruit trainees or researchers to enroll in such program, position, or activity;
- c. establishing a laboratory or company, accepting a faculty position, or undertaking any other employment or appointment in a foreign country or with an entity based in, funded by, or affiliated with a foreign country if such activities are in violation of the standard terms and conditions of a federal research and development award;
- d. being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
- e. through funding or effort related to the foreign talent recruitment program, being limited in the capacity to carry out a research and development award or required to engage in work that would result in substantial overlap or duplication with a federal research and development award;
- f. being required to apply for and successfully receive funding from the sponsoring foreign government's funding agencies with the sponsoring foreign organization as the recipient;
- g. being required to omit acknowledgment of the recipient institution with which the individual is affiliated, or the federal research agency sponsoring the research and development award, contrary to the institutional policies or standard terms and conditions of the federal research and development award;
- h. being required to not disclose to the federal research agency or employing institution the participation of such individual in such program, position, or activity; or
 - i. having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of the federal research and development award; and
 - ii. A program that is sponsored by—

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- a. a foreign country of concern or an entity based in a foreign country of concern, whether or not directly sponsored by the foreign country of concern;
 - b. an academic institution on the list developed under section 1286(c)(8) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; 1 Public Law 115–232); or
 - a foreign talent recruitment program on the list developed under section 1286(c)(9) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; 1 Public Law 115–232).
 - iii. Consistent with applicable law, this provision does not prohibit, unless such activities are funded, organized, or managed by an academic institution or a foreign talent recruitment program on the lists developed under paragraphs (8) and (9) of section 1286(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 4001 note; Public Law 115–232)—
 - a. making scholarly presentations and publishing written materials regarding scientific information not otherwise controlled under current law;
 - b. participation in international conferences or other international exchanges, research projects or programs that involve open and reciprocal exchange of scientific information, and which are aimed at advancing international scientific understanding and not otherwise controlled under current law;
- advising a foreign student enrolled at an institution of higher education or writing a recommendation for such a student, at such student's request; and other international activities determined appropriate by the federal research agency head or designee.

3. Covered Individual:

Covered Individual means an individual who (i) contributes in a substantive, meaningful way to the development or execution of the scope of work of a project funded by DOE, and (ii) is designated as a covered individual by DOE.

DOE designates as covered individuals any principal investigator (PI); project director (PD); co-principal investigator (Co-PI); co-project director (Co-PD); project manager; and any individual regardless of title that is functionally performing as a PI, PD, Co-PI, Co-PD, or project manager. Status as a consultant, graduate (master's or PhD) student, or postdoctoral associate does not automatically disqualify a person from being designated as a "covered individual" if they meet the definition in (i) above.

The recipient is responsible for assessing the applicability of (i) against each person listed on the project (i.e., listed by the recipient in the application for federal financial assistance, approved budget, progress report, or any other report submitted to DOE by the recipient regarding the subject project). Further, the recipient is responsible for identifying any such individual to DOE for designation as a covered individual, if not already designated by DOE as described above.

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The recipient's submission of a current and pending support disclosure and/or biosketch/resume for a particular person serves as an acknowledgement that DOE designates that person as a covered individual.

DOE may further designate covered individuals during the award period of performance.

B. Disclosure Requirements

Prior to award, the Recipient was required to provide current and pending support disclosure statements for each covered individual, as defined by the award Terms and Conditions, at the recipient and subrecipient level, regardless of funding source.

New Covered Individuals:

Prior to starting work on the project, new covered individuals must submit a current and pending support disclosure and biosketch/resume and must receive approval from DOE. R&D covered individuals are encouraged to comply with the Digital Persistent Identifier (PID) and Research Security Training Requirements Terms. The PID and Research Training will be required for all R&D covered individuals on May 1, 2025

Existing Covered Individuals:

Submit an updated current and pending support disclosure within thirty (30) calendar days after the end of the quarterly reporting period in which the change occurred.

Information Required for Each Activity	
Sponsor of the Activity	The sponsor of the activity or the source of funding.
Award Number	The federal award number or any other identifying number.
Award Title	The title of the award or activity. If the title of the award or activity is not descriptive, add a brief description of the research being performed that would identify any overlaps or synergies with the proposed research
Total Cost or Value	The total cost or value of the award or activity, including direct and indirect costs and cost share. For pending proposals, provide the total amount of requested funding
Award Period	The "Start Date" through "End Date".

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Person-months	The person-months of effort per year dedicated to the award or activity.
Description	To identify overlap, duplication of effort, or synergistic efforts, append a description of the other award or activity to the current and pending support.
Details	Details of any obligations, contractual or otherwise, to any program, entity, or organization sponsored by a foreign government must be provided to DOE upon request to either the applicant institution or DOE. Supporting 112 documents of any identified source of support must be provided to DOE on request, including certified translations of any document.
Digital Persistent Identifier (e.g., ORCID iD)	Providing an ORCID iD is optional until May 2025, and required thereafter.
Certification Statement	<p>All covered individuals must provide a separate disclosure statement listing the required information above regarding current and pending support. Each individual must sign and date their respective certification statement:</p> <p>I, [Full Name and Title], understand that I have been designated as a covered individual by the federal funding agency.</p> <p>I certify to the best of my knowledge and belief that the information contained in this Current and Pending Support Disclosure Statement is true, complete, and accurate. I understand that any false, fictitious, or fraudulent information, misrepresentations, half-truths, or omissions of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (18 U.S.C. §§ 1001 and 287, and 31 U.S.C. §§ 3729-3733 and 3801-3812). I further understand and agree that (1) the statements and representations made herein are material to DOE's funding decision, and (2) I have a responsibility to update the disclosures during the period of performance of the award should circumstances change which impact the responses provided above.</p>

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	<p>I also certify that, at the time of submission, I am not a party in a malign foreign talent recruitment program.</p> <p>The following certification is optional until May 1, 2025, and mandatory thereafter:</p> <p>I further certify that within the past 12 months I have completed one of the following: (1) research security training meeting the guidelines in SEC. 10634(b) of 42 USC 19234, or (2) all of the NSF training modules located https://new.nsf.gov/research-security/training.</p>
Foreign Government Sponsorship	<p>Details of any obligations, contractual or otherwise, to any program, entity, or organization sponsored by a foreign government must be provided on request to either the applicant institution or DOE. Supporting documents of any identified source of support must be provided to DOE on request, including certified translations of any document.</p>

The information may be provided in the common disclosure format available at [Common Form for Current and Pending \(Other\) Support \(nsf.gov\)](#) to be implemented by DOE. Regardless of the format used, the individual must still include a signature, date, and a certification statement using the language included in the paragraph above.

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61. PROHIBITION RELATED TO MALIGN FOREIGN TALENT RECRUITMENT PROGRAMS

A. Prohibition

As required by law², covered individuals participating in a *Malign Foreign Talent Recruitment Program* are prohibited from participating in this award.

The recipient must exercise ongoing due diligence to reasonably ensure that no such covered individuals participating on the DOE-funded project are participating in a *Malign Foreign Talent Recruitment Program*. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the recipient must notify DOE within five (5) business days upon learning that an owner of the recipient or subrecipient or individual on the project team is or is believed to be participating in a *Malign Foreign Talent Recruitment Program*. DOE may modify and add requirements related to this prohibition to the extent required by law.

Covered Individuals and the recipient must provide certifications regarding no participation in *Malign Foreign Talent Recruitment Programs* (see the Current and Pending Support section and Transparency of Foreign Connections section).

B. Non-Discrimination

DOE will ensure that the Malign Foreign Talent Recruitment Program Prohibition is carried out in a manner that does not target, stigmatize, or discriminate against individuals on the basis of race, ethnicity, or national origin, consistent with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

C. Definitions – Malign Foreign Talent Recruitment Program has the definition included in section 10638(4) of P.L. 117-167.

1. any program, position, or activity that includes compensation in the form of cash, in-kind compensation, including research funding, promised future compensation, complimentary foreign travel, things of non de minimis value, honorific titles, career advancement opportunities, or other types of remuneration or consideration directly provided by a foreign country at any level (national, provincial, or local) or their designee, or an entity based in, funded by, or affiliated with a foreign country, whether or not directly sponsored by the foreign country, to the targeted individual, whether directly or indirectly stated in the arrangement, contract, or other documentation at issue, in exchange for the individual—
 - i. engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information owned by a United States entity or developed with a federal research and development award to the government of a foreign country, or an entity

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based in, funded by, or affiliated with a foreign country regardless of whether that government or entity provided support for the development of the intellectual property, materials, or data products;

- ii. being required to recruit trainees or researchers to enroll in such program, position, or activity;
- iii. establishing a laboratory or company, accepting a faculty position, or undertaking any other employment or appointment in a foreign country or with an entity based in, funded by, or affiliated with a foreign country if such activities are in violation of the standard terms and conditions of a federal research and development award;
- iv. being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
- v. through funding or effort related to the foreign talent recruitment program, being limited in the capacity to carry out a research and development award or required to engage in work that would result in substantial overlap or duplication with a federal research and development award;
- vi. being required to apply for and successfully receive funding from the sponsoring foreign government's funding agencies with the sponsoring foreign organization as the recipient;
- vii. being required to omit acknowledgment of the recipient institution with which the individual is affiliated, or the federal research agency sponsoring the research and development award, contrary to the institutional policies or standard terms and conditions of the federal research and development award;
- viii. being required to not disclose to the federal research agency or employing institution the participation of such individual in such program, position, or activity; or
- ix. having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of the federal research and development award; and

2. A program that is sponsored by—

- i. a foreign country of concern or an entity based in a foreign country of concern, whether or not directly sponsored by the foreign country of concern;
- ii. an academic institution on the list developed under section 1286(c)(8) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; 1 Public Law 115–232); or
- iii. a foreign talent recruitment program on the list developed under section 1286(c)(9) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; 1 Public Law 115–232).

3. Consistent with applicable law, this provision does not prohibit, unless such activities are funded, organized, or managed by an academic institution or a foreign talent recruitment program on the lists developed under paragraphs (8) and (9) of section 1286(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 4001 note; Public Law 115–232)—

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- i. making scholarly presentations and publishing written materials regarding scientific information not otherwise controlled under current law;
- ii. participation in international conferences or other international exchanges, research projects or programs that involve open and reciprocal exchange of scientific information, and which are aimed at advancing international scientific understanding and not otherwise controlled under current law;
- iii. advising a foreign student enrolled at an institution of higher education or writing a recommendation for such a student, at such student's request; and
other international activities determined appropriate by the federal research agency head or designee.

62. TRANSPARENCY OF FOREIGN CONNECTIONS

The recipient must notify the DOE Grants Officer within fifteen (15) business days of learning of the circumstances listed below in relation to the recipient and subrecipients.

Disclosure exceptions by entity type:

- U.S. National Laboratories and domestic government entities are not required to respond to the Transparency of Foreign Connections disclosure.
- Institutions of higher education are only required to report on items 5 and 7.

For subrecipient reporting requirements, applicability is determined by the subrecipient entity type, regardless of whether the prime recipient was exempt.

Disclosure Information:

1. Any current or pending subsidiary, foreign business entity, or offshore entity that is based in or funded by any foreign country of risk or foreign entity based in a country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an entity owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the recipient or subrecipients that increases foreign ownership related to a country of risk. Each notification shall be accompanied by a complete and up-to-date capitalization table showing all equity interests held including limited liability company (LLC) and partnership interests, as well as derivative securities. Include both the number of shares issued to each equity holder, as well as the percentage of that series and of all equity on fully diluted basis. For each equity holder, provide the place of incorporation and the principal place of business, as applicable. If the equity holder is a natural person, identify the citizenship(s);
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;

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5. Any current or pending technology licensing, transfer or intellectual property sales to a foreign country of risk within the same technology area as the award (e.g., biotechnology, energy generation and storage, advanced computing;
6. Any changes to the recipient or the subrecipients' board of directors, including additions to the number of directors, the identity of new directors, as well as each new director's citizenship, shareholder affiliation (if applicable); each notification shall include a complete up-to-date list of all directors (and board observers), including their full name, citizenship and shareholder affiliation, date of appointment, duration of term, as well as a description of observer rights as applicable; and
7. Any of the following changes to the equipment proposed for use on the project:
 - i. Unmanned aircraft, control, and communication components originally made or manufactured in a foreign country of risk (including relabeled or rebranded equipment).
 - ii. Coded equipment where the source code is written in a foreign country of risk.
 - iii. Equipment from a foreign country of risk that will be connected to the internet or other remote communication system.
 - iv. Any entity from a foreign country of risk that will have physical or remote access to any part of the equipment used on the project after delivery.

Should DOE determine the connection poses a risk to economic or national security, DOE will require measures to mitigate or eliminate the risk.

DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

Recognizing the disclosures may contain business confidential information, subrecipients may submit their disclosures directly to DOE.

63. FOREIGN COLLABORATION CONSIDERATIONS

- A. Consideration of new collaborations with foreign entities, organizations, and governments. The recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations, or governments in connection with its DOE-funded award scope. The recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- B. Existing collaborations with foreign entities, organizations, and governments. The recipient must provide DOE with a written list of all existing foreign collaborations, organizations, and governments in which has entered in connection with its DOE-funded award scope.

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- C. In general, a collaboration will involve some provision of a thing of value to, or from, the recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the award but resulting in provision of a thing of value from or to the award must also be reported. Collaborations do not include routine workshops, conferences, use of the recipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the recipient's standard policies and procedures.

64. RESEARCH SECURITY TRAINING REQUIREMENT

SUBRECIPIENT must maintain a research security training program for covered individuals on the project, consistent with Section 10634 of the CHIPS and Science Act of 2022. Any new covered individuals at the subrecipient level added to the project must certify that they have completed the training within thirty (30) calendar days of the individual joining the project (see Current and Pending Support term for certification instructions).

In addition, SUBRECIPIENT must maintain sufficient records (records must be retained for the time period noted in [2 CFR 200.334](#) and made available to DOE upon request) of their compliance with this requirement for covered individuals at the SUBRECIPIENT organization and they must extend this requirement to any and all its subrecipients. To fulfill this requirement, subrecipients may utilize the four one-hour training modules developed by the National Science Foundation at <https://new.nsf.gov/research-security/training> or develop and implement their own research security training program aligned with the requirements in Section 10634(B) of the CHIPS and Science Act of 2022. Upon completion of the training, SUBRECIPIENT shall provide USABC with copies of the training certificates.

Acceptance of this Subrecipient Agreement or use of the first dollar of award funds constitutes the SUBRECIPIENT'S acceptance of this requirement and all other applicable award requirements.

Covered individuals previously identified by USABC who have already certified and completed the research security training do not need to complete it again, even if they are submitting an updated Current and Pending Support Form during the life of the award.

Covered Individual means an individual who (1) contributes in a substantive, meaningful way to the development or execution of the scope of work of a project funded by DOE, and (2) is designated as a covered individual by DOE.

DOE designates as covered individuals any principal investigator (PI); project director (PD); co-principal investigator (Co-PI); co-project director (Co-PD); project manager; and any individual regardless of title that is functionally performing as a PI, PD, Co-PI, Co-PD, or project manager. Status as a consultant, graduate (master's or PhD) student, or postdoctoral associate does not

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automatically disqualify a person from being designated as a “covered individual” if they meet the definition in (1) above.

USABC’s submission of a current and pending support disclosure and/or biosketch/resume for a particular person serves as an acknowledgement that DOE designates that person as a covered individual.

USABC and/or DOE may further designate covered individuals during the award period of performance.

65. ENTITY OF CONCERN PROHIBITION

No Entity of Concern, as defined in section 10114 of [Public Law 117-167 \(42 USC 18912\)](#), may receive any grant, contract, cooperative agreement, or loan of \$10 million or more in Departmental funds including funds made available by the Consolidated Appropriations Act, 2024 ([Public Law 118-42](#)). In addition, for all awards involving Departmental activities authorized under Public Law 117-167, no Entity of Concern (including an individual that owns or controls, is owned or controlled by, or is under common ownership or control with an Entity of Concern) may receive DOE funds or perform work under the award, subject to certain penalties. See section 10114 of Public Law 117-167 and section 310 of Public Law 118-42 for additional information.

The SUBRECIPIENT shall include this term, suitably modified to identify the parties, in all lower-tier subawards or subcontracts at any tier under this award.

66. ACCESS RESTRICTIONS

The SUBRECIPIENT (including its employees, directors, officers, managers, agents, contractors, or other representatives, and includes the respective successors or assigns of the foregoing) shall not disclose any information that is not publicly available (including technical data, subject inventions, or any other information that is not publicly available or required to be made public under applicable law or regulation) developed under the DOE-funded project with any Recipient subsidiary, affiliate, investor, supplier, licensee at any tier, battery manufacturer for Recipient end customers, or joint development partner that: (1) has a place of incorporation or a principal place of business in a Foreign Country of Risk (for entities) or (2) is a national of a Foreign Country of Risk (for individuals). The Recipient shall also ensure that its subsidiaries or affiliates under its control adhere to this same restriction.

67. REQUIRED RISK MITIGATION

This Subrecipient Agreement is subject to compliance with required DOE Office of Research, Technology, and Economic Security (RTES) mitigation measures, if any. If a subrecipient fails to comply with required RTES mitigation measures, if any, that are specific to that subrecipient, it is grounds for immediate termination of the Subrecipient Agreement.

SUBPART E: MISCELLANEOUS PROVISIONS

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68. DIGITAL PERSISTENT IDENTIFIERS

Throughout the lifetime of the award, those individuals conducting research and development (R&D) under the award at the prime and subaward level must obtain and use a digital persistent identifier (PID) for themselves that meets the common/core standards specified in the NSPM-33 Implementation Guidance or successor guidance (e.g., an ORCID iD). DOE requires recipients of federal awards with R&D activities, or technical assistance that supports R&D activities, to use the PID when publishing R&D outputs when that is an available option. Individuals conducting R&D activities at the prime and subaward level must report their R&D outputs as outlined in the DOE F 4600.2, U.S. Department of Energy “Federal Assistance Reporting Checklist” (FARC). The PID for individuals must be provided when reporting R&D outputs to the Department of Energy Office of Scientific and Technical Information (DOE OSTI).

69. AFFIRMATIVE ACTION AND PAY

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

1. Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
2. Recipients and Contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
3. Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor’s (DOL) Office of federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP’s Technical Assistance Guide should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors, and subcontractors must take. See OFCCP’s Technical Assistance Guide at: <https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec>.

70. POTENTIALLY DUPLICATIVE FUNDING NOTICE

If the SUBRECIPIENT currently has or or receives any other award of federal funds for activities that potentially overlap with the activities funded under this award, the SUBRECIPIENT must promptly notify USABC and DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the

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identical cost items under this award. If there are identical cost items, the SUBRECIPIENT must promptly notify the USABC and the DOE Grants Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

71. IMPACTED INDIAN TRIBES

If any activities anticipated to take place under this agreement could potentially impact the resources or reserved rights of Indian Tribe(s), as defined in 25 U.S.C. § 5304 (e), then the recipient/awardee agrees to develop and maintain active and open communications with the potentially impacted Indian Tribe(s), during the period of performance of the agreement, and, if necessary, after the end of the agreement. If the recipient proposes any activities that could impact Tribal resources or reserved rights, including but not limited to lands, cultural sites, sacred sites, water rights, mineral rights, fishing rights, and hunting rights, the recipient must notify DOE. The recipient/awardee must coordinate with DOE on all Tribal interactions. DOE will determine if formal government-to-government consultation is needed, and DOE will conduct that consultation accordingly.

- Tribal lands is as defined in 25 U.S.C. §§ 3501(2), (3), (4)(A) and (13).
- Indian Tribe is as defined in 25 U.S.C. § 5304 (e).

72. REPORTING EXECUTIVE COMPENSATION

SUBRECIPIENT must complete the attached Exhibit A and return an electronic copy to the USABC Business Point of Contact.

73. IMPLEMENTATION OF EXECUTIVE ORDER 13798, PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY

States, local governments, or other public entities may not condition sub-awards in a manner that would discriminate, or disadvantage sub-recipients based on their religious character.

74. RECORD RETENTION

Consistent with 2 CFR 200.334 through 200.338, the SUBRECIPIENT must retain all federal award records.

75. FOREIGN TRAVEL

The recipient is required to obtain the prior written approval of the Grants Officer for any foreign travel costs.

- To initiate a foreign travel request, submit a foreign work waiver. See Performance of Work in the United States (Foreign Work Waiver) above for details.
- Foreign travel that typically isn't subject to foreign work waivers (e.g., foreign travel to conferences, scholarly workshops, or symposia) still requires a foreign work waiver if the travel is to a foreign country of risk (China, Russia, North Korea, Iran).

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All international travel must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between, or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

76. GOVERNING LAW; JURISDICTION

This Subrecipient Agreement is to be construed according to the laws of the country (and state/province, if applicable) from which it is issued as shown by the address of USABC, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Any action or proceedings by USABC against SUBRECIPIENT may be brought by USABC in any court(s) having jurisdiction over SUBRECIPIENT or, at USABC’s option, in the court(s) having jurisdiction over USABC’s location, in which event SUBRECIPIENT consents to jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by SUBRECIPIENT against USABC may be brought by SUBRECIPIENT only in the court(s) having jurisdiction over the location of USABC from which this contract is issued.

77. NOTICES

Notices pursuant to this Subrecipient Agreement shall be to the following contacts and effective when sent if sent by commercial carrier’s overnight delivery service or when received if sent otherwise:

To SUBRECIPIENT:

Subrecipient Name:

Address:

Attn:

Phone:

With copy to:

To USABC:

USABC LLC
3000 Town Center Suite 35
Southfield, MI 48075

Attention: Bernadette Renaud

Phone:

With copy to:

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78. ORDER OF PRECEDENCE

In the event of any ambiguity, inconsistency, or conflict arising under this Subrecipient Agreement, the following order of precedence shall apply:

- i. The Clauses included within this Subrecipient Agreement, including any clauses incorporated by reference;
- ii. DOE Award DE-EE0011268 (Attachment I)
- iii. SUBRECIPIENT Statement of Work (Attachment II).

79. FURTHER ASSURANCES

The Parties agree to execute any further agreements and provide any requested assurances reasonably necessary for the Parties to effectuate the purpose of this Subrecipient Agreement and to ensure the compliance of USABC with the terms of USABC/DOE Award DE-EE0011268.

80. ENTIRE AGREEMENT

This Subrecipient Agreement, together with the attachments, exhibits, supplements or other terms of the Parties made in connection with the Subrecipient Agreement, constitutes the entire agreement between SUBRECIPIENT and USABC with respect to the matters contained in the Subrecipient Agreement and supersedes all prior oral or written representations and agreements on this DOE project. This Subrecipient Agreement may only be modified by an amendment agreed to by both Parties.

The Parties hereto have executed this Subrecipient Agreement through their duly authorized officers on the dates set forth below.

SUBRECIPIENT INC.	USABC LLC
<div></div>	<div></div>
Signature	Signature
<div></div>	<div></div>
Printed Name	Printed Name
<div></div>	<div></div>
Title	Title
<div></div>	<div></div>
Date	Date
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Attachment I – DOE Award DE-EE0011268

Attachment II – SUBRECIPIENT Statement of Work

Attachment III – Exhibit A, FFATA

Attachment IV- SUBRECIPIENT Budget Justification