

04-13-1999



101010164

NOTION FORM COVER SHEET  
PATENTS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

☒ New

☐ Resubmission (Non-Recordation)

Document ID#

☐ Correction of PTO Error

Reel #

Frame #

☐ Corrective Document

Reel #

Frame #

Conveyance Type

☐ Assignment

☐ Security Agreement

☐ License

☐ Change of Name

☐ Merger

☒ Other ☐ Confirmatory License

U.S. Government

(For Use ONLY by U.S. Government Agencies)

☒ Departmental File

☐ Secret File

Conveying Party(ies)

☐ Mark if additional names of conveying parties attached

Name (line 1) Minnesota Mining & Manufacturing Company

Execution Date  
Month Day Year  
07/01/1998

Name (line 2)

Second Party

Name (line 1) Hydro Quebec

Execution Date  
Month Day Year  
06/18/1998

Name (line 2)

Receiving Party

☐ Mark if additional names of receiving parties attached

Name (line 1) United States Department of Energy

Name (line 2)

Address (line 1) 1000 Independence Avenue

Address (line 2)

Address (line 3) Washington

D.C. USA

20585

City

State/Country

Zip Code

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

FOR OFFICE USE ONLY

**Correspondent Name and Address**

Area Code and Telephone Number

(630) 252-2176

Name Robert J. Fisher

Address (line 1) U.S. Department of Energy

Address (line 2) Office of Intellectual Property Law

Address (line 3) 9800 South Cass Avenue

Address (line 4) Argonne, IL 60439

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

# 31

**Application Number(s) or Patent Number(s)**

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

08/900,428

If this document is being filed together with a new Patent Application, enter the date the patent application was

Month Day Year

**Patent Cooperation Treaty (PCT)**

Enter PCT application number only if a U.S. Application Number has not been assigned.

PCT PCT PCT  
PCT PCT PCT

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment:

Enclosed ☐

Deposit Account ☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the

Deposit Account Number:

#

Authorization to charge additional fees:

Yes ☐

No ☒

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Mark P. Dvorscak, Reg. No. 33,492

Name of Person Signing

*Mark P. Dvorscak*

Signature

3-31-99

Date

# ***CONFIRMATORY LICENSE***

(Advanced Waiver)

Title : Thermal Conductor for High-Energy Electrochemical Cells

Inventor(s) : Joseph A. Hoffman, Michael K. Domroese, David D. Lindeman, Vern E. Radewald, Roger Rouillard, and Jennifer L. Trice

Serial No. : 08/900,428 Filing Date: 7/25/97

Subcontractor : **Minnesota Mining & Manufacturing Company and Hydro Quebec**

DOE Contract No. : **R&D Agreement 93-0025 under DOE Contract No. DE-FC02-91CE50336 with the United States Advanced Battery Consortium**

DOE Case No. : S-88,767

DOE Advanced Waiver No.: W(A)-91-016

Foreign Applications filed in or intended to be filed at Contractor's expense in (countries):

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An advanced waiver of Government rights having been granted by the U.S. Department of Energy (DOE) to the Contractor and the above-identified invention having been reported as a Subject Invention to DOE by the contractor with its election to file a domestic patent application thereon, the earliest effective date of said waiver for the above invention is March 23, 1997.

Accordingly, this document is confirmatory of the paid-up license required to be granted to the Government under 41 CFR 9-9.109.6 and the above-identified contract in this invention, patent application and any resulting patent as well as any continuation, divisional, reissue, supplemental or continuation-in-part thereof, and of all rights acquired by the Government by the referenced patent rights clause, a copy of which is attached hereto and incorporated by reference herein. The undersigned certifies the attached copy to be a true copy of said clause. It is understood and agreed that this license does not preclude the Government from asserting rights under the provisions of said contract or any other agreement between the Government and the Contractor, or any other rights of the Government with respect to the above-identified invention.

The government is hereby granted an irrevocable power to inspect and make copies of the above-identified patent application.

Signed this 1 day of July, 1998.

(SEAL)

MINNESOTA MINING & MANUFACTURING CO.  
(Contractor)

By: Joseph T. Bailey  
Contractor's Official: Joseph T. Bailey  
Title: Research & Development Vice President

Business Address: P. O. Box 33427  
St. Paul, MN 55133-3427

AND

Signed this 18th day of June, 1998.

(SEAL)

HYDRO QUEBEC  
(Contractor)

By: Jean-René Marcoux  
Contractor's Official: Jean-René Marcoux

General Manager  
Title: Direction principale Commercialisation  
de la technologie et Participations

Business Address: 75 Rene-Levesque Blvd. W., 22nd Floor  
Montreal, Que. H2Z 1A4

**ARTICLE 1. AUTHORIZATION AND CONSENT**

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this Agreement or any part hereof or any amendment hereto or any Subcontract hereunder (including all lower-tier Subcontracts hereunder).

**ARTICLE 2. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

The provisions of this article shall be applicable only if the amount of this Agreement exceeds \$10,000.

(a) 3M shall report to the USABC and the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which 3M has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, 3M shall furnish to the Government when requested by the Contracting Officer, all evidence and information in possession of 3M pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where 3M has agreed to indemnify the Government.

(c) This article, including this paragraph (c), shall be included in all Subcontracts under this Agreement.

**ARTICLE 3. REPORTING OF ROYALTIES**

If this Agreement is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the Agreement or are reflected in the Agreement price to the Government, 3M agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this Agreement and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Agreement together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties

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3M/USABC PROPRIETARY  
AND BUSINESS SENSITIVE  
INFORMATION

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PATENT  
REEL: 9876 FRAME: 0903

shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

#### ARTICLE 4. PATENT RIGHTS

##### (a) Definitions.

- (1) "Subject Invention" means any invention or discovery of 3M conceived or first actually reduced to practice in the course of or under this Agreement, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.
- (2) "Contract" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of parties.
- (3) "Government agency" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the Executive Branch of the Government of the United States of America.
- (4) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.
- (5) "Patent Counsel" means the DOE Patent Counsel assisting the procuring activity.

##### (b) Allocation of principal rights.

- (1) Whereas USABC has entered into a Cooperative Agreement No. DE-FC02-91CE50336, with the Department of Energy (DOE) for conducting work in the DOE's Advanced Battery Program, and whereas prior to entering into the Cooperative Agreement, USABC did receive from the DOE an advance waiver of certain rights with respect to intellectual property generated as a consequence of said Cooperative Agreement, said advanced waiver being executed on August 21, 1991, and whereas concurrent with said waiver DOE declared an exceptional circumstance under 35 USC 202 (a) (ii) for funding agreements under said Cooperative Agreement; therefore, pursuant

to said Cooperative Agreement and said advance waiver, the Parties agree that as to any Subject Invention of 3M employees and/or employees of any Subcontractor and/or any Subcontractor who is an individual, USABC hereby grants to 3M and to such Subcontractors the right to elect title thereto pursuant to the terms of said Cooperative Agreement and hereby conveys the entire right, title and interest to such Subject Invention to 3M and/or such Subcontractors including Hydro-Quebec, which conveyance may be confirmed by an appropriate assignment. The election by 3M and its Subcontractors shall be concomitant with the reporting of the Subject Invention to the DOE and USABC.

(2) 3M and/or Subcontractors shall retain the entire right, title and interest throughout the world to each Subject Invention subject to the provisions of this Article 4.

(3) 3M agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent rights are waived to, and retained by 3M and/or a Subcontractor under the terms of the Exceptional Circumstances Determination and the Statement of Considerations and pursuant to paragraph (c) of this Article 4.

(c) Rights to the Contractor.

(1) Minimum Contractor license. 3M, Hydro-Quebec and USABC reserve an irrevocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to 3M's, Hydro-Quebec's and USABC's domestic subsidiaries and affiliates, if any, within the corporate structure of which 3M, Hydro-Quebec and USABC are a part and shall include the right to grant sublicenses of the same scope to the extent 3M, Hydro-Quebec and USABC were legally obligated to do so at the time this Agreement was awarded. The license shall be transferable only with approval of DOE except when transferred to the successor of that part of the business to which the invention pertains.

(2) Election to retain waived rights.

- (i) Subject to the provisions of paragraph (c)(3) and paragraph (d) of this clause, with respect only to a Subject Invention reported in accordance with paragraph (e)(2)(i) of this clause and with the written report of which is included an election by 3M identifying the party retaining title to the rights in the invention waived herein, rights in patent applications and

patents will be reserved as follows: The election by 3M will specify that title will be retained by 3M and Hydro-Quebec jointly, or by 3M individually or by Hydro-Quebec individually. The party(ies) so specified will be referred to as the "Party retaining title" hereafter. The Party retaining title reserves the entire domestic right, title and interest in any United States patent application on the Subject Invention filed and any resulting United States patent secured by the Party retaining title.

- (ii) Subject to the provisions of paragraph (c)(3) and paragraph (d) of this clause, with respect only to a Subject Invention reported in accordance with paragraph (e)(2)(i) of this clause and with the written report of which is included an election by 3M as to whether an identified party will retain the rights in the invention waived herein and a statement specifying those foreign countries in which such rights will be retained, and subject to DOE security regulations and requirements, 3M and/or Hydro-Quebec jointly or individually will reserve the entire right, title and interest in any foreign patent application on the Subject Invention filed and any resulting foreign patent secured by 3M and/or Hydro-Quebec in those foreign countries specified. The party(ies) so specified will also be referred to as the "Party retaining title" hereafter.

(3) Terms and Conditions of Waived Rights.

- (i) Subject to the rights granted in paragraph (c)(1) of this clause, 3M and/or Hydro-Quebec, as the case may be, agrees to reconvey to the USABC, and if the USABC declines, to convey to the Government, upon request, the entire domestic right, title, and interest in any Subject Invention when ~~3M and/or Hydro-Quebec, as the case may be.~~
  - (A) ~~3M~~ Does not elect pursuant to paragraph (c)(2)(i) of this clause to retain such rights (DOE may only request title within 60 days after learning of 3M's ~~and/or Hydro-Quebec's~~ failure to elect within the specified time);
  - (B) ~~3M and/or Hydro-Quebec, as the case may be,~~ Fails to have a United States patent application filed on the invention in accordance with paragraph (d)(1) of this clause, or decides not to continue prosecution of such application; or



- (C) ~~3M and/or Hydro-Quebec, as the case may be.~~ At any time, no longer desires to retain title except where transfer of title occurs pursuant to the Statement of Considerations.
- (ii) Subject to the rights granted in paragraph (c)(1) of this clause, 3M and/or Hydro-Quebec, as the case may be, agrees to reconvey to the USABC and if the USABC declines, to convey to the Government, upon request, the entire right, title, and interest in any Subject Invention in any foreign country if ~~3M and/or Hydro-Quebec, as the case may be.~~
- (A) ~~3M~~ Does not elect pursuant to paragraph (c)(2)(ii) of this clause to retain such rights in the country (DOE may only request title within 60 days after learning of 3M's ~~and/or Hydro-Quebec's~~ failure to elect within the specified time); or
- (B) ~~3M and/or Hydro-Quebec, as the case may be.~~ Fails to have a patent application filed in the country on the Subject Invention in accordance with paragraph (d)(3) of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, 3M and/or Hydro-Quebec shall notify USABC and the Patent Counsel not less than 60 days before the expiration period for any action required by the foreign Patent Office.
- (iii) Conveyance requested pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this clause shall be made by delivering to the Patent Counsel or to USABC when USABC takes title duly executed instruments and such other papers as are deemed necessary to vest in the USABC or the Government the entire right, title, and interest in the invention to enable USABC or the Government to apply for and prosecute patent applications covering the invention in this or the foreign country, respectively, or otherwise establish its ownership of the invention.
- (iv) For each invention in which ~~3M and/or Hydro-Quebec~~ initially elects pursuant to (c)(2)(i) or (c)(2)(ii) of this clause not to retain the rights waived, ~~3M and/or Hydro-Quebec~~ shall inform USABC and the Patent Counsel promptly in writing of the date and identity of any on sale, public use, or public disclosure of the invention which may constitute a statutory

bar under 35 USC 102, which was authorized by or known to 3M and/or ~~Hydro-Quebec~~, or any contemplated action of this nature.

(v) Government License

With respect to any Subject Invention in which 3M and/or Hydro-Quebec or USABC retains 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.

(vi) Reporting on Utilization of Subject Inventions

The Party retaining title agrees to submit on request periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Party retaining title or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Party retaining title, and such other data and information as DOE may reasonably specify. The Party retaining title also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by DOE in accordance with paragraph (c)(3)(viii) of this clause. To the extent data or information supplied under this paragraph is considered by the Party retaining title or USABC, its licensee or assignee to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 USC 202(c)(5), it will not disclose such information to persons outside the Government.

(vii) Preference for United States Industry

The Party retaining title agrees that it will not 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 or produced through the use of 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 Party retaining title 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.

(viii)

**March-in Rights**

The Party retaining title agrees that with respect to any Subject Invention in which it and/or Hydro-Quebec has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of DOE to require the Party retaining title, or an exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Party retaining title, an assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

- [1] Such action is necessary because the Party retaining title or a licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;
- [2] Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Party retaining title, or an assignee, or a licensee;
- [3] Such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the Party retaining title or its licensee; or
- [4] Such action is necessary because the agreement required by paragraph (c)(3)(vii) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(ix)

**U.S. Competitiveness**

- [1] The Party retaining title to a Subject Invention, shall, at the DOE's request, grant a sublicense under the Subject Invention, or any patent or patent application based thereon, to a U.S. owned or controlled company identified by DOE to the Party retaining title if the Party retaining title transfers title in the Subject Invention to a company or entity which is majority-owned or controlled, directly or

indirectly, by a non-U.S. company or entity and the non-U.S. company or entity is other than 3M, Hydro-Quebec, Hydro-Quebec Related Corporations, or the Joint Venture.

- [2] In the event the Party retaining title to a Subject Invention decides to grant licenses under a Subject Invention, or patent or patent application based thereon, to a party other than a 3M Related Corporation, Hydro-Quebec, a Hydro-Quebec Related Corporation, or the Joint Venture, the Party retaining title will give preference to U.S. manufacturers who have demonstrated capability of providing high quality product and services.
- [3] Subject to Paragraph (ix)(4) below, the Party retaining title in a Subject Invention shall not grant or transfer to a company which is majority owned or controlled, directly or indirectly, by a non-U.S. company or entity the right to manufacture products embodying the Subject Invention or produced through the use of a Subject Invention in a foreign country without the express written approval of DOE.
- [4] By reviewing and approving this Agreement, the DOE hereby approves any grant or transfer of the right to manufacture products embodying a Subject Invention or produced through the use of a Subject Invention in a foreign country by the Party retaining title to a Subject Invention to Hydro-Quebec, Related Corporations of 3M and/or Hydro-Quebec, or the Joint Venture, with the proviso that 3M Related Corporations, Hydro-Quebec, Hydro-Quebec Related Corporations, and the Joint Venture will not sell in the United States products embodying a Subject Invention or produced through the use of a Subject Invention unless they are manufactured substantially in the U.S. or Canada, without the express written approval of DOE.
- [5] 3M shall include Subparagraphs (1), (2) and (4) of Section (c)(3)(ix), "U.S. Competitiveness", of Article 4, "Patent Rights", of Appendix B to the Cooperative Agreement in any Subcontract under which a Subcontractor may take title to a Subject Invention. Such Subparagraphs of Section (c)(3)(ix) shall be modified in each such Subcontract to (a) substitute the name of the Subcontractor

for the name "USABC" each place it appears, and (b) provide that such Section shall not apply to, or restrict in any way, the assignment of the entire right, title and interest in a Subject Invention or the grant of a license, whether exclusive or otherwise, under a Subject Invention or any patent or patent application thereon, to 3M and/or Hydro-Quebec, per this subparagraph (c)(3)(ix), U.S. Competitiveness, of this Article 4. 3M shall include this Section (c)(3)(ix) in any R&D Subcontract with a 3M Related Corporation or Hydro-Quebec Related Corporation.

- [6] Subparagraphs (1), (2), (3) and (4) of this Section (3)(c)(ix) shall be included in any contract under which the Joint Venture is transferred title to a Subject Invention by the Party retaining title. Such Subparagraphs shall be modified in such contract to substitute the name of the Joint Venture for the term "Party retaining title" in each place it appears.

(4) Terminations.

- (i) Any waiver or retention of rights by 3M under paragraphs (b)(2), (c)(1), or (c)(2) of this clause may be terminated at the discretion of the Secretary or his designee, in whole or in part, if the request for waiver or retention of rights by USABC is found to contain false material statements or nondisclosure of material facts, and such were specifically relied upon in reaching the waiver determination or the agreement to the retention of rights by USABC or 3M.
- (ii) Any waiver of the rights retained in accordance with paragraph (c)(2), as applied to particular inventions, may be terminated at the discretion of the Secretary or his designee, in whole or in part, if USABC or 3M fails to comply with the provisions set forth in paragraph (c)(3) and paragraph (d) of this clause, and such failure is determined by the Secretary or his designee to be material and detrimental to the interests of the United States and the general public.

- (iii) Prior to terminating any waiver of rights under paragraph (c)(4)(i) or (c)(4)(ii) of this clause, USABC and 3M will be given written notice of the intention to terminate the waiver of rights, the extent of such proposed termination and the reasons therefor, and a period of 30 days, or such longer period as the Secretary or his designee shall determine for good cause shown in writing, to show cause why the waiver of rights should not be so terminated.
- (iv) All terminations of waivers of rights under paragraph (c)(4)(ii) shall be subject to the rights granted in paragraph (c)(1) of this clause, and termination shall normally be partial in nature, requiring 3M to grant nonexclusive or partially exclusive licenses to responsible applicants upon terms reasonable under the circumstances.
- (v) The DOE recognizes that 3M did not participate in the USABC's request for waiver and that 3M may be unduly harmed by a termination of the USABC waiver. If the USABC waiver is terminated, the DOE will provide 3M an opportunity to submit a waiver in its own behalf and shall give full consideration on 3M's reliance on the USABC waiver together with participation in cost sharing in this Program. In no event will any termination of 3M's rights under this paragraph (c)(4) diminish or in any way adversely effect the rights obtained by USABC relative to Subject Inventions under the Cooperative Agreement No. DE-FC02-91CE50336.

(5) Effective Date of Waivers.

The waiver of rights in a Subject Invention shall be effective on the following dates:

- (i) For advance waivers of identified inventions, i.e., inventions conceived prior to the effective date of this Agreement, on the effective date of the Agreement even though the advance waiver may have been requested after that date;
- (ii) For identified inventions under advance waivers, i.e., inventions conceived or first actually reduced to practice after the effective date of the Agreement, on the date the invention is reported with the election to retain the waived rights in that invention; and

- (iii) For waivers of identified inventions (other than under an advance waiver), on the date of the letter notifying the requestor that the waiver has been granted.

(d) Filing of Patent Applications.

(1) With respect to each Subject Invention in which the Party retaining title elects to retain domestic rights pursuant to paragraph (c)(2)(i) of this clause, the Party retaining title shall have a domestic patent application filed on the invention within 6 months after submission of the invention disclosure pursuant to paragraph (e)(2)(i) of this clause, or such longer period of time as may be approved by the Patent Counsel for good cause shown in writing by 3M. With respect to the invention, the Party retaining title shall promptly notify USABC and the Patent Counsel of any decision not to file an application.

(2) For each Subject Invention on which a domestic patent application is filed by the Party retaining title, the Party retaining title shall:

- (i) Within 2 months after the filing or within 2 months after submission of the invention disclosure if the patent application previously has been filed, deliver to USABC and Patent Counsel a copy of the application as filed including the filing date and serial number;
- (ii) Within 6 months after filing the application or within 6 months after submitting the invention disclosure if the application has been filed previously, deliver to the Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and provide DOE an irrevocable power to inspect and make copies of the patent application filed;
- (iii) Provide USABC and the Patent Counsel with a copy of the patent within 2 months after a patent is issued on the application;
- (iv) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify USABC and the Patent Counsel of any decision not to continue prosecution of the application and deliver to the Patent Counsel executed instruments granting the Government a power of attorney; and

- (v) Include the following statement in the second paragraph of the specification of the application and any patents issued on a Subject Invention, "The Government of the United States of America has rights in this invention pursuant to Cooperative Agreement No. DE-FC02-91CE50336 awarded by the U.S. Department of Energy".

(3) With respect to each Subject Invention in which 3M has elected pursuant to paragraph (c)(2)(ii) of this clause to retain the patent rights waived in specified foreign countries, or in which 3M has obtained a waiver of foreign rights on an identified invention:

- (i) The Party retaining title shall file a patent application on the invention in each specified foreign country in accordance with applicable statutes and regulations and within one of the following periods:
  - (A) Eight months from the date of filing a corresponding United States application, or if such an application is not filed, six months from the date the invention is submitted in a disclosure pursuant to paragraph (e)(2)(i) of this clause;
  - (B) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application where such filing has been prohibited by security reasons; or
  - (C) Such longer period as may be approved by the Patent Counsel for good cause shown in writing by the Party retaining title.
- (ii) The Party retaining title shall notify USABC and the Patent Counsel promptly of each foreign application filed and upon written request shall furnish an English version of the application without additional compensation.

(e) Invention identification, disclosures, and reports.

(1) 3M shall establish and maintain active and effective procedures to ensure that Subject Inventions of 3M employees are promptly identified and timely disclosed. Those procedures shall include the maintenance of laboratory notebooks or equivalent records and any other records that are reasonably necessary to document the conception and/or



the first actual reduction to practice of Subject Inventions of 3M employees, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, 3M shall furnish the Contracting Officer a description of these procedures so that he may evaluate and determine their effectiveness.

(2) 3M shall furnish USABC and the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) on a DOE-approved form:

- (i) A written report containing full and complete technical information concerning each Subject Invention of 3M employees within 6 months after conception or first actual reduction to practice whichever occurs first in the course of or under this Agreement, but in any event prior to any on sale, public use or public disclosure of such inventions known to 3M. The report shall identify the Agreement and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any election of foreign patent rights under paragraph (c)(2)(ii) of this clause and any election of rights under paragraph (c)(2)(i) of this clause. Any requests for greater rights shall be made within the period set forth in paragraph (b)(2) of this clause. When an invention is reported under this paragraph (e)(2)(i), it shall be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 USC 5908 unless 3M contends it was not so made in accordance with paragraph (g)(2)(ii) of this clause.
- (ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing Subject Inventions of 3M employees and Subcontracts awarded containing a Patent Rights clause for that period and certifying that:
  - (A) 3M's procedures for identifying and disclosing Subject Inventions of 3M employees as required by this paragraph (e) have been followed throughout the reporting period;
  - (B) All Subject Inventions of 3M employees have been disclosed or that there are no such inventions;

- (C) All Subcontracts containing a Patent Rights clause have been reported or that no such Subcontracts have been awarded; and
- (iii) A final report on a DOE-approved form within 3 months after completion of the Agreement work listing all Subject Inventions of 3M employees and all Subcontracts awarded containing a Patent Rights clause and certifying that:
  - (A) All Subject Inventions of 3M employees have been disclosed or that there were no such inventions; and
  - (B) All Subcontracts containing a Patent Rights clause have been reported or that no such Subcontracts have been awarded.

(3) 3M shall obtain patent agreements to effectuate the provisions of this clause from all persons in its employ who perform any part of the work under this Agreement except nontechnical personnel, such as clerical employees and manual laborers.

(4) 3M agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause. If the Party retaining title is to file a foreign patent application on a Subject Invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d)(1) of this clause, or for up to the period specified on the restrictive legend authorized by the CRADA, but in no event shall the Government or its employees be liable for any publication thereof.

(f) Publication.

It is recognized that during the course of the work under this Agreement, 3M or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this Agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Party retaining title, patent approval for release or publication shall be secured from Patent Counsel prior to any such release or publication.

(g) Forfeiture of rights in unreported Subject Inventions.

(1) 3M shall forfeit to the Government, at the request of the Secretary or his designee, all rights in any Subject Invention of its own and any Subject Invention of any R&D

Subcontractor of which it is aware which 3M or its R&D Subcontractor, as the case may be, fails to report to Patent Counsel (with notification by Patent Counsel to the Contracting Officer) within six months after the time 3M or its R&D Subcontractor, as the case may be, :

- (i) Files or causes to be filed a United States or foreign patent application thereon; or
- (ii) Submits the final report required by paragraph (e)(2)(ii) of this clause, whichever is later.

(2) However, 3M shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (g), 3M or its R&D Subcontractor:

- (i) Prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the Agreement and delivers the same to Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or
- (ii) Contending that the invention is not a Subject Invention 3M or its R&D Subcontractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or
- (iii) Establishes that the failure to disclose did not result from 3M's or its R&D Subcontractor's fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Secretary or his designee to be forfeited (such determination to be a final decision under the Disputes Clause of this Agreement), 3M and/or the Party retaining title shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (g) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Invention.

(4) A forfeiture by 3M under this paragraph (g) to rights in a Subject Invention shall not affect the rights of USABC to such Subject Invention as provided under the Cooperative Agreement No. DE-FC02-91CE50336.

(h) Examination of Records Relating to Inventions.

(1) The Contracting Officer, or his authorized representative, until the expiration of 3 years after final payment under this Agreement, shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of 3M which the Contracting Officer or his authorized representative reasonably deem pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records and documents of 3M relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this Agreement to determine whether any such inventions are Subject Inventions, if 3M refuses or fails to:

- (i) Establish the procedures of paragraph (e)(1) of this clause; or
- (ii) Maintain and follow such procedures; or
- (iii) Correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies 3M of such a deficiency.

(i) [Reserved]

(j) Subcontracts Under This Agreement.

(1) For the purpose of this paragraph the term "R&D Subcontractor" means the party being awarded a R&D Subcontract hereunder, regardless of tier.

(2) Unless otherwise authorized or directed by DOE, 3M shall include the Patent Rights article of 41 CFR 9-9.107-5(a) or 41 CFR 9-9.107-6 as appropriate, modified to reflect the terms of the Statement of Considerations and the Exceptional Circumstances Determination and the identity of the parties in any lower tier R&D Subcontract hereunder having as a purpose the conduct of research, development, or demonstration work. In the event of refusal by a lower tier R&D Subcontractor to accept this article, or if in the opinion of the R&D Subcontractor this article is inconsistent with DOE's patent policies, the R&D Subcontractor: (a) Shall promptly submit written notice to USABC setting forth reasons for the lower tier R&D Subcontractor's refusal and other pertinent information

which may expedite disposition of the matter; and (b) Shall not proceed with the lower tier R&D Subcontract without the written authorization of USABC and the Contracting Officer.

In any R&D Subcontract with a U.S. small business, U.S. university, or U.S. nonprofit organization where the patent clause of 41 CFR 9-9.107-5(a) is included delete paragraph (k).

In any R&D Subcontract with a U.S. small business, U.S. university or U.S. nonprofit organization including a patent clause, provide the following notice and a copy of Attachment 2 to this Agreement by the time of execution of the R&D Subcontract.

If you are a small business, nonprofit, or University your contract, which relates to the Department's Advance Battery Program, is subject to a class exceptional circumstances determination (a copy of which is attached hereto as Attachment 1) by DOE in accordance with 35 U.S.C. 202(b)(1). The effect of this determination is that the patent clause of your contract allocates patent rights to the Government in order to better promote the policies and objectives of Chapter 18, Title 35 of the U.S. Code. You may appeal this determination by providing written notice to DOE Patent Counsel within 30 working days of your receipt of this notice.

(3) Except as may be otherwise provided in this article and in the Statement of Considerations and Exceptional Circumstances Determination, 3M shall not, in any R&D Subcontract hereunder or by using a R&D Subcontract hereunder as consideration therefor, acquire any rights in said R&D Subcontractor's Subject Invention for 3M's own use (as distinguished from such rights as may be required solely to fulfill 3M's obligations to the Government in the performance of this Agreement).

(4) A copy of all invention disclosures, reports, instruments, and other information required to be furnished by 3M to DOE under the provisions of a Patent Rights article in any R&D Subcontract hereunder, shall be furnished to DOE.

(5) 3M shall promptly notify the Contracting Officer in writing upon the award of any Subcontract containing a Patent Rights clause by identifying 3M, the work to be performed under the R&D Subcontract, and the dates of award, and estimated completion.

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(6) 3M shall identify all Subject Inventions of 3M of which it acquires knowledge in the performance of this Agreement and shall notify the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any R&D Subcontract clause granting rights to the Government in Subject Inventions, and 3M hereby assigns to the Government all rights that 3M would have to enforce 3M's obligations for the benefit of the Government with respect to Subject Inventions. 3M shall not be obligated to enforce the agreements of any R&D Subcontractor hereunder relating to the obligations of the R&D Subcontractor to the Government regarding Subject Inventions.

(k) Background Patents.

(1) "Background Patent" means a domestic patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by 3M at any time through the completion of this Agreement:

- (i) Which 3M, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
- (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this Agreement.

(2) 3M agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any Background Patent for purposes of practicing battery technology developed under this Agreement for Electric Vehicle Applications by or for the Government in research, development, and demonstration work only.

(3) 3M also agrees that upon written application by DOE, it will grant to responsible parties, in accordance with procedures similar to 37 CFR 401.6 and any supplemental regulations of DOE, for purposes of practicing battery technology developed under this Agreement for Electric Vehicle Applications, nonexclusive licenses under any Background Patent on terms that are reasonable under the circumstances. If, however, 3M believes that exclusive or partially exclusive rights are necessary to achieve expeditious

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commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by 3M.

(4) Notwithstanding the foregoing paragraph (k)(3), 3M shall not be obligated to license any Background Patent if 3M provides reasonable basis to the satisfaction of the Secretary or his designee that:

- (i) a competitive alternative to the subject matter covered by said Background Patent is commercially available or readily introducible from one or more other sources; or
- (ii) 3M or its licensees are supplying the subject matter covered by said Background Patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) Atomic Energy.

(1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by 3M or its employees with respect to any invention or discovery made or conceived in the course of or under this Agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, 3M will obtain patent agreements to effectuate the provisions of paragraph (1)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(m) Limitation of rights.

Nothing contained in this Patent Rights clause shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in the Patent Rights clause of this Agreement with respect to Background Patents.

# ARTICLE 5. RIGHTS IN TECHNICAL DATA - LONG FORM

## (a) Definitions.

(1) "Technical Data" means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog items identification, and related information. Technical Data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary Data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

- (i) Are not generally known or available from other sources without obligation concerning this confidentiality;
- (ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and
- (iii) Are not readily available to the Government without obligation concerning their confidentiality.

(3) "Contract Data" means technical data first produced in the performance of this Agreement, technical data which are specified to be delivered in this Agreement, technical data that may be called for under the "Additional Technical Data Requirements" article of this Agreement, if any, or technical data actually delivered in connection with this Agreement.

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(4) "Unlimited Rights" means rights to use, duplicate, or disclose Technical Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(5) "Protected Battery Information" means technical data or commercial or financial information, first produced in the performance of this Agreement which, if it had been obtained from and first produced by a non-Federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4), and which is marked as being Protected Battery Information by a party to this Agreement.

(b) Allocation of rights.

(1) Subject to the provisions of Paragraph (i) of this Article 5, the Government shall have:

- (i) Unlimited Rights in Contract Data except as otherwise provided below with respect to Proprietary Data and Protected Battery Information.
- (ii) The right to remove, cancel, correct or ignore any markings not authorized by the terms of this Agreement on any Technical Data furnished hereunder, if in response to a written inquiry by DOE concerning the propriety of the markings, 3M fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify 3M of the action taken.
- (iii) No rights under this Agreement in any Technical Data which are not Contract Data.

(2) 3M shall have:

- (i) The right to withhold Proprietary Data in accordance with the provisions of this article, and
- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Agreement or the CRADA between 3M, Hydro-Quebec and Argonne National Laboratory, Contract Data it first produces in the performance of this Agreement provided the data requirements of this Agreement have been met as of the date of the private use of such

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data. 3M agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, 3M shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer. Prior to disclosure, the DOE shall notify 3M of its intent to furnish or provide access to such Proprietary Data or other technical, business or financial data and permit 3M to refuse to receive or have access to the data if 3M does not wish to accept the data under the terms of the restrictive legend.

(3) Nothing contained in this "Rights in Technical Data" article shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) Copyrighted material.

(1) 3M shall not, without prior written authorization of the Contracting Officer, establish a claim to statutory copyright in any Contract Data first produced in the performance of the Agreement. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit and perform any such data copyrighted by 3M.

(2) 3M agrees not to include in the Technical Data delivered under the Agreement any material copyrighted by 3M and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If such royalty-free license is unavailable and 3M nevertheless determines that such copyrighted material must be included in the Technical Data to be delivered, rather than merely incorporated therein by reference, 3M shall request the written authorization of the Contracting Officer to include such copyrighted material in the Technical Data without a license.

(d) Subcontracting Under this Agreement.

It is the responsibility of 3M to obtain from its Subcontractors hereunder Technical Data and rights therein, on behalf of the Government, necessary to fulfill 3M's obligations to the

Government with respect to such data. In the event a Subcontractor refuses to accept an article affording the Government such rights, 3M shall:

- (1) Promptly submit written notice and a proposed Subcontract to the Contracting Officer setting forth any modifications to the article and reasons for the modifications and other pertinent information which may expedite disposition of the matter; and
- (2) Shall proceed with said Subcontract unless the Contracting Officer objects in writing to such modifications within 20 days from the date of receipt of such notice.

(e) Withholding of Proprietary Data.

Notwithstanding the inclusion of the "Additional Technical Data Requirements" article in this Agreement or any provision of this Attachment 4 specifying the delivery of Technical Data, 3M may withhold Proprietary Data from delivery, provided that 3M furnishes in lieu of any such Proprietary Data so withheld Technical Data disclosing the source, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("Form, Fit and Function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.) or a general description of such Proprietary Data where "Form, Fit and Function" data are not applicable. The Government shall acquire no rights to any Proprietary Data so withheld except that such data shall be subject to the "Inspection rights" provisions of paragraph (f), and, if included, the "Limited rights in Proprietary Data" provisions of paragraph (g) and the "Contractor licensing" provisions of paragraph (h).

(f) Inspection rights.

Except as may be otherwise specified in this Attachment 4 for specific items of Proprietary Data which are not subject to this paragraph, the Contracting Officer's representatives, at all reasonable times up to three (3) years after final payment under this Agreement, may inspect at 3M's facility any Protected Battery Information and Proprietary Data withheld under paragraph (e) and not furnished under paragraph (g), if included, for the purposes of verifying that such data properly fell within the withholding provision of paragraph (e), or for evaluating work performance.

(g) Limited rights in Proprietary Data.

3M shall, upon written request from the Contracting Officer at any time prior to one (1) year after final payment by the DOE under this Agreement, promptly make available to the Government at 3M's or its Subcontractor's facilities any Proprietary Data withheld pursuant to

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paragraph (e) of the Rights in Technical Data clause of this Agreement. The following legend is authorized to be affixed on any Proprietary Data delivered to or removed by DOE from such facilities pursuant to this provision, provided Proprietary Data meets the conditions for initial withholding under Paragraph (e) of the Rights in Technical Data clause. The Government will thereafter treat the Proprietary Data in accordance with such legend.

#### LIMITED RIGHTS LEGEND

This Proprietary Data, furnished under Cooperative Agreement DE-FC02-91CE50336 with the United States Department of Energy, may be used by DOE with the express limitations that the Proprietary Data be retained in confidence and may not be disclosed outside the Government except to support service contractors and National Laboratory contractors who are not reasonably expected to be present or potential competitors of 3M for evaluation of the battery forming the subject matter of the above identified agreement and under the restriction that the Proprietary Data be retained in confidence and not be further disclosed. Thereafter all such Proprietary Data must be returned to the Participant or, with written certification by the Contracting Officer to Participant, destroyed.

#### (h) Contractor licensing.

Except as may be otherwise specified in this Attachment 4 as Technical Data not subject to this paragraph and provided the battery for electric vehicles is developed to the point of practical application under this Agreement and is not available for sale in the United States, DOE shall have the right, in accordance with procedures similar to those in 37 CFR 401.6 and any supplemental regulations of DOE, and upon written application by DOE, to require 3M to grant to the Government and responsible third parties for purposes of making, using and selling such battery for Electric Vehicle Applications, a nonexclusive license in any Contract Data owned or controlled by 3M and specifically used in performing this Agreement and which are Proprietary Data, on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality, provided, however, 3M shall not be obligated to license any such data if 3M provides a reasonable basis that:

- (1) Such data are not essential to the manufacture of such battery;
- (2) Such data, in the form of results obtained by their use, have a commercially competitive alternative available or readily introducible from one or more other sources;
- (3) Such data, in the form of results obtained by their use, are being supplied by 3M or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or

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3M or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by its use;

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing batteries of the same general type and character necessary to achieve the contract results; or

(5) Such data are available for licensing to responsible third parties on reasonable terms and conditions by 3M.

This paragraph (h) shall be included in all R&D Subcontracts except R&D Subcontracts with a small business, university, or nonprofit organization.

(I) Protected Battery Information

(1) Information Available to the Public

(a) 3M and Hydro-Quebec agree that the types of Technical Data and commercial or financial information which will be listed in Attachment 8 once the content of that attachment has been agreed upon by the parties as contemplated in Paragraph (I)(2)(f) of this Article 5 shall not be considered proprietary and shall be provided to the Government when requested without any claim that the information is to be protected as Protected Battery Information. DOE, 3M and Hydro-Quebec agree that it is necessary for this type of information to be publicly available.

(b) The parties agree, however, that notwithstanding the foregoing list of the types of information to be publicly available, nothing precludes the Government from seeking delivery of additional Technical Data and commercial or financial information in accordance with this Agreement or from making publicly available additional non-proprietary or non-protected Technical Data and information, nor does the foregoing list constitute any admission by the Government that Technical Data or commercial or financial information not on the list is proprietary.

(2) Protected Battery Information

(a) Except for items of Technical Data or commercial or financial information subject to subparagraph (1)(a) of this paragraph (i) of this Article 5, 3M and its Subcontractors may claim as Protected Battery Information any information first

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produced in the performance of this Agreement which meets the definition for "Protected Battery Information" set forth in paragraph (a)(5) of this clause.

(b) 3M and/or its Subcontractors shall mark any such Protected Battery Information delivered to the Government with the following legend and such other legends, restrictions or limitations on use or disclosure as may be applicable or appropriate. To the extent the Government agrees that the information is properly marked, any such claimed Protected Battery Information delivered to the Government with the proper marking will be treated as such, and except as ordered by a court of competent jurisdiction or otherwise provided herein, will not be published, disseminated, or disclosed to others outside the Government by the Government for a period of five years after completion of the Program without the prior written authorization of 3M.

#### "PROTECTED BATTERY INFORMATION"

"This Protected Battery Information was produced under Cooperative Agreement No. DE-FC02-91CE50336 with the U.S. Department of Energy and may not be published, disseminated or disclosed to others by the Government unless otherwise authorized in the Cooperative Agreement until five (5) years after the completion of the Program during termination or expiration of the Research and Development Agreement between USABC and 3M under which it was developed unless express written authorization is obtained from 3M. Upon expiration of the period of protection set forth in this legend, the Government shall have unlimited rights in this data. This legend shall be marked on any reproduction of this data, in whole or in part."

(c) Any such marked Protected Battery Information may be disclosed under obligations of confidentiality for the following purposes:

(i) This Protected Battery Information may be disclosed for evaluation purposes under the restriction that such data be retained in confidence and not be further disclosed.

(d) 3M shall have the right to license such Protected Battery Information or include such Protected Battery Information in a license with other technology developed under this Agreement or the CRADA between 3M, Hydro-Quebec and Argonne National Laboratory and, subject to paragraph (h) of this Article 5, will license such Protected Battery Information to responsible third parties. Such

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licenses shall include terms and conditions that are reasonable under the circumstances, including obligations of confidentiality.

(e) The obligations of confidentiality and restrictions on use, publication and dissemination shall end for any Protected Battery Information:

(i) At the end of the protected period, as indicated in the legend unless otherwise protected by law;

(ii) If the information becomes publicly known or available from other sources without a breach of the obligations of confidentiality by the Government with respect to the Protected Battery Information;

(iii) If the same information is independently developed by someone who does not have access to the Protected Battery Information and such independently developed data is made available without obligations of confidentiality; or

(iv) If 3M or Hydro-Quebec disseminates or authorizes another to disseminate such information without obligations of confidentiality.

(f) The Attachment 8, referenced in subparagraph (1)(a) of this Paragraph (i) is currently being negotiated by the parties and will be incorporated into this Agreement under a separate amendment.

## ARTICLE 6. ADDITIONAL TECHNICAL DATA REQUIREMENTS

(a) In addition to the Technical Data specified elsewhere in this Attachment 4 to be delivered, the Contracting Officer may at any time during the Agreement performance or within one year after final payment call for 3M to deliver any Technical Data first produced or specifically used in the performance of this Agreement to the extent available to 3M with the right to deliver such data except Technical Data pertaining to items of standard or future commercial design as well as detailed manufacturing data.

(b) The provisions of Article 5 of this Attachment 4 are applicable to all Technical Data called for under this "Additional Technical Data Requirements" article. Accordingly, nothing contained in this article shall require 3M to actually deliver any Technical Data, the delivery of which is excused by paragraph (e) of the "Rights in Technical Data" article.

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lobbying the Executive or Legislative branches of the Government in connection with a specific contract, cooperative agreement, or grant. This law applies to Subcontracts at all tiers.

(b) 3M shall obtain the certification and disclosure required in 10 CFR 601.110 for each Subcontract issued hereunder in excess of \$100,000 and shall forward such disclosure to USABC.

(c) This Article 8, including this paragraph (c), shall be included in all Subcontracts issued hereunder in excess of \$100,000.

**ARTICLE 9. CLEAN AIR ACT OF 1970 AND FEDERAL WATER POLLUTION CONTROL ACT**

(a) 3M shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Act (33 U.S.C. 1251 et seq.) as amended.

(b) 3M shall include this Article, including this paragraph (b), in every Subcontract issued hereunder in excess of \$100,000 that is to be performed in the United States.

**ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY**

(a) 3M shall comply with Executive Order 11246 entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(b) 3M shall include this Article, including this paragraph (b), in every Subcontract issued hereunder in excess of \$10,000 that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246.

**ARTICLE 11. RIGHTS TO PROPOSAL DATA**

Except for Technical Data contained on pages marked as being Proprietary Data, 3M agrees that as a condition of the award of this Agreement or a modification thereto, and notwithstanding the provisions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others do so for any purpose whatsoever, the Technical Data contained in the proposal(s) upon which the CRADA or modification is based.

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