

Cooperative Research Programs

Liability Statement

Revised November 2022

Project #

& Title: _____ [Proj # & Title from RFP] Fiscal Year _____ [FY from RFP]

The signature of an *authorized representative of the prime proposing agency* is required on the following unaltered statement in order for the TRB to accept the agency's response for consideration. **Responses submitted without this executed and unaltered statement by the response deadline will be summarily rejected.** An executed, unaltered statement indicates the agency's intent and ability to execute a subaward that includes the provisions below.

NOTE: The "authorized representative of the prime proposing agency" must be an individual who has authority to enter into a contract on behalf of the proposing agency indicated below.

Proposing Agency (Prime): _____ [PRIME Contract Agency]

Name & Title: _____ [Individual with Contracting Authority for PRIME Agency]

Signature: _____ Date: _____

SUBAWARDEE LIABILITY

- (a) The parties agree that the subawardee and its employees and agents ("Subawardee") will be primarily responsible for performing the work required under the subaward, and shall therefore be legally responsible for, and shall indemnify and hold the Academy harmless for all claims asserted against the Academy, its committee members, officers, employees, and agents, by any third parties, whether or not represented by a final judgment, if such claims arise out of or result from Subawardee's negligent or wrongful acts in performing such work, including all claims for bodily injury (including death), personal injury, property damage, and other losses, liabilities, costs, and expenses (including but not limited to attorneys' fees).
- (b) With respect to entities of State government that are subject to State law restrictions on their ability to indemnify and hold harmless third parties ("Restricted State Entities"), the obligation to indemnify and hold harmless the Academy in Paragraph (a) shall apply to the full extent permitted by applicable State law. In addition, each Restricted State Entity executing this subaward represents and warrants that no part of any research product or other material delivered by such Restricted State Entity to the Academy ("Work Product") shall include anything of an obscene, libelous, defamatory, disparaging, or injurious nature; that neither the Work Product nor the title to the Work Product will infringe upon any copyright, patent, property right, personal right, or other right; and that all statements in the Subawardee's proposal to the Academy and in the Work Product are true to the Subawardee's actual knowledge and belief, or based upon reasonable research for accuracy.
- (c) The term "wrongful act" as used herein shall include any tortious act or omission, willful misconduct, failure to comply with Federal or state governmental requirements, copyright or patent infringement, libel, slander or other defamatory or disparaging statement in any written deliverable required under the subaward, or any false or negligent statement or omission made by Subawardee in its proposal to the Academy.
- (d) The obligations in paragraph (a) of this clause to indemnify and hold harmless the Academy shall not extend to claims, damages, losses, liabilities, costs, and expenses to the extent they arise out of the negligent or wrongful acts or omissions of the Academy, its committee members, officers, employees, and agents.
- (e) Both the Academy and Subawardee shall give prompt notice to each other upon learning of the assertion of any claim, or the commencement of any action or proceeding, in respect of which a claim under this paragraph may be sought, specifying, if known, the facts pertaining thereto and an estimate of the amount of the liability arising therefrom, but no failure to give such notice shall relieve the Academy or Subawardee of any liability hereunder except to the extent actual prejudice is suffered thereby.
- (f) The Academy and Subawardee agree to cooperate with each other in the defense of any claim, action, or legal proceeding arising out of or resulting from Subawardee's performance of the work required under this subaward, but each party shall control its own defense. The Academy shall also have the option in its sole discretion to permit Subawardee or its insurance carrier to assume the defense of any such claims against the Academy.
- (g) The obligations under this clause survive the termination, expiration, or completion of performance under this subaward.