



# NATIONAL ACADEMY OF SCIENCES

## NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM

### SYNTHESIS STUDY

### SUBAWARD INFORMATION

**SUBAWARD NO:** HR

**PROJECT/ACTIVITY:** SUPPLIER CONTRACT NO.:

**SUBAWARDEE NAME:**

**UNIQUE ENTITY IDENTIFIER (UEI):**

**ADDRESS:**

**PRINCIPAL INVESTIGATOR:** ( )  
Email address

**PROJECT ADMINISTRATOR:** ( )  
Email address

**AWARD TYPE:** Fixed Price **SUBAWARD AMOUNT:** \$

**EFFECTIVE DATE:**

**EXPIRATION DATE:**  
( ) months after effective date

**SUBAWARD MANAGER:** Joyce A. Tillman (202) 334-1347

**NAS PROGRAM OFFICER:** ( )

**NAS/SUBAWARD ADMINISTRATOR:** ( )

### TITLE OF THE WORK

This subaward is entered into by and between the National Academy of Sciences (hereinafter called the "NAS") and \_\_\_\_\_ (hereinafter called the "Subawardee"). This subaward is supported by Cooperative Agreement No. 693JJ31950003, dated June 24, 2019.

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**ORDER OF PRECEDENCE:**

The rights and obligations of the parties to this Subaward shall be subject to and governed by this Subaward, which consists of a cover page, this page, the Schedule and signature page, and the applicable Subaward Clauses. Should there be any inconsistency between the Schedule and the Subaward Clauses and any specifications or other provisions which are made part of this subaward by reference or otherwise, the Schedule and Subaward Clauses shall control. Should there be any inconsistency between the Schedule and the Subaward Clauses, the Schedule shall control. All applicable clauses under this Subaward shall be supported by the Subawardee's certified Representations and Certifications or Subaward Certification Form.

## **ARTICLE I - SCOPE OF WORK**

The Subawardee will furnish all necessary materials, facilities, equipment, qualified personnel, and deliverables to perform the services described in the attached Scope of Work (Attachment A). The Subawardee may modify the plan and procedures for the purpose of more effective execution of the work hereunder, provided such modified plans and procedures are consistent with the objectives set forth above, and provided such modifications have the advance approval in writing of the NAS Program Officer. The Subawardee's performance is under the technical direction of the individual identified as the NAS Program Officer on the cover page of this subaward.

## **ARTICLE II - PERIOD OF PERFORMANCE/SUBAWARD EXTENSIONS**

The period of performance for this Subaward is detailed on the cover page. All requests to extend the period of performance of this Subaward must be submitted in writing to the NAS Program Officer no less than 30 days prior to the expiration date of the Subaward. Any work performed beyond the expiration date of the Subaward without authorization from the NAS Office of Contracts and Grants will be at the Subawardee's own risk. Extensions to the period of performance will be accomplished by modification to the subaward.

## **ARTICLE III – DELIVERABLES/PAYMENTS**

Upon satisfactory performance and acceptance of the activities under this Subaward, NAS will pay Subawardee the firm fixed price detailed on the cover page for completion of all activities described in the Scope of Work and (Attachment A) and delivered in accordance with the Schedule of Delivery and Payments (Attachment B). Payment will be made within thirty (30) days of receipt and acceptance by NAS of invoice(s) for accepted deliverables. Additional Billing Instructions are included as Attachment C.

## **ARTICLE IV – TERMINATION**

- A. **For Cause:** This Subaward may be terminated for cause at any time, in whole or in part, by NAS upon written notice to Subawardee whenever it is determined that Subawardee has failed to comply with the terms and conditions of the subaward.
- B. **For Convenience:** This Subaward may be terminated for convenience, in whole or in part, by either party with thirty (30) days written notice provided to the appropriate party's Authorized Signer. If this Subaward is terminated, the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated, will be provided in the notice.
- C. **Termination Procedures:** Upon receipt of, and in accordance with, a termination notice as specified in either paragraph above, Subawardee will take immediate action to stop work and minimize all expenditures and obligations financed by this Subaward. Subawardee will also cancel unliquidated obligations whenever possible. NAS agrees to reimburse Subawardee for work completed, accepted and authorized work in progress on behalf of NAS.

## **ARTICLE V - TECHNICAL DIRECTION**

The Subawardee agrees to obtain the written approval of the NAS Program Officer prior to the assignment of the Principal Investigator's responsibilities to another individual.

- A. Performance of the work under this Subaward is subject to the technical direction of the NAS Program Officer designated to maintain scientific or technical liaison with the Subawardee. The term "Technical Direction" includes:
  - 1. Directions to the Subawardee, which redirects the subaward effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual scope of work.
  - 2. Provision of information to the Subawardee, which assists in the interpretation of specifications or technical portions of the work description.
  - 3. Review and, where required by the Subaward, approval of technical information to be delivered by the Subawardee to NAS under this Subaward.
  
- B. Technical direction must be within the general Scope of Work stated in this Subaward. The NAS Program Officer does not have the authority to and may not issue any technical direction which (1) constitutes an assignment of additional work outside the general scope of this Subaward; (2) constitutes a change as defined in the clause of the Subaward ; (3) in any manner causes an increase or decrease in the total cost of the time required for performance; or (4) changes any of the expressed terms, conditions, or specifications of the Subaward.
  
- C. All technical directions will be issued in writing by the NAS Program Officer, or shall be confirmed by the NAS Program Officer in writing, as promptly as practicable.
  
- D. The Subawardee will proceed promptly with the performance of technical directions duly issued by the NAS Program Officer in the manner prescribed by this Article and within the NAS Program Officer's authority under the provision of this Article.
  
- E. If, in the opinion of the Subawardee, any instruction or direction issued by the NAS Program Officer is within one of the above categories as defined in paragraph B above, the Subawardee shall not proceed but shall instead notify the NAS Subaward Administrator in writing within five (5) working days after receipt of any such instruction or direction. Upon receiving such notification from the Subawardee, and after consultation with the NAS Program Officer, the NAS Subaward Administrator shall either issue an appropriate subaward modification or advise the Subawardee in writing that, in the opinion of the NAS Program Officer, the technical direction is within the scope of this Article and does not constitute a change. The Subawardee shall thereupon proceed immediately with the direction given. A failure of the parties to agree upon the nature of the instruction or direction or upon the subaward action to be taken with respect thereto shall be subject to the "Disputes" article of this Subaward.

**ARTICLE VI - DATA RIGHTS AND PUBLICATION**

- A. Definition: The term "Data" as used herein includes all data, written materials, photographs, drawings, computer software, programs, databases and other information created or generated under this Subaward regardless of the media on which said data or information may be recorded, and whether delivered under this Subaward or not. The term does not include financial records, accounting records, or other information incidental to subaward administration.

B. Data and Copyright Ownership: All Data created or generated under this Subaward, and the copyrights therein in all media and languages throughout the world, will be irrevocably assigned to and owned by NAS and will be delivered to NAS upon request.

C. Publication by Subawardee: Subawardee may publish, disseminate, or otherwise utilize Data in accordance with the following conditions:

Data contained in interim or final reports that have been accepted by NAS may be published, disseminated, or otherwise utilized by Subawardee under a nonexclusive, irrevocable, royalty-free license, provided that the Subawardee: (i) first provides written notification of the intended publication, dissemination, or use to NAS; (ii) NAS expressly authorizes such publication, dissemination, or use in writing; (iii) credit is given to the individuals and organization who conducted and sponsored the Data.

D. Third Party Rights: Subawardee will not, without the prior written approval of NAS, incorporate in any Data delivered under this Subaward, any data not produced in the performance of this Subaward, which contains the copyright notice of 17 U.S.C. 401 or 402, unless Subawardee identifies such data to NAS acquires an appropriate license on behalf of NAS.

The obligations under this clause survive the termination, expiration, or completion of performance under this Subaward.

#### **ARTICLE VII – SUBAWARDEE LIABILITY**

To the fullest extent permitted by law, Subawardee will indemnify and hold harmless the NAS from any and all claims, damages, lawsuits, attorney’s fees, court costs, defense costs or any other costs arising out of the negligence, breach of this subaward, or wrongful acts on the part of Subawardee.

The term “wrongful act” as used herein includes any tortuous 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 this subaward, or any false or negligent or wrongful acts or omission made by the Subawardee in its proposal to NAS.

Both parties agree to give prompt notice to each other upon learning of the assertion of any claim, or the commencement of any action or legal proceeding, in respect of which a claim may be sought. Both parties further agree to cooperate 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 will control its own defense.

To the extent Subawardee is a state government entity subject to state law restrictions on the ability to indemnify and hold harmless third parties, the obligation to indemnify and hold harmless the NAS will apply to the fullest extent permitted by State law. Subawardee represents and warrants that no part of any research product or material delivered by Subawardee to NAS (“Work Product”) shall include anything obscene, libelous, defamatory, or disparaging in nature; that neither the Work Product nor title to the Work Product will infringe upon the copyright, patent, property right, or other right; and that all statements in the Subawardee’s proposal to NAS and in the Work Product are true to the Subawardee’s actual knowledge and belief, based upon reasonable research for accuracy.

The obligations of this clause to indemnify and hold harmless NAS 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 NAS. The obligations under this clause survive the termination, expiration, or completion of performance under this Subaward.

### **ARTICLE VIII – INSURANCE**

- A. **Insurance:** Subawardee shall maintain during the performance of this Subaward at its own expense the following types of insurance with not less than the following limits of liability:
1. Commercial general liability insurance, or its equivalent, for bodily injury (including death), personal and advertising injury, and property damage (including loss of use) with limits of not less than \$1,000,000 per occurrence or claim, \$2,000,000 general aggregate, \$2,000,000 products and completed operations aggregate;
  2. Worker’s compensation insurance, or its equivalent, with statutory benefits as required by law, including standard “other states” coverage; employers liability insurance or its equivalent;
  3. Business automobile liability insurance, or its equivalent, with limits of not less than \$1,000,000 per occurrence for each accident, if vehicles will be used in the performance of the subaward.
- B. **Limits of Liability:** It is expressly understood that any insurance protection required by this clause shall in no way limit Subawardee’s obligations under the clause entitled “Subawardee Liability,” nor shall it be construed to relieve Subawardee of liability in excess of the coverage specified herein.
- C. **Waiver:** Subawardee waives all rights of recovery against the NAS for any claims, damages, costs or expenses covered by any required insurance policies carried by the Subawardee and for any damage or loss of use of personal property owned or leased by the Subawardee. The required insurance shall include a waiver of subrogation in favor of NAS.
- D. Subawardee will furnish evidence of insurance to NAS, if requested, by transmitting original certificates of insurance signed by authorized representatives of the insurers.
- E. In lieu of insurance coverage provided for in this clause, Subawardee may, with the prior written approval of NAS, satisfy the requirements of this clause by submitting proof that Subawardee is a self-insurer under the applicable self-insurance laws of its State. Alternatively, if Subawardee is a State Entity, it may, with the prior approval of NAS, satisfy the requirements of this clause by submitting proof that Subawardee is a self-insurer under the self-insurance statutes or regulations governing such entities in that State, or if self-insurance is not provided for under State law, such Subawardee may submit a statement that such insurance is not available and a certified copy of an audited financial statement showing net total assets of at least fifty million dollars, and cash, cash equivalents, and liquid investments totaling at least 25 million dollars. Such proof must be submitted to NAS for review in sufficient time to permit completion of the review prior to the commencement of performance of work under the Subaward.

### **ARTICLE IX- SUBCONTRACTING AND ASSIGNMENTS**

No portion of this Subaward will be subcontracted, assigned, or otherwise disposed of except with the written consent of the NAS Subaward Administrator. The Subawardee will forward for prior approval the proposed subcontract, which will include the terms and conditions, scope of work, and budget with supporting documentation.

In the event the Subawardee subcontracts or assigns any or all of the performance of this Subaward, the Subawardee remains contractually responsible for the complete and full performance of all the work, duties, covenants, and obligations of the Subawardee under this Subaward. The Subawardee will enter into no subcontract or assignment, which is inconsistent with its obligations under this Subaward. NAS's consent to any subcontract or assignment will not be deemed a waiver of its rights under this Subaward, nor shall it create any privity of subaward between NAS and any lower-tier subcontractor or assignee.

#### **ARTICLE X - RECORDS AND AUDIT REQUIREMENTS**

The Subawardee will retain all financial records and other pertinent evidence pertaining to costs incurred and reimbursed hereunder for a period of three years after final payment under this Subaward. The Subawardee agrees to give NAS, the Comptroller General of the United States, or any of their authorized representatives, access to these records and any other pertinent books, documents, papers or other records, in order to conduct audits, examinations or produce excerpts and transcripts. Subaward closeout does not alter these requirements.

Institutions of higher education and other non-profit recipients and sub-recipients are required to meet the audit requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F of 2 CFR 200.

The Subawardee further agrees to provide NAS with copies of any independent auditors' report within thirty (30) days of receipt by the Subawardee. Where the report includes instances of non-compliance with federal laws and regulations, the Subawardee will provide copies of responses to the report and the corrective action taken.

#### **ARTICLE XI - DISPUTES**

Both parties agree to enter into negotiation to resolve any dispute. Both parties agree to negotiate in good faith to reach a mutually agreeable settlement within a reasonable amount of time. If negotiations are not successful, NAS and the Subawardee agree to enter into binding arbitration. The American Arbitration Association (AAA) Commercial Arbitration Rules (most recent edition) would govern this Arbitration, which will take place in the District of Columbia. The Arbitrator will follow the applicable subaward provisions and the District of Columbia law in adjudicating the dispute. It is agreed by both parties that the Arbitrator's decision is final, and that neither party may take any action, judicial or administrative, to overturn this decision. The judgment rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

#### **ARTICLE XII – JURISDICTION**

This Subaward is to be construed, interpreted and enforced in accordance with the laws of the District of Columbia.

#### **ARTICLE XIII – DEBARMENT AND SUSPENSION**

The Recipient shall comply with the 2 CFR Parts 180 and 1200, Government Debarment and Suspension (Non-procurement). Further, the Recipient shall flow down this requirement to applicable sub-awards by including a similar terms or condition in lower-tier covered transactions.

**ARTICLE XIV – FINANCIAL ASSISTANCE POLICY TO BAN TEXT MESSAGING WHILE DRIVING**

A. Definitions: The following definitions are intended to be consistent with the definitions in DOT Order 3902.10 and the E.O. For clarification purposes, they may expand upon the definitions in the E.O.

“Driving” – (1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. (2) It does not include being in your vehicle (with or with-out the motor running) in a location off the roadway where it is safe and legal to remain stationary.

“Text Messaging” – means reading from or entering data into any handheld or other electronic devise, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

B. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Test Messaging While Driving, December 30, 2009, financial assistance recipients and sub-recipients of grants and cooperative agreements are encouraged to:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving – (i) Company-owned or rented vehicles or Government-owned, leased or rental vehicles; or (ii) Privately-owned vehicles when on official Government business or when performing and work for or on behalf of the Government.
2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as – (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

C. Assistance Awards: All recipients and sub-recipients of financial assistance to include: grants, cooperative agreements, loans and other types of assistance, shall insert the substance of this clause, including this paragraph (c), in all assistance awards.

**ARTICLE XV – ENTIRE AGREEMENT**

This document, including the listed Attachments and the Subawardee’s Subaward Certification Form, constitutes the entire subaward between the parties and no representation or promise not specifically set forth herein will be binding on the parties prior to its effective date. No modification or change to this Subaward will be effective unless set forth in writing and executed by both parties.



**ACCEPTED FOR:**

**SUBAWARDEE**

**Signature** \_\_\_\_\_

**Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Date** \_\_\_\_\_

**NATIONAL ACADEMY OF SCIENCES**

**Signature** \_\_\_\_\_

**Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Date** \_\_\_\_\_