

LAWRENCE LIVERMORE NATIONAL LABORATORY
INDEMNIFICATION AND INSURANCE PROVISIONS
FOR
DESIGN-BUILD CONSTRUCTION SERVICES - CHAMP

The following provisions shall apply to any work and other activities performed by the Subcontractor or its lower-tier subcontractors under this Agreement at any Participating Site or at any other location, except Subcontractor or lower-tier subcontractor facilities. As used herein, the term “Subcontractor” shall also mean “Seller” and the term “Subcontract” shall also mean “Agreement”.

A. INDEMNIFICATION

The Subcontractor shall indemnify, hold harmless, and defend Lawrence Livermore National Security, LLC and its members and affiliates and the U.S. Government, their officers, employees, and agents from and against all losses and expenses (including, but not limited to, costs of attorney's fees), damages and liabilities of any kind (collectively “losses”) resulting from or arising out of this Agreement or the Subcontractor's work and completed operations (including, but not limited to, injury or death of any person, or Subcontractor’s employees, or damage or loss of any property), excepting only those losses, expenses, damages and law imposed liabilities caused solely by the intentional misconduct or active negligence of LLNS or U.S. Government personnel. The parties agree that the indemnity obligations shall be construed in accordance with the clauses in the General Provisions entitled, "Governing Law and Venue.”

B. INSURANCE

1. Types of Coverage

The Subcontractor shall, at its expense, obtain, keep in force, and maintain insurance to cover its performance under this Agreement of the types and in the minimum amounts set forth below. Such insurance shall be maintained in full force and effect during the performance of work required by this Agreement including post-termination warranty work if site access (of a U.S. Government location) is required to correct any nonconformance under the Warranty clause of the General Provisions.

a. <u>Commercial General Liability Insurance</u>	<u>Minimum Limit</u>
• Per Occurrence and General Aggregate	\$ 10,000,000
• Products/Completed Operations Aggregate	\$ 10,000,000
• Personal and Advertising Injury	\$ 1,000,000
b. <u>Business Automobile Liability Insurance</u>	<u>Minimum Limit</u>
• Combined Single Limit	\$ 1,000,000

The CHAMP Subcontractor and its lower tier subcontractors are expressly prohibited from using U.S. Government owned vehicles at Participating Sites without the advance written consent of the LLNS Contract Analyst. Any unauthorized use will be at the risk of CHAMP Subcontractor and its lower-tier subcontractor. In the event such use is authorized by the Contract Analyst, LLNS requires the automobile liability insurance to cover liability to third parties related to the Subcontractor's use of owned, scheduled, non-owned, or hired vehicles, including the Subcontractor's use of any LLNS-furnished U.S. Government owned vehicles. In addition, the automobile liability insurance shall cover liability to LLNS, as a third-party, and the U.S. Government, for any loss or destruction of, or damage to, LLNS-furnished U.S. Government owned vehicles.

- c. Workers' Compensation (As required under California state law or other applicable state law for any work not performed in California). The workers' compensation insurance shall include the following minimum coverage:

	<u>Minimum Limit</u>
• Employer's Liability, Per Accident	\$ 1,000,000
• Employer's Liability Disease, Each Employee	\$ 1,000,000
• Employer's Liability Disease, Policy Limit	\$ 1,000,000

- d. Professional Liability Insurance
- | | <u>Minimum Limit</u> |
|---------------------------|----------------------|
| • Per Claim and Aggregate | \$ 5,000,000 |

Continuity of Professional Liability Insurance:

In the event the Subcontractor's professional liability insurance is cancelled, expired or materially changed, the Subcontractor agrees to maintain extended reporting and discovery provisions for not less than 4 years after such cancellation, expiration or change to the insurance policy occurs.

(Applicable to the primary Architect-Engineer of record under this Agreement.)

- e. Contractors Pollution Liability (applicable if any work or activities involve asbestos, lead, or hazardous waste)

	<u>Minimum Limit</u>
• Contractors Pollution Liability, Per Occurrence	\$ 5,000,000
• Contractors Pollution Liability, Aggregate	\$ 5,000,000

The contractor's pollution liability policy shall include coverage for liability to third parties for damages caused by pollution conditions arising from the Subcontractor's work and the work performed by their lower-tier subcontractors. The Contractor's pollution liability policy provided by the Subcontractor shall include, but not be limited to, coverage for Over the Road Pollution for transportation operations, for temporary storage of contaminants on the Subcontractor's premises, and for Non-Owned Disposal Sites.

2. Certificates of Insurance, Endorsements and Other Conditions

The general liability insurance and contractors pollution liability insurance shall name and endorse Lawrence Livermore National Security, LLC and its members and affiliates and the U.S. Government and Participating Site Entities as “**additional insureds**” for the work and completed operations, protecting them against losses, expenses, damages and liabilities arising out of the Agreement activities, whether performed by the Subcontractor or its lower-tier subcontractors.

The general liability insurance, contractors pollution liability insurance and workers’ compensation insurance shall endorse to the policies a “**waiver of subrogation**” provision in favor of LLNS and its members and affiliates and the U.S. Government and Participating Site Entities.

All such insurance coverage shall be primary and shall not participate with or apply in excess of any other valid, collectible insurance or program of self-insurance of LLNS or the U.S. Government.

The “Certificate Holder” must be named:

Lawrence Livermore National Security, LLC and its members and affiliates

And the U.S. Government

Lawrence Livermore National Laboratory

7000 East Ave. (L-650)

Livermore, CA 94550

The required insurance shall be obtained from insurance companies authorized to do business in California that have an A.M. Best rating of A: VII or better, or an equivalent Standard & Poor’s rating of AA or better, or Moody’s rating of Aa or better.

Except for Professional Liability Insurance, the insurance shall not be written on a claims-made form or be subject to a self-insured retention (SIR) or deductible of \$100,000 or more without the written approval of the LLNS Contract Analyst.

The stipulation of required coverage and limits of insurance shall not in any way limit the liability of the Subcontractor.

3. Submission of Insurance Certificates and Endorsements

Unless otherwise indicated in the Agreement, prior to commencement of any work, including post-termination warranty work, at a LLNS controlled or U.S. Government owned or leased premises, the Subcontractor shall provide certificate(s) of insurance for all the types of required insurance, issued by properly authorized representatives. The certificate(s) of insurance shall specifically confirm the “waiver of subrogation” and “additional insured” obligations and be accompanied by all required endorsements. [An insurance instructions document is available at https://supplychain.llnl.gov/supplier-information/special-provisions](https://supplychain.llnl.gov/supplier-information/special-provisions) and includes a sample certificate of insurance and sample endorsements.

The Subcontractor shall ensure all required insurance certificates and endorsements are submitted to the LLNS Contract Analyst. Neither LLNS's failure to notify the Subcontractor of any non-compliance with these provisions nor LLNS acceptance of Subcontractor's insurance documentation shall be construed as a waiver of any Subcontractor's obligations herein.

The Subcontractor shall provide written notification to the LLNS Contract Analyst at least 30 days in advance of any modification, change, or cancellation of any of the insurance coverage. Any such notification by an insurance agent or other insurance company representative shall be in addition to, and shall not satisfy, the Subcontractor's obligation to provide a written notification.

4. Lower-Tier Subcontractor Insurance

Before permitting any lower-tier subcontractor, other than a seller or vendor of standard commercial items and supplies, to perform any work under this Agreement, the Subcontractor shall require the lower-tier subcontractor to furnish to the Subcontractor satisfactory evidence the lower-tier subcontractor has obtained and maintains insurance consistent with the above specified types for all work the lower-tier subcontractor will perform under this Agreement. Minimum coverage amounts are listed below.

The Subcontractor shall require the lower-tier subcontractor to obtain, maintain and keep in full force and effect the minimum insurance coverage amounts set forth below. In addition, the Subcontractor shall require the lower-tier subcontractor to name LLNS, the applicable Participating Site Entity, and the U.S. Government as additional insureds.

a. <u>Commercial General Liability Insurance</u>	<u>Minimum Limit</u>
• Per Occurrence and General Aggregate	\$ 5,000,000
• Products/Completed Operations Aggregate	\$ 5,000,000
• Personal and Advertising Injury	\$ 1,000,000
b. <u>Business Automobile Liability Insurance</u>	<u>Minimum Limit</u>
• Combined Single Limit	\$ 1,000,000

The CHAMP Subcontractor and its lower tier subcontractors are expressly prohibited from using U.S. Government owned vehicles at Participating Sites without the advance written consent of the LLNS Contract Analyst. Any unauthorized will be at the risk of the CHAMP Subcontractor and its lower-tier subcontractor. In the event such use occurs, LLNS requires the automobile liability insurance to cover liability to third parties related to the lower-tier build Subcontractor's use of owned, scheduled, non-owned, or hired vehicles, including the lower-tier build Subcontractor's use of any LLNS-furnished U.S. Government owned vehicles. In addition, the automobile liability insurance shall cover liability to LLNS, as a third-party, and the U.S. Government, for any loss or destruction of, or damage to, LLNS-furnished U.S. Government owned vehicles.

- c. Workers' Compensation (As required under California state law or other applicable state law for any work not performed in California). The workers' compensation insurance shall include the following minimum coverage:

	<u>Minimum Limit</u>
• Employer's Liability, Per Accident	\$ 1,000,000
• Employer's Liability Disease, Each Employee	\$ 1,000,000
• Employer's Liability Disease, Policy Limit	\$ 1,000,000

- d. Professional Liability Insurance Minimum Limit

- Per Claim and Aggregate \$ 2,000,000
NOTE: Lower-Tier Professional Liability coverage shall be applicable to any lower-tier sub-consultants to the Architect-Engineer of record under this Agreement.

Continuity of Lower Tier Professional Liability Insurance: In the event the Lower-Tier Subcontractor's professional liability insurance is cancelled, expired or materially changed, the Lower-Tier Subcontractor agrees to maintain extended reporting and discovery provisions for not less than 4 years after such cancellation, expiration or change to the insurance policy occurs.

- e. Contractors Pollution Liability (applicable if any construction work or activities involve asbestos, lead, or hazardous waste)

	<u>Minimum Limit</u>
• Contractors Pollution Liability, Per Occurrence	\$ 1,000,000
• Contractors Pollution Liability, Aggregate	\$ 1,000,000

The contractor's pollution liability policy shall include coverage for liability to third parties for damages caused by pollution conditions arising from the Subcontractor's work and the work performed by their lower-tier build subcontractors. The Contractor's pollution liability policy provided by the Subcontractor shall include, but not be limited to, coverage for Over the Road Pollution for transportation operations, for temporary storage of contaminants on the Subcontractor's premises, and for Non-Owned Disposal Sites.

5. In lieu of the having the lower-tier subcontractors provide insurance coverage for their activities under this Agreement, the Subcontractor may provide the required insurance coverage for the lower-tier subcontractors.

C. SITE 300 VALLEY FEVER HEALTH HAZARD
(Applicable if any work or activities are at LLNL Site 300.)

1. Representations

The Subcontractor represents it is aware the LLNL Site 300 area is located in San Joaquin County, which has dirt and dust containing spores that cause

Coccidioidomycosis (sometimes called “Valley Fever”), a disease that is endemic throughout the county, including Site 300. The Subcontractor also represents it will take appropriate precautionary measures to protect the health of employees, other workers and individuals who may be involved with the Subcontractor's work or services at Site 300 under this Agreement. Information on the disease and certain precautionary measures is available from the American Lung Association.

2. Required Training

All Subcontractor employees, lower-tier subcontractor personnel, consultants, and/or agents who will perform work at Site 300 shall complete LLNL course HS-0096W, a web-based training course on Valley Fever or its equivalent, prior to commencement of any on-site work performed at Site 300 under this Agreement.

3. Indemnification

The Subcontractor agrees to indemnify and hold harmless LLNS and its members and affiliates and the U.S. Government from any or all claims and expenses, including reasonable legal fees, arising from personal injury, including death, which may be asserted by the employees of the Subcontractor or its lower-tier subcontractors or other individuals exposed or alleged to have been exposed to the spores that cause Coccidioidomycosis as a result of Subcontractor activities at Site 300.

4. Insurance

The Subcontractor agrees that the general liability and workers’ compensation insurance required to be maintained will protect LLNS and its members and affiliates and the U.S. Government from the risks enumerated above, and will contain a provision waiving any right of subrogation against LLNS and its members and affiliates and the U.S. Government which may arise by reason of any payment under the insurance.

D. BUILDERS RISK PROPERTY INSURANCE

[Applicable for new construction and alterations to existing buildings, including but not limited to new structures in the building (e.g., new roof, new exterior walls, etc.).]

1. Coverage Requirements

- a. The Subcontractor shall, at its own expense, provide and maintain insurance under a “Builder’s Risk” policy, to include transit insurance coverage, insuring all work done and materials supplied in connection with work done in performance of applicable task orders let under this Agreement against loss or damage resulting from all risks of physical loss or damage, including, but not limited to, fire, vandalism and malicious mischief, earthquake, and flood if the location of the work has been delineated in a flood hazard boundary map issued by the Department of Housing and Urban Development, or other causes. Such insurance shall be issued with limits on a completed value basis and valuation to be on a replacement cost basis. If the project involves building systems, including, but not limited to HVAC, mechanical or electrical, the policy should cover those systems.
- b. The word “flood,” as used in this clause, shall have the same definition as used in the National Flood Insurance Act, which is “a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of streams, rivers or other inland water, or (2) abnormally high tidal water or rising coastal waters resulting from severe storms, hurricanes or tsunamis (destructive sea wave caused by an underwater earthquake)”.
- c. When work involves either alterations only or both alterations and new construction, earthquake and flood insurance is not required for the existing structure value. For work involving alterations only, earthquake and flood insurance shall cover the value of the alteration work if alterations exceed \$500,000. For work involving both alterations and new construction, earthquake and flood insurance shall cover the values of the alteration work (if alterations exceed \$500,000) and the new construction.

2. Conditions of Coverage

- a. The insurance shall (a) include a provision designating LLNS and its members and affiliates and the U.S. Government as “additional insureds,” by certificate, endorsement, or otherwise; (b) include a provision the policies are primary and shall not participate with nor are excess over any other valid and collective insurance; (c) include a “waiver of subrogation” in favor of LLNS and its members and affiliates and the U.S. Government; and (d) provide for deductible amounts not exceeding five percent of the insurable values of work of Subcontractor for the perils of all risks of physical loss or damage, including, but not limited to, fire, vandalism and malicious mischief, earthquake, and flood. In the event of insured loss or damage, the Subcontractor shall be responsible for making LLNS whole for the amount equal to the deductible attached to the Subcontractor’s insurance policy if the insurer fails to do so.

- b. The insurance shall specifically provide that the proceeds of said policy or policies shall be payable to the Subcontractor and LLNS, as their interests may appear, and, in the case of an Act of God as defined by the California Government Code, Section 4151, the proceeds of said policy or policies shall be payable to LLNS, to indemnify LLNS and its members and affiliates and the U.S. Government for any damage to the work caused by such Act of God, if LLNS elects to terminate the Agreement or covered Task Orders.
- c. The insurance shall contain an endorsement to the effect any cancellation or any material change adversely affecting LLNS' or the U.S. Government's interest shall not be effective (a) for such period as the laws of the state in which the covered Task Orders let this Agreement are to be performed prescribe, or (b) until 30 days after the insurer or the Subcontractor gives written notice to LLNS, whichever period is longer.
- d. The insurance shall be kept in full force and effect by the Subcontractor during the performance of the covered Task Orders under this Agreement, until LLNS accepts the construction work as completed. Such insurance shall be maintained in an amount equal to the full insurable value of the portion of the work and building done, at all times during progress of work to be done in compliance with provisions of the covered Task Orders under this Agreement.

3. LLNS May Insure for Subcontractor

In case of the breach of any provision of this clause, LLNS may, at its option, take out and maintain such insurance in the name of the Subcontractor or any subcontractor, as LLNS may deem appropriate, and may deduct the cost of obtaining and maintaining such insurance from any sums which may be found or become due the Subcontractor under covered Task Orders let under this Agreement.

4. Submission of Certificates of Insurance and Endorsements

The Subcontractor shall submit all required certificates of insurance and endorsements substantiating and covering the insurance required under this clause to the LLNS Contract Analyst.

(END OF PROVISIONS)