

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

The following provisions shall apply to any work and other activities performed by the Subcontractor or its lower-tier subcontractors under this Subcontract at any U.S. Government location managed or operated by Lawrence Livermore National Security, LLC (also referred to herein as “LLNS”), including the Lawrence Livermore National Laboratory (hereinafter “LLNL”) and its Site 300, 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” and “Purchase Order.”

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 Subcontract 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.

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 Subcontract 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 Subcontract:

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>
• Per Occurrence	\$ 1,000,000

The automobile liability insurance shall 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. 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 only if the Subcontractor’s use involves hazardous activities or materials or the vehicle is assigned for exclusive, full-time use.

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>
• Coverage B – Employer's Liability, Per Accident	\$ 1,000,000
• Bodily Injury by Disease, Per Employee	\$ 1,000,000
• Bodily Injury by Disease, Aggregate	\$ 1,000,000

d. Professional Liability Insurance

	<u>Minimum Limit</u>
• Per Occurrence and General Aggregate	\$ 2,000,000
• Bodily Injury	\$ 2,000,000
• Property Damage	\$ 2,000,000

2. Certificates of Insurance, Endorsements and Other Conditions

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

The general liability insurance and workers’ compensation insurance shall include a **“waiver of subrogation”** provision in favor of LLNS and its members and affiliates and the U.S. Government.

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 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.

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

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 Subcontract, prior to commencement of any 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.

The Subcontractor shall ensure all required insurance certificates and endorsements are submitted to EXIGIS LLC (EXIGIS) using its online insurance compliance services portal. Upon execution of the Subcontract, EXIGIS will send an E-Mail to the Subcontractor requesting the Subcontractor provide its insurance broker contact information. The Subcontractor shall provide EXIGIS the required insurance broker contact information and facilitate prompt broker submission of the required insurance certificates and endorsements.

The Subcontractor shall provide written notification to EXIGIS 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 Subcontract, 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 and amounts for all work the lower-tier subcontractor will perform under this Subcontract.

C. BUILDER’S RISK PROPERTY INSURANCE

(Applicable to Subcontracts over \$50,000.)

1. Coverage Requirements

a. The Subcontractor shall, at its own expense, provide and maintain insurance under a “Standard Risk Course of Construction” policy, to include transit insurance coverage, insuring all work done and materials supplied in connection with work done in performance of this Subcontract against loss or damage resulting from all risks of physical loss or damage, including, but not limited to, fire and associated perils, 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.

- 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. Should the work involve solely alteration work, then earthquake and flood insurance is not required for the existing structure value, but is required for the alteration work if such work exceeds \$500,000. Should the work involve both alteration work and new construction, then earthquake and flood insurance is required on the new construction and for the alteration work if such work exceeds \$500,000, but is not required for the existing structure.

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 and associated peril, vandalism and malicious mischief, earthquake, and flood. In the event of an insured loss or damage, the Subcontractor agrees to pay to LLNS, upon demand, an amount equal to the deductible amount.
- b. The insurance shall specifically provide 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 Subcontract.
- 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 this Subcontract is 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 entire performance of this Subcontract, until final acceptance of the completed

work by LLNS. 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 this Subcontract.

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 this Subcontract.

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 EXIGIS using its online insurance compliance services portal as described in paragraph B., 3., above.

D. 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 Subcontract. 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 Subcontract.

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.

E. LIENS

1. The Subcontractor agrees, at any time upon the request of LLNS, it will submit a sworn statement setting forth the services performed or goods furnished by its lower-tier subcontractors and suppliers, and the amount due and to become due to each, and before the final payment called for hereunder, it will, if requested, submit to LLNS a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.
2. The Subcontractor shall promptly notify LLNS, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, or suits and, at the request of LLNS, shall do all things and execute and deliver all appropriate documents and assignments in favor of LLNS and its members and affiliates and the U.S. Government of all Subcontractors' rights and claims growing out of such asserted claims as will enable LLNS and its members and affiliates and the U.S. Government to protect their respective interests by litigation or otherwise.
3. The final payment shall not be made until the Subcontractor, if required, shall deliver to LLNS a complete release of all liens arising out of this Subcontract, or receipts in full in lieu thereof, as LLNS may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed; but Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to LLNS to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to LLNS all money that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

(END OF PROVISIONS)