

**LAWRENCE LIVERMORE NATIONAL LABORATORY**  
**INDEMNIFICATION AND INSURANCE PROVISIONS**

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” or “Purchase Order.”

**A. GENERAL INDEMNIFICATION**

The Subcontractor shall defend, indemnify and hold harmless Lawrence Livermore National Security, LLC and its members and affiliates and the U.S. Government, their officers, employees and agents (collectively, the “Indemnified Parties”) from and against all losses and expenses (including, but not limited to reasonable attorney's fees, court costs, and expert witness fees), damages and liabilities of any kind, including, but not limited to injury or death of any person, including Subcontractor’s own employees, or damage or loss of any property (collectively “Losses”) arising under or otherwise related to this Subcontract or the Subcontractor's work and completed operations excepting only those Losses caused solely by the Indemnified Parties’ negligence. The indemnity set forth in this paragraph will apply only if the Subcontractor will have been informed as soon and as completely as practical by the Indemnified Parties of the action alleging such claim and will have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Indemnified Parties will have provided all reasonably available information and reasonable assistance requested by the Subcontractor. No settlement for which the Subcontractor would be responsible will be made without the Subcontractor’s consent, which shall not be unreasonably conditioned, withheld or delayed.

**B. DISCLAIMER OF WARRANTIES / LIMITATION OF LIABILITY**

**EXCEPT FOR EXPRESS WARRANTIES OTHERWISE PROVIDED IN THIS AGREEMENT, NO PARTY MAKES ANY ADDITIONAL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.**

**IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES; LOST PROFITS; OR OTHER ECONOMIC LOSS FOR ANY MATTER ARISING OUT OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DIRECT DAMAGES SHALL BE LIMITED TO**

**THE TOTAL AGGREGATE VALUE OF THIS SUBCONTRACT; PROVIDED HOWEVER, THAT ANY INDEMNITY OR INSURANCE OBLIGATION SHALL NOT BE CONSIDERED TO BE LIMITED BY THIS PROVISION.**

**C. 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 including post-termination warranty work if site access (of a U.S. Government location operated and managed by LLNS) 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	\$ 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 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>
• 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. 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 contractors 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 contractors 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 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, 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.

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.

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 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 Subcontract, 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> 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 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. BUILDERS RISK PROPERTY INSURANCE**

(Applicable for new construction and alterations to existing buildings which involve the structure of 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 “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 the LLNS Contract Analyst.

(END OF PROVISIONS)