

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

Appendix O

**AGREEMENT BETWEEN THE DEPARTMENT OF ENERGY,
NATIONAL NUCLEAR SECURITY ADMINISTRATION AND
LAWRENCE LIVERMORE NATIONAL SECURITY LLC (LLNS)
CONCERNING THE TRANSFER OF ASSETS AND LIABILITIES
FROM THE UNIVERSITY OF CALIFORNIA RETIREMENT PLAN
TO THE LLNS DEFINED BENEFIT PENSION PLAN**

(a) **General.**

- (1) The “Parties” means the Department of Energy, through the National Nuclear Security Administration (DOE/NNSA), and Lawrence Livermore National Security, LLC (LLNS).
- (2) The “Agreement” means this Agreement between the Department of Energy/National Nuclear Security Administration and LLNS concerning the Transfer of Assets and Liabilities from the University of California Retirement Plan (UCRP) to the LLNS Defined Benefit Pension Plan (“LLNS Plan”). This Agreement includes the following Exhibits:
 - (i) October 1, 2007, Lawrence Livermore National Laboratory Special Interim Addendum Report (Exhibit 1) (Actuarial Valuation).
 - (ii) Revised pages to October 1, 2007 Lawrence Livermore National Laboratory Special Addendum Report (Exhibit 1A)
 - (iii) Proposed Approach for Asset Allocation for Transfer to the LLNS Plan (Exhibit 2) (Asset Allocation).
 - (iv) Pricing Procedures for Asset Classes Held in the UCRP (Exhibit 3) (Pricing Procedures).
 - (v) Estimated Asset Transfer Amount, as of March 25, 2008 to be modified upon determination of the actual value at the Asset Transfer Date (Exhibit 4) (Estimation).
- (3) Pursuant to Clause H.008 of Contract No: W-7405-ENG-48 between DOE/NNSA and The Regents of the University of California (UC), the assets and liabilities associated with the Lawrence Livermore National Laboratory Segment (referred to as the “LLNL Segment”) of the UCRP

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

have been accounted for separately each year by the Regents' actuary since the early 1990s at the request of DOE/NNSA.

- (4) During the transition to management of Lawrence Livermore National Laboratory (LLNL) by LLNS, employees of UC at LLNL on September 30, 2007, who were either active, or rehired and reinstated as members of the UCRP, consistent with Section 2.17 of the LLNS Plan, could elect to participate in the LLNS Plan so that benefit liabilities under the UCRP attributable to their service prior to October 1, 2007 under UCRP, would be transferred from the UCRP to the LLNS Plan effective October 1, 2007. Such individuals are collectively referred to as "Transferring Employees." The benefit liabilities transferred exclude any liabilities for Capital Accumulation Payment provision (CAP) accounts. The benefit liabilities transferred also exclude liabilities for benefits assigned by a qualified domestic relations order (QDRO) to a former spouse of an employee who elected to participate in the LLNS Plan if the former spouse elected pursuant to procedures established by LLNS and UC to retain his or her interest in UCRP. Collectively the excluded liabilities for CAP accounts and for alternate payees under QDROs who themselves elect to retain their interest in the UCRP shall be referred to as "Excluded Liabilities."
- (5) Under the terms of the LLNS Plan, as adopted by LLNS on December 20, 2007, Transferring Employees began accruing benefits under the terms of the LLNS Plan starting October 1, 2007. Subject to the provisions of the LLNS Plan, these individuals are also eligible to receive benefits under the LLNS Plan attributable to service credited under the UCRP for employment prior to October 1, 2007, based upon the benefit provisions, payment options, and other terms of the LLNS Plan. Transferring Employees waived any rights they might have had to benefits under the UCRP, except the Excluded Liabilities, which remain payable from the UCRP.

(b) For and in consideration of the mutual understandings expressed herein, DOE/NNSA agrees and represents as follows:

- (1) DOE/NNSA will work with the Internal Revenue Service (IRS) to facilitate regulatory approval for the transfer of assets and liabilities described below from the UCRP to the LLNS Plan.
- (2) The costs, expenses, losses and penalties that LLNS, the LLNS Plan, or one or more fiduciaries of the LLNS Plan reasonably incur, as a direct result of the transfer of assets and liabilities from the UCRP to the LLNS

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

Plan (or the LLNS Plan to the UCRP) as provided for in this Agreement, including transaction costs associated with rebalancing investments, will be assessed as costs of the LLNS Plan to the extent permissible or, if not, separately invoiced. "Costs" for these purposes do not include losses on the value of assets sold in the rebalancing of investments. "Penalties" for these purposes are limited to those assessed to LLNS, to one or more fiduciaries of the LLNS Plan, or to the LLNS Plan as a direct result of performing those acts in conformance with the terms of this Agreement.

- (3) DOE/NNSA will provide LLNS with the following –
- (i) A copy of the Favorable Determination Letter received from the IRS on November 8, 2007 stating that the UCRP, as amended, continues to satisfy the requirements of Code section 401(a), taking into account changes in qualification requirements made by the Uruguay Round Agreements, the Small Business Job Protection Act of 1996, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000 as well as other amendments adopted as of December 11, 2002, but excluding amendments required by the Economic Growth and Tax Relief Reconciliation Act of 2001.
 - (ii) UC's representation that UC will submit a request for an updated Favorable Determination Letter on the UCRP to the IRS within Cycle C, the remedial amendment cycle established for governmental plans in IRS Revenue Procedure 2007-44, stating that the form of the UCRP, as amended subsequent to December 11, 2002, continues to be qualified under Section 401(a) of the Code.
 - (iii) A copy of the opinion from counsel for UC that the UCRP, as amended subsequent to December 11, 2002, continues to be qualified under Section 401(a) of the Code as to form, the UCRP's trust is exempt from taxation under Section 501(a) of the Code, and UC has confirmed its intent to make any amendments requested by the IRS as required to obtain an updated determination that the form of the UCRP, as amended subsequent to December 11, 2002, continues to satisfy the requirements of Code section 401(a).
 - (iv) UC's certification that UC has determined that, priced as of September 30, 2007, as provided in the Pricing Procedures, the

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

total market value of the assets allocated to the LLNL Segment was \$5,600,667,264 on September 30, 2007.

- (v) UC's certification that, as of midnight Pacific Time on September 30, 2007, the liabilities associated with the LLNL Segment for benefits under the UCRP attributable to service at LLNL prior to October 1, 2007, that remain in the UCRP, including the Excluded Liabilities, were \$3,780,314,849. Collectively, these liabilities, together with the associated assets, are referred to as the "Retained Segment."
- (vi) UC's certification that, priced as of September 30, 2007, as provided in the Pricing Procedures, the calculated market value of the assets to be transferred from the UCRP to the LLNS Plan is \$1,820,352,415 (Formula Amount). The actual amount of assets to be transferred is \$1,680,352,415(Adjusted Formula Amount) as of September 30, 2007.
- (vii) Certification from UC's enrolled actuaries that, if Code section 414(l) did apply to the spin off of assets and liabilities from the UCRP to the LLNS Plan, the transfer of the Asset Transfer Amount as defined in subparagraph (d) (3) would comply with Code section 414(l) regarding the minimum level of assets to be transferred to the LLNS Plan to cover the liabilities transferred and that UC will submit an IRS Form 5310-A to that effect for the spin off of assets and liabilities from the UCRP.
- (viii) UC's agreement to transfer the Asset Transfer Amount from the UCRP to the LLNS Plan as of a date on or about April 1, 2008 (Asset Transfer Date); provided, however, that the transfer will be accomplished with an allocation of cash and an allocation of assets mutually agreed upon by the DOE/NNSA, LLNS, and UC as set forth in Exhibit 2 attached to and made a part of this Agreement.
- (ix) UC's agreement to cooperate with DOE/NNSA and LLNS to determine and reconcile the Final Transfer Amount and the final liability transfer amount from the UCRP to the LLNS Plan in accordance with the terms of this Agreement and applicable law. UC further agrees to cooperate with DOE/NNSA and LLNS in finalizing the data and reconciliation to support any adjustments in the amount of assets and liabilities transferred from the UCRP to the LLNS Plan that may be necessary after the Asset Transfer Date.

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

- (x) UC's agreement to provide data, documentation, and records reasonably requested for and on behalf of the LLNS Plan for the proper establishment, maintenance and administration of the LLNS Plan.
 - (xi) UC's agreement that, if – in accordance with paragraph (c) (3) of this Agreement – LLNS returns the Asset Transfer Amount (as adjusted pursuant to paragraphs (c) (3) and (d) (4) of this Agreement) and the remaining liabilities for service under the UCRP prior to October 1, 2007, to the UCRP, the UCRP will accept those assets and liabilities to the extent legally permissible.
- (c) **For and in consideration of the mutual understandings expressed herein, LLNS agrees and represents as follows:**
- (1) LLNS agrees to provide a copy of the application submitted by LLNS on January 31, 2008, to the IRS for a Favorable Determination Letter that the LLNS Plan satisfies the requirements of Section 401(a) of the Internal Revenue Code of 1986 (Code), including the requirements of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and all other applicable requirements, including those documented in the Cumulative List in Notice 2007-3. In that application, LLNS also requested a determination that the LLNS Plan's associated trust is tax-qualified within the meaning of Code section 501(a).
 - (2) LLNS agrees to provide a copy of an opinion provided by LLNS to DOE/NNSA from counsel for LLNS that the LLNS Plan is qualified under Section 401(a) of the Internal Revenue Code (Code) as to form, that its trust is exempt from taxation under Section 501(a) of the Code, and that LLNS will make any modifications requested by the IRS as required to obtain a Favorable Determination Letter as to the qualified status of the LLNS Plan.
 - (3) LLNS agrees to return the Asset Transfer Amount (as defined in clause (d) (3) below) and the remaining liabilities for service under the UCRP prior to October 1, 2007, to the UCRP to the extent legally permissible (a) if LLNS is unable to obtain a Favorable Determination Letter from the IRS on the form of the LLNS Plan; (b) if LLNS, with the facilitation of DOE/NNSA, as described above, is unable to obtain IRS approval for the asset and liability transfer to the LLNS Plan; or (c) if so ordered by a court of competent jurisdiction. To the extent legally permissible:

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

- (i) The assets so returned to the UCRP shall be the Asset Transfer Amount adjusted by benefit distributions from the LLNS Plan attributable to service credit earned prior to October 1, 2007, to the extent transferred to the LLNS Plan, and an allocable share of the investment return and expenses incurred during the period from the Asset Transfer Date to the date the assets are returned to UCRP.
 - (ii) The allocable share of expenses to be offset against the assets returned to UCRP shall be an amount equal to the administrative expenses, excluding investment expenses, incurred during the period from the Asset Transfer Date to the date the assets are returned to UCRP, multiplied by the ratio of the liability of the Transferring Employees to the total liability of the LLNS Plan on the Asset Transfer Date.
 - (iii) Solely for the purpose of calculating the ratio in (ii) above, the liability shall be based on the funding target under Code section 430(d)(1) using the LLNS Plan assumptions for the funding target for the LLNS plan year containing the Asset Transfer Date.
 - (iv) The allocable share of the investment return added to (or subtracted from) the assets returned to UCRP shall be determined in accordance with applicable fiduciary duties by applying the total rate of investment return, net of investment expenses, of the LLNS Plan (during the period from the Asset Transfer Date to the date the assets are so returned to the UCRP) to the Asset Transfer Amount adjusted by benefit distributions attributable to service credit earned prior to October 1, 2007 and the allocable share of expenses determined above.
 - (v) The liabilities so returned to the UCRP shall be adjusted by benefit distributions attributable to service credit earned prior to October 1, 2007, to the extent of the liabilities transferred to the LLNS Plan, and the obligations incurred by LLNS on behalf of members of the LLNS Plan under the LLNS Defined Benefit Eligible Survivor Income Program and the LLNS Defined Benefit Eligible Disability Program.
- (4) LLNS agrees to cooperate in finalizing the data and reconciliations to support any adjustments in the amount of assets transferred from the UCRP to the LLNS Plan that may be necessary after the Asset Transfer Date. LLNS agrees to assume full responsibility for payment of premiums to the Pension Benefit Guaranty Corporation for the LLNS Plan. LLNS also agrees to assume responsibility for the LLNS Plan's compliance with

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

the requirements of the Code; provided, however, that any costs, expenses, losses and penalties of compliance that directly result from compliance with this Agreement and/or with any other requirement imposed on LLNS or the LLNS Plan by UC and/or DOE will be handled in the manner provided in paragraph (b) (2) of this Agreement.

- (5) LLNS agrees that it has been given an adequate opportunity to review the proposed allocation of assets to be transferred from the UCRP to the LLNS Plan, that it agrees that the valuation approach to be used with respect to the assets transferred is reasonable, and that it agrees to direct the trustee of the LLNS Plan to accept the Asset Transfer Amount into the LLNS Plan as of the Asset Transfer Date.
 - (6) LLNS agrees that it will maintain the special schedule (or the data necessary to create the special schedule) as required by Code section 414(l), and that it will file IRS Form 5310-A to this effect for the merger of the assets and liabilities into the LLNS Plan.
 - (7) LLNS agrees that, upon transfer of the Asset Transfer Amount from the UCRP to the LLNS Plan pursuant to this Agreement and in accordance with the Agreement between DOE/NNSA and UC concerning the Transfer of Assets and Liabilities from the UCRP to the LLNS Plan, all liabilities of the UCRP, UC and the Regents for the benefits under the UCRP attributable to service prior to October 1, 2007, associated with the Transferring Employees – with the exception of Excluded Liabilities retained in the UCRP – will be extinguished.
- (d) **For and in consideration of the mutual understandings and the certifications expressed herein, LLNS and DOE/NNSA agree as follows:**
- (1) **Adjusted Formula Amount**
 - (i) The Parties are mutually relying upon obtaining approval from the IRS for the Adjusted Formula Amount.
 - (ii) The Adjusted Formula Amount (\$1,680,352,415) was determined based upon the Actuarial Valuation as of September 30, 2007, the effective date of disaffiliation – the last business day of the calendar quarter which ended coincident with, or next preceding, the effective date of disaffiliation as had been provided in Clause H.008 of Contract No: W-7405-ENG-48 between DOE/NNSA and The Regents of the University of California (UC).

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

(2) Anticipated Contribution Reserve

NNSA has determined to leave \$140,000,000 with UCRP to cover anticipated future contributions to UCRP for the LLNL segment remaining in UCRP.

(3) Asset Transfer Amount

The Asset Transfer Amount is the Adjusted Formula Amount (i.e., the Formula Amount less the Anticipated Contribution Reserve) as further adjusted to the Asset Transfer Date to reflect the following factors occurring during the period beginning October 1, 2007, and ending on or near the Asset Transfer Date: the portion of the total return earned by the UCRP portfolio allocable to the Adjusted Formula Amount of the LLNL Segment; administrative expenses allocable to the Adjusted Formula Amount of the LLNL Segment; buybacks for the UCRP service credit attributable to the UCRP benefits of Transferring Employees (apart from the CAP accounts) that are allocable to the Adjusted Formula Amount; and any interim distributions agreed to by DOE/NNSA from the UCRP made to the LLNS Plan and/or to LLNS Plan members or their beneficiaries or alternate payees pursuant to a QDRO. See Determination of Asset Transfer Amount (Exhibit 4) estimating the Asset Transfer Amount, based upon preliminary accounting through March 25, 2008 to be modified on or before April 15, 2008, upon determination of the actual value at the Asset Transfer Date. The administrative expenses allocated to the LLNL Segment shall not include any losses or penalties which cannot be charged to the LLNL Segment.

(4) Final Transfer Amount

UC, DOE, and LLNS acknowledge and agree that the Asset Transfer Amount transferred on the Asset Transfer Date may need to be subsequently adjusted to reflect – with respect to certain assets – final earnings figures and other final performance numbers that may be received by UC after the Asset Transfer Date, other investment-related adjustments and any data corrections related to the calculations supporting the Asset Transfer Amount, but not available on the Asset Transfer Date, as well as to make any adjustments necessary to obtain appropriate regulatory approval. Any additional transfers of assets between the UCRP and the LLNS Plan as may be needed to make such adjustments will be made as soon as practicable following the Asset Transfer Date.

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

(5) Corrections

The Parties agree that LLNS and UC will provide prompt notice of any errors or omissions in data used to calculate the Asset Transfer Amount discovered after the Asset Transfer Date that would have had an effect on the Asset Transfer Amount had such error or omission been recognized prior to April 1, 2008. The Parties shall determine how to correct the error or omission with as minimum an administrative burden on the Parties as possible.

(6) Third Party Beneficiaries

This Attachment, including its Exhibits, is for the exclusive benefit and convenience of the Parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, upon any participants or beneficiaries of the UCRP or LLNS Plan, as each may be amended from time to time, or upon any other third party. Notwithstanding the foregoing, UC may rely on the representations made by LLNS in subparagraph (c) of this Agreement provided that UC has entered into an enforceable agreement with the DOE/NNSA providing that LLNS may rely on the representations provided by UC described in subparagraph (b)(3) of this Agreement.

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) indicated below.

DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY
ADMINISTRATION

By: 
Ronna Promani

Title: Contracting Officer
Livermore Site Office

Date: 3/27/2008

LAWRENCE LIVERMORE NATIONAL SECURITY, LLC

By: 
Paul E. Rosenkoetter

Title: Chairman
LLNS Benefits and Investment Committee

Date: 3/27/08

Part III, Section J, Appendix O – Transfer of Assets and Liabilities Agreement

Attachment:

Appendix T to Contract W-7405-ENG-48 - Agreement between the Department of Energy/National Nuclear Security Administration and LLNS concerning the Transfer of Assets and Liabilities from the University of California Retirement Plan (UCRP) to the LLNS Defined Benefit Pension Plan ("LLNS Plan"). This Agreement includes the following Exhibits:

- (i) **October 1, 2007, Lawrence Livermore National Laboratory Special Interim Addendum Report (Exhibit 1) (Actuarial Valuation).**
- (ii) **Revised pages to October 1, 2007 Lawrence Livermore National Laboratory Special Addendum Report (Exhibit 1A)**
- (iii) **Proposed Approach for Asset Allocation for Transfer to the LLNS Plan (Exhibit 2) (Asset Allocation).**
- (iv) **Pricing Procedures for Asset Classes Held in the UCRP (Exhibit 3) (Pricing Procedures).**
- (v) **Estimated Asset Transfer Amount (Exhibit 4) (Estimation).**