

**TRIAD NATIONAL SECURITY, LLC
LOS ALAMOS NATIONAL LABORATORY
NON-DISCLOSURE AGREEMENT
(BILATERAL RSNDA-23-0076)**

I. This non-disclosure agreement (“Agreement”) is entered into by and between **Regents of the University of Michigan**, having a principal place of business at Ruthven Building, 1109 Geddes Avenue, Ann Arbor, MI 48109, and **Triad National Security, LLC**, a Delaware limited liability company having its principal place of business at P.O. Box 1663, Los Alamos, NM 87545, hereinafter referred to as “**Triad**,” operator of the Los Alamos National Laboratory (“LANL”) under Contract No. 89233218CNA000001 with the U.S. Department of Energy, National Nuclear Security Administration (“DOE/NNSA”). The entities named above may also be referred to herein individually as a “Party” or collectively as the “Parties.”

II. WHEREAS the Parties desire to disclose information, some of which may be Proprietary Information as defined below, to each other for the purpose of **conducting discussions and information sharing relating to a High Performance Computing facility and an office building in support of the Advanced Simulation & Computing Program and Weapons Physics Directorate** (the “Purpose”) in accordance with Contract No. 89233218CNA000001; and WHEREAS the Discloser further desires to protect such Proprietary Information from unauthorized disclosure and use under the terms and conditions contained herein.

III. WHEREAS the Disclosers will maintain two identical documents which will contain all of the parties which will be party to the disclosed information. This will include, but not limited to employees and or contractors or consultants employed by either Discloser. These lists (one per discloser, per site) will be kept in synch and shall reflect exactly the same names to ensure a complete understanding of the personnel who have been disclosed on any of the data/IP/proposals/designs/potential patents for the duration of the project. If someone is removed from the list, they must sign a document which states they are restricted from disclosing or discussing any of the information, until notified by both Disclosers. This states that this will be a “by name” (RESTRICTED) NDA. Agreement from both parties will have to be given before names can be added or subtracted from the existing lists. All documents, notes, drawings, designs will be numbered and assigned on a per name basis. All documents must be protected and stored in locked cabinets or secured in an agreed upon method. (Safe or other containers) Upon agreement of both parties, said documents will be updated with the destruction of the previous document in an approved manner. (Shred, burn or return to the owner of the document). Once destroyed, a letter of acknowledgement will be sent to both parties. The person who will maintain this list will be the Technical Point of Contact for the project. As this is a RESTRICTED NON-DISCLOSURE AGREEMENT, the existence is also to be protected and not acknowledged.

IV. The Parties agree as follows:

1. Proprietary Information¹ means all information which is disclosed hereunder by the

¹ Triad’s “Proprietary Information” means information generated in the performance of, or pursuant to the performance of Contract No. 89233218CNA000001 between the Department of Energy and Triad, which would be Proprietary Information had it been generated for a non-federal entity, and which can be restricted from dissemination by applicable laws, and/or DOE rules or regulations.

Discloser to the Recipient for the Purpose; provided that, when disclosed, such Proprietary Information is in written or other permanent form and is identified as proprietary by the Discloser by clear and conspicuous markings. Any information disclosed in unwritten form shall be considered Proprietary Information hereunder, but only to the extent it is identified as proprietary at the time of original disclosure and thereafter summarized in writing with clear and conspicuous markings, and transmitted by the Discloser to the Recipient within **fourteen (14) days** of the unwritten disclosure. The Parties intend to disclose Proprietary Information which relates to **Triad's Advanced Simulation & Computing Program future plans such as platform costs, roadmaps and schedules; facility project costs, plans and schedules; electrical power transmission and distribution, supercomputer and facility cooling technology capacity; and all LANL supercomputer specification requirements, which may include size, power forecast, and cost; floorspace, physical and cybersecurity requirements; financial and cost data**, and information which relates to **Regents of the University of Michigan's site characteristics, project scope, limitations, potential for construction, operation, and maintenance of a secure data center.**

2. Subsidiary. A "subsidiary" shall mean any legal entity, whether such entity now exists or is hereafter created or acquired, that is: (i) directly or indirectly more than fifty percent (50%) owned by Regents of the University of Michigan; or (ii) under the Control of Regents of the University of Michigan. "Control" shall be deemed to exist if Regents of the University of Michigan possesses, directly or indirectly, the power to direct or cause the direction of management or policies of another entity, whether through ownership of voting securities by contract or otherwise. Any Regents of the University of Michigan Subsidiary shall be considered a third party beneficiary under this Agreement with respect to any Proprietary Information disclosed and owned by such Subsidiary.

3. The Recipient shall preserve Proprietary Information received from the Discloser in confidence for a period of **five (5) years** (the "Obligation Period") from the termination or expiration of this Agreement, and shall survive any termination or expiration of this Agreement. During this Obligation Period, the Recipient shall not, directly or indirectly, use, exploit or disclose such Proprietary Information to any third party without written authorization from the Discloser, except that all Proprietary Information provided to Triad is subject to disclosure to United States Government employees; provided, however, that any such disclosure is further protected under 18 U.S.C. § 1905 and that, prior to such inspection or disclosure, Triad has marked all such proprietary information in accordance with the provisions of Federal Acquisition regulation (FAR) 52.215-1(e), Department of Defense FAR Supplement (DFARS) 252.227-7013 and/or DFARS 252.227-7014, as applicable. Further, the Recipient may disclose Proprietary Information received under this Agreement to those of its employees, sub-contractors, independent contractors (collectively "Representatives"), agents, affiliates, and consultants thereof, who need to know the Proprietary Information for the Purpose, and who, prior to such disclosure, are subject to a written agreement or professional obligation that prohibits unauthorized disclosure of proprietary information and obligates such Representatives to comply with the restricted use and non-disclosure provisions of this Agreement. Triad and Regents of the University of Michigan shall be liable for any unauthorized use or disclosure of the Proprietary Information by its Representatives. Additional amendments or restrictions agreed to by the Parties must be made in writing, signed by both Parties. Recipient shall exercise at least the same degree of care with regard to the Proprietary Information that it uses to restrict disclosure and use of its own proprietary information of like importance, but no less than

reasonable care. Recipient shall notify Disclosure promptly in the event of any disclosure of Proprietary Information by it or its representatives not authorized under this agreement.

4. Proprietary Information received under this Agreement shall not be mechanically or electronically copied or otherwise reproduced by the Recipient without the written consent of the Discloser, except for such copies as may be required for the Purpose and by prior approved Representatives who have a need to know. All copies shall contain the same proprietary designations which appear on the original Proprietary Information and shall not be modified.

5. Term (Disclosure Period). This Agreement may be terminated by either Party upon thirty (30) days written notice to the other. This Agreement shall expire **two (2) years** from the Effective Date set forth below unless terminated earlier. Termination or expiration of this Agreement for any reason shall not relieve either Party of any obligation to preserve Proprietary Information received prior to termination or expiration, and all such obligations shall continue until expiration of the Obligation Period.

6. This Agreement shall not restrict disclosure or use of Proprietary Information that is:

- a. Known to the Recipient without restriction as to further disclosure prior to its disclosure by the Discloser and such prior knowledge can be established; or
- b. Developed independently by the Recipient without any use of Proprietary Information; or
- c. Obtained without restriction as to further disclosure from a lawful source other than the Discloser through no breach of confidence by such source; or
- d. In the public domain when received, or thereafter enters the public domain through no fault of the Recipient; or
- e. Disclosed by the Discloser to a third party, including the United States Government, without restriction as to further disclosure; or
- f. Is disclosed as required by applicable law or in response to a valid order of a court or other governmental body of the United States or any political subdivisions thereof, but only to the extent of and for the purposes of such order; provided, however, that Recipient shall first notify the Discloser of the order and reasonably cooperate with the Discloser's efforts to seek an appropriate protective order or otherwise avoid or minimize the disclosure.
- g. Disclosed pursuant to the Defend Trade Secrets Act of 2016, 18 USC § 1833(b), an employee will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

In addition, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney

of the individual and use the trade secret information in the proceeding, if the individual (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to an order from the court, arbitrator, or tribunal. Nothing in this Agreement shall be construed in violation of 18 USC § 1833(b).

7. Proprietary Information shall remain the property of the Discloser. Upon written request of Discloser, the Recipient shall immediately return (or, at the Discloser's option, certify deletion or destruction) of any trade secrets disclosed to the Recipient. This Agreement shall not constitute any representation, warranty, or guarantee to the Recipient by the Discloser with respect to non-infringement of patents or other rights of any other party. The Discloser shall not be liable to the Recipient for any errors or omissions in the Proprietary Information disclosed by it under this Agreement nor for the use or the results of the use of the Proprietary Information by the Recipient. Neither this Agreement nor the disclosure of Proprietary Information hereunder shall be construed as granting any right or license express or implied under any inventions, patents, or copyrights (except as set forth in Section 3), mask works or trademarks now or hereafter owned or controlled by either Party.

8. Proprietary Information, and other **technical information**, transmitted between the Parties under this Agreement shall be addressed as set forth below, or as otherwise designated by written notice from either Party to the other:

Regents of University of Michigan

Ruthven Building
1109 Geddes Ave.
Ann Arbor, MI 48109
Attn: Dr. Ravi Pendse
Phone: 734-763-7109
Email: rpense@umich.edu

Triad National Security, LLC

Los Alamos National Laboratory
P.O. Box 1663, HPC-DO, MS B260
Los Alamos, NM 87545
Attn: Jason C. Hick
Phone: 505-667-4477
Email: jhick@lanl.gov

Other communications relating to the **administration** of this Agreement shall be addressed as follows:

Regents of University of Michigan

Ruthven Building
1109 Geddes Ave.
Ann Arbor, MI 48109
Attn: Dr. Rebecca M. Cunningham
Phone: 734-936-2680
Email: stroh@umich.edu

Triad National Security, LLC

Los Alamos National Laboratory
P.O. Box 1663, FCI-DO, MS C334
Los Alamos, NM 87545
Attn: NDA Team
Phone: 505-665-9090
Email: nda@lanl.gov

9. Upon expiration or early termination of this Agreement, the Recipient shall cease use of Proprietary Information received from the Discloser and shall destroy all such Proprietary Information, including copies thereof, then in its possession or control. Notwithstanding this paragraph, each Party may retain a record identifying or listing, by title and general description, Proprietary Information received, but the record shall not include any Proprietary Information.

10. Each Party shall bear all costs and expenses incurred by it under or in connection with

this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract, or other business relationship.

11. The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Proprietary Information when received.

12. A Party will not assign this Agreement without the written consent of the other Party, except that Triad has the right to assign this Agreement to the U.S. Department of Energy or its designee, and Triad will have no further responsibilities except for applicable confidentiality, nonuse, and nondisclosure obligations.

13. Proprietary Information shall not be exported or re-exported, directly or indirectly and each Party is responsible for its own compliance with the applicable laws and regulations governing export controls.

14. Injunctive Relief and Damages. The Parties acknowledge that disclosure of Proprietary Information in violation of the terms of this Agreement may cause irreparable harm for which monetary damages would not be an adequate remedy. The Parties agree that, in addition to any other remedies available to the disclosing Party, in the event of any breach or threatened breach of this Agreement, the disclosing Party may be entitled to seek injunctive relief and the Parties waive any requirement for the posting of a bond in connection therewith.

15. Where a court of competent jurisdiction declares any provision of this Agreement to be invalid or unenforceable, the remaining provisions shall continue in full force and effect and all rights accrued under the enforceable provisions shall survive such declaration.

16. Governing Law. This Agreement shall be construed in accordance with, and the rights of the Parties shall be governed by Federal common law of government contracts as enunciated and applied to prime government contracts by the Federal boards of contract appeals and Federal courts having appellate jurisdiction over their decisions rendered pursuant to the Contract Disputes Act of 1978.

17. Effective Date. This Agreement shall be effective as of the date of the later signature below. This Agreement will be null and void if not fully executed within thirty (30) calendar days of the date of the first signature below.

18. This Agreement contains the entire understanding between the Parties, superseding all prior or contemporaneous communications, agreements, and understandings between the Parties with respect to the disclosure and protection of Proprietary Information. This Agreement may be signed in one or more counterparts (including faxed or electronic portable document format (pdf) copies), each of which shall be deemed one and the same original. This Agreement shall not be amended except by further written agreement executed by the duly authorized representatives of the Parties.

19. The provisions of this Agreement are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or

mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this Agreement and are controlling.

V. IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in by their duly authorized representatives.

**REGENTS OF UNIVERSITY OF
MICHIGAN**

By: 

Name: Rebecca M. Cunningham
Title: Vice President for Research

Date: 3/1/23

**TRIAD NATIONAL SECURITY, LLC
Los Alamos National Laboratory**

JOHN SARRAO
(Affiliate)
By: 

Digitally signed by JOHN SARRAO (Affiliate)
DN: c=US, o=U.S. Government,
ou=Department of Energy,
0.9.2342.19200300.100.1.1=8900100023484
8, cn=JOHN SARRAO (Affiliate)
Date: 2023.03.02 13:12:34 -07'00'

Name: John L. Sarrao
Title: Deputy Laboratory Director
For Science, Technology & Engineering

Date: _____