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ELECTRONIC DELIVERY

September 30, 2022

Director, Office of Nuclear Material Safety and Safeguards
U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

- References:
- 1) Docket No. 70-7027
 - 2) TRISO-X letter from Jennifer Wheeler to Director, Office of Nuclear Material Safety and Safeguards, "TRISO-X Fuel Fabrication Facility License Application Submittal," dated April 5, 2022
 - 3) TRISO-X letter from Jennifer Wheeler to Director, Office of Nuclear Material Safety and Safeguards, "TRISO-X Fuel Fabrication Facility Environmental Report Submittal," dated September 23, 2022

Subject: **TRISO-X Fuel Fabrication Facility Online Reference Portal Information Access Agreement**

TRISO-X, LLC (TRISO-X) and the U.S. Nuclear Regulatory Commission (NRC) staff discussed the use of an online reference portal that would provide the authorized NRC staff and contractors with limited read-only access to certain materials owned by and under the control of TRISO-X. The purpose of the online reference portal is to enhance the NRC's ability to timely and efficiently perform its regulatory licensing and oversight responsibilities by providing access to reference materials related to the TRISO-X License Application (References 2 and 3).

TRISO-X understands that the enclosed "Information Access Agreement" (Agreement) should be used as the only acknowledgement form for the authorized NRC staff and contractors' access to the online reference portal. Any proposed modification or addition to the enclosed "Information Access Agreement" would require further review by the NRC staff. If the NRC staff determines that information viewed or accessed via the online reference portal is necessary for formal evaluation or otherwise necessary to support the NRC staff's regulatory licensing responsibilities, the NRC staff will request that TRISO-X formally submit such information in accordance with Title 10 of the Code of Federal Regulations Section 70.5, "Communications," as stated in Section 5 of the Agreement.


TRISO-X, LLC, is a wholly owned subsidiary of X Energy, LLC (X-energy). The Agreement is based on the version sent to X-energy on June 2, 2022, in connection with the Xe-100 Program. Edits made by TRISO-X to the Agreement include the following.

1. Throughout:
 - a. Update of X-energy references to TRISO-X.
 - b. Update of “documents related to activities associated with the X-energy reactor design” to “documents related to the construction and operation of the TRISO-X Fuel Fabrication Facility to be located in Oak Ridge, TN (“the Facility”).”
 - c. Update of “regulatory licensing responsibilities” to “regulatory licensing and oversight functions” to cover both licensing and inspection activities.
2. Paragraph 1: Addition of note that the online reference portal may be maintained by TRISO-X or their parent company X-energy.
3. Paragraph 3: Addition of “which by their nature may be considered to be Export Controlled Information” at the end of the paragraph.
4. Section 5: Update of the 10 CFR 50.4, “Written communications,” reference to 10 CFR 70.5, “Communications.”
5. Signatures:
 - a. To cover both licensing and inspection activities, signature lines have been included for both the Office of Nuclear Material Safety and Safeguards and the Regional Administrator for Region II.
 - b. To cover all vintages of information created to date for the TRISO-X project, signature lines have been included for both TRISO-X, LLC and X Energy, LLC.

TRISO-X requests that NRC review the edits to the Agreement noted above, and if acceptable, sign, date, and return the “Information Access Agreement” enclosed with this letter.

If there are questions or if additional information is required, please contact me at (865) 850-0893 or jwheeler@x-energy.com.

Sincerely,



Jennifer K. Wheeler, P.E.
Director, Regulatory Affairs

TRISO-X, LLC
801 Thompson Avenue
Rockville, MD 20852

Copy: Mr. Matthew Bartlett, US NRC, NMSS
TRISO-X Regulatory Records File

**INFORMATION ACCESS AGREEMENT BETWEEN
TRISO-X, LLC AND
THE UNITED STATES NUCLEAR REGULATORY COMMISSION**

This agreement is made and effective on this ____ day of _____, 2022 (“Effective Date”) by and between the UNITED STATES NUCLEAR REGULATORY COMMISSION (“NRC”) and TRISO-X, LLC (“TRISO-X”) (collectively “the Parties”) for the purpose of facilitating the NRC’s access to an online reference portal maintained by TRISO-X or their parent company X Energy, LLC, through which NRC staff and contractors approved in accordance with Section 1 (“the authorized NRC staff and contractors”) may access certain documents related to the construction and operation of the TRISO-X Fuel Fabrication Facility to be located in Oak Ridge, TN (“the Facility”).

Whereas TRISO-X desires to enhance the NRC’s ability to timely and efficiently perform its regulatory licensing and oversight functions with respect to the Facility, including by providing the authorized NRC staff and contractors with access to certain documents owned by or under the control of TRISO-X through an online reference portal so that the NRC staff may access such information in a timely manner; and

Whereas information accessed by the authorized NRC staff and contractors may consist of information considered by TRISO-X to be trade secrets, or privileged or confidential commercial and financial information (“Proprietary Information”), which by their nature may be considered to be Export Controlled Information; and

Whereas TRISO-X is willing to make such Proprietary Information available to the authorized NRC staff and contractors for the purpose of promoting timely and efficient NRC regulatory licensing and oversight of the Facility, subject to the terms and conditions set forth below.

The Parties mutually agree as follows:

Terms:

1. At no charge to the NRC staff, TRISO-X agrees to maintain and make available to the authorized NRC staff and contractors an online reference portal in which TRISO-X will provide access to documents relating to the Facility, which may include Proprietary Information. TRISO-X will provide the NRC staff with login credential access to the online reference portal. The Parties will separately agree upon a list of authorized NRC staff and contractors permitted to use the login credential access. This list of the authorized users will include only the NRC staff and contractors who have been determined to have a requisite need to access the online reference portal in furtherance of official duties in relation to regulatory licensing and oversight of the Facility. This list of authorized users may be revised from time to time upon agreement of the Parties. The points of contact for the Parties for the purpose of agreeing upon the list of authorized users are TRISO-X’s Director of Regulatory Affairs (for TRISO-X); and the NRC’s Project Manager for TRISO-X (for the NRC).
2. The Authorized NRC staff and contractors may use the online reference portal only to access TRISO-X documents, including Proprietary Information, and only in furtherance of official duties and in accordance with any of TRISO-X’s reasonable policies and procedures governing access and use. The Parties expressly recognize that TRISO-X reserves the right to revoke the NRC staff access to the portal at any time.

3. The online reference portal will be available to the authorized NRC staff and contractors through “read only” access with no capability to (a) modify information on the online reference portal, (b) control the online reference portal application, or (c) print, save, or download information from the online reference portal.
4. The Parties expressly acknowledge that documents placed into the online reference portal and made available to the authorized NRC staff and contractors are owned by and under the control of TRISO-X. The NRC staff does not consider documents placed in the online reference portal to constitute “agency records” for purposes of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the NRC’s implementing FOIA regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 9. The fact that TRISO-X makes Proprietary Information available to the NRC staff as provided in this Agreement shall not, in and of itself, be construed as a waiver of the proprietary nature of such Proprietary Information, or as an indication that such information residing within the online reference portal is not “owned by,” “under the control of” and “in the possession of” TRISO-X.
5. If the NRC staff determines that information viewed or accessed via the online reference portal is necessary for formal evaluation or otherwise necessary in support of the NRC’s regulatory licensing and oversight responsibilities with respect to the Facility, the NRC staff will request that TRISO-X formally submit such information in accordance with 10 CFR § 70.5, “Communications.” TRISO-X shall abide by the requirements in 10 CFR § 2.390(b) when submitting such information to the NRC staff if TRISO-X seeks to have information contained within that correspondence withheld from public disclosure. If the NRC receives a FOIA request that encompasses records formally submitted by TRISO-X to the NRC in accordance with the affidavit requirements, such information shall be subject to disclosure only in accordance with the provisions of 10 CFR § 9.19, “Segregation of exempt information and deletion of identifying details.”
6. Information made available to the authorized NRC staff and contractors only through the online reference portal does not constitute “communications” as part of the formal licensing, oversight, or enforcement functions with respect to the Facility pursuant to applicable regulations contained in 10 CFR. TRISO-X is not required to submit an affidavit or mark documents in accordance with 10 CFR § 2.390 when making them accessible through the online reference portal. TRISO-X makes no warranty, guarantee, or representation as to the completeness or accuracy of information that the authorized NRC staff or contractors’ access through the portal. The NRC requirements governing completeness and accuracy of information apply to any information that TRISO-X submits to the NRC in accordance with NRC regulations, or information that TRISO-X is otherwise required to maintain or provide pursuant to statute, order, license, or regulation.
7. This Agreement may be modified at any time in a writing signed by the Parties. Either party shall have the right, upon written notice to the other party, to terminate this Agreement, in whole or in part, at any time, without cost, penalty, or liability to any party.

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

UNITED STATES NUCLEAR REGULATORY COMMISSION

By: _____
Director, Office of Nuclear
Title: Material Safety and Safeguards
Date: _____

By: _____
Title: Regional Administrator, Region II
Date: _____

TRISO-X, LLC

By: _____
Title: President
Date: _____

X Energy, LLC

By: _____
Title: Senior VP and General Counsel
Date: _____