

U.S. Department of State
DIRECTORATE OF DEFENSE TRADE CONTROLS

Change to Non-Disclosure Agreements (NDAs) for Warehouse and Distribution Agreements (WDAs)

In an effort to standardize retransfer requirements among all Part 124 agreements the Directorate of Defense Trade Controls is clarifying when NDAs are needed in regard to WDAs. There is an increasing trend to utilize WDAs to either support integration of a minor system into major system or to provide parts/components to an end-item manufacturer prior to transfer to the ultimate end-user. These intermediaries/integrators are recipients of USML-controlled defense articles and as such need to acknowledge the requirements of the WDA under which they received the defense articles. This will be accomplished through the execution of a NDA. A sample WDA NDA is provided within this web notice as well as at Appendix A, Tab 13 of the Guidelines for Preparing Electronic Agreements, Revision 3.0.

These intermediaries/integrators must be identified in Block 16 of the DSP-5 vehicle.

The following language must be provided in 22 CFR 124.14(b)(4) of the proposed agreement:

“This agreement authorizes the temporary transfer of USML-controlled defense articles to the entities listed in **Attachment X** prior to final transfer to the authorized end-users. As recipients of USML-controlled defense articles these entities must execute Non-Disclosure Agreements (NDAs) acknowledging receipt of USML-controlled defense articles. These NDAs must be maintained by the applicant for five years after conclusion of this agreement pursuant to 22 CFR 122.5.”

Please see Section 7.0 of the Guidelines for Preparing Electronic Agreements, Revision 3.0 for information on preparing WDAs.

SAMPLE – WDA Non-Disclosure Agreement (NDA)

NON-DISCLOSURE AGREEMENT

For DTCL Case _____

I, _____, acknowledge and understand that any defense articles (hardware) on the U.S. Munitions List, to which I have access or which is disclosed to me under this license by (company name) is subject to export control under the International Traffic in Arms Regulations (Title 22, Code of Federal Regulations, parts 120-130). I hereby certify that such defense articles (hardware) will not be further exported or transferred in any manner, to any other foreign national or any foreign country without the prior written approval of the Office of Defense Trade Controls Licensing, U.S. Department of State.

§124.14(c)(1). This agreement shall not enter into force, and may not be amended or extended without the prior written approval of the Department of State of the U.S. Government.

§124.14(c)(2). This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.

§124.14(c)(3). The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government.

§124.14(c)(4). No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement.

§124.14(c)(5). No export, sale, transfer or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Defense Trade Controls of the U.S. Department of State.

§124.14(c)(6). The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State.

§124.14(c)(7). (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

“These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an

intermediate process into other end-items, without the prior written approval of the U.S. Department of State.”

§124.14(c)(8). All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement.

§124.14(c)(9). Additional clause: Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all Warehouse and Distribution Agreements:

“Sales or other transfers of the licensed article shall be limited to the governments of the countries in the distribution territory and private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained.”

For WDAs involving the Distribution of SME, add the following:

§124.14(d)(1). A completed Non-transfer and Use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place.

§124.14(d)(2). The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory.

For Integrators/Intermediaries with Contract Employees, add the following:

Contract employees to any party to the agreement hired through a staffing agency or other contract employee provider shall be treated as employees of the party, and that party is legally responsible for the employees’ actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services. Transfers to the parent company by any contract employees are not authorized. The party is further responsible for certifying that each employee is individually aware of their responsibility with regard to the proper handling of ITAR controlled defense articles, technical data, and defense services.

Signature Block of Foreign Licensee

Signature of Block of Integrator/Intermediary

Date

Date