

## AGREEMENT COMPLIANCE ESSENTIALS

### SIGNATORY AGREEMENT GUIDE Based on U.S. Department of State Guidelines

The purpose of the document is to provide guidance for signatories to GE DoS Agreements for managing key U.S. Department of State, Directorate of Defense Trade Controls (DDTC) requirements related to:

- Signatory Name Changes
- Sublicensing
- Dual and Third Country National Employees
- Contract Employees; and
- Agreement Sales Reporting.

The guidance below is consistent with GE's interpretation of the DoS Guidelines for Agreements, found at:

<http://www.pmdtcc.state.gov/licensing/agreement.html>

#### **SIGNATORY NAME CHANGES**

##### **Requirement:**

Written prior approval of DDTC must be obtained before reselling, transferring, transshipping, or disposing of a defense article, technical data or defense service to any entity other than as stated, exactly, on the agreement. This includes a name change resulting from an acquisition, divestiture or a name change for branding purposes only.

DDTC has prepared specific instructions for efficiently transferring existing DoS TAAs/MLAs to successor entities without disrupting program or project activities. On the other hand, failure to follow DDTC guidance may invalidate the GE Agreement, resulting in substantial program delays, or possible DoS enforcement action against GE.

To help GE maintain compliance, please take the following actions prior to executing a name change:

1. Pre-coordinate anticipated name changes with GE before they take place.
2. Submit a letter to DDTC using the format found here:

[http://www.pmdtcc.state.gov/licensing/documents/WebNotice\\_GCforeign.pdf](http://www.pmdtcc.state.gov/licensing/documents/WebNotice_GCforeign.pdf)

3. Send GE a copy of DDTC's response providing written instruction on actions required to complete the name change (e.g., minor or major amendment instructions).

Typically, parties who follow this process receive a response similar to the web notice found here:

[http://www.pmdtcc.state.gov/licensing/documents/WebNotice\\_GEFanucUK.pdf](http://www.pmdtcc.state.gov/licensing/documents/WebNotice_GEFanucUK.pdf)

This response allows existing approvals to remain effective and allows GE to submit "minor amendments" updating the signatory legal entity names.

## **SUBLICENSING**

### **Requirement:**

Some GE Agreements permit the release of defense articles and/or technical data to 3<sup>rd</sup> parties referred to as "Sublicensees".

What is Sublicensing?

SubLicensing involves the retransfer or re-export of USML controlled defense articles and/or technical data by an Agreement Signatory to a third party that is not a signatory to the agreement, but whose participation based on the scope of the agreement and work-share requirements is essential to fulfilling the objectives of the agreement.

To help GE maintain compliance, please take the following actions:

1. Before releasing defense articles and/or technical data to a third party, ensure that the Agreement contains language authorizing sublicensing. This language should be included in the ITAR 124.7(4) section of the Agreement. Some GE Agreements include a separate appendix listing the names of authorized sublicensees.

If the GE Agreement does not permit sublicensing or does not properly identify the legal entity name of a third party, DO NOT release the defense article and/or technical data. Contact your GE PoC immediately for instruction.

Note: If the release of defense articles and/or technical data involves a U.S. Person, then it is not necessary to specifically identify the U.S. Person legal entity name. However, the GE Agreement must contain the following provision in the ITAR 124.7(4) section:

"This agreement authorizes sublicensing to U.S. Persons". In addition, the transfer of GE Intellectual Property must conform to the terms and conditions of the applicable Proprietary Information Agreement (PIA).

If the GE Agreement does not permit sublicensing to U.S. Persons, DO NOT release the defense article and/or technical data. Contact your GE PoC immediately for instruction.

2. If the 3<sup>rd</sup> party is properly identified as an authorized sublicensee, please obtain a signed Non-Disclosure Agreement (NDA) using the template found in Appendix B. Provide 1 copy of the NDA to your GE PoC.

3. Notify your GE PoC of any changes to list of sublicensees (e.g., name change, address change, deletion, addition, etc.). GE will submit an appropriate amendment to DDTC. Do not release defense articles and/or technical data to the 3<sup>rd</sup> party without confirmation from GE that DDTC has approved the amendment.

## **DUAL/THIRD COUNTRY NATIONAL EMPLOYEES**

### **Requirement:**

Some GE Agreements permit the release of defense articles and/or technical data to dual or third country national employees.

What is a dual or third country national?

Dual National: An individual who holds nationality from the country of their employer who is an Agreement Signatory (or authorized sublicensee), and also holds nationality from one or more additional countries.

Third Country National: An individual who holds nationality from a country other than the country of their employer who is an Agreement Signatory (or authorized sublicensee).

When determining nationality, DDTC considers the country of origin or birth in addition to citizenship.

Unless the Agreement Signatory (including sublicensees – if applicable) is eligible for an ITAR exemption, GE must list all countries of nationality for each dual/third country national employee.

Appendix E provides a step-by-step process for determining eligibility for an ITAR exemption. Please note that GE Agreements do not permit retransfers under the authority of ITAR 126.18(c)(2). GE is currently awaiting additional guidance from DDTC concerning the implementation of this exemption. However, exceptions may be considered on a case-by-case basis.

To help GE maintain compliance, please take the following actions:

1. Prior to the release of defense articles and/or technical data to a dual or third country national employee, ensure that the transfer will take place under one of the following four (4) options:

- a. The transfer will take place under the authority of §124.16 as specified in the §124.7(4) section of the GE agreement.

OR

- b. The transfer will take place under the authority of §126.18 as specified in the §124.7(4) section of the GE agreement.

OR

- c. The transfer will take place under the authority of a bilateral agreement with DDTC (i.e., Australia, Canada and The Netherlands) as specified in the §124.7(4) section of the GE agreement.

OR

- d. The employee's nationality is properly listed in the §124.7(4) section of the GE agreement in accordance with ITAR 124.8(5).

2. If the transfer is made under item 1(d) above, ensure the employee signs a Non-Disclosure Agreement (NDA) and provide a copy to your GE PoC. The NDA must be sent to GE prior to the transfer of defense articles to approved dual/third country nationals. Refer to Appendix A for an NDA Template.

3. Notify GE of any changes to approved list of countries or eligibility for country specific exemptions.

## **CONTRACT EMPLOYEES**

### **Requirement:**

Some GE Agreements permit the release of defense articles and/or technical data to Contract Employees.

What is a Contract Employee?

Contract Employees are frequently hired through staffing agencies or other contract employee providers by both U.S. and non-U.S. companies.

When a non-U.S. Signatory (including authorized sublicensee) hires contract employees through staffing agencies or other contract employee providers, there is no requirement for the staffing agency or other contract employee provider to be identified as signatories to the agreement, so long as:

- The transfer of defense articles to include technical data and the provision of defense services are limited only to the specific contract employees and NOT to the staffing agency or contract employee provider itself. Transfer/retransfer of defense articles to include technical data to the parent staffing agency or contract employee provider, either directly from the parties to the agreement, or indirectly from the contract employee, IS NOT authorized.
- The staffing agency or contract employee provider is not in the business of providing defense services independently of the contract entered into as related to the specific agreement.
- The employing party assumes full responsibility for the employee's actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services.

To help GE maintain compliance, please take the following actions.

1. Prior to the release of defense articles and/or technical data to a Contract Employee, ensure the following language is contained in the §124.7(4) section of the GE Agreement:

"Contract employees to any party to the agreement (including eligible sublicensees – If applicable) 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 (including eligible sublicensees – If applicable) 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."

2. Notify your GE PoC immediately if you are unable to meet the terms and conditions as specified in the GE agreement.

## **Unique Requirements for Manufacturing License Agreements**

### **WDA or MLA SALES REPORTING**

#### **Requirement:**

GE MLAs and WDAs contain the following mandatory language in the §124.9 section of the agreement:

"The parties to this Agreement agree that an annual report of sales or other transfers pursuant to this Agreement of licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by the licensor to the Department of State."

Your GE PoC will request an annual sales report be submitted no later than January 30<sup>th</sup> of each calendar year pursuant to the format in Appendix C (for MLAs) and D (for WDAs).

APPENDIX A  
NON DISCLOSURE AGREEMENT (NDA)  
FOR DUAL/THIRD COUNTRY NATIONAL EMPLOYEES

For new eAgreement or Rebaseline: DDTC CASE NO: To Be Assigned by DDTC

For eAmendment: DDTC CASE NO: Amendment NO. X to TA (MA) 05XXXXXXXX (TA/MA XXXX-YY)

(TRANS ID NO: GR0034)

Additional guidance concerning DoS Agreement compliance can be found at:  
[http://geae.com/aboutgeae/doingbusinesswith/trade\\_compliance/index.html](http://geae.com/aboutgeae/doingbusinesswith/trade_compliance/index.html)

I, \_\_\_\_\_, acknowledge and understand that any technical data related to defense articles on the U.S. Munitions List and proprietary data that I will have access to or which is disclosed to me by (employer's name) are subject to control under United States law (the International Traffic in Arms Regulations (the "ITAR").

I hereby certify that such controlled technical data will not be further disclosed, exported, or transferred in any manner not authorized under the ITAR, except with the prior written approval of the U.S. Department of State and [employer's name]. I certify that I will report promptly to [employer's name] and its security and export control officers any inquiry or request to provide controlled technical or proprietary data to any third person without authority.

I further certify that I have never acted for, represented, or provided information to and do not currently act for, represent, or provide information to any country or person acting on its behalf that is subject to Section 126.1 of the ITAR, including but not limited to Iran, Syria, North Korea, Sudan, China, Burma, Cuba, or Libya, or any entity that is owned or controlled by such country. Furthermore, I certify that I understand and will comply with the notification requirements of Section 126.1(e) of the ITAR or any other law.

I make this certification voluntarily and understand and agree that it may be provided to the government of \*employer's location+ and the United States which have an interest in ensuring that controlled defense articles and technical data are not provided or transferred to persons without authority.

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Signature & Printed Name & Address

APPENDIX B  
NON DISCLOSURE AGREEMENT (NDA)  
FOR SUB-LICENSEES

For new eAgreement or Rebaseline: DDTC CASE NO: To Be Assigned by DDTC

For eAmendment: DDTC CASE NO: Amendment NO. X to TA (MA) 05XXXXXXXX (TA/MA XXXX-YY)

(TRANS ID NO: GR0034)

Additional guidance concerning DoS Agreement compliance can be found at:  
[http://geae.com/aboutgeae/doingbusinesswith/trade\\_compliance/index.html](http://geae.com/aboutgeae/doingbusinesswith/trade_compliance/index.html)

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

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

§124.8 (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.

§124.8 (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.

§124.8 (5). The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a foreign person except pursuant to §124.16 and §126.18, as specifically authorized in this agreement, or where prior written approval of the Department of State has been obtained.

§124.8 (6). 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.

For Sub-licensees on MLAs, add the following:

§124.9(a)(1). No export, sale, transfer or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained.



§124.9(a)(2). It is agreed that sales by licensee or its sub-licensees under contract made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-fee license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.

§124.9(a)(3). If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.

§124.9(a)(4). If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a)(2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data.

§124.9(a)(5). The parties to this agreement agree that an annual report of sales or other transfer 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.

§124.9(a)(6). (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice, or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (state the country of ultimate destination or approved sales territory. Do not use collective terminology). 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.

For Sub-licensees on MLAs involving the Manufacture of SME, add the following:

§124.9(b)(1). A completed Non-transfer and use Certificate (DSP-83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place.

§124.9(b)(2). The prior written approval of the U.S. Government 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 of the approved sales territory.

For Sub-licensees 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 Party  
Company

\_\_\_\_\_  
Signature Block of Participating  
(Foreign Signatory)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Send this NDA to: [ge.itc@ge.com](mailto:ge.itc@ge.com)**

Additional guidance concerning NDA can be found at:  
[http://geae.com/aboutgeae/doingbusinesswith/trade\\_compliance/index.html](http://geae.com/aboutgeae/doingbusinesswith/trade_compliance/index.html)

**APPENDIX C  
SAMPLE MLA SALES REPORT FORMAT**

**For new eAgreement or Rebaseline:** DDTC CASE NO: To Be Assigned by DDTC

**For eAmendment:** DDTC CASE NO: Amendment NO. X to TA (MA) 05XXXXXXXX (TA/MA XXXX-YY)

Additional guidance concerning DoS Agreement compliance can be found at:  
[http://geae.com/aboutgeae/doingbusinesswith/trade\\_compliance/index.html](http://geae.com/aboutgeae/doingbusinesswith/trade_compliance/index.html)

**MLA/WDA # XYZ-00 Company Name – Country  
ANNUAL SALES REPORT 2010: \$1,000,000**

Purchaser/Recipient	Part Number	Nomenclature	Qty	Unit Price	Total Price
ABC Co.	ABCDEF	Widget	3	\$250,000	\$750,000
XYZ Co.	ABCDEF	Widget	1	\$250,000	\$250,000
<b>Total 2010</b>					<b>\$1,000,000</b>
<b>2011 Sales Projection</b>					<b>\$500,000</b>

**USG Approved Value: (GE To Provide)**  
**Sales Reported to Date: (GE To Provide)**  
**Remaining Balance: (GE To Provide)**

Send this report to: [ge.itc@ge.com](mailto:ge.itc@ge.com)

Please alert GE immediately at ([ge.itc@ge.com](mailto:ge.itc@ge.com)) if current or projected sales will exceed the USG Approval Value. GE will submit an appropriate amendment to increase the USG Approved Value. Exceeding the USG Approved Value is NOT authorized and will result in MLA termination.

For more information concerning USG sales reporting requirement, visit this website:  
[http://geae.com/aboutgeae/doingbusinesswith/trade\\_compliance/index.html](http://geae.com/aboutgeae/doingbusinesswith/trade_compliance/index.html)

**APPENDIX D  
SAMPLE WDA SALES REPORT FORMAT**

**For new eAgreement or Rebaseline:** DDTC CASE NO: To Be Assigned by DDTC

**For eAmendment:** DDTC CASE NO: Amendment NO. X to WDA 05XXXXXXXX (WDA XXXX-YY)

Additional guidance concerning DoS Agreement compliance can be found at:  
[http://geae.com/aboutgeae/doingbusinesswith/trade\\_compliance/index.html](http://geae.com/aboutgeae/doingbusinesswith/trade_compliance/index.html)

**WDA # XYZ-00 Company Name – Country**

**ANNUAL SALES REPORT 2010: \$1,000,000**

<b>Purchaser/Recipient</b>	<b>Part Number</b>	<b>Nomenclature</b>	<b>Qty</b>	<b>Unit Price</b>	<b>Total Price</b>
ABC Co.	ABCDEF	Widget	3	\$250,000	\$750,000
XYZ Co.	ABCDEF	Widget	1	\$250,000	\$250,000
				<b>Total 2010</b>	<b>\$1,000,000</b>

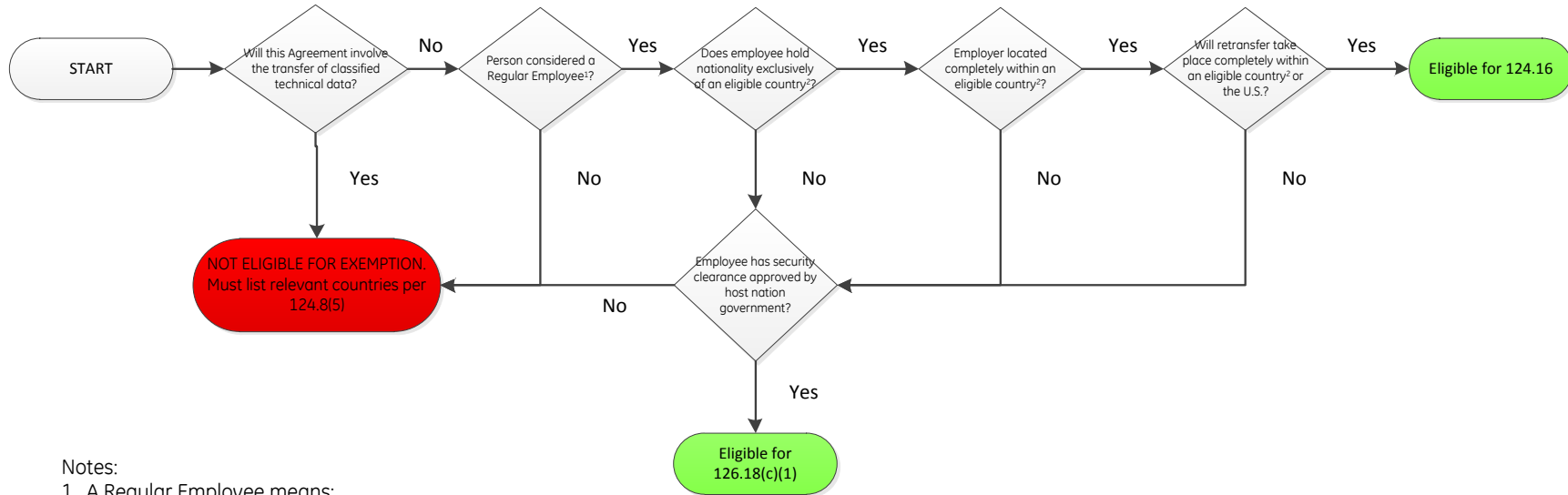
Send this report to: [ge.itc@ge.com](mailto:ge.itc@ge.com)

For more information concerning USG sales reporting requirement, visit this website:  
[http://geae.com/aboutgeae/doingbusinesswith/trade\\_compliance/index.html](http://geae.com/aboutgeae/doingbusinesswith/trade_compliance/index.html)

APPENDIX E

Dual/ Third Country National Exemption Process

Repeat this worksheet for each dual or third country national employee.



Notes:

1. A Regular Employee means:

- (a) An individual permanently and directly employed by the company, or
- (b) An individual in a long term contractual relationship with the company where the individual works at the company's facilities, works under the company's direction and control, works full time and exclusively for the company, and executes nondisclosure certifications for the company, and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license).

2. **Eligible countries include:** Members of NATO the European Union, Australia, Japan, New Zealand or Switzerland?