**Non-Retransfer Agreement**

**Pertaining to the the XXXXX project of the European Defense Fund**

**(meaning of the acronym)**

This Non-Retransfer Agreement (hereinafter referred to as the “**Agreement**” or NRTA) is entered into between the following authorized parties, inasmuch as they are signatories:

**Company name #1**

Adress, registration,

**Company name #2**

Adress, registration,

[etc]

[complete companies list, *a priori* the members of the consortium, but may be adapted]

being hereinafter referred to individually as the "**Party**" or collectively as the "**Parties**"

The parties, within the framework of the project XXXX, contract to respect the following:

## **NRTA and national export control:**

1. This NRTA is intended to be used within the XXXXX Project, for transfers from one Party to another Party of products that are subject to national export control obligations.

With respect to national export control requirements and regulations, for any Product declared **subject to this NRTA**, the Parties hereby certify that their commitment will be the one usually involved by an “end user certificate” (EUC).

2. When a national export control authority allows the transfer of a product under the present NRTA, this permission shall be understood as ***immediately authorizing any transfer or re-transfer of the said product to any Party having signed this NRTA as an EUC equivalent***, for which the Parties may collectively be considered as the “end user”.

If the national export control authority considers this NRTA to be insufficiently specific for a given Product, it may request the delivery of an End-User Certificate (EUC) or the signature of a Non-Disclosure Agreement (NDA) by the receiving Party. In such a case, the transfer and retransfer of the said Product shall be governed by the said EUC or NDA, not by this NRTA; and to avoid any ambiguity, such subjection shall be appropriately marked.

3. The Parties shall take all necessary actions in order to obtain in due time all necessary export control authorizations. The Parties shall cooperate to enable one another to fulfil legal obligations arising under applicable national export control laws. No Party shall be considered to be in breach of its obligations if a governmental authorization restriction prevents it (or its Subcontractor) from fulfilling it.

## **Declaration that a Product is subject to this NRTA:**

4. Any Product (such as but not limited to hardware, software, services, document or technical data…) transferred or made accessible to another Party by a **Party originally transferring the Product** under the Project XXXXX, and declared by the latter as **subject to this NRTA**, shall be considered by the receiving Party as being **subject to this NRTA**, and shall be handled consequently.

Within the project, transfers may be allowed to any signatory party, or restricted to parties members of a (list of) named transfer group, as described in appendix A.

5. For any transfer of such Product, a statement that the Product is **subject to this NRTA** shall be explicitly made in the documents attached to the Product. If the Product is a document, this statement shall also be made on the document itself. If the Product necessitates an access, this statement shall be made at the time of this access. The statement shall be the following, or an equivalent:

Product from [*Name of the* ***Party originally transferring the Product***], subject to non-retransfer agreement under the Project XXXXX – [*group name* [and *transfer nature*]restricted].

To avoid any ambiguity, it is recommended that Products not **subject to this NRTA** be also identified with an appropriate marking.

## **Commitment of the Parties:**

6. Under this NRTA, any receiving Party (other than the **Party originally transferring the Product**), and as long as the Product is available to this receiving Party, commits itself to use the Product exclusively in the frame of the XXXXX Project. This receiving Party commits itself not to sell, give, lend or in any way make available a Product **subject to this NRTA**, or any part of it, to any recipient not Party to the present NRTA, unless authorized to do so in accordance with this NRTA.

Any other use or transfer shall be subject to the prior agreement of the **Party originally transferring the Product**.

Any receiving Party shall retain proof of destruction or final transfer to a third party of any Product **subject to this NRTA**, proof of which shall be provided upon request to the **Party originally transferring the Product**.

7. Any derivative product using a Product **subject to this NRTA** as input must itself be considered as **subject to this NRTA**, under the same conditions as the original product, when it would allow a third party to access to or reconstitute the initial Product **subject to this NRTA**, or any part of it.

## **Authorized transfers:**

8. Returning a product tot he **Party originally transferring the Product** is always authorized.

Any signatory Party of this present NRTA shall be authorized to re-transfer any Product **subject to this NRTA** to any other signatory Party, without authorization of the **Party originally transferring the Product**, provided that:

* If the product is not declared limited to a transfer group, the other party is any signatory party.
* If the product is declared limited to a (list of) transfer group(s), by a mention such as “*group name* restricted”, the other signatory party is a member of the said group(s), as described in appendix A.

It remains the responsibility of the re-transferring Party to abide by its national export control regulations when required.

9. Any re-transfer to a recipient not Party to this present NRTA must be explicitly authorized by the **Party originally transferring the Product**.

It remains the responsibility of the **Party originally transferring the Product** and the re-transferring Party to abide by their national export control regulations, and obtain any required export control authorization.

Unless the relevant national export control authority allows otherwise, the prior delivery of an End-User Certificate (EUC), the signature of a Non-Disclosure Agreement (NDA), or any equivalent appropriate non-disclosure commitment, shall be required from the third-party recipient. The materialization of this commitment shall be held by the Party originally transferring the Product, and if necessary communicated on request to other Parties.

## **Validity:**

10. Each Party is bound by this agreement from the date of its respective signature, whether or not the other Parties have signed this agreement.

11. ZZZZZZZ, acting as the European coordinator of the XXXXX project for this NRTA, shall inform without delay all the signatories of each new signature under this agreement.

IN WITNESS WHEREOF, the present Agreement is duplicated in as many copies as the number of counterparts, and this has the same effect as if the signatures of the counterparts were on a single copy of the Agreement.

 [Prepare one signature per page – facilitates signature collection]

**For Company #1,** Represented by xxxxx yyyyyy, position, who is entitled to enter into legally binding commitments on behalf of the company,

Date:

Signature:

Name:

Position:

[etc., repeat for each company]

## **Appendix A: Transfer groups**

### a/ Consortium Management

|  |  |
| --- | --- |
| Group Name | Consortium Management |
| Group Members |  |

Note: products such as sensible technical requirements or results, that should be exchanged between the “consortium management” group and a technical working group (for instance “architectural concept and feasibility”), but to which other parties should not access, will be marked restricted to those two groups (for instance, “*Consortium management” and “Architectural concept and feasibility” Restricted*).

### b/ Architectural concept and feasibility

|  |  |
| --- | --- |
| Group Name | Architectural concept and feasibility |
| Group Members |  |

### c/ …

|  |  |
| --- | --- |
| Group Name |  |
| Group Members |  |