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**Defense Security Service**

FOCI Operations Division

**Defense Security Service**

**Defense Security Service**

**February 2013**

**DSS AFFILIATED OPERATIONS PLAN**

**TEMPLATE**

**Defense Security Service**

**AFFILIATED OPERATIONS PLAn template**

**Date:**

**Company:**

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 **Address:**

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**Cage Code:**

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**Named Affiliate(s):**

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**Affiliated Operations Plan**

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Instructions: This template serves as a guide for requesting affiliated operations and demonstrating mitigation methods for an Administrative Services Agreement between affiliates. This template should be used for the request of all administrative services shared between the Corporation and the Affiliate Group. The approval of any affiliated operations may result in increased contacts with the parents/affiliates subject to the visitation and electronic communications policies. DSS is unlikely to waive provisions of these policies due to the burdensome nature of increased contacts resulting from affiliated operations.

**Affiliated Operations Plan**

**Between**

**[COMPANY] and [PARENTS/AFFILIATES]**

This Memorandum and Plan of Agreement Regarding Affiliated Operations (“Affiliated Operations Plan” or “AOP”) is made on by and among , a corporation (“Company”), , a corporation (“Parent”), , a corporation (“Intermediate Parent”) and , a corporation (“Ultimate Parent”) (individually, a “Party”; collectively, the “Parties”).

 **WHEREAS,** unless otherwise provided, capitalized terms used in this AOP will have the definitions specified in Exhibit A attached hereto and incorporated herein; and

 **WHEREAS,** the Parties are also parties to a Department of Defense (“DoD”) agreement for the mitigation of foreign ownership control or influence (FOCI) dated (the “Mitigation Agreement”); and

 **WHEREAS,** each of the Parties desire various valuable products and services to be provided and received from time to time among any of the Affiliates on one hand and, on the other hand, the Company or any of its subsidiaries (the “Mitigated Group”); and

 **WHEREAS**, a company under FOCI is not normally authorized to conduct joint operations with the Affiliates to the extent that such operations render compliance with the Mitigation Agreement infeasible; and

 **WHEREAS,** the Parties desire to provide and receive various products and services under the terms and conditions of this AOP with the consent and approval of DSS;

 **NOW THEREFORE**, the Parties hereby agree as follows:

**Article I. Plan of Affiliated operations**

 **Section 1.01. Plan Structure and Integrity.** None of the Mitigated Group is permitted to receive or provide any Affiliated Operations other than those disclosed pursuant to Article II of this AOP and as approved by DSS pursuant to this AOP. The Company’s Government Security Committee (GSC) therefore shall cause the Company to maintain a reasonably up to date list of:

a. Affiliates known by the Company to exist; and

b. Affiliated Operations organized at a minimum into the following categories:

 i. Affiliated Services;

 ii. Shared Third-Party Services;

 iii. Shared Persons, and

 iv. Cooperative Commercial Arrangements.

 **Section 1.02. Specific Transactional Oversight.** There is no circumstance under which the Mitigated Group may permit an Affiliated Operation to circumvent the requirements of this AOP or the Mitigation Agreement, and the Mitigated Group must therefore maintain and enforce internal procedures for obtaining written consent of the GSC or its delegate prior to the performance of any type of Affiliated Operation that has been generally disclosed to and approved by DSS pursuant to this AOP. However, if an Affiliated Operation is performed prior to DSS approval due to emergency or other unforeseen exigencies, the Parties can expect that DSS will consider the matter on a reasonable and contextual basis so long as the Company promptly notifies DSS of the situation. Nothing in this AOP constitutes a waiver of any requirement in the Mitigation Agreement or the NISPOM, including without limitation controls on communications and visits. The Mitigated Group may incorporate specific transactional oversight of this AOP with such other controls required by the Mitigation Agreement at the discretion of the GSC.

 **Section 1.03. Annual Certification.** In connection with its annual reporting obligations under the Mitigation Agreement, the Company’s GSC must provide to DSS an annual written certification in the Annual Implementation and Compliance Report that it is effectively monitoring the applicable Affiliated Operations, and that such Affiliated Services do not allow the Affiliates to exercise Control or Influence with respect to the management or business of the Company, including its cash or other assets, in violation of the Mitigation Agreement, this Agreement or otherwise in violation of the NISPOM or any OPSEC Requirement.

 **Section 1.04. Supporting Documents.** The Mitigated Group must maintain copies of supporting documents such as one or more administrative service agreements, joint venture agreements, contracts, subcontracts, purchase orders, work orders, invoices, and third-party engagement letters relevant to the Mitigated Group’s Affiliated Operations for periodic review and as requested by the GSC or DSS. A listing of these documents shall be maintained in in the Schedule of Supporting Documents of this AOP.

 **Section 1.05. Additional Notifications Required for the Use of Affiliate Technology.** Except as may be otherwise provided in the Mitigation Agreement, for current or future classified contracts in which the Mitigated Group will use technology products or services of any of the Affiliates in performance thereof, the Company’s management shall notify each applicable Government Contracting Activity (“GCA”) regarding the technology products or services that each Affiliate will provide under the contract except where that GCA has opted out of its right to notification in writing. The GCA’s written statement shall be maintained by the Company for the duration of the applicable classified contract and must be made available for review upon GSC and/or DSS request.

**Article ii. affiliated PRODUCTS AND SERVICES**

 None of the Mitigated Group is permitted to receive or provide any Affiliated Operations other than those approved by DSS pursuant to the Mitigation Agreement and as more specifically described in Exhibit B attached hereto and incorporated herein, which at a minimum shall contain the following:

 a. *Affiliated Services*. Affiliated Services shall be described in detail sufficient to inform DSS of the following issues:

 i. the nature of the exchange and that value placed on it;

 ii. the expected locations where the transactions will occur;

 iii. the expected position of the persons and entities who will perform and pay for the transaction (and whether they are key management);

 iv. the expected dates or frequency of the transaction;

 v. the rationale for the affiliated transaction compared to other options; and

 vi. the expected means for performing the transaction in a manner consistent with the Mitigation Agreement (including without limitation visit controls, ECP, and TCP) with an estimated number of interactions, loss of control over assets, accounts.

 b. *Shared Third-Party Services*. Shared Third-Party Services shall be described in detail sufficient to inform DSS of conditions likely to present a conflict of interest or otherwise degrade the ability of the Mitigated Group to comply with the security measures required by the Mitigation Agreement. Company should be able to provide separate engagement letters, separate projects and the like as mitigating factors;

 i. the nature of the exchange and that value placed on it (with special attention given to audit, IT, legal, strategy, and Mergers & Acquisitions including name of firm any evidence of bearing on the nature of the affiliated relationship such as separate engagement letters and expected location of firm offices and professionals);

 ii. the expected locations where the transaction will occur;

 iii. the expected position of the persons and entities who will perform and pay for the transaction (and whether they are key management);

 iv. the expected dates or frequency of the transaction;

 v. the rationale for the affiliated transaction compared to other options; and

 vi. the expected means for performing the transaction in a manner consistent with the Mitigation Agreement (including without limitation visit controls, ECP, and TCP) with an estimated number of interactions, loss of control over assets, accounts.

 c. *Shared Persons*. Shared Persons shall be described in detail sufficient to inform DSS of the following issues:

 i. the nature of the exchange and that value placed on it;

 ii. the expected locations where the transactions will occur;

 iii. the expected position of the persons and entities who will perform and pay for the transaction (and whether they are key management);

 iv. the expected dates or frequency of the transaction;

 v. the rationale for the affiliated transaction compared to other options; and

 vi. the expected means for performing the transaction in a manner consistent with the Mitigation Agreement (including without limitation visit controls, ECP, and TCP) with an estimated number of interactions, loss of control over assets, accounts.

 d. *Cooperative Commercial Arrangements*. Cooperative Commercial Arrangements shall be described in detail sufficient to inform DSS of the following issues:

 i. the nature of the exchange and that value placed on it;

 ii. the expected locations where the transactions will occur;

 iii. the expected position of the persons and entities who will perform and pay for the transaction (and whether they are key management);

 iv. the expected dates or frequency of the transaction;

 v. the rationale for the affiliated transaction compared to other options; and

 vi. the expected means for performing the transaction in a manner consistent with the Mitigation Agreement (including without limitation visit controls, ECP, and TCP) with an estimated number of interactions, loss of control over assets, accounts.

**ARTICLE III. AFFILIATED OPERATIONS**

1. **AFFILIATED SERVICES**
	1. **[SERVICE TYPE] (Complete the process outlines below for each service)**
2. **Service Description**

This section shall describe the service. Specifically address:

* which entity will provide the service and which entity(ies) the service will be provided to and who is paying for the service;
* how the recipient and the provider interpret the service;
* how the shared service benefits the entities;
* specific sub-categories of services within the broader type (language indicating that additional unlisted sub-categories may be provided, including “including, but not limited to” will not be approved);
* procedures associated with providing the service;
* technology to be utilized, including shared software, information systems and applications;
* whether the technology described above is classified or export-controlled;
* types of information to be exchanged through the service;
* whether any Key Management Personnel will be involved in the affiliated operations and how;
* include any supporting documentation such as examples, screenshots, network configuration diagrams or sample reports as attachments
1. **Risk/FOCI Mitigation Procedures**

This section shall demonstrate that the GSC has properly considered potential risks associated with the approval of the administrative operations and has a plan to emplace controls to mitigate these potential risks. Describe the specific risks associated with the sharing of the operations and identify the mitigation procedures that will be put in place to mitigate the identified risks.

**iii. Review of Service**

This section shall describe how the Industrial Security Representative (ISR) may review compliance with the risk mitigation procedures identified above, the mitigation agreement and NISPOM requirements with respect to the specific service. Identify specific documentation or processes available to the ISR that will be available for review. ISRs are not limited to reviewing these documents or processes to ensure compliance with the FOCI mitigation procedures.

1. **Service X**
2. **Service Description**

*PARENT will provide SERVICE X to the COMPANY and its branches, divisions and subsidiaries. Description of SERVICE X and how PARENT and COMPANY will utilize SERVICE X. SERVICE X allows COMPANY and PARENT to realize cost savings, as well as utilize a common system, streamlining the process for both PARENT and COMPANY. In furtherance of providing SERVICE X, PARENT will provide specific services: SERVICE X1, SERVICE X2, and SERVICE X3. Providing SERVICE X will require PARENT and COMPANY to take steps A, B and C. SERVICE X will require that COMPANY uplink to PARENT to provide electronic information, however information may only be pushed to the PARENT in a specific format. Examples of SERVICE X are attached as EXHIBIT 1.*

**ii. Risk Matrix**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *Risk (examples)* | *Mitigation* | *Mitigation Owner* | *Frequency* | *Reviewable Documentation* |
| *1.Unauthorized Access to Classified Information/CUI*  | *Mitigation measure* | *FSO/GSC/**Designated Outside Director* | *Daily/Weekly/ Monthly/Annually* | *Visitor/telephone records, IT systems, contracts and agreements, etc…*  |
| *2.Undue FOCI* |  |  |  |  |
| *3. Lack of apparent separation of entities to government customer* |  |  |  |  |
| *4. Lack of apparent separation of control to employees*  |  |  |  |  |

1. **Service X (alternate format)**
2. **Service Description**

*PARENT will provide SERVICE X to the COMPANY and its branches, divisions and subsidiaries. Description of SERVICE X and how PARENT and COMPANY will utilize SERVICE X. SERVICE X allows COMPANY and PARENT to realize cost savings, as well as utilize a common system, streamlining the process for both PARENT and COMPANY. In furtherance of providing SERVICE X, PARENT will provide specific services: SERVICE X1, SERVICE X2, and SERVICE X3. Providing SERVICE X will require PARENT and COMPANY to take steps A, B and C. SERVICE X will require that COMPANY uplink to PARENT to provide electronic information, however information may only be pushed to the PARENT in a specific format. Examples of SERVICE X are attached as EXHIBIT 1.*

1. **Risk/FOCI Mitigation Procedures**

*PARENT providing SERVICE X presents several risks including:*

*1. Potential unauthorized access to classified information if conditions A, B and C occur. This risk can be mitigated through Control Y.*

*2. Potential unauthorized access to Controlled Unclassified Information if conditions D, E and F are met. This risk can be mitigated through Control Z.*

*3. Potential undue influence if conditions G, H and I are met. This risk can be mitigated by Control W.*

*4. Potential access to Information Systems of cleared company if conditions J, K and L occur. This risk can be mitigated by Control V.*

1. **Review of Service**

*DSS will review the contractor at least annually. To verify compliance with control Y, COMPANY will provide access to and/or copies of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which will indicate that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. To verify compliance with Control Z, COMPANY will provide DSS access to and/or copies of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that will indicate \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. To ensure compliance with Control W, COMPANY will provide DSS access to and/or copies of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which will indicate to DSS that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. To ensure compliance with Control V, COMPANY will provide access to and/or copies of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which will indicate to DSS that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.*

1. **SHARED THIRD-PARTY SERVICES**
2. **SHARED PERSONS**
3. **COOPERATIVE COMMERCIAL ARRANGEMENTS**

**ARTICLE IV. ACKNOWLEDGEMENTS**

*Please provide signed statements from the FOCI Company and Affiliate entities acknowledging that if serious and/or systemic acts of non-compliance with the FOCI mitigation agreement are identified DSS may require an immediate termination of the shared service.*

**Exhibit A**

**DEFINITIONS**

“Affiliate” shall have the meaning described to this term in the Mitigation Agreement.

“Affiliated Operations” means any instance, whether individually or in combination, of the following: (i) an Affiliated Service; (ii) a Shared Third-Party Service; (iii) a Shared Person, or (iv) a Cooperative Commercial Arrangement.

“Affiliated Service” means the exchange of a valuable product or service through any means other than an Arm’s Length Transaction (i) by any of the Affiliates to any of the Mitigated Group or (ii) by any of the Mitigated Group to any of the Affiliates.

 “Arm’s Length Transaction” means a transaction having results that are consistent with the results that would have been realized if the Company had engaged in the same transaction with a party who is not a member of the Affiliates and, as a result, is not subject to the conflict of interest that otherwise arises in business transactions among commonly-controlled companies. The Company may rely on the best method rule described in the U.S. Department of Treasury Regulations at 26 C.F.R. § 1.482–1(c) in order to demonstrate an Arm’s Length Transaction for purposes of this Agreement.

“Charter Documents” means the Company’s certificate of incorporation dated [*insert date*] and bylaws dated [*insert date*]. *[Note: Company may modify as necessary to describe its particular organizing documents.]*

“Control” means the power, direct or indirect, whether or not exercised, through the Ownership of a majority or a dominant minority of the total outstanding voting interest in the Company, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting the Company. Such matters may include, in particular but without limitation, the ability to determine, direct, take, reach, or cause decisions regarding the following or similar matters affecting the Company: (i) the sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the Company, whether or not in the ordinary course of business; (ii) the reorganization, merger, or dissolution of the Company; (iii) the closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the Company; (iv) with respect to the Company, major expenditures or investments, issuances of equity or debt securities, payment of dividends, or approval of the operating budget; (v) the selection of new business lines or ventures for the Company to pursue; (vi) the entry into, termination of, or non-fulfillment by, the Company of significant contracts; (vii) the Company’s policies or procedures governing the treatment of non-public technical, financial, or other proprietary information; (viii) the appointment or dismissal of Company officers or senior managers; (ix) the appointment or dismissal of Company employees with access to sensitive technology or classified U.S. Government information; or (x) the amendment of the Company Charter Documents regarding matters described in paragraphs (i) through (ix) of this definition. To the extent that the exercise of a power described in (i) through (ix) of this definition is subject to an Investor Protection, it will not confer Control over the Company for purpose of this Agreement. References in this definition to the Company include each of the Controlled Subsidiaries.

“Controlled Subsidiary” means each entity in which the Company has an ownership interest in excess of fifty percent (50%) or otherwise controls more than fifty percent (50%) of the voting stock.

“Cooperative Commercial Arrangement” means the exchange of a valuable product or service through an Arm’s Length Transaction whether by contract, subcontract, or joint research, development, marketing or other type of teaming arrangement between any of the Mitigated Group and any of the Affiliates.

“Influence” means the perceived or actual ability by an external person or entity to affect the actions or decisions of Mitigated Group directors, officers, employees, agents or representatives for purposes that may be contrary to this AOP. For purposes of this AOP, such influence may include without limitation: (i) persuasion by providing financial or technical rewards and incentives; (ii) coercion by punishing the Mitigated Group or its managers; (iii) assertion of a legal right, power, privilege or immunity; or (iv) affiliation through shared officers, employees, workspaces, or projects.

“Investor Protections” means the power to: (i) prevent the merger, consolidation, reorganization, or dissolution of the Company; the liquidation, sale or pledge of all or substantially all of the assets of the Company; or a voluntary filing for bankruptcy or liquidation; (ii) purchase additional Shares in the Company to prevent the dilution of an investor’s pro rata interest in the Company in the event that the Company issues new Shares; (iii) prevent the change of existing legal rights or preferences of the Shares, as provided in the Charter Documents; and (iv) prevent the amendment of the Charter Documents with respect to the matters described in (i) through (iii) of this definition.

“OPSEC Requirement” or “Operations Security Requirement” means any contractual requirement between the Company and a User Agency designed to deny potential adversaries information about capabilities and intentions by identifying, controlling and protecting indicators of the planning and execution of sensitive activities and operations.

“Shared Person” means: (ii) persons employed by any member of the Affiliates and assigned to work in whole or in part in support or on behalf of the Mitigated Group; (iii) persons employed by the Mitigated Group assigned to work in whole or in part in support or on behalf of the Affiliates.

“Shared Third-Party Service” means a professional service (such as accounting, legal, tax, information technology, or business consulting) where the Company has a reasonable expectation that the service will be provided to both a member of the Affiliates and the Mitigated Group by the same service provider.

 “Government Contracting Activity” or “GCA” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

**SCHEDULE OF SUPPORTING DOCUMENTS**

**ATTACHMENT 2**