



## DoD INSTRUCTION 5205.85

# ENHANCED SECURITY PROGRAM TO SUPPORT THE DoD INNOVATION INITIATIVE

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<b>Originating Component:</b>	Office of the Under Secretary of Defense for Intelligence and Security
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<b>Approved by:</b>	Ronald S. Moultrie, Under Secretary of Defense for Intelligence and Security

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**Purpose:** In accordance with Section 951 of Public Law 114-328 and the authority in DoD Directive (DoDD) 5143.01, this issuance:

- Establishes policy, assigns responsibilities, and provides procedures to support the DoD Enhanced Security Program (DESP), when access to classified information is required, as part of the DoD Innovation Initiative. The DESP does not include participation as a cleared contractor facility in the National Industrial Security Program.
- Provides supplementary policy guidance to the DoD Personnel Security and Industrial Security Programs.

## TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION .....	3
1.1. Applicability. ....	3
1.2. Policy. ....	3
1.3. Information Collections. ....	3
SECTION 2: RESPONSIBILITIES.....	4
2.1. Under Secretary of Defense for Intelligence and Security (USD(I&S)). ....	4
2.2. Director, Defense Counterintelligence and Security Agency (DCSA).....	4
2.3. General Counsel of the Department of Defense. ....	5
2.4. DoD Component Heads. ....	5
SECTION 3: PROCESSING COMPANIES AND EMPLOYEES FOR DESP PARTICIPATION .....	7
3.1. Determining Eligibility. ....	7
3.2. Security Reviews and Verification. ....	10
3.3. Criteria for Access to Classified Information. ....	10
APPENDIX 3A: MATERIAL CHANGES TO FOCI.....	12
3A.1. General.....	12
SECTION 4: STANDARDS FOR MOAs FOR THE DESP .....	15
4.1. General.....	15
4.2. MOAs for the DESP. ....	15
GLOSSARY .....	17
G.1. Acronyms.....	17
G.2. Definitions.....	17
REFERENCES .....	20
TABLES	
Table 1. Material Changes Requiring Reporting .....	12

## **SECTION 1: GENERAL ISSUANCE INFORMATION**

### **1.1. APPLICABILITY.**

This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within DoD (referred to collectively in this issuance as the “DoD Components”).

### **1.2. POLICY.**

The DoD will:

- a. Enable access to innovative technologies and solutions to better leverage commercial technology in accordance with Section 951 of Public Law 114-328.
- b. Enforce operations security practices to protect classified and unclassified indicators of advanced technology development in accordance with DoDD 5205.02E.

### **1.3. INFORMATION COLLECTIONS.**

- a. The collection and maintenance of business structure, governance and ownership records of DESP companies, referred to throughout this issuance, is assigned Office of Management and Budget control number 0704-0571 in accordance with the procedures in Volume 2 of DoD Manual (DoDM) 8910.01.
- b. Standard Form (SF) 328, “Certificate Pertaining to Foreign Interests,” referred to throughout this issuance, is assigned Office of Management and Budget control number 0704-0579.

## **SECTION 2: RESPONSIBILITIES**

### **2.1. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE AND SECURITY (USD(I&S)).**

In accordance with DoD Directive 5143.01 and Section 951(c) of Public Law 114-328, the USD(I&S) oversees DESP policy and manages the DESP to ensure the program is efficient and consistent.

### **2.2. DIRECTOR, DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY (DCSA).**

Under the authority, direction, and control of the USD(I&S) and in addition to the responsibilities in Paragraph 2.4., the Director, DCSA:

- a. At the request of DoD Components or their Federal government contracting activities (GCAs), conducts analysis, consults, and makes recommendations regarding foreign ownership, control, or influence (FOCI) on a case by case basis for U.S. companies under consideration for participation in the DESP.
- b. Analyzes information necessary to examine the source, nature, and extent of a company's FOCI, upon request and provided by the DoD Component that wants to sponsor a company to be in the DESP.
- c. Evaluates other publicly available information and all-source intelligence reporting to examine any known foreign intelligence threats affecting the U.S. company under consideration.
- d. Identifies information from mission activities or from the DoD Component and GCA that may alter FOCI determination or foreign threat assessment for these companies and the involved technologies or solutions and, as warranted, shares and resolves with the DoD Component, GCA and its supporting Military Department counterintelligence organization.
- e. Provides the DoD Components, and applicable GCAs, with a guide regarding business structure, governance, and ownership records for their use in assessing whether a company meets the DESP criteria established in Paragraph 3.2. Updates the guide, as needed.
- f. Prioritizes conduct of personnel security investigations and national security adjudications for eligibility for access to classified information by company personnel in the DESP when submissions are endorsed by a DoD Component's Senior Agency Official for Security (or designee).
- g. Consults on the risk management considerations for the sponsoring DoD Component or its applicable GCA for a company to participate in the DESP, after providing the FOCI analysis for a potential DESP company.

### **2.3. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE.**

In accordance with DoDDs 5220.6 and 5145.01 and DoD Instruction (DoDI) 5145.03, the General Counsel of the Department of Defense:

- a. Provides advice and guidance to the USD(I&S) on the legal sufficiency of procedures and standards established by this issuance.
- b. Ensures DESP policies, standards, and procedures are in accordance with the Constitution, laws of the United States, Executive orders, DoD policy, and Security Executive Agent directives.
- c. Designates the Director, Defense Office of Hearings and Appeals, in accordance with this issuance and DoDD 5220.6, to conduct hearings and appeals as applicable under general guidance of the General Counsel of the Department of Defense.

### **2.4. DOD COMPONENT HEADS.**

The DoD Component heads:

- a. Oversee compliance by the Component's personnel with applicable procedures identified in this issuance.
- b. Fund, submit, and manage any personnel security investigation (PSI) submissions for access to classified information in the DoD personnel security system of record for designated company employees in the DESP.
- c. Notify DCSA, by endorsement of the Component's Senior Agency Official for Security, or designee, for the specific DESP PSI submissions of designated company employees that must be prioritized for both conduct of the PSI and the adjudicative determination for eligibility for access to classified information.
- d. To manage the security clearance for the designated DESP company employees:
  - (1) Take an owning security-management office relationship for them in the DoD personnel security system of record as soon as the company and its designated personnel are affiliated with the DoD Component through the DESP.
  - (2) Take actions in accordance with the provisions of Paragraph 4.2.g. when the arrangement has expired.
- e. Sponsor DESP company personnel for access to classified information by signing a memorandum of agreement (MOA) with such companies in accordance with Section 4.
- f. Determine, along with DCSA, if consulted, if the company meets the criteria in Paragraphs 3.1.b. and 3.1.c for participation in the DESP, both initially and on an ongoing basis as a result of any change to the company's eligibility throughout their participation in the DESP.

g. Provide operations security requirements and oversee compliance by DESP companies' designated cleared personnel with security requirements for the protection of classified information.

h. Direct compliance with all applicable reporting, training, and security requirements, including insider threat, on designated DESP company personnel.

i. May augment this issuance by prescribing more detailed procedures for their respective DoD Components and their GCAs, as required, provided they are consistent with this issuance.

j. Provide, if the Component or its applicable GCAs use this program, an update to the Office of the USD(I&S) Counterintelligence, Law Enforcement, and Security Directorate by the end of the second quarter of each fiscal year on its effectiveness or need for changes to support the DoD Innovation Initiative.

k. Provide DCSA, if consulted, with information that a DoD Component or applicable GCA has on the foreign threat activity against the DESP company or the involved technologies, including supporting information systems the company uses, to inform DCSA assessments of the threat environment for the company and the involved technologies or solutions.

l. Manage and safeguard reports submitted or information provided about an individual DESP company employee in accordance with DoDI 5400.11 and DoD 5400.11-R.

(1) When such reports contain information pertaining to an individual, that information may be provided to the individual, except for information for which both of the following conditions apply:

(a) An exemption rule has been published pursuant to Section 552a of Title 5, United States Code, as amended (also known and referred to in this issuance as the "Privacy Act of 1974").

(b) An exemption is available and asserted pursuant to Section 552 of Title 5, United States Code, as amended (also known and referred to in this issuance as the "Freedom of Information Act").

(2) For guidance on applying exemptions under the Privacy Act and the DoD Freedom of Information Act, refer to Paragraph 3.9 of DoDM 5400.07.

## SECTION 3: PROCESSING COMPANIES AND EMPLOYEES FOR DESP PARTICIPATION

### 3.1. DETERMINING ELIGIBILITY.

a. The DESP:

(1) Is not a part of the National Industrial Security Program and does not apply to contractors cleared or in process for a facility security clearance in accordance with Part 117 of Title 32, Code of Federal Regulations (CFR).

(2) Does not use mitigation or negotiation agreements of FOCI factors for a company to participate in the program.

b. For a company and its personnel to be evaluated to participate in the DESP, a DoD Component head or, if delegated, a GCA must determine if a company meets the criteria in Paragraph 3.1.c. and establish and enter into an MOA with the company. The GCA may consult with DCSA on whether the company meets the DESP program criteria.

c. The applicable DoD Component head or, if delegated, the sponsoring GCA will determine, along with DCSA, if consulted, whether the company meets the requirements that it:

(1) Is organized and exists:

(a) Under the laws of any of the 50 States, the District of Columbia, or an organized U.S. territory; or

(b) As a business entity under the laws of an American Indian tribe or an Alaska Native entity, and also meets the following conditions.

1. The American Indian tribe or Alaska Native entity under whose laws the company is chartered must have been formally acknowledged by the Assistant Secretary – Indian Affairs of the U.S. Department of the Interior, as a recognized American Indian entity. A DoD Component, or, if delegated, GCA, may also enter into an MOA with a company owned in whole or in part by an American Indian tribe for the DESP when the business entity is organized and existing under the laws of a U.S. State, the District of Columbia, or an organized U.S. territory.

2. The business entity must have been organized, and continue to exist during the period of its participation in the DESP, under a tribal statute or code, or pursuant to a resolution of an authorized tribal legislative body.

(c) As a federally chartered tribal corporation formed when the Secretary of the Interior issues a corporate charter based on a petition from a tribe pursuant to Chapter 45 of Title 25, United States Code, also known as the “Indian Reorganization Act.”

(2) Is located in the United States, its territorial areas, or the District of Columbia.

(3) Is not under FOCI to such a degree that participation in the DESP would be inconsistent with U.S. national security interests.

(4) Does not have, or is not in the process of obtaining, a facility security clearance in the National Industrial Security Program.

(5) Has a reputation for integrity and lawful conduct in its business dealings, including no debarment or suspension by the company or its key managers from participating in U.S. Government (USG) contracts.

d. To determine if the company meets the DESP criteria in Paragraph 3.1.c., the applicable GCA will direct the company to provide a completed SF 328 and documentation detailing business structure, ownership, and governance. See Appendix 3A for SF 328 guidance.

e. The GCA, along with DCSA if consulted, evaluates the company's completed documentation described in Paragraph 3.1.c to determine eligibility to participate in DESP.

f. DCSA, if consulted, will evaluate the documentation provided by the company and the proposed MOA, as well as any other relevant information sources, and provide the analysis and a recommendation within 30 business days after receipt to the sponsoring DoD Component or GCA on whether the company meets the DESP eligibility criteria in Paragraph 3.1.c.

(1) In determining whether a company is under FOCI, the GCA, along with DCSA, if consulted, will consider the information provided by the company on the SF 328, and any other relevant information (e.g., MOA for the DESP, filings with the Securities and Exchange Commission (for publicly traded companies), articles of incorporation, by-laws, and loan, operating, or shareholder agreements), as well as other publicly available information about the company. The SF 328 may be found at <http://www.gsa.gov/portal/forms/download/116246> and instructions for its completion at [https://www.dcsa.mil/Portals/69/documents/foci/sf328\\_instructions.pdf](https://www.dcsa.mil/Portals/69/documents/foci/sf328_instructions.pdf).

(2) If the DoD Component or GCA (or DCSA, if consulted) determines a DESP-proposed company is under FOCI, the DoD Component and the GCA will assess the extent to which the FOCI may result in unauthorized access to classified information when leveraging commercial technology and access to classified information is required.

(3) The FOCI factors in Paragraph 3.1.f.(4) must be considered together from a risk assessment standpoint with the following:

- (a) The foreign interest that is the source of the FOCI.
- (b) The country or countries in which the foreign interest is located and has its principal place of business (if not in the country of origin).
- (c) Any other foreign country that is identified because it is a substantial source of the revenue for, or otherwise has significant ties to, the foreign interest.



(4) DoD recognizes FOCI concerns may arise in a variety of circumstances, all of which cannot be listed in this issuance. The GCA (or DCSA if consulted) will consider the following FOCI factors and any other relevant information in the context of threat, vulnerability, and sensitivity of the classified information required when the GCA is leveraging the DESP company's commercial technology.

- (a) Record of economic and government espionage against U.S. targets.
- (b) Record of enforcement or engagement in unauthorized technology transfer.
- (c) Record of compliance with pertinent U.S. laws, regulations, and contracts.
- (d) The type and sensitivity of the information that will be accessed.
- (e) The source, nature, and extent of FOCI, including, but not limited to, whether a foreign interest holds a majority or substantial minority position in the company. The assessment will consider the immediate, intermediate, and ultimate parent companies of the company or prior relationships between the U.S. company and the foreign interest.
- (f) The nature of any relevant bilateral and multilateral security and information exchange agreements (e.g., the political and military relationship between the USG and the government of the foreign interest).
- (g) Ownership or control, in whole or in part, by a foreign government.
- (h) Any other factor that indicates or demonstrates a capability on the part of foreign interests to control or influence the operations or management of the business organization concerned.

(5) As part of its FOCI analysis, the DoD Component and GCA (or DCSA, if consulted) may consider counterintelligence and technology transfer risk assessments and any available intelligence from all appropriate USG sources and agencies.

g. The DoD Component or the applicable GCA will:

- (1) Notify the company if it does not meet the criteria as determined by the DoD Component head or GCA, if delegated.
- (2) Direct DESP companies to provide notice via an updated SF 328 as soon as practicable, but no later than 10 business days, of any material information change reported by the company concerning FOCI.
- (3) Direct DESP companies to provide notice of any changes that may require DoD Component or applicable GCA evaluation to determine whether a company still meets the criteria in Paragraph 3.1.c.
- (4) Reassess whether the company is under FOCI as described in Paragraph 3.1.c. when a DESP company reports any material changes concerning FOCI.

h. If a company disputes a DCSA recommendation to the GCA that the company is under FOCI or otherwise does not meet the DESP eligibility criteria in Paragraph 3.1.b., the company may appeal to the DoD Component head or, if delegated, the applicable GCA no later than 30 days after receipt of written notification that the company does not meet the DESP criteria.

(1) The company must identify the specific relief sought and grounds for that relief in its appeal. In response, the GCA may request additional information from the company.

(2) At a minimum, GCAs will respond to appeals within 45 days, either with a decision or an estimate as to when a decision will be made. The DoD Component head or applicable GCA may decide to reconsider a company's participation in the DESP 1 year after declination of an appeal to participate in the program.

### **3.2. SECURITY REVIEWS AND VERIFICATION.**

a. If the company does meet the DESP eligibility criteria in Paragraph 3.1.b., the GCA will initiate the PSI request for access to classified information and required fingerprints, notify DESP company employees to complete and submit the electronic questionnaire, and provide billing information to the investigative service provider.

b. GCAs will verify the personnel security clearances for DESP company employees as requested by facilities hosting meetings or visits by them.

### **3.3. CRITERIA FOR ACCESS TO CLASSIFIED INFORMATION.**

a. The DoD Component head or, if delegated, a GCA will only provide DESP company employees with access to classified information when:

(1) The DoD Component's Senior Agency Official for Security, or designee, concurs with a GCA determination that a company meets the criteria to participate in the DESP.

(2) There is a legitimate requirement for access to classified information by those designated DESP company employees (i.e., an MOA for the DESP requiring some designated company employees to have access to classified information).

(3) There is a USG granted eligibility for access to classified information at the SECRET level validated by the sponsoring DoD Component or its applicable GCA for the DESP company personnel in the DoD personnel security system of record. The applicable DoD Component or GCA must have an owning relationship for the DESP company personnel in the DoD personnel security system of record.

(4) The GCA has approved an SF 312, "Classified Information Nondisclosure Agreement," for each of the DESP company employees for GCA retention.

(5) Access to classified information by DESP company personnel granted eligibility for access to classified information occurs only at DoD government locations or at other USG

locations or NISP cleared contractor facilities, if authorized by the applicable GCA. No access to classified information, in hard copy or electronically, will be authorized at the DESP company's own physical location(s) as that would then require compliance with Volume 1 of DoDM 5220.32 to become a cleared facility in the National Industrial Security Program.

b. Authorities listed in Appendix 7A., Paragraphs 7A.1.a. through 1., of DoDM 5200.02 may grant interim access for DESP company personnel, if a DESP MOA is in place, pending a final security clearance eligibility determination by the DoD Consolidated Adjudications Facility in accordance with the justification and requirements of Security Executive Agent Directive 4 and DoDM 5200.02.

c. DESP company personnel should be granted no higher than a SECRET-level security clearance.

## APPENDIX 3A: MATERIAL CHANGES TO FOCI

### 3A.1. GENERAL.

Table 1 describes circumstances that companies in the DESP are required to report on the SF 328 when there are changes in the information provided as stated in Paragraph 2.2.c. When submitting information, the company does not need to repeat answers that have not changed. In addition, to the information in Table 1, all circumstances that would change any answer on the SF 328 from “no” to “yes” must be reported. Table 1 is not an exhaustive list of circumstances and may be revised based on factors such as emerging financial instruments and the experience of government activities responsible for oversight and evaluation of FOCI factors affecting the protection of classified information for DESP business organizations.

**Table 1. Material Changes Requiring Reporting**

<b>SF 328 Question</b>	<b>Material Changes Requiring Report</b>
1.a. Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5 percent or more of the outstanding shares of any class of the business organization’s equity securities?	An increase of 5 percent or greater in the beneficial ownership of a class of equity securities of the business organization, as determined by voting or investment rights, by one or more foreign interests and any U.S. person effectively controlled by a foreign interest.
1.b. Has any foreign person directly or indirectly subscribed 5 percent or more of your organization’s total capital commitment?	An increase of 5 percent or greater in the beneficial ownership of the business organization, as determined by voting or investment rights, by one or more foreign interests and any U.S. citizen effectively controlled by a foreign interest.
2. Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own 10 percent or more of any foreign interest?	An increase of 10 percent or more of the tangible net worth of the business organization.
3. Do any non-U.S. citizens serve as members of your organization’s board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees, or senior management officials?	Appointment of any additional non-U.S. citizen to a position required to be cleared in connection with the facility clearance or to any position identified in the articles of incorporation, by-laws, articles or organization, or equivalent governance documentation or charter for the business organization.

**Table 1. Material Changes Requiring Reporting, Continued**

<b>SF 328 Question</b>	<b>Material Changes Requiring Report</b>
4. Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization?	Any change to such power or authority, except amendments or waivers to governance documentation either to correct manifest error or which are of a formal, minor, or technical nature and do not change materially any person's rights or obligations.
5. Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)?	Any change expected to result in annual payments to or from an entity where the payments exceed 20 percent of the U.S. business organization's annual gross revenues.
6. Does your organization, whether as borrower, surety, guarantor, or otherwise, have any indebtedness, liabilities, or obligations to a foreign person(s)?	<p>Report a change whenever there is:</p> <p>(i) Any new indebtedness to foreign persons that results in a liability exceeding 10 percent of the tangible net worth of the business organization or includes an instrument creating a mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance against (A) any of its property, assets, or leasehold interests exceeding 10 percent of the business organization's tangible net worth; or (B) pledges of 5 percent or more of the voting securities of the business organization as collateral; or</p> <p>(ii) Any other new foreign indebtedness where the business organization permits to exist a leverage ratio exceeding two to one (2:1) based on the business organization's indebtedness to its tangible net worth and calculated on the basis of the information set forth in its financial statements.</p>
7a. During your last fiscal year, did your organization derive: 5 percent or more of its total revenues or net income from any single foreign person?	With respect to the business organization and that single foreign person, any change expected to result in annual payments to or from the business organization where the payments exceed an additional 10 percent of the business organization's annual gross revenues.

**Table 1. Material Changes Requiring Reporting, Continued**

<b>SF 328 Question</b>	<b>Material Changes Requiring Report</b>
7b. Is the aggregate 30 percent or more of its revenues or net income from foreign persons?	With respect to the business organization and any foreign persons, any change expected to result in annual payments to or from the business organization where the payments exceed an additional 20 percent of the business organization's gross revenues.
8. Is 10 percent or more of any class of your organization's voting securities held in "nominee" shares, in "street names" or in some other method that does not identify the beneficial owner?	<p>Any change of 5 percent or more in the total number of shares held in "nominee" shares, in "street names" or in some other method that does not identify the beneficial owner. Or, any amendment to the bylaws of the business organization or its parent related specifically to voting rights of such nominee holders.</p> <p>Any requirements requiring notice of any matter to be presented by a nominee stockholder at a shareholders meeting including any amendment affecting the voting and notice rights and obligations of nominee holders and associated persons who fail to make timely disclosures required by the U.S. Securities and Exchange Commission such as Schedule 13D.</p>
9. Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees, or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)?	Any new positions held by a member of the organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees, or senior management officials with any foreign person(s), or as a consultant(s) for any foreign person(s).
10. Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization?	Each change qualifying as an affirmative answer to this question and each change having a material effect on the ownership, control, or influence of the business, operations, prospects, condition (financial or otherwise), or property of the business organization.

## SECTION 4: STANDARDS FOR MOAS FOR THE DESP

### 4.1. GENERAL.

To ensure consistent compliance with the terms of this issuance for DESP companies, DoD Components or applicable GCAs must execute an MOA with the participant company.

### 4.2. MOAS FOR THE DESP.

The provisions of this paragraph and MOA template in DoDI 4000.19 provide the requirements and format for a DESP MOA.

a. The MOA must include:

(1) A general unclassified description of the company's innovative technology or solutions to support the DoD Innovation Initiative to sustain and advance the capabilities from commercial sources traditionally not available to DoD and how long the activity is considered to be necessary.

(2) A signed SF 328 and documentation detailing business structure, ownership, and governance from the company for evaluation of eligibility to participate in the DESP. In addition, companies are required to provide information on any material changes (as an Appendix to Section 2 in the MOA) within 10 business days concerning FOCI information previously reported by the company once a DESP participant.

(3) A list designating, by position title, those company employees who will have access to classified information for the DESP. In addition, include the requirement for the company employees in those designated positions to each complete and submit an SF 312 to the DoD Component or applicable GCA since those individuals will have access to classified information. Blank copies of the SF 312 can be found at <https://www.gsa.gov/portal/forms/download/116218>.

(4) The level of access to classified information required for DESP company personnel. Those designated company personnel will comply with all applicable reporting, training, and security requirements, including insider threat, levied by the DoD Component or applicable GCA.

(5) DoD Component head or, if delegated, GCA provisions for the destruction or return of any unclassified or controlled unclassified information generated during or at the conclusion of the DESP company's participation. There should be no need for such provisions for classified information, since the DESP company personnel will not have such authorization in accordance with Paragraph 4.2.a(6).

(6) A stipulation that DESP company personnel will only have access to classified information at the DoD locations, US Government locations, or any NISP cleared contractors authorized by the applicable GCA.

(7) An acknowledgement that the DESP company will not have any authorization to store any classified information or to transmit or process classified information on any information system or network at or from the DESP company's physical location.

(8) An acknowledgment by the company that it will comply with export control requirements under Parts 120-130 of Title 22, CFR, also known as the "International Traffic in Arms Regulations" and Parts 730-774 of Title 15, CFR, also known as the "Export Administration Regulations" to ensure the company implements control to prevent unauthorized access to export-controlled information by foreign persons as defined in the Parts 120-130 of Title 22, CFR, and Parts 730-773 of Title 15, CFR, whichever is applicable.

(9) An acknowledgment by the DoD Component or, if delegated, its applicable GCA and the company that participation in the DESP is not the equivalent to being sponsored for or granted a facility security clearance through the provisions of Part 117 of Title 32, CFR.

b. There will be no authorization to use the data from participation in the DESP for non-USG purposes without the express written consent of the sponsoring DoD Component or its applicable GCA.

c. There is no reciprocity or equivalency between participation in the DESP and a facility security clearance granted in accordance with Part 117 of Title 32, CFR.

d. The agreement may be executed or amended only by written agreement of the DoD Component or, if delegated, its applicable GCA and a DESP company official who has the authority to bind the company to the MOA.

e. If the DoD Component or its applicable GCA determine that the agreement should be terminated for any reason, they will provide the DESP company with 30 days written advance notice.

f. Notwithstanding the provisions of Paragraph 4.2.e., the DoD Component or applicable GCA who is a signatory to the MOA can immediately terminate the MOA if there has been a breach of the agreement, a company no longer meets DESP criteria, or the DoD Component or applicable GCA determines that termination is in the national interest.

g. The agreement will expire no more than 5 years from the date of execution. The DoD Component or its applicable GCA will take appropriate actions to ensure that DESP company cleared employees are properly debriefed, no longer have access to classified information, and are identified as separated in the DoD personnel security system of record.



## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
CFR	Code of Federal Regulations
DCSA	Defense Counterintelligence and Security Agency
DESP	Defense Enhanced Security Program
DoDD	DoD directive
DoDI	DoD instruction
DoDM	DoD manual
FOCI	foreign ownership, control, or influence
GCA	government contracting activity
MOA	memorandum of agreement
PSI	personnel security investigation
SF	Standard Form
U.S. GAAP	U.S. generally accepted accounting principles
USD(I&S)	Under Secretary of Defense for Intelligence and Security
USG	U.S. Government

### G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
<b>beneficial ownership</b>	A situation in which a person has or shares the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the securities, and includes the power to vote, direct the vote, dispose or direct to dispose such security.
<b>business organization</b>	The company that submits the initial SF 328 or material change SF 328.
<b>classified information</b>	Defined in Executive Order 13526.

<b>TERM</b>	<b>DEFINITION</b>
<b>DESP</b>	A DoD program that provides procedures to support the DoD Innovation Initiative when access to classified information is required.
<b>financial statement</b>	The company's most recent quarterly or annual balance sheet and statements of income, retained earnings, and sources and application of funds for such fiscal period, together with all notes thereto and comparable figures for the corresponding period of the previous fiscal year, each prepared in U.S. dollars in accordance with U.S. generally accepted accounting principles (GAAP).
<b>FOCI assessment</b>	Evaluation with associated documentation by the GCA or DCSA, if consulted, of all FOCI affirmative responses on the SF 328 and other available information on a company to determine the existence, nature, and source of FOCI to determine eligibility for said company and designated company personnel to participate in the DESP.
<b>GCA</b>	An element of a DoD Component designated and delegated by the DoD Component head or designee with broad authority regarding acquisition functions, to include the appropriate resources and personnel (e.g., contracting officers or their designees, program managers, program offices, and security personnel) with appropriate security education and training.
<b>indebtedness</b>	<p>As used in this issuance, the total liabilities, obligations, and reserves, contingent or otherwise, that would be reflected as a liability on a company's balance sheet in accordance with U.S. GAAP. This may include, without limitation:</p> <ul style="list-style-type: none"><li>Any obligation from borrowing money or arising out of any credit facility.</li><li>Any obligation evidenced by bonds, debentures, notes, or other similar instruments.</li><li>Any obligation to pay the deferred purchase price of property or services.</li><li>Any obligation under conditional sales or other title retention agreements.</li></ul> <p>The net aggregate rentals under any lease as lessee that, under U.S. GAAP, would be capitalized on the books of the lessee or is the substantial equivalent of the financing of the property so leased.</p>

<b>TERM</b>	<b>DEFINITION</b>
	<p>Any obligation to purchase securities or other property that arises out of or in connection with the sale or the same or substantially similar securities or property.</p> <p>Any instrument creating a mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance against any property, assets, or leasehold interests.</p>
<b>organized U.S. territories</b>	Guam, the Commonwealth of the Northern Marianas Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.
<b>tangible net worth</b>	The total stockholders' equity (including capital stock, paid-in capital, and retained earnings after deducting treasury stock and reserves) that would appear on the business organization's financial statements prepared as of that date, less the aggregate book value of all intangible assets shown on the company's financial statements as of that date. This includes, without limitation, goodwill, patents, trademarks, trade names, copyrights, franchises, and unrealized appreciation of assets.
<b>under FOCI</b>	A U.S. company is considered to be under FOCI whenever a foreign interest has the power, direct or indirect (whether or not exercised, and whether or not exercisable through the ownership of the U.S. company's securities, by contractual arrangements or other means), to direct or decide matters affecting the management or operations of the company that may result in unauthorized access to classified information when leveraging commercial technology and access to classified information is required.

## REFERENCES

- Code of Federal Regulations, Title 15
- Code of Federal Regulations, Title 22
- Code of Federal Regulations, Title 32, Part 117
- DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- DoD Directive 5143.01, “Under Secretary of Defense for Intelligence and Security (USD(I&S)),” October 24, 2014, as amended
- DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- DoD Directive 5205.02E, “DoD Operations Security (OPSEC) Program,” June 20, 2012, as amended
- DoD Directive 5220.6, “Defense Industrial Personnel Security Clearance Review Program,” January 2, 1992, as amended
- DoD Instruction 4000.19, “Support Agreements,” December 16, 2020
- DoD Instruction 5145.03, “Oversight of the DoD Personnel Security Programs,” January 10, 2013, as amended
- DoD Instruction 5200.02, “DoD Personnel Security Program (PSP),” March 21, 2014, as amended
- DoD Instruction 5400.11, “DoD Privacy and Civil Liberties Program,” January 29, 2019, as amended
- DoD Manual 5200.02, “Procedures for the DoD Personnel Security Program (PSP),” April 3, 2017, as amended
- DoD Manual 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 25, 2017
- DoD Manual 8910.01, Volume 2, “DoD Information Collections Manual: Procedures for DoD Public Information Collections,” June 30, 2014, as amended
- Executive Order 13526, “Classified National Security Information,” December 29, 2009
- Public Law 114-328, Section 951, “National Defense Authorization Act for Fiscal Year 2017,” December 23, 2016
- Secretary of Defense Memorandum, “The Defense Innovation Initiative,” November 15, 2014
- Security Executive Agent Directive 4, “National Security Adjudicative Guidelines,” December 10, 2016
- United States Code, Title 5, Section 552a (also known as the “Freedom of Information Act”), as amended
- United States Code, Title 25, Chapter 45 (also known as the “Indian Reorganization Act”), as amended