



Information Security Registered Assessors Program (IRAP) Confidentiality Deed

Deed details

Date	
Confidant	Name: Address: Contact phone number: Email address:
Commonwealth	The Commonwealth of Australia as represented by the Australian Signals Directorate ABN: 22 323 254 583 Address: PO Box 5076, Kingston, ACT, 2604 Contact person: IRAP Administrator Contact phone number: 02 6144 8062 Email address: asd.irap@defence.gov.au
Specific Confidential Information	Any information provided by the Commonwealth to the Confidant marked "IRAP EYES ONLY".
Permitted Purpose	The Confidant may only use the Confidential Information for purposes directly connected with the following: (i) conducting IRAP assessments or providing IRAP advice (ii) preparing for an IRAP assessment (iii) scoping an IRAP assessment, or (iv) gaining a deeper understanding of government advice and policy.

CONFIDENTIALITY DEED POLL

1 CONTEXT

The Confidant will receive or have access to Confidential Information belonging to the Commonwealth. The Commonwealth requires, and the Confidant agrees, that it is necessary to take all necessary steps (including the execution of this Document for the benefit of the Commonwealth) to ensure that the Confidential Information is kept confidential, is not disclosed to any party that is not authorised to receive it and is only used for the Permitted Purposes.

2 DEFINITIONS

In this Document:

Confidential Information means any information Disclosed to Confidant by or on behalf of the Commonwealth as part of the Information Security Registered Assessors Program that:

- (a) is Specific Confidential Information
- (b) is marked as confidential
- (c) is by its nature confidential, or
- (d) is by its nature confidential or that otherwise the Confidant knows or ought reasonably to know is confidential

but excludes information or material that:

- (e) is already known to the Confidant prior to the disclosure by the Commonwealth
- (f) is independently developed or legally acquired by the Confidant (including by lawful disclosure by a third party), or
- (g) is or becomes publicly available without breach of this Document by the Confidant.

Disclose means disclosure, making available or accessible by any means, including in writing, by discussion or by any other communication or activity.

Deed Details means the table of information with that name included in this Document.

Document means this Confidentiality Deed Poll.

IRAP means the Information Security Registered Assessors Program operated by the Commonwealth.

Law means any applicable statute, regulation, by-law, ordinance, or subordinate legislation in force from time to time, including the common law and equity as applicable from time to time and any mandatory standards or industry codes of conduct.

Permitted Purposes means the purposes specified in the Deed Details.

Specific Confidential Information means the information contained in any of the materials listed as such in the Deed Details.

3 CONFIDENTIAL INFORMATION

3.1 Confidentiality obligation

The Confidant must:

- (a) keep all Confidential Information Disclosed by the Commonwealth in strict confidence and not Disclose, or allow the Disclosure of, the Confidential Information, except as permitted by clause 3.3
- (b) keep all Confidential Information secure and protected from alteration, loss and unauthorised use, access, copying and Disclosure
- (c) notify the Commonwealth as soon as reasonably practicable in writing if the Confidant suspects, or becomes aware of, any unauthorised use, access, copying or Disclosure of Confidential Information or suspected or actual breach of this Document and, at its cost, take all reasonable steps to prevent or stop that breach, and
- (d) reasonably assist the Commonwealth in connection with any action, proceeding or investigation by the Commonwealth relating to any suspected, expected or actual, unauthorised use, access, copying or Disclosure of the Confidential Information.

3.2 Permitted use

The Confidant must:

- (i) access or use Confidential Information solely and directly for Permitted Purposes, and
- (ii) not allow any Confidential Information to be Disclosed to any person except as permitted by clause 3.3.

3.3 Permitted Disclosure

(a) Subject to clause 3.3(b) below, the Confidant may disclose the Confidential Information where the Confidant is required by Law.

(b) The Confidant must:

- (i) use his or her best endeavours to notify the Commonwealth prior to disclosing the Confidential Information
- (ii) provide full details of the relevant legal requirement and information to be Disclosed
- (iii) take any reasonable action requested by, and reasonably cooperate with any action taken by, the Commonwealth to challenge, prevent or limit such Disclosure, and
- (iv) keep a record of the Disclosure, including what Confidential Information was Disclosed, to whom, when and the reasons for the Disclosure.

3.4 Copies

- (a) The Confidant may make such copies of Confidential Information as is necessary for Permitted Purposes.
- (b) All copies of Confidential Information must be protected in accordance with this Document.

3.5 Deletion of Confidential Information

- (a) Subject to clause 3.5(b), as soon as practical after the Confidential Information is no longer required for the Permitted Purposes, or at any time at the request of the Commonwealth, the Confidant must cease to use that Confidential Information for any purpose and, at the request of the Commonwealth:
 - (i) permanently delete all Confidential Information held in electronic form, and
 - (ii) destroy all documents prepared by or for the Confidant and which contain that Confidential Information and delete from the Confidant's systems all such documents held in electronic form.
- (b) The Confidant is not required to delete or destroy any Confidential Information or other document under clause 3.5(a) that the Confidant is required to retain by Law, an order of a court, or for compliance with its insurance policies or professional standards.
- (c) This Document continues to apply to any Confidential Information retained under clause 3.5(b).

4 NO REPRESENTATION OF COMPLETENESS OR ACCURACY OF INFORMATION

- (a) All Confidential Information is made available on an 'as is' basis, without any representation or warranty of any kind by the Commonwealth, including as to whether the Confidential Information is timely, accurate, fit for purpose, free from defects, sufficient or comprehensive.
- (b) The Confidant will make, and rely solely on, its own independent assessment of the accuracy and completeness any Confidential Information.
- (c) To the maximum extent permitted by Law, the Commonwealth has no liability, of any nature, to the Confidant in respect of any loss or damage that may be suffered, directly or indirectly, as a result of or in connection with that party relying on, or taking action as a result of, Confidential Information.

5 INJUNCTIVE RELIEF

The Confidant acknowledges and agrees that:

- (a) the Commonwealth will not be adequately compensated by damages in an action at Law for any breach of this Document, and
- (b) the Commonwealth is entitled, in addition to any other remedy available to it, to seek injunctive and

other equitable relief to prevent or cure any breach or threatened breach of this Document.

6 PERIOD OF CONFIDENTIALITY AND SURVIVAL

6.1 Period

All Confidential Information will remain subject to the requirements of this Document until it becomes available from a legal public source without restriction.

6.2 Survival

This Document will survive the termination or expiry of any other deed, agreement or arrangement of any kind between the parties.

7 COMPLIANCE WITH LAWS

Without limiting anything contained in this Document, the Confidant acknowledges that it is aware of the following legislative provisions which may have application to its handling of Confidential Information:

- (a) Sections 40, 40G and 40H of the *Intelligence Services Act 2001* (Cth),
- (b) the *Privacy Act 1988* (Cth), and
- (c) Division 122 and Section 91.1 of the *Criminal Code Act 1995* (Cth).

8 GENERAL

- (a) Any notices required to be provided to a party pursuant to this Document will be addressed using the contact details set out in the Deed Details.
- (b) None of the provisions or covenants of this Document will be taken either at law or in equity to have been varied, waived, estopped, discharged or released by a party unless by its express consent in writing.
- (c) The rights and remedies provided under this Document are cumulative and not exclusive of any other rights or remedies of a party.
- (d) Subject to the other covenants of this Document, the obligations of a party pursuant to this Document are in addition to and not in derogation of any other obligation the party has under any other deed or agreement or at law.
- (e) If any provision of this Document is unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, then so much of the offending provision is to be severed from this Document and the remaining provisions will continue in full force and effect.

9 CONSTRUCTION

- (a) In this Document the following rules of interpretation apply:
 - (i) a reference to legislation includes any amendment, re-enactment or replacement of that legislation and includes any subordinate legislative instruments

- (ii) headings are for convenience only and do not affect interpretation
- (iii) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done
- (iv) **including** and **includes** are not words of limitation
- (v) a reference to a **clause** is to a clause of this Document
- (vi) a word that is derived from a defined word has a corresponding meaning
- (vii) no rule of construction applies to the disadvantage of a party because that party

was responsible for the preparation of this Document, and

- (viii) the singular includes the plural and vice versa.

10 APPLICABLE LAW

- (a) The laws of the Australian Capital Territory apply to this Document.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the Australian Capital Territory and any court competent to hear appeals from any of those courts in respect of any proceedings arising out of or in connection with this Document.

Executed as a Deed Poll

Signed, Sealed and Delivered by the Confidant

In the presence of

sign here _____
Confidant

sign here _____
Witness

print name _____

print name _____

date _____