



CONFIDENTIALITY DEED POLL Deed Details

1. **Date** (Date of execution)

2. **Recipient**

Name (and ABN if applicable):

Contact phone number:

Contact email:

Important information for Recipients

1. This Confidentiality Deed Poll (**Deed Poll**) is made in favour of the Commonwealth of Australia as represented by the Australian Signals Directorate ABN 22 323 254 583.

1. This Deed Poll contains confidentiality obligations in respect of certain information that you as an individual may receive as part of your participation in an ASD Activity or any engagement with ASD. This Deed Poll covers confidential information along with information containing a Traffic Light Protocol designation (TLP Information).

2. The recipient listed above in the Deed Details is the person ASD will contact in respect of any issues surrounding this Deed.

3. The Recipient must validly execute this Deed on the last page. The standard execution block is included.



1 CONTEXT

The Recipient may receive and/or disclose Confidential Information in accordance with this Deed Poll. If ASD requires, that Confidential Information will only be used, handled and disclosed in accordance with the Permitted Purpose specified in this Deed Poll.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following definitions apply in this Deed Poll unless the contrary intention appears.

ASD means the Australian Signals Directorate continued in existence in accordance with the *Intelligence Services Act 2001* (Cth).

Confidential Information means all information or material of whatever nature and in whatever medium that:

- (a) is described in Attachment A to this Deed Poll; and
- (b) is by its nature confidential; or
- (c) the Recipient knows or ought to know is confidential,

but does not include information which:

- (d) is already known to the Recipient prior to the disclosure by the Discloser (and such prior knowledge is able to be proved to the Discloser as required);
- (e) is independently developed or legally acquired by the Recipient (including by lawful disclosure by a third party and such independent development or acquisition is able to be proved to the Discloser as required); or
- (f) is or becomes available in the public domain without breach of this Deed Poll by the Recipient (or any person to whom the Recipient has disclosed that information).

Cyber Security means technologies, processes and practices designed to protect applications, services, devices, information, and systems connected directly or indirectly to networks from attack, damage or unauthorised use or access.

Deed Details means the table of agreement information with that name set out on the cover page of this Deed Poll.

Disclose means disclosure by any means, including in writing, by discussion or by any other communication.

Discloser means:

- (a) ASD; or
- (b) any Relevant Third Party.

Intelligence has the meaning given to that term under s 7(1)(a) of the *Intelligence Services Act 2001* (Cth).

IT System means any information technology, communications network or other system, including hardware, software and public or private websites used for processing, storing and/or communicating data or information.

Law means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth Government of Australia, or any State or Territory government) and any applicable common law and rule or principle of equity.

Permitted Purposes means:

- (a) the purposes as described in Attachment A to this Deed Poll;
- (b) any other purposes that may be approved in writing from ASD from time to time; and
- (c) any other purpose approved by the relevant Discloser prior to that Confidential Information being provided to the Recipient.



Recipient means the individual specified as such in the Deed Details.

Relevant Third Party means any natural person or entity who is subject to a confidentiality obligation on substantially the same terms as this Deed Poll.

TLP means traffic light protocol, being a system of markings that communicates information sharing permissions. The TLP system is managed by the Forum of Incident Response and Security Teams (FIRST) and is amended from time to time. Details of the markings and permissions as applied by ASD is set out at <https://www.cyber.gov.au/tlp>.

TLP Information means any information or materials (including Confidential Information) shared by a Discloser within the ASD Activity which is given a TLP designation as set out at <https://www.cyber.gov.au/tlp>.

Working Day means in relation to the doing of an action in a place:

- (a) any day other than a Saturday, Sunday or public holiday in that place; or
- (b) any day other than the two-week period that starts on:
 - (i) the Saturday before Christmas Day; or
 - (ii) if Christmas Day fall on a Saturday, Christmas Day.

2.2 Interpretation

In this Deed Poll the following rules of interpretation apply:

- (a) a reference to an **entity** includes a corporation, statutory corporation, partnership and any other organisation or legal entity;
- (b) a reference to legislation includes any amendment, re-enactment or replacement of that legislation and includes any subordinate legislative instruments;
- (c) headings are for convenience only and do not affect interpretation;
- (d) 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;
- (e) **including** and **includes** are not words of limitation;
- (f) a reference to a **clause** is to a clause of this Deed Poll;
- (g) a word that is derived from a defined word has a corresponding meaning;
- (h) if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the next Working Day;
- (i) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the date of entering into the Deed, or alternatively, a reference to another version of the Document if agreed in writing between the parties;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement; and
- (k) the singular includes the plural and vice versa.

3 BENEFIT AND ENFORCEMENT OF DEED POLL

3.1 Benefit of Deed Poll

- (a) The obligations of the Recipient in this Deed Poll are undertaken in favour of ASD and each other Discloser.
- (b) By executing this Deed Poll, the Recipient acknowledges and agrees it is bound to comply with the terms of this Deed Poll, fulfil and perform every obligation and duty imposed on it by this Deed Poll, and the rights and obligations contained in this Deed Poll endure not only to the Recipient but to every Discloser who has agreed to observe and comply with the terms of this Deed Poll.



3.2 Enforcement

- (a) Subject to clause 3.2(b), this Deed Poll may be enforced by ASD and each other Discloser.
- (b) A Discloser only has a right to enforce this Deed Poll in respect of its own Confidential Information or TLP Information.

4 CONFIDENTIAL INFORMATION

4.1 Nature of information

The Recipient acknowledges and agrees that the Confidential Information is confidential and of significant value to the Disclosers and that any unauthorised disclosure of the Confidential Information may cause loss or damage to the Disclosers.

4.2 Confidentiality obligation

Subject to clause 4.5, the Recipient must:

- (a) keep all Confidential Information in strict confidence and not Disclose, or allow the Disclosure of, the Confidential Information, except as permitted by clause 4.4;
- (b) keep all Confidential Information secure and protected from alteration, loss and unauthorised use, access, copying or Disclosure;
- (c) only reproduce or copy Confidential Information to the extent necessary to carry out work in support of the Permitted Purposes;
- (d) notify ASD as soon as reasonably practicable in writing if the Recipient suspects, or becomes aware of, any unauthorised use, access, copying or Disclosure of Confidential Information or suspected or actual breach of this Deed Poll and, at its cost, take all reasonable steps to prevent or stop that breach; and
- (e) reasonably assist a Discloser in connection with any action, proceeding or investigation by a Discloser relating to any suspected, expected or actual, unauthorised use, access, copying or Disclosure of the Confidential Information.

4.3 Permitted Use

Subject to clauses 4.5(a) and 4.5(b), the Recipient must:

- (a) access or use Confidential Information solely and directly for Permitted Purposes; and
- (b) not allow any Confidential Information to be Disclosed to any person except as permitted by clause 4.4.

4.4 Permitted Disclosure

- (a) The Recipient must not use, reference, or otherwise leverage its involvement in the ASD Activity for the purposes of sales, marketing, or customer engagement without obtaining the prior written approval from ASD.
- (b) If Confidential Information is also TLP Information, that Confidential Information may be Disclosed in accordance with clause 5.2.
- (c) If required by Law, the Recipient may, subject to clause 4.5(c), Disclose Confidential Information:
 - (i) to the Commonwealth, State or Territory Minister having responsibility for, or oversight of, the Recipient;
 - (ii) to any oversight or regulatory body with responsibility for the Recipient; or
 - (iii) in order to respond to a request or direction for information of a House, or a request by a Committee, of the Commonwealth or any state or territory Parliament.
- (d) Subject to clauses 4.5(d) and 4.5(e), the Recipient may Disclose so much of the Confidential Information as the Recipient is legally required to Disclose by Law or legally binding order of any court, government or semi government authority, administrative or judicial body, or a requirement of a stock exchange or regulator.



4.5 Obligations upon Disclosure

- (a) Any act, omission or breach of an obligation in this Deed Poll relating to the Confidential Information by the Recipient will be treated as a breach of this Deed Poll.
- (b) If the Recipient Discloses Confidential Information under clause 4.4(b), the Recipient must notify the entity or person to which the information is Disclosed of the confidential nature of the information.
- (d) If the Recipient must make a Disclosure under clause 4.4(c), the Recipient must, where permitted by Law, before disclosing that Confidential Information:
 - (i) notify the relevant Discloser of the proposed Disclosure, including providing the Discloser with written reasons for the Disclosure and a copy of the Confidential Information which the Recipient proposes to Disclose; and
 - (ii) if requested by the relevant Discloser, take all lawful steps reasonably requested by the relevant Discloser, and permit the Discloser to take all lawful steps, to oppose or restrict the Disclosure.
- (e) If the Recipient Discloses Confidential Information under clause 4.4(c), the Recipient must:
 - (i) notify the proposed Recipient that the relevant Confidential Information is confidential;
 - (ii) where permitted by Law or legally binding order of any court, government or semi government authority, administrative or judicial body, or a requirement of a stock exchange or regulator, not provide the relevant Confidential Information unless the proposed Recipient agrees to keep that Confidential Information confidential; and
 - (iii) keep a record of the Disclosure, including what Confidential Information was Disclosed, to whom, when and the reasons for the Disclosure.
- (f) It is acknowledged that where Disclosure is made under clause 4.4(b) and 4.4(c), no confidentiality undertaking will be required and no guarantee can be given that the information will not be further Disclosed by the entity or person who receives the Confidential Information.

4.6 Copies

- (a) The Recipient may:
 - (i) make such copies of Confidential Information as is necessary for Permitted Purposes; and
 - (ii) make copies of Confidential Information in connection with any routine back-up of data in the course of the Recipient's usual operations.
- (b) All copies, including back-ups, of Confidential Information, must be protected in accordance with this Deed Poll.

4.7 Deletion of Confidential Information

- (a) Subject to clause 4.7(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 Discloser of that Confidential Information, the Recipient must cease to use that Confidential Information for any purpose and, at the request of the relevant Discloser:
 - (i) permanently delete all Confidential Information held in electric form; and
 - (ii) destroy all documents prepared by or for the Recipient and which were based solely or partly on that Confidential Information and delete from the Recipient's systems all such documents held in electronic form.
- (b) The Recipient to whom Confidential Information has been Disclosed is not required to delete or destroy any Confidential Information or other document under clause 4.7(a) that:
 - (i) the Recipient is required to retain by Law, an order of a court, or for compliance with its insurance policies or professional standards;
 - (ii) are contained in papers or minutes of the board or committees of the board of the Recipient;



- (iii) has become integrated or incorporated into the Cyber Security of the Recipient or security of IT Systems for which the Recipient is responsible (provided that the Discloser is not identified);
 - (iv) is contained in a routine back-up of data contained in computer systems used by the Recipient, provided that no attempt is made to recover the Confidential Information; or
 - (v) is this Deed Poll.
- (c) This Deed Poll continues to apply to any Confidential Information retained under clause 4.7(b).
- (d) The return or destruction of any Confidential Information does not release the Recipient from its obligations under this Deed Poll.

5 TLP INFORMATION

5.1 Restriction on Disclosure

The Recipient must:

- (a) not Disclose TLP Information it receives except as permitted in accordance with clause 5.2; and
- (b) protect all TLP Information in its possession or control from unauthorised Disclosure.

5.2 Permitted Disclosure of TLP Information

- (a) The Recipient must only Disclose TLP Information in accordance with TLP sharing permissions. Details of the markings and permissions as applied by ASD is set out at <https://www.cyber.gov.au/tlp>.
- (b) Clauses 4.4(b) and 4.4(c) (as qualified by clause 4.5) apply to TLP Information which has any of the following TLP designations: TLP:RED, TLP:AMBER and TLP:GREEN.
- (c) Any Permitted Disclosure of TLP Information under clause 5.2 shall not constitute a waiver of confidentiality or any other obligations under this Deed Poll, unless otherwise agreed by ASD in writing.

5.3 Notification of breach

The Recipient will as soon as reasonably practicable notify the relevant Discloser and ASD of any information which comes to its attention regarding any actual or potential unauthorised disclosure of TLP Information, and take all steps necessary to prevent the recurrence of such unauthorised Disclosure of the TLP Information.

6 DISCLOSURE OF INFORMATION BY RECIPIENT

6.1 Protection of Disclosed information

- (a) If the Recipient wants any information it shares to be Confidential Information as defined in this Deed Poll, it must take all reasonable action to identify any information or material as Confidential Information by:
 - (i) marking all written material as 'Confidential', 'Proprietary', 'Commercial Sensitive', 'Sensitive' or similar; and
 - (ii) prefacing any oral Disclosure of the information with a statement identifying that such information falls within the definition of Confidential Information in this Deed Poll.
- (b) If the Recipient wants any information it shares to be designated as TLP Information, it must take all reasonable action to identify any information or material it Discloses as TLP Information by:
 - (i) marking all written materials with the appropriate TLP designation; and
 - (ii) prefacing any oral Disclosure of the information with a statement identifying the appropriate TLP designation of such information.



- (c) Nothing in this clause shall affect the confidential nature of any information or material the Recipient communicates, makes available, provides access to or otherwise Discloses in the course of its participation in an ASD Activity that is by its nature confidential, or which the Recipient subsequently notifies as confidential following the disclosure.

7 NO REPRESENTATION OF COMPLETENESS OR ACCURACY OF INFORMATION

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

8 INJUNCTIVE RELIEF

The Recipient acknowledges and agrees that:

- (a) damages may not be a sufficient remedy for a Discloser in an action at Law for any breach by the Recipient of this Deed Poll; and
- (b) a Discloser is entitled, in addition to any other remedy at Law available to it, to seek injunctive and other equitable relief to prevent or cure any breach or threatened breach by the Recipient of this Deed Poll.

9 PERIOD OF CONFIDENTIALITY AND SURVIVAL

9.1 Period

All Confidential Information, Recipient Confidential Information and TLP Information will remain subject to the requirements of this Deed Poll until the relevant information is in the public domain (other than through a breach of confidentiality by a Discloser or the Recipient).

9.2 Survival

This Deed Poll will survive the termination of any deed, agreement or arrangement of any kind between ASD and the Recipient.

10 COMPLIANCE WITH LAWS

Without limiting anything contained in this Deed Poll, the Recipient acknowledges that it is aware of the following legislative provisions which may have application to its handling of Confidential Information or TLP Information:

- (a) Sections 39, 40C, 40D of the *Intelligence Services Act 2001* (Cth) (or any equivalent legislative sections as may be updated from time to time);
- (b) the *Privacy Act 1988* (Cth); and
- (c) section 91.1 and Division 122 of the *Criminal Code Act 1995* (Cth) (or any equivalent legislative sections as may be updated from time to time).

11 GENERAL

- (a) The Recipient gives the undertakings in this Deed Poll in consideration of ASD and each of the other Disclosers disclosing Confidential Information or TLP Information to the Recipient.



- (b) Any notices required to be provided to the Recipient pursuant to this Deed Poll must be in writing and will be sent to the contact details set out in the Deed Details:
- (i) if hand delivered, when received at the address listed in the Deed Details;
 - (ii) if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another; or
 - (iii) if sent as an email, when the email enters the Recipient's information system, unless ASD's information system receives a message within one Working Day that the email has not been delivered to the Recipient, but if the receipt, transmission or entry into the information system is not on a Working Day or is after 5:00pm (Recipient's local time) on a Working Day, the notice is deemed to be delivered at 9:00am (Recipient's local time) on the next Working Day.
- (c) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by or under this Deed Poll by a Discloser does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Deed Poll.
- (d) A waiver given by a Discloser under this Deed Poll is only effective and binding on that party if it is given or confirmed in writing and signed by that party.
- (e) No waiver of a breach of a term of this Deed Poll operates as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.
- (f) None of the provisions or covenants of this Deed Poll will be taken at Law to have been varied, waived, estopped, discharged or released by a Discloser unless by its express consent in writing.
- (g) This Deed Poll shall not be unilaterally terminated or amended unless such termination or amendment is reduced in writing and agreed in writing by ASD. ASD can terminate this Deed Poll at any time for any reason by providing written notice to the Recipient.
- (h) The termination of this Deed Poll does not affect any rights, liabilities or obligations that a party has accrued before such termination, including in respect of an antecedent breach.
- (i) The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of a Discloser.
- (j) Subject to the other covenants of this Deed Poll, the obligations of the Recipient pursuant to this Deed Poll are in addition to and not in derogation of any other obligation of the Recipient under any other deed or agreement or at Law.
- (k) Any provision of the Deed Poll which expressly or by implication from its nature is intended to survive the termination or expiration of the Deed Poll and any rights arising on termination or expiration shall survive, including provisions relating to Confidential Information and TLP Information.
- (l) To the extent a provision of this Deed Poll is or becomes illegal, void or unenforceable, that provision (or the relevant part) will be severed, and the remainder of this Deed Poll has full force and effect.

12 APPLICABLE LAW

- (a) The Laws of the Australian Capital Territory apply to this Deed Poll.
- (b) The courts of the Australian Capital Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Deed Poll.

Executed as a Deed Poll.

Executed as a deed by Recipient :	
<hr/>	
Signature of Recipient:	Signature of witness:
Full name:	Full name:
Date:	Date:

ATTACHMENT A

1. CONFIDENTIAL INFORMATION

The Deed Poll contains confidentiality obligations in respect of certain information that you receive as part of your participation in the ASD Infosec Registered Assessors Program (IRAP) with access to the ACSC Partner Portal. Confidential information referenced in this deed refers to:

- (a) All information regarding other ACSC services and programs, that may be visible to the individual as a result of their access to the Partner Portal to manage IRAP administrative requirements. This includes but is not limited to services, alerts, advisories, publications, events, reports and blogs.
- (b) Information and posts specific to the IRAP program including: announcements, community newsletters, requests for information (RFI's), Knowledge Share evening presentations/recordings and IRAP document updates that are not otherwise publically available. Assessors are required to adhere the traffic light protocol with regards to the sharing of IRAP specific information.
- (c) Information regarding the IRAP programs use of the ACSC Partner Portal, administrative processes, personal details, Assessment Records, Conflict of Interest (COI) declarations, renewal requirements or information collection that is not otherwise publically available.
- (d) Information relating to individuals or organisations that have access to the ACSC Partner Portal through the Partnerships Program.
- (e) Information pertaining to ASD programs or groups, other than IRAP, who have interest in or actively post on the ACSC Partner Portal.

2. PERMITTED PURPOSES

- (a) The Recipient may Disclose Confidential Information to Permitted Recipients to the extent such Disclosure is necessary for the Recipient to use that Confidential Information solely and directly for Legitimate Purposes.
- (b) Permitted for sharing only with other registered assessors and members of the IRAP community, in alignment with the traffic light protocol.
- (c) Confidential information may not be shared with individuals, other than IRAP Assessors, who do not have access to the ACSC Partner Portal.
- (d) Assessors must notify ASD as soon as reasonably practicable in writing if the Recipient 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.
- (e) Assessors who have been provisioned separate ACSC Partner Portal access through their employer, as a part of the Partnerships program, must take all reasonable actions to ensure a distinction in disclosure is made between information available on either account.