



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

CONFIDENTIALITY DEED POLL

This Deed Poll is made on:

by:

('the Confidant') in favour of the Commonwealth of Australia as represented by the Australian Signals Directorate (ASD) ABN 22 323 254 583 ('the Commonwealth').

RECITALS

- A. The Confidant wishes to participate in IRAP. ASD manages and administers the program with an aim to enhance the security of broader industry and Australian Government systems and data.
- B. The Confidant will receive or have access to Confidential Information in the course of the IRAP.
- C. 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.

OPERATIVE PROVISIONS

1 ACKNOWLEDGMENT

- 1.1 The Confidant acknowledges the truth and accuracy of the statements in the Recitals in every particular.

2 DEFINITIONS

2.1 In this Document, unless the contrary intention appears:

ASD means the Commonwealth of Australia as represented by the Australian Signals Directorate.

Confidential Information means all information or material of whatever nature and in whatever medium that is owned or legally held by ASD or an IRAP Assessment Customer that is communicated to, becomes available to, or is accessible by, the Confidant in the course of its participation in IRAP and that:

- (a) is described in Attachment A to this Deed; and
- (b) any other information:
 - i. that is by its nature confidential; or
 - ii. that otherwise the Confidant knows or ought reasonably to know is confidential, including this Document;

but excludes or does not include information or material which:

- (c) is or becomes publicly available other than by breach of this Document by the Confidant;

- (d) is already known to the Confidant, or is in the lawful possession of the Confidant without restriction in relation to disclosure before the date of receipt from the disclosing party; or

- (e) has been independently developed or acquired by the Confidant (including by lawful disclosure by a third party).

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 Document.

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

Document means this Deed Poll and its attachments.

IRAP means the InfoSec Registered Assessors Program.

IRAP Assessment Customer means a government agency or private organisation that is procuring, or has procured, an IRAP assessment.

IT System means any information technology and/or communications network or system, including public and private websites, hardware, software and network data and information, where the network or system is used for processing, storing and/or communicating data or information by electronic or similar means.

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:

- (a) the purposes described in Attachment A to this Deed;
- (b) reasonable use for the purpose of assessing, planning, reviewing, improving and coordinating security, risk management, business and operational continuity and consequence management (or any of these things) relating directly to the Cyber Security of IT Systems for which the Confidant is responsible; and
- (c) any other purpose that may be approved by the Commonwealth from time to time.

Working Day in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

3 INTERPRETATION

3.1 In this Deed, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a word that is derived from a defined word has a corresponding meaning;
- (d) 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;

- (e) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (f) a reference to a legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislations issued under it;
- (g) a reference to a clause includes a reference to a subclause of that clause;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) the word 'Disclose' in any form is not a word of limitation;
- (j) 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; and
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement.

4 BENEFIT AND ENFORCEMENT

4.1 Benefit of Deed Poll

- (a) The obligations of the Confidant in this Document are undertaken in favour of ASD.

4.2 Additional Requirements

- (a) Without limiting any other obligations of the Confidant under this Document, the Confidant acknowledges that IRAP may have additional requirements in relation to confidentiality, which will be notified to the Confidant. If the Confidant agrees to any such additional requirements, a breach of those requirements will be treated as a breach of this Document.

5 CONFIDENTIALITY INFORMATION

5.1 Confidentiality Obligation

- (a) The Confidant must:
 - i. keep all Confidential Information in strict confidence and not Disclose, or allow the Disclosure of, the Confidential information, except as permitted by clause 5.3;
 - ii. keep all Confidential Information secure and protected from

alteration, loss, and unauthorised use, access, copying or Disclosure;

- iii. notify ASD as soon as reasonably practicable in writing if the Confidant suspects, or becomes aware of, any unauthorized use, access, copying or Disclosure of Confidential Information and, at its cost, take all reasonable steps to prevent or stop that breach;
- iv. notify ASD as soon as reasonably practicable in writing if the Confidant suspects, or becomes aware of, an actual or suspected breach of this Document and, at its cost, take all reasonable steps to prevent or stop that breach; and
- v. reasonably assist ASD in connection with any action, proceeding or investigation by ASD relating to any suspected, expected or actual, unauthorized use, access, copying or Disclosure of the Confidential Information.

5.2 Permitted Use

- (a) The Confidant may only access or use Confidential Information solely and directly for Permitted Purposes.

and

- (b) The Confidant must not allow any Confidential information to be Disclosed to any person except as permitted by clause 5.3.

5.3 Permitted Disclosure

- (a) Subject to clauses 5.4(a) and 5.4(b), the Confidant may Disclose so much of the Confidential Information as the Confidant is legally required to Disclose by Law or legally binding order for any court, government or semi government authority, administrative or judicial body, or a requirement of a regulator.

5.4 Obligations upon Disclosure

- (a) If the Confidant must make a Disclosure under clause 5.3(a), the Confidant must, where permitted by Law, before disclosing that Confidential Information:
 - i. notify ASD of the proposed Disclosure, including providing ASD with written reasons for the Disclosure and a copy of the Confidential Information which the Confidant proposes to Disclose; and
 - ii. if requested by ASD, take all lawful steps reasonably requested by ASD, and permit ASD to take all lawful steps, to oppose or restrict the Disclosure.
- (b) If the Confidant Discloses Confidential Information under clause 5.3(a), the Confidant 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.
- (c) It is acknowledged that where Disclosure is made under clause 5.3(a), 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.

5.5 Copies

- (a) The Confidant 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 Confidant's usual operations.
- (b) All copies, including back-ups, of Confidential Information must be protected in accordance with this Document.

5.6 Deletion of Confidential Information

- (a) Subject to clause 5.6(b), as soon as practicable after the Confidential Information is no longer required for the Permitted Purposes, or at any time at the request of ASD, the Confidant must cease the use of the Confidential Information for any purpose and, at the request of ASD:
 - i. permanently delete all Confidential Information held in electronic form; and
 - ii. destroy all documents prepared by or for the Confidant and which were based solely or partly on that Confidential Information and delete from the Confidant's systems all such documents held in electronic form.
- (b) The Confidant to whom Confidential Information has been Disclosed is not required to delete or destroy any Confidential Information or other document under clause 5.6(a) that:
 - i. the Confidant is required to retain by Law, an order of a court, or for compliance with its insurance policies or professional standards; or
 - ii. is this Document.
- (c) This Document continues to apply to any Confidential Information retained under clause 5.6(b).

6 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 ASD, 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.

7 INJUNCTIVE RELIEF

- (a) The Confidant acknowledges and agrees that:
 - i. ASD will not be adequately compensated by damages in an action at Law for any breach by the Confidant of this Document; and
 - ii. ASD 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 by the Confidant of this Document.

8 PERIOD OF CONFIDENTIALITY AND SURVIVABILITY

9.1 Period

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

9.2 Survival

- (a) This Document will survive the termination or expiry of any deed, contract, arrangement or agreement of any kind between ASD and the Confidant relating to IRAP.

9 COMPLIANCE WITH LAWS

- (a) 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:
 - i. sections 39, 40C and 40D of the *Intelligence Services Act 2001* (Cth);
 - ii. the *Privacy Act 1988* (Cth), and
 - iii. Division 122 and Section 91.1 of the *Criminal Code Act 1995* (Cth).

10 NOTICES

- (a) Unless the contrary intention appears, any notice under this Deed shall be effective if it is in writing and sent from and delivered to ASD or Confidant, as the case may be, as detailed below:
 - i. **ASD**

Director, Information Security Registered Assessors Program

Australian Signals Directorate

PO Box 5076, Kingston, ACT, 2604

Canberra BC ACT 2610

Email: asd.irap@defence.gov.au;

Phone: 02 6144 8062; or

ii. **The Confidant**

Address:

Email:

- (b) A notice or other communication shall be deemed to have been delivered:
- i. if hand delivered, when received at the address;
 - ii. if sent by prepaid post, in three Working Days if sent within Australia and in eight Working days if sent by air mail from one country to another; or
 - iii. if sent by an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the recipient.

11 GENERAL

- (a) The Confidant gives the undertakings in this Document in consideration of ASD disclosing Confidential Information to the Confidant.
- (b) Any notices required to be provided to the Confidant pursuant to this Document will be addressed using the contact details set out in the Deed Details.
- (c) None of the provisions or covenants of this

Executed as a Deed Poll

Address:

Email:

Signed, Sealed and Delivered by the Confidant

In the presence of

sign here _____
Confidant

sign here _____
Witness

print name _____

print name _____

date _____

Document will be taken either at law or in equity to have been varied, waived, estopped, discharged or released ASD unless by its express consent in writing.

- (d) The rights and remedies provided under this Document are cumulative and not exclusive of any other rights or remedies of ASD.
- (e) Subject to the other covenants of this Document, the obligations of the Confidant are in addition to and not in derogation of any other obligation to the Confidant under any other deed or agreement or law.
- (f) This Deed shall not be unilaterally terminated or amended unless such termination or amendment is reduced to, and agreed in, writing by ASD.
- (g) Any provision of the Deed which expressly or by implication from its nature is intended to survive the termination or expiration of the Deed and any rights arising on termination or expiration shall survive, including provisions related to Confidential Information.
- (h) Failure by ASD to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or this Deed as a whole.
- (i) 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 that 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.

12 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.

ATTACHMENT A

1. CONFIDENTIAL INFORMATION

Confidential Information means any information:

- a. provided by ASD or an IRAP Assessment Customer to the Confidant; and
- b. any other information obtained, used or developed by the Confidant

in the course of the Confidant's provision of services to ASD or an IRAP Assessment Customer under the relevant deed, contract, agreement or arrangement under which the Confidant is engaged, including any IRAP related information, such as:

- a. any information in relation to IRAP;
- b. any information in relation to the IRAP course materials, guidelines, policies and procedures, resources, templates and tools;
- c. any information in relation to the IRAP assurance or assessment frameworks; and
- d. any information provided by ASD to the IRAP community through newsletters, knowledge share evenings, emailed program updates or requests for information (RFIs)

2. PERMITTED PURPOSES

2.1 The Confidant shall only use the Confidential Information for the sole and exclusive purpose of providing services (and associated obligations) to ASD in accordance with:

- c. the relevant deed, contract, agreement or arrangement under which the Confidant is engaged;
- d. any relevant IRAP requirements and obligations; and
- e. any other conditions or requirements of ASD as notified in writing to the Confidant

which are directly connected with conducting, preparing for or scoping an IRAP assessment, or providing IRAP advice.