

# DEED POLL OF CONFIDENTIALITY

THIS DEED POLL is made on [DATE]

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BY:

[FULL NAME]

[ADDRESS]

of  
(Confidant)

IN FAVOUR OF:

**AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) represented by the Chief Minister, Treasury and Economic Development Directorate (**Territory**).

## BACKGROUND

- A. Electronic voting is available under the *Electoral Act 1992* (ACT) and is provided in the Territory through the System. eVACS® is available to electors attending an early voting centre during the three-week early voting period, and at those same locations on election day.
- B. The Territory and Software Improvements entered into a contract for the development and licencing of eVACS®. Software Improvements specialises in the development and commercialisation of high integrity electronic voting and counting products and services.
- C. eVACS® was first used at the 2001 Territory Legislative Assembly election and has been used at all subsequent elections in 2004, 2008, 2012 and 2016. The 2020 election will also feature eVACS®. eVACS® uses standard ‘all in one’ personal computers as voting terminals, with voters using an e-voting card with a pre-printed QR code to initiate the voting process. Voting terminals are linked to a server in each polling location using a secure local area network. No connection to the broader internet is established.
- D. The Confidant is permitted to review the source code of eVACS® upon request and subject to the provisions of this Deed Poll. The purpose of this Deed Poll is to protect the integrity and security of the System by allowing the Confidant to identify vulnerabilities and/or coding errors in the System and affording the Territory an opportunity to rectify and remedy the identified issues.
- E. In the course of its dealings with the Territory, the Confidant may become aware of, or have disclosed to it, Confidential Information. Improper use or disclosure by the Confidant of that Confidential Information may damage the Territory’s ability to perform its functions, jeopardise the security and/or integrity of the System, and/or be a breach of law.
- F. The Territory considers, and the Confidant agrees, that it is necessary to take all reasonable steps to ensure the Confidential Information is kept confidential in accordance with the terms of this Deed Poll and to ensure all applicable legislation is complied with.

IT IS AGREED AS FOLLOWS:

# 1. Interpretation

## 1.1 Definitions

The following definitions apply in this Deed Poll unless the context otherwise requires.

**Commencement Date** means the date the Confidant executes this Deed Poll, as specified on page 1.

**Confidential Information** information that:

- (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential;
- (2) is notified (whether in writing or not) by the Territory to the Confidant as confidential;
- (3) the Confidant knows or ought to know is confidential;
- (4) is personal information as defined in the *Information Privacy Act 2014*; or
- (5) is specified in **Item 1 Schedule 1**,

but does not include information which:

- (6) is or becomes public knowledge other than by breach of this Deed Poll;
- (7) has been independently developed or acquired by the Confidant; or
- (8) has been notified in writing by the Territory to the Confidant as being not confidential.

**Developers** means Software Improvements.

**eVACS®** means the electronic voting and counting system.

**Findings** means the Confidant's findings, opinions, results, recommendations or feedback associated with the Permitted Activities.

**Permitted Activities** means the activities specified in **Item 2 Schedule 1**.

**Software Improvements** means Software Improvements Pty Ltd.

**Source Code** means the source code for the System.

**System** Means eVACS®, developed for the Territory by Software Improvements.

**Territory** when used:

- (1) in a geographical sense, the Australian Capital Territory; and
- (2) in any other sense, the body politic established under the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

## 1.2 General

In this Deed Poll, unless the context otherwise requires:

- (1) words in the singular number include the plural and vice versa;

- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) clause headings are for convenience only and do not affect the construction or interpretation of this Deed Poll;
- (4) a reference to a “person” includes a body corporate; and
- (5) the word “include” and any derivation is not to be construed as a word of limitation.

## **2. Commencement Date**

The obligations in this Deed Poll commence on the Commencement Date.

## **3. Non-disclosure of Confidential Information**

- (1) The Confidant must only deal with the Confidential Information in accordance with the terms of this Deed Poll.
- (2) The Confidant must maintain strict confidentiality regarding the Confidential Information and must notify the Territory of all attempted unauthorised communications, where “unauthorised communications” mean communications entered into with the Confidant by a person who is not a Territory employee.
- (3) Subject to **clause 5**, the Confidant must not, at any time while or after being granted access to the Confidential Information, without the prior written consent of the Territory, nor at any time after the expiration of this Deed Poll, disclose the Confidential Information to any person.
- (4) The Confidant must take all action necessary to maintain the confidential nature of the Confidential Information, including keeping all records of the Confidential Information under lock and key or password protection.
- (5) The Territory may grant or withhold its consent for purposes of **clause 3(2)** in its absolute and unfettered discretion. If the Territory grants its consent, it may impose conditions on that consent and the Confidant must comply with those conditions.
- (6) The obligations of the Confidant under this Deed Poll will not be taken to have been breached where the Confidential Information is legally required to be disclosed.
- (7) The Confidant must immediately deliver to the Territory or destroy all documents in its control containing the Confidential Information as soon as the Confidant is requested by the Territory (whether in writing or not). Following such a request, unless otherwise agreed in writing by the Territory, the Confidant is not permitted to retain any copies of documents (including in electronic form) which contain Confidential Information.

## **4. Permitted Activities**

The Confidant must only use the Confidential Information for the purposes of undertaking the Permitted Activities and as otherwise directed by the Territory.

## 5. Disclosure of Findings

- (1) The Confidant must notify the Territory of any Findings in writing as soon as reasonably possible.
- (2) The Confidant may publish its Findings only if it provides a copy of the Findings to the Territory in writing at least 60 days before the intended publication.
- (3) During the 60 day notice period referred to in **clause 5(2)**, the Territory may request clarification from the Confidant in relation to the Findings and the Confidant must provide such clarification as soon as reasonably possible.
- (4) The Findings must not include the Source Code, either in whole or in part.
- (5) The Territory may use without limitation the Findings, including providing the Findings to the Developers.

## 6. Notices

- (1) All requests and notices under this Deed Poll must be forwarded to the address or email address of the relevant party specified in **Item 3 Schedule 1**.
- (2) A notice given under this Deed Poll will be deemed to have been given:
  - (a) if delivered by hand, on delivery;
  - (b) if sent by prepaid mail, on the expiration of five business days after the date on which it was sent; or
  - (c) if sent by electronic mail, on whichever of the following occurs first:
    - (i) the other party's acknowledgement of receipt by any means;
    - (ii) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
    - (iii) the expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of paragraphs (a) to (c) occurring.

## 7. Indemnity

The Confidant will indemnify and keep indemnified the Territory, its employees and agents in respect of all claims, costs and expenses made against any of them in relation to injury, loss or any damage suffered by any person as a consequence of the Confidant breaching this Deed Poll, except to the extent to which a relevant claim arises out of the act or omission of the Territory.

## 8. Legal proceedings

The Confidant acknowledges that the Territory may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed Poll, including proceedings for an injunction to restrain such breach.

## **9. Governing law**

This Deed Poll is governed and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the Courts of the Territory.

## SCHEDULE 1

**Item 1. Confidential Information**  
*See clause 1.1*

Confidential Information includes the following:

- (1) the Source Code;
- (2) Developer documentation, technology, program codes, strategies, practices, procedures and associated information for example business plans, data, specifications, financial information and manuals;
- (3) any Findings;
- (4) any correspondence to or from the Territory or the Confidant concerning the Permitted Activities;
- (5) this Deed Poll; and
- (6) any other information disclosed or submitted, orally, in writing, or by any other means to the Confidant by the Territory or on behalf of the Territory to facilitate the Permitted Activities.

**Item 2. Permitted Activities**  
*See clause 1.1*

In relation to the Confidential Information, the Confidant is permitted to:

- (1) view the Confidential Information for the sole purpose of assessing the integrity and security of the System;
- (2) inform the Territory of any potential technical vulnerabilities, bugs or errors associated with the System as identified or suspected by the Confidant;
- (3) provide general feedback about the performance and function of the System to the Territory;
- (4) respond to requests by the Territory for further information about comments made by the Confidant to the Territory concerning the System; and
- (5) make recommendations to the Territory for addressing any concerns associated with the System.

**Item 3 Notices**  
*See clause 6(1)*

For the Confidant:

Street address: [\[insert details\]](#)

Postal address: [\[insert details\]](#)

Email address: [\[insert details\]](#)

For the Territory:

Street address: Level 6, 221 London Circuit,  
Canberra City ACT 2601

Postal address: PO Box 272, Civic Square ACT  
2608

Email address: [elections@act.gov.au](mailto:elections@act.gov.au)

**SIGNED, SEALED AND DELIVERED** as a Deed Poll on the date written on page 1.

.....	)	.....
Print Name in Full	)	Signature of Confidant
	)	
in the presence of:	)	
	)	
	)	
.....	)	
Signature of witness	)	
	)	
.....		
Name of witness		