



Confidentiality and Process Deed Poll

  in favour of

TransGrid Services Pty Limited
(ACN 626 136 865) as trustee for
TransGrid Services Trust (ABN 94 121
353 950) trading as Lumea
Infrastructure Services (**Lumea**)

15 July 2021

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Date

By

The person(s) named in item 1 of schedule 1 (jointly and severally, the **Participant**)

In favour of

TransGrid Services Pty Limited (ACN 626 136 865) as trustee for TransGrid Services Trust (ABN 94 121 353 950) trading as Lumea Infrastructure Services of Level 1, 180 Thomas Street, Sydney, New South Wales 2000 (**Lumea**)

Background

- A Lumea has provided the Participant with an invitation for expressions of interest (**EOI Invitation**) in connection with the competitive tender process (**Tender Process**) through which Lumea proposes to select one or more entities to contract for access to the capacity of the proposed Deer Park Battery Storage System for market services in Victoria, as more particularly described in the EOI Invitation (**Project**).
- B In connection with the Tender Process, Lumea may provide Confidential Information to the Participant relating to the Tender Process or the Project.
- C The Participant intends to participate in the Tender Process and has agreed to the matters set out in this document.

Declarations

1. Definitions and interpretation

1.1 Definitions

In this document:

Associate

In respect of the Participant means:

- (a) any director, officer or employee of the Participant;
- (b) any financier (or potential financier), financial adviser (if different from the financier), legal adviser, legal adviser to the financier or financial adviser (if different from the financier), accountant, insurance adviser, environmental adviser, engineering adviser, and any other adviser of the Participant;
- (c) any Related Body Corporate of the Participant;
- (d) any director, officer or employee of each Related Body Corporate of the Participant; or
- (e) any financier (or potential financier), financial adviser (if different from the financier), legal adviser,

legal adviser to the financier or financial adviser (if different from the financier), accountant, insurance adviser, environmental adviser, engineering adviser, and any other adviser of a Related Body Corporate of the Participant,

and includes, where the Participant comprises more than one entity, any entity referred to in paragraphs (a) to (e) in respect of any entity comprising the Participant.

Business Day	A day on which trading banks are open for business in Sydney and Melbourne , Australia.
Confidential Information	<p>The following, whether or not in material form:</p> <ul style="list-style-type: none"> (a) all information disclosed by or on behalf of Lumea to the Participant in relation to the Tender Process or the Project (including as part of any electronic or physical data room in connection with the Tender Process or the Project or disclosed as part of any Project briefing, forum or question and answer process); (b) that part of all notes and other records (including without limitation notes and records in electronic or other forms) prepared by the Participant (or prepared by any person to whom the Participant has disclosed Confidential Information under this document) based on or incorporating the information referred to in paragraph (a); and (c) all copies of the information and other records referred to in any of paragraph (a) or (b), <p>but excludes any information which, at the time it was disclosed to the Participant:</p> <ul style="list-style-type: none"> (d) was generally and publicly available other than by breach of any duty or obligation; or (e) was in the possession of the Participant lawfully and without breach of any duty or obligation.
Disclosure	Includes in writing, by discussion (or other communication) or disclosure, by whatever means.
EOI Invitation	Has the meaning given in paragraph A of the Background.
Fund	A trust, a partnership, a body corporate or similar vehicle that is used for collective investment by investors or members.
Lumea Entity	<p>Each of:</p> <ul style="list-style-type: none"> (a) Lumea; (b) TransGrid;

	<ul style="list-style-type: none"> (c) any Related Body Corporate of Lumea or TransGrid; (d) any director, officer, employee advisor, representative or shareholder of any of the entities referred to in paragraph (a), (b) or (c).
Notice	Has the meaning given in clause 10.1 .
Permitted Purpose	To use the Confidential Information solely for the purpose of preparing and lodging a proposal or proposals for the Project as part of the Tender Process.
Process Document	<p>Each of:</p> <ul style="list-style-type: none"> (a) the EOI Invitation; (b) this document and any other confidentiality or process or acceptance deed(s) or deed(s) poll (however called) which is required to be executed by the Proponent during the Tender Process; and (c) any other document issued by Lumea in relation to the Tender Process which is stated as being a Process Document.
Project	Has the meaning given in paragraph A of the Background.
Related Body Corporate	<ul style="list-style-type: none"> (a) Has the meaning given in the <i>Corporations Act 2001</i> (Cth), but on the basis that "subsidiary" has the meaning given to Subsidiary in this document and that "body corporate" includes a Fund; (b) in the case of TransGrid, includes NSW Electricity Networks Assets Pty Limited (ACN 609 169 922) as trustee for the NSW Electricity Networks Assets Trust and each of their respective related bodies corporate (within the meaning of paragraph (a)).
Subsidiary	<p>Has the meaning given to "subsidiary" in the <i>Corporations Act 2001</i> (Cth), amended as necessary such that:</p> <ul style="list-style-type: none"> (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and (b) a body corporate or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a body corporate.
Tender Process	Has the meaning given in paragraph A of the Background.
TransGrid	NSW Electricity Networks Operations Pty Limited (ACN 609 169 959) as trustee for NSW Electricity Networks Operations Trust (ABN 70 250 995 390) trading as TransGrid.

1.2 Definitions in the EOI Invitation

In this document, unless defined in this document or the context otherwise requires, words and expressions have the same meaning as in the EOI Invitation.

1.3 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (f) The meaning of terms is not limited by specific examples introduced by including, or for example, or similar expressions.
- (g) Where more than one person comprises the Participant, the rights and obligations of those persons under or in respect of this document are joint and several.
- (h) A reference to any document includes all schedules and attachments to the document.
- (i) Headings are used for ease of reference only and are not to be taken into account for the purposes of construing this document.
- (j) Any reference to this document or any other agreement, contract, document or instrument includes any variation or replacement of any of them.
- (k) Any references to any clause, schedule and provision are references to that clause, schedule and provision contained in this document.
- (l) Unless otherwise specified, where a provision of this document refers to Lumea's consent being required, that consent may be given, given subject to conditions or withheld in Lumea's absolute discretion.

2. Application of this document

The Participant acknowledges that this document:

- (a) applies to the Tender Process and any act, matter or thing arising from or connected with the Tender Process;
- (b) takes precedence over the EOI Invitation and, unless expressly specified otherwise, any other Process Document, in each case, to the extent of any inconsistency between them; and
- (c) as full force and effect despite any prior agreement or representation by Lumea.

3. Acknowledgement and undertaking

3.1 Tender Process

(a) The Participant:

- (i) agrees to be bound by; and
- (ii) undertakes to strictly comply with,

all terms, conditions and other provisions of the EOI Invitation (including those set out in the 'Important Notice' on page 1 of the EOI Invitation and section 4 of the EOI Invitation under the headings 'Notice and disclaimer', 'Purpose and intended recipients', 'Information', 'Rights', 'Liability' and 'Confidentiality, ownership and use of information') and any other Process Document.

- (b) The Participant agrees that, except to the extent Lumea may otherwise expressly agree in writing, the terms and conditions and other provisions of the EOI Invitation and this document continue to apply to any process which Lumea may undertake (including following the completion or termination of the Tender Process) in connection with this document, the selection of any Shortlisted Participant(s), Preferred Participant(s) or Successful Participant(s) or the entering into of any agreement relating to the Project (including any further Tender Process or any negotiations with any person (including the Participant)).

3.2 Termination of discussions

This document and the disclosure of Confidential Information to the Participant is not an offer or acceptance of an offer to enter into the Tender Process. Lumea is not under any obligation to continue the Tender Process and may terminate, suspend or reinstate the Tender Process (including terminating any discussions with the Participant) without giving any reason for doing so.

4. Confidentiality

4.1 Confidentiality obligation

The Participant:

- (a) must treat as confidential, and keep confidential, all Confidential Information;
- (b) except to the extent required for the Permitted Purpose, must not copy any Confidential Information (including any document containing Confidential Information), without the prior written consent of Lumea;
- (c) may only use the Confidential Information for the Permitted Purpose only and not for any other purpose; and
- (d) must not create any document containing Confidential Information, other than for the Permitted Purpose.

4.2 Permitted Disclosures

- (a) The Participant must not Disclose Confidential Information other than:
- (i) without prejudice to any other provision of this document, to any Associate for the Permitted Purpose only, and only to the extent necessary for that Permitted Purpose;
 - (ii) to the extent:
 - (A) required by:
 - 1. law or statutory body;
 - 2. the rules of any stock exchange;
 - 3. any applicable accounting standards; or
 - (B) order by any court,
provided that, in the case of **clause 4.2(a)(ii)**, the Participant has notified Lumea as soon as possible after the Participant becomes aware that it may be required to disclose the Confidential Information, and having consulted with Lumea with a view to agreeing in good faith the form, content, timing and manner of disclosure, including taking into account any actual basis that Lumea may have to prevent or restrict disclosure, and to allow Lumea to bring action to prevent disclosure, so as to ensure that, as far as possible, the extent of disclosure is strictly limited to that required.
- (b) If the Participant discloses Confidential Information under **clause 4.2(a)(i)**, the Participant assumes responsibility for the actions of any persons to whom it discloses Confidential Information, and must use its reasonable endeavours to ensure that the confidentiality of the Confidential Information is maintained.

4.3 Security and control

- (a) The Participant must:
- (i) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised under this document;
 - (ii) keep Confidential Information under the Participant's control; and
 - (iii) immediately notify Lumea of any suspected or actual unauthorised use, copying or Disclosure of Confidential Information.
- (b) The Participant must provide assistance reasonably requested by Lumea in relation to any proceedings Lumea may take against any person for unauthorised use, copying or Disclosure of Confidential Information.

4.4 Confidential Information ownership and rights

- (a) As between the Participant and Lumea, the Confidential Information is owned by Lumea.
- (b) The Participant acknowledges that:
- (i) it does not have, and this document does not confer on it, any right, title or interest in the Confidential Information or, except as expressly provided for under this document, any licence or right to use the Confidential Information; and

- (ii) Lumea makes no representation and gives no warranty as to its right to disclose the Confidential Information.

4.5 Undertakings as to Participant conduct

Without limiting any other obligations in this document, the Participant undertakes not to (and must ensure that its Related Bodies Corporate do not):

- (a) approach or hold any discussions relevant to the Tender Process or the Project with Lumea personnel, customers or suppliers without Lumea's prior written consent;
- (b) make contact with or enter into any discussions with any other participant or adviser of any other participant in relation to the Tender Process or the Project without Lumea's prior written consent;
- (c) form any consortium or syndicate in connection with the Tender Process or the Project that is not notified to Lumea on or before the date of execution of this document;
- (d) become a party to any arrangement, agreement or understanding with any other persons restricting or limiting that person or any other person from participating in the Tender Process or the Project or from providing advice or financial assistance to any party participating in the Tender Process or the Project;
- (e) engage in any collusive or anticompetitive conduct in relation to the Tender Process or the Project;
- (f) engage in an arrangement or engage debt financier providers to arrange, facilitate or provide finance to the Participant on an exclusive basis in connection with the Tender Process or the Project or otherwise on terms or understanding that would otherwise restrict a finance provider in any way from providing debt finance to Lumea, any Lumea Entity or any other participant in respect of the Tender Process or the Project; or
- (g) engage in an arrangement or engage consultants to provide advice to the Participant on an exclusive basis in connection with the Tender Process or the Project or otherwise on terms or understanding that would otherwise restrict a consultant in any way from providing technical advice to Lumea, any Lumea Entity or any other participant in respect of the Tender Process or the Project.

5. Public statements

5.1 Announcements

Without prejudice to any other provision of this document, the Participant must not make any announcement or otherwise publicise the terms of this document, or the subject matter of the Tender Process, or negotiations relating to the Tender Process (including any agreement contemplated in the Tender Process), without the prior written consent of Lumea, except to the extent required by law or statutory body, the rules of any stock exchange, any applicable accounting standards or order of any court.

5.2 Action to be taken if required to make an announcement

If the Participant is required to make an announcement in respect of any Confidential Information, it must:

- (a) consult with Lumea with a view to agreeing the form, content, timing and manner of making the announcement; and
- (b) ensure that the announcement includes only information that is required and does not include any information other than that required.

6. Disclaimer and exclusion of liability

The Participant acknowledges that:

- (a) Lumea makes no representations or warranties as to the accuracy or completeness of the Confidential Information, or any other information disclosed to the Participant in relation to the Tender Process or the Project; and
- (b) Lumea disclaims and excludes all liability for, and the Participant must not make any claim against Lumea or any other Lumea Entity in relation to and the Participant releases Lumea and each Lumea Entity from, all claims, expenses, losses, damages and costs the Participant may incur as a result of the Confidential Information, or any other information disclosed to the Participant in relation to the Tender Process or the Project being inaccurate or incomplete in any way for any reason.

7. Acknowledgement and indemnity

7.1 Acknowledgment

The Participant acknowledges that it is aware that any breach of this document will result in Lumea suffering damage.

7.2 Indemnity

The Participant indemnifies Lumea against all losses, damages, expenses and legal costs (on a solicitor and own client basis and whether incurred by or awarded against Lumea) that Lumea may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach by the Participant of this document; or
- (b) any Disclosure of Confidential Information by any Associate other than to the extent permitted under this document.

7.3 Injunction

The Participant acknowledges and agrees that:

- (a) the Confidential Information is commercially sensitive, proprietary and valuable to Lumea;
- (b) damages may not be available, or if they are, may not be an adequate remedy for Lumea;
- (c) Lumea is entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Participant of this document and without the need on the part of Lumea to prove any special damage; and
- (d) if Lumea seeks injunctive relief, the Participant will not contest the granting of the relief.

7.4 Intellectual property rights

The Participant acknowledges that this document or the disclosure of the Confidential Information by Lumea to the Participant does not transfer any interest in any intellectual property.

8. Termination of right to use

- (a) Lumea may, at any time, terminate the Participant's right to use the Confidential Information by written notice to the Participant.
- (b) On a notice contemplated under clause 8(a) being given:
 - (i) the Participant's right to use Confidential Information ceases with immediate effect or, if another time is stated in the notice, at that time; and
 - (ii) the Participant must, at Lumea's option, immediately or, if another time is stated in that notice, by that time:
 - (A) return to Lumea;
 - (B) destroy and certify in writing to Lumea the destruction of; or
 - (C) destroy and permit Lumea to witness the destruction of,
- (c) The termination of the Participant's right to use the Confidential Information contemplated in this **clause 8** does not affect any accrued rights or remedies Lumea may have.

9. Failure to comply

- (a) If the Participant fails to comply with its obligations under this document, Lumea may, in its absolute discretion, exclude the Participant from any further involvement in the Tender Process or the Project by written notice to the Participant.
- (b) Lumea's rights under this **clause 9** are without prejudice to any other rights or remedies of Lumea.
- (c) The Participant acknowledges that:
 - (i) monetary damages alone may not be a sufficient remedy for a breach of this document; and
 - (ii) in addition to any other remedy which may be available at law or in equity, Lumea is entitled to interim, interlocutory and permanent injunctions or any of them to prevent breach of this document and to compel specific performance of it.

10. Notices

10.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this document must be in writing in English and may be given by an agent of the sender.

10.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for Notices;
- (c) sent to the party's current address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by email to the party's current email address for Notices.

10.3 Particulars for delivery of Notices

(a) The particulars for delivery of the Notices are initially:

Lumea	Delivery address:	Level 1 180 Thomas Street Sydney, NSW
	Postal address:	Level 1 180 Thomas Street Sydney, NSW
	Email:	contracts@lumea.com.au
	Attention:	The Contracts Manager

Participant As set out in **item 2** of schedule 1.

(b) Each party may change its particulars for delivery of Notices by Notice to the other party.

10.4 Effect and receipt of Notice

(a) Unless a later time is specified in it, any Notice takes effect from the time it is actually received or taken to be received.

(b) A Notice given in accordance with this **clause 10** is taken to have been received:

- (i) in the case of Notice given or served by hand, at the time of delivery;
 - (ii) in the case of Notice given or served by post, on the third day following the date of posting; and
 - (iii) in the case of an email, at the earlier of:
 - (A) when the addressee's email system logs the email message as having been received; or
 - (B) when the email message enters the addressee's information system, provided that if a Notice is given:
 - (iv) after 5.00 pm in the place of receipt; or
 - (v) on a day which is not a Business Day in the place of receipt,
- then the Notice is taken as having been given on the next Business Day.

10.5 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 10** or in accordance with any applicable law.

11. General

11.1 Waiver

- (a) Any failure or delay by Lumea in exercising a right, power or remedy does not operate as a waiver of that right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy by Lumea does not preclude either its exercise in the future or the exercise of any other right, power or remedy by Lumea.

11.2 Variation

- (a) No provision of this document may be varied other than by written agreement between Lumea and the Participant.
- (b) This document cannot be revoked without the prior written consent of Lumea.

11.3 Deed Poll for benefit of Lumea

- (a) This document is a deed poll. Factors which might suggest otherwise are to be disregarded.
- (b) The Participant agrees that this document is for the benefit of and is enforceable by Lumea and its successors and assigns (and its officers, employees, agents, consultants and contractors) in their own name and is binding on the Participant and its successors and permitted assigns.

11.4 Governing law and jurisdiction


This document is governed by the laws applicable in New South Wales and the Participant submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any court competent to hear appeals from any of those courts.

11.5 Anti-bribery and corruption

Despite any other provision of this document, the Participant must not engage in, and must ensure that its Associates in carrying out any part of the works, obligations or activities under this document, the Tender Process or the Project do not engage in, any fraud, bribery or corruption.

Schedule 1

Participant information

1	Participant		
2	Participant particulars for delivery of Notices	Delivery address:	[insert]
		Postal address:	[insert]
		Email:	[insert]
		Attention:	[insert]

Execution

Executed as a deed poll.

[Note: To be executed by the Participant or, if the Participant comprises more than one entity, each Participant comprising the Participant.]

If the entity is an individual:

Signed sealed and delivered)
by)
)

.....

.....:

Name of individual (print)

in the presence of:

.....

Witness

.....

Name of Witness (print)

Date:

If the entity is a company incorporated under the *Corporations Act 2001* (Cth):

Executed by)
)
.....)

.....:

Name of company (print)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)

Date:

If neither of the above applies, the Participant to insert appropriate execution block for due execution of this Deed Poll.