

Non-Disclosure Agreement

Market Sounding - HumeLink
March 2022



This Agreement of Non-Disclosure is made on

BETWEEN

Name NSW Electricity Networks Operations Pty Limited ACN 609 169 959 as trustee
for NSW Electricity Networks Operations Trust

ABN 70 250 995 390

Alias **Discloser**

Address 180 Thomas Street, Sydney NSW 2000

Postal PO Box A1000 Sydney South NSW 1235

Contact Mark Levy E-mail humelink.enquiries@transgrid.com.au

AND

Name

ABN

ACN

Alias **Recipient**

Address

Postal

Contact E-mail

both the “**Parties**”

BACKGROUND

- A. Both the Discloser and the Recipient are incorporated under, and have all the powers listed in section 124 of the *Corporations Act 2001*.
- B. The Discloser has agreed to give the Recipient access to the Confidential Information for the Permitted Purpose and on the terms and conditions of this Agreement.

IT IS AGREED as follows in consideration of the mutual promises contained herein:

1. COMMENCEMENT AND DURATION

1.1. Commencement

The obligations in this Agreement will commence in effect on and from the earlier of the date that the last of the parties executes this Agreement or the date on which the Confidential Information is communicated or disclosed, whether orally, electronically or by hard copy, or otherwise provided by the Discloser to the Recipient.

1.2. Expiry

Subject to Clause 5.1., this Agreement will continue in effect until it is terminated in accordance with the express written consent of all parties to this Agreement.

2. DEFINITIONS

“Authorised Representative” means any director, officer, employee, agent, financier or professional advisor or Related Party of a Party.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in Sydney.

“Confidential Information” means any information, Document or Data, whether tangible or intangible, which in any way relates to the Permitted Purpose, that is disclosed or communicated by the Discloser to the Recipient or their Authorised Representative, observed by the Recipient or their Authorised Representative in written, oral or visual form or which is otherwise acquired directly or indirectly by the Recipient from the Discloser for the Permitted Purpose; and includes:

- (i) all information relating to technology, processes, products, samples, drawings, plans, specifications, trade secrets, know-how or other information of a commercially sensitive nature (including financial information, business and marketing plans, projections and formulae); and
- (ii) any information or opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
- (iii) any volume data for load and/or generation sites (whether historical or current, tangible or intangible in whatever form), relating to or obtained in connection with Transgrid’s transmission system; all information as to the operational technology and associated ICT infrastructure of Transgrid’s operational network; and any personal information captured under the *Privacy Act 1988* (Cth).
- (iv) if disclosed or observed in written form, is marked “Confidential”, “Commercial in confidence”, or “Proprietary”; and
- (v) if communicated orally, is contemporaneously described as “Confidential”, “Commercial in confidence” or “Proprietary”; and
- (vi) the information or Document constitutes confidential information, a communication made in trust or confidence or other protected information or secret under general law and equity.

“Document” means any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record or any other means by which information may be stored, disseminated or reproduced.

“Permitted Purpose” means the market sounding process being led by Transgrid for the Humelink project, as described in the document entitled “Project Information Document – Humelink” received by the recipient around March or April 2022.

“Related Party” means any related body corporate (within the meaning of the *Corporations Act 2001*) of a Party.

3. THE PARTIES AGREE AS FOLLOWS

3.1. Permitted Purpose

The Recipient, their Representatives and Related Parties must not use the Confidential Information or prepare Documents incorporating the Confidential Information other than for the Permitted Purpose.

3.2. Excluded Information

Information disclosed, observed or communicated cannot be regarded as Confidential Information for the purposes of this Agreement where:

- (a) the information is, or becomes part of, the public domain (otherwise than by breach of this Agreement); or
- (b) the information is lawfully obtained by the Recipient from another person without any restriction as to use and disclosure; or
- (c) the information was in the Recipient’s possession prior to disclosure to it by the Discloser under this Agreement, except as a result of a prior confidential disclosure to the Recipient by the Discloser.

3.3. Obligation of Non-Disclosure

The Recipient will, in relation to the Confidential Information of the Discloser:

- (a) regard it as confidential and keep it confidential;
- (b) use it only for the Permitted Purpose;
- (c) not disclose it to any person or third party except their Authorised Representatives and Related Parties who:
 - (i) need to know it for the Permitted Purpose; and
 - (ii) have first been directed to keep it confidential and use it only for the Permitted Purpose.
- (d) not copy it or any part of it except as necessary for the Permitted Purpose, and mark any such copy “*Confidential – [NAME OF DISCLOSER]*”;
- (e) prevent unauthorised copying, use, and disclosure, whether by oral, visual, written or other means, and implement security precautions to that end and in accordance with clause 3.6;
- (f) notify the Discloser immediately if it becomes aware of any unauthorised copying, use or disclosure in any way, or a legal duty to disclose;
- (g) take reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this Agreement;
- (h) promptly comply with any request to return or destroy Confidential Information in accordance with the procedure set out in clause 3.5;
- (i) hold it (including by electronic means) solely within Australia; and

- (j) ensure it is only accessed, disseminated and used (including by its Authorised Representatives) solely from within Australia.

3.4. Permitted Disclosure

- (a) The Recipient may disclose Confidential Information where:
 - (i) the Confidential Information is required by law to be disclosed by the operation of any applicable law, recognized stock exchange requirement, judicial or parliamentary body or governmental agency, provided that the Recipient only discloses the Confidential Information to the extent required to comply with the applicable law or requirement;
 - (ii) and, to the extent legally permissible, before the Recipient makes any disclosure under this clause it must provide the Discloser with prompt written notice of the requirement to disclose the Confidential Information (including details of the Confidential Information to be disclosed and the third party to whom it is to be disclosed) to enable the Discloser to seek an appropriate protective order or to take steps to resist or narrow the scope of the requirement to disclose.
- (b) The Discloser may authorise, in writing, the disclosure of Confidential Information.

3.5. Return of Confidential documents

- (a) If the Discloser requests the Recipient to return or destroy a Document containing Confidential Information then the Recipient will immediately stop using, copying or disclosing the document, and
 - (i) return all Confidential Information to the Discloser immediately, regardless of how the Confidential Information is embodied at the date of that request; or
 - (ii) if part or all of the Confidential Information cannot be returned because it is contained in the Recipient's property or cannot be detached from any valuable equipment, the Recipient will destroy that part of the Confidential Information and certify its erasure from that medium to the Discloser within 24 hours of the request for return being made.
- (b) If the Recipient is required by law to retain a record of part of the Confidential Information, the Recipient will notify the Discloser of the Confidential Information being retained for record-keeping purposes and will keep it for that purpose only.

3.6. Security Measures

The Recipient agrees to maintain strict security and control over any authorisation, distribution, grant of access or dissemination of the Confidential Information.

3.7. Remedy for Breach

- (a) The Parties acknowledge and accept that financial and other loss and damage would be suffered if the Confidential Information were disclosed except as provided under this Agreement and that monetary damages would be an insufficient remedy.
- (b) The Parties acknowledge and accept that, in addition to any other remedy which may be available in law or equity, the Parties are entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

- (c) Any Party in breach of this Agreement will immediately reimburse the other Party for all costs and expenses (including legal costs and disbursements on a full indemnity basis) incurred in enforcing their obligations under this Agreement.

4. WARRANTIES

4.1. Warranty of Capacity

Each Party promises the other that:

- (a) it is a separate legal entity capable of being sued;
- (b) it has power to enter into and perform all of its obligations under this Agreement;
- (c) it has done everything the law requires to be done in order that it may lawfully execute this Agreement and to perform its obligations under this Agreement;
- (d) its execution of this Agreement and performance of its obligations is not illegal;
- (e) its execution of this Agreement and performance of its obligations do not contravene any contractual or fiduciary obligation it may have to anyone else; and
- (f) it has not been threatened with any court or governmental orders, proceedings or judgements that might prevent it from performing its obligations under this Agreement.

4.2. Authorised Representatives

Each Party will be responsible for any acts or omissions of their Authorised Representatives, whether or not said acts or omissions were unauthorised or performed outside the ordinary course of an Authorised Representative's duties, and for ensuring that each Authorised Representative observe and comply with this Agreement.

5. MISCELLANEOUS

5.1. Obligations Surviving Termination

- (a) The general termination of the Parties' obligations under this Agreement does not excuse any Party from continued performance of its obligations.
- (b) The Parties acknowledge and accept that such obligations will, without clear written intention by all Parties to the contrary, be assumed to continue in force notwithstanding general discharge of this Agreement.

5.2. Performance During Dispute

Each obligation of a Party under this Agreement is a separate and independent liability and will not be discharged by the performance of any obligation or the non-performance of any Party. Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

5.3. Governing Law

This Agreement will be governed by and construed in accordance with the laws in force in New South Wales and each Party will submit to the non-exclusive jurisdiction of its courts.

5.4. Relationship of the Parties

The relationship between the parties is limited to the performance of this Agreement and nothing will be considered to constitute the Parties as being in a relationship of partnership, principal and agent, trust, fiduciary or any other special relationship.

5.5. Amendments

This Agreement may only be amended in writing by the mutual agreement of the Parties.

5.6. No Waiver

The failure or delay of a Party to exercise its rights will not be a waiver of its rights.

5.7. Assignment

The Recipient may not assign any of its rights or obligations without the prior written consent of the Discloser (such consent not to be unreasonably withheld).

5.8. Severability

If a term or condition in this Agreement is void, voidable, unenforceable or illegal but would not be void, voidable, unenforceable or illegal if it were read down and it is capable of being read down, then the provision must be read down. In any other case, the minimum of the term or condition must be severed in order that it is no longer void, voidable, unenforceable or illegal, without invalidating the remaining provisions hereof.

5.9. Notices

(a) Any notices or other communications contemplated or required under this Agreement, in order to be valid, must be given by:

- (i) personal delivery, or
- (ii) express post at the addresses provided above, or
- (iii) e-mail at the addresses provided above; and

is regarded as being delivered by the sender and received by the addressee, if by:

- (vii) delivery in person, when delivered to the addressee by 5pm on a Business Day; or
- (iv) email, at the time recorded on the device at the place of receipt ("**Receipt Time**") and provided that no automated message was received by the sender, that the email had not been delivered within 4 hours after the Receipt Time.

(b) Any notice provided in accordance with this clause is taken to be a notice in writing.

5.10. Intellectual Property

Nothing in this Agreement transfers ownership of any Intellectual Property that is owned by any Party prior to the effective date of this Agreement.

EXECUTION

Each attorney executing this Agreement states that he or she has no notice of the revocation or suspension of his or her power of attorney.

Signed, as an **Agreement**.

Signed, for and on behalf of NSW Electricity Networks Operations Pty Limited ACN 609 169 959 as trustee for NSW Electricity Networks Operations Trust ABN 70 250 995 390 by its attorneys:

.....
Signature of attorney

.....
Signature of attorney

.....
Print name and position

.....
Print name and position

Executed by

by its officer which it has duly authorised:

.....
Signature of Officer

.....
Print name