

Utilities (Grant of Licence) Notice 2022 (No 1)

Notifiable instrument NI2022–360

made under the

Utilities Act 2000, section 37 (Grant), section 52(1)(a) (Public notice of licence decisions) and section 53 (Public access to licences etc)

1 Name of instrument

This instrument is the *Utilities (Grant of Licence) Notice 2022 (No 1)*

2 Commencement

This instrument commences the day after it is notified.

3 Public notice of licence decision — Grant

Under section 37 of the *Utilities Act 2000*, a licence for electricity transmission is granted to Transgrid Services Pty Limited (ACN 626 136 865) as trustee of Transgrid Services Trust (ABN 94 121 353 950) trading as ‘Lumea Infrastructure Services’.

The licence is granted for 20 years.

4 Public access to licence

Copies of the licence are available from the commission’s website at: [Current Licences - Independent Competition and Regulatory Commission \(act.gov.au\)](https://www.act.gov.au/competition-and-regulatory-commission/current-licences-independent-competition-and-regulatory-commission)

Joe Dimasi
Senior Commissioner

21 July 2022

**INDEPENDENT COMPETITION AND
REGULATORY COMMISSION**

**Licence to provide electricity transmission
services under the
*Utilities Act 2000 (ACT)***

granted to

**Transgrid Services Pty Limited (ACN 626 136
865) as trustee of Transgrid Services Trust
(ABN 94 121 353 950)**

trading as

‘Lumea Infrastructure Services’

Issued on
21/July/2022

Table of Contents

<u>1.</u>	<u>Definitions and Interpretation</u>	<u>1</u>
1.1.	Interpretation	1
1.2.	Definitions	1
<u>2.</u>	<u>Commencement and term</u>	<u>1</u>
2.1.	Commencement date	1
2.2.	Licence term	2
<u>3.</u>	<u>Licence does not limit Licensee</u>	<u>2</u>
<u>4.</u>	<u>Authorisation</u>	<u>2</u>
4.1.	Authorised Utility Services	2
4.2.	Area of operations	2
4.3.	Non-exclusive rights	2
<u>5.</u>	<u>Licensee to comply with obligations under this Licence</u>	<u>2</u>
5.1.	Licensee to comply with obligations	2
5.2.	Joint and several responsibility	2
<u>6.</u>	<u>Compliance with all applicable laws</u>	<u>3</u>
6.1.	Licensee to comply	3
6.2.	Licensee to comply with the Act and Utilities Technical Regulation Act	3
6.3.	Severance of any part of the licence does not affect continued operation of remainder of licence	3
<u>7.</u>	<u>Variation of Licence</u>	<u>3</u>
<u>8.</u>	<u>Licence Compliance</u>	<u>3</u>
8.1.	Licensee to monitor compliance	3
8.2.	Licensee to notify the ICRC of any material breaches	4
8.3.	Licensee to provide statement on any non-compliance	4
8.4.	Licensee must report compliance annually	4
8.5.	Availability of compliance report	4

8.6.	Operation and compliance audits	4
9.	Technical and prudential criteria	5
9.1.	Requirement to continue to meet criteria	5
9.2.	Licensee to advise the ICRC of financial and technical capacities	5
10.	Contracting out	5
10.1.	Licensee may contract out	5
10.2.	Licensee bound by obligations under licence	5
11.	Securities, assignment and changes to shareholdings	5
11.1.	Security Interest	5
11.2.	Assignment	5
11.3.	Assignment generally	6
11.4.	Deemed assignment - changes in Licensee's shareholdings	6
11.5.	Changes in ownership	6
12.	Risk Management	6
12.1.	The ICRC may request information	6
12.2.	Information that may be requested	6
12.3.	Licensee must provide information	6
12.4.	Licensee to indemnify the ICRC	6
13.	Other restrictions on Licensee	7
13.1.	Restrictions on Licensee	7
14.	Maintenance and inspection of records	7
14.1.	Licensee to keep records	7
14.2.	Consents and authorisation	7
14.3.	Licensee to provide copies of records	8
14.4.	Licensee to comply with all requests	8
15.	Annual Licence fee	8
16.	Review of Licensee's obligations	8
17.	Transfer, surrender, revocation or suspension of Licence	8

17.1.	Suspension of licence	8
17.2.	Licensee to comply with requirements of suspension notice	8
18.	Notices	9
18.1.	Notice to be in writing	9
18.2.	Address for service	9
18.3.	The ICRC to be advised of contact details	9
18.4.	Deemed delivery	9
19.	Waiver	9
19.1.	Non exercise of power or right	9
19.2.	Exercise of power or right	9
19.3.	Waiver must be in writing	10
19.4.	Limit on application	10
Schedule 1:	Additional Conditions	12
1.	The following additional conditions apply to this licence	12
Schedule 2:	Variations to the licence	13
Dictionary		15

Licence to provide **Utility Services** granted on 21/July/2022

By

The **Independent Competition and Regulatory Commission**, a body corporate established under the *Independent Competition and Regulatory Commission Act 1997* (ACT) (**ICRC**) pursuant to the *Utilities Act 2000* (ACT)

TO

The **Person** specified in **Item 1** of the **Reference Schedule** ('**Licensee**').

Subject to the terms and conditions set out in this licence, the **ICRC** has determined to grant a licence to the **Licensee**, under Part 3 of the **Act** to provide the utility services outlined in **Item 3** of the **Reference Schedule**.

1. Definitions and Interpretation

1.1. Interpretation

In this licence, unless the context requires otherwise:

- (1) the singular includes the plural and vice versa
- (2) headings are used for convenience only and do not affect the interpretation of this licence
- (3) a reference to a document includes the document as modified from time to time and any document replacing it
- (4) the word 'person' includes a natural person and any body or entity whether incorporated or not.

1.2. Definitions

Terms shown in bold typeface are defined. Definitions are specified in the Dictionary at the end of this licence and are part of this licence.

2. Commencement and term

2.1. Commencement date

This licence commences on the date specified in **Item 2** of the **Reference Schedule**.

2.2. Licence term

This licence will remain in force until:

- (1) 20 years beginning on the date at item 2 of reference schedule, or
- (2) a variation is made to this clause, or
- (3) the licence is transferred under section 40 of the **Act**, or
- (4) the **Licensee** surrenders the licence under section 41 of the **Act**, or
- (5) the **ICRC** revokes the licence under section 42 of the **Act**.

3. Licence does not limit Licensee

This licence does not:

- (1) limit or prevent the **Licensee** from doing anything that it may lawfully do without the benefit of this licence, or
- (2) override or derogate from a requirement under any other **Law**.

4. Authorisation

4.1. Authorised Utility Services

This licence confers on the **Licensee** the right to provide the **Authorised Utility Services** referred to in **Item 3** of the **Reference Schedule**.

4.2. Area of operations

The **Licensee** may provide the **Authorised Utility Services** in any part of the **Territory**.

4.3. Non-exclusive rights

The rights granted by this licence on the **Licensee** are not exclusive.

5. Licensee to comply with obligations under this Licence

5.1. Licensee to comply with obligations

The **Licensee** must provide the **Authorised Utility Services** in accordance with the obligations imposed by this licence, including the obligations set out in the schedule.

5.2. Joint and several responsibility

Where the **Licensee** comprises two or more legal entities, each entity is jointly and severally liable for the **Licensee's** compliance with the terms of this licence.

6. Compliance with all applicable laws

6.1. Licensee to comply

The **Licensee** must comply with all **Laws** in force in the **Territory** during the licence term that are applicable to any services provided by the **Licensee** in the **Territory**.

6.2. Licensee to comply with the Act and Utilities Technical Regulation Act

Without limiting the generality of clause 6.1, in providing the **Authorised Utility Services** the **Licensee** must comply with:

- (1) any requirement of the **Act** and the **Utilities Technical Regulation Act**
- (2) relevant **Industry Codes** including the service standards (if any) prescribed under those codes
- (3) relevant **Technical Codes** including the performance standards (if any) prescribed under those codes
- (4) any direction given to the **Licensee** by the **ICRC** or the **Technical Regulator** under the **Act**
- (5) any direction given to the **Licensee** by the **Technical Regulator** under the **Utilities Technical Regulation Act** and
- (6) any applicable ring-fencing requirements.

6.3. Severance of any part of the licence does not affect continued operation of remainder of licence

If any part of this licence is prohibited, void, voidable, illegal or unenforceable, then that part is severed from the licence but without affecting the continued operation of the remainder of the licence.

7. Variation of Licence

The terms of this licence may be varied by the **ICRC** in accordance with section 38 of the **Act**.

8. Licence Compliance

8.1. Licensee to monitor compliance

The **Licensee** must monitor its compliance with this licence and any **Law**, **Industry Code**, **Technical Code**, or such other code of practice, direction or guideline applicable to the **Licensee** and the **Authorised Utility Services** provided by the **Licensee**.

8.2. Licensee to notify the ICRC of any material breaches

The **Licensee** must notify the **ICRC** if it becomes aware of a material breach of this licence, or any **Law, Industry Code, Technical Code** or direction that **Licensee** is required to comply with under clause 6.2 as soon as practicable and in accordance with any reporting guidelines published by the **ICRC** from time to time.

8.3. Licensee to provide statement on any non-compliance

- (1) If the **Licensee** has not complied with any of its obligations under clause 6.2, the **Licensee** must identify those obligations and provide a statement to the **ICRC** that explains the:
 - (a) circumstances of, and reasons for the non-compliance
 - (b) consequences of the non-compliance (including any penalties imposed), and
 - (c) outlines measures that the **Licensee** will, or has, put in place to rectify the non-compliance.
- (2) The non-compliance statement must be provided in accordance with any reporting guidelines published by the **ICRC** from time to time, and in the absence of any such guideline, it must be included with the annual compliance report outlined in clause 8.4(1).

8.4. Licensee must report compliance annually

- (1) The **Licensee** must report to the **ICRC** on its obligations under clause 6.2, and any other reporting requirements the **Licensee** has under the **Act**, including information that the **ICRC** requires to be reported, by 1 October every year during the term of this Licence.
- (2) The **Licensee** must report to the **Technical Regulator** on its obligations under the **Utilities Technical Regulation Act, Technical Codes**, any technical requirements outlined in the schedule of this licence and any other associated technical information that the **Technical Regulator** reasonably requires to be reported, in a manner, timeframe and format required by the **Technical Regulator**.

8.5. Availability of compliance report

The **Licensee** must ensure that its annual compliance report required under clause 8.4(1), or a summary of the annual compliance report, is made publicly available by publishing it on the **Licensee's** website.

8.6. Operation and compliance audits

- (1) The **Licensee** must undertake periodic audits of the services and operations authorised by this licence and of its compliance with its obligations under this licence and any **Law, Industry Code, Technical Code**, or direction that it is required to comply with under clause 6.2.
- (2) The audits must be conducted by an independent expert or auditor nominated by the **Licensee** and approved by the **ICRC**.

- (3) The audit results must be reported to the **ICRC** in a manner (including as to form and substance) approved by the **ICRC**.

9. Technical and prudential criteria

9.1. Requirement to continue to meet criteria

The **Licensee** must, throughout the term of this licence, continue to satisfy the same technical and prudential criteria that it was required to meet as a condition of the grant of the licence under the **Act**.

9.2. Licensee to advise the ICRC of financial and technical capacities

- (1) The **Licensee** must, from time to time as reasonably required by the **ICRC**, provide the **ICRC** with:
 - (a) details of the **Licensee's** financial, technical and other capacity (including the capacity of its major contracted providers) to continue to provide the services and to conduct the operations authorised by this licence, and
 - (b) such other information as the **ICRC** requires.
- (2) The **Licensee** must promptly notify the **ICRC** of any significant reduction in its financial capacity which has potential to impact upon the **Licensee's** ability to carry on the operations authorised by this licence.

10. Contracting out

10.1. Licensee may contract out

The **Licensee** may contract out the provision, construction, operation, management or maintenance of any of the systems or services that are the subject of this licence.

10.2. Licensee bound by obligations under licence

Contracting out does not relieve the **Licensee** of its responsibility to comply with its obligations under this licence.

11. Securities, assignment and changes to shareholdings

11.1. Security Interest

The **Licensee** must not grant a **security interest** in this licence without the prior written consent of the **ICRC**.

11.2. Assignment

The **Licensee** must not **assign** its interest under this Licence without the prior written consent of the **ICRC**.

11.3. Assignment generally

An application by a **Licensee** to the **ICRC** for consent to an assignment must demonstrate, to the reasonable satisfaction of the **ICRC**, that the proposed assignee is a respectable, responsible, and solvent **Person** who is capable of performing all obligations in this licence on the part of the **Licensee**.

11.4. Deemed assignment - changes in Licensee's shareholdings

A change in the shareholding in the **Licensee**, at any one time, resulting in the transfer of more than 50 percent of the shares in the **Licensee** to a third party will be deemed to be an assignment for the purposes of clause 11.2. The **ICRC**'s consent to assignment in these circumstances will not be unreasonably withheld.

11.5. Changes in ownership

The **Licensee** must keep the **ICRC** informed of all substantial holding changes of the **Licensee**.

12. Risk Management

12.1. The ICRC may request information

The **ICRC** may, from time to time, request details of the **Licensee**'s risk management strategy.

12.2. Information that may be requested

Without limiting the generality of clause 12.1, the information requested by the **ICRC** may include information about the **Licensee**'s levels of insurance cover for the protection of:

- (1) persons affected by the activities or operations of the **Licensee** (including customers, owners or occupiers of land and members of the general public) from injury or harm, and
- (2) the property of those persons against damage or loss.

12.3. Licensee must provide information

The **Licensee** must provide the details requested under clause 12.1 within a reasonable time period specified by the **ICRC**.

12.4. Licensee to indemnify the ICRC

The **Licensee** will indemnify the **ICRC**, the **Territory** and their respective employees and agents ('those indemnified') against liability in respect of all claims and for all loss, damage or injury to persons or property caused by the **Licensee**, its employees, agents or contractors in connection with services it provides pursuant to this licence (and those it purports to deliver under this licence). The amount of all claims, damage, costs and expenses which may be paid, suffered or incurred by those indemnified in respect of any

such claim, loss, damage or injury will be made good at the **Licensee's** expense, except to the extent that the **ICRC** or the **Territory** caused the relevant loss, damage or injury.

13. Other restrictions on Licensee

13.1. Restrictions on Licensee

A **Licensee** must first consult with the **ICRC** if the **Licensee**:

- (1) intends to dispose of any major asset
- (2) intends to enter into any major transaction
- (3) is granted a **security interest** or a lien over the **Licensee's network facilities**, or
- (4) intends to engage in any other business activity

that is likely to materially adversely affect the **Licensee's** ability to:

- (5) provide the **Authorised Utility Services**
- (6) continue to meet the technical and prudential criteria specified in clause 9.1, or
- (7) comply with its obligations under:
 - (a) the **Act**
 - (b) any **Law**
 - (c) this licence, or
 - (d) the **customer contract**.

14. Maintenance and inspection of records

14.1. Licensee to keep records

- (1) The **Licensee** must keep, or cause to be kept, comprehensive records in accordance with the requirements under the **Act**.
- (2) The **Licensee** must keep all records and documents necessary to enable it to meet any reporting requirement under this licence, the **Act**, the **Utilities Technical Regulation Act**, and any relevant **Industry Code** or **Technical Code**.

14.2. Consents and authorisation

The **Licensee** must obtain and keep current all licences, permits, authorities or consents issued or given by an agency or a Minister necessary for it to lawfully provide the **Authorised Utility Services**.

14.3. Licensee to provide copies of records

The **ICRC**'s officers and agents may request the **Licensee** to provide copies of records and documents referred to in clause 14.1 and 14.2.

14.4. Licensee to comply with all requests

The **Licensee** must comply with all reasonable requests by the **ICRC** for copies of the records.

15. Annual Licence fee

The **Licensee** must pay to the **ICRC** an annual licence fee determined in accordance with the **Act**. The payment of the fee is to be made in accordance with the **ICRC**'s determination.

16. Review of Licensee's obligations

The **ICRC** may review this licence at any time in accordance with section 46 of the **Act**.

17. Transfer, surrender, revocation or suspension of Licence

This licence may only be transferred, surrendered or revoked in accordance with section 40, section 41 or section 42 of the **Act**.

17.1. Suspension of licence

- (1) If the **Licensee** breaches or is likely to breach a licence condition in circumstances where the **ICRC** determines that the breach is remediable by the **Licensee** in a timely manner, the **ICRC** may suspend this licence, or suspend the **Licensee's** conduct of specified services or operations under this licence, until the breach is remedied.
- (2) The **ICRC** may only suspend a licence, or the **Licensee's** conduct under clause 17.1, where it has issued a direction to the **Licensee** in accordance with section 48 of the **Act** and
 - (a) the **Licensee** has failed to comply within the timeframe specified in the direction, or
 - (b) there is a safety risk with continuing to provide the services prior to compliance with the direction.

17.2. Licensee to comply with requirements of suspension notice

In the event of the **ICRC** notifying the **Licensee** that this licence is suspended, or that the **Licensee's** provision of any specified services or operations under this licence are suspended, the **Licensee** must comply with any requirements under the suspension notice for the purpose of remedying a specified breach of this licence in the timeframe specified by the **ICRC**.

18. Notices

18.1. Notice to be in writing

Any notice or other communication given under this licence must be in writing addressed to the intended recipient, and:

- (1) delivered by hand at the address for service of the addressee, or
- (2) sent by post to the address for service of the addressee, or
- (3) sent by email to the primary contact email of the addressee.

18.2. Address for service

A notice under this licence is only effective if given by the **Licensee** to the **ICRC** or by the **ICRC** to the **Licensee** on the specified service address for the recipient. The **Licensee's** service address and the **ICRC's** service address are the relevant addresses referred to in **Item 4** of the **Reference Schedule** or another address subsequently notified to the **ICRC** by the **Licensee** or to the **Licensee** by the **ICRC**.

18.3. The ICRC to be advised of contact details

The **Licensee** must notify the **ICRC** of a change of address in **Item 4** of the **Reference Schedule** and any other contact details within 10 **business days** of the change.

18.4. Deemed delivery

Where a notice or other communication to be given under this licence is delivered or sent, it is deemed given to, and received by, the addressee:

- (1) if hand delivered, upon delivery
- (2) if mailed to an address, four **business days** after the date of posting
- (3) if sent by email before 4:00 pm on a **business day** at the place of receipt, on the day it is sent, otherwise on the next **business day** at the place of receipt.

19. Waiver

19.1. Non exercise of power or right

A failure or delay to exercise a power or right arising under this licence by the **ICRC** or the **Licensee** does not waive that power or right.

19.2. Exercise of power or right

The exercise of a power or right arising under this Licence does not preclude either its exercise in the future or the exercise of any other power or right.

19.3. Waiver must be in writing

A waiver by the **Licensee** or the **ICRC** of a power or right arising under this licence is not effective unless it is in writing.

19.4. Limit on application

A waiver of a power or right arising under this licence is effective only with respect to the specific instance to which it relates and for the specific purpose for which it is given.

REFERENCE SCHEDULE

Item 1

Licensee

Transgrid Services Pty Limited (ACN 626 136 865) as trustee of Transgrid Services Trust (ABN 94 121 353 950) trading as 'Lumea Infrastructure Services'

Item 2

Commencement date

Licence commencement date: 23/July/2022

Item 3

Authorised Utility Services

Electricity transmission services under section 6(d) of the *Utilities Act 2000*.

Item 4

Address for Service

	Licensee	The ICRC
Electronic	infrastructure@lumea.com.au	icrc@act.gov.au
Postal	PO Box A1000 Sydney South NSW 1235	GPO Box 158 Civic Square ACT 2601
Physical	Level 1 180 Thomas Street Sydney NSW 2000	

SCHEDULE 1: Additional conditions

1. The following additional conditions apply to this contract

- 1.1.** Despite any terms elsewhere in this licence, the ICRC can review or revoke this licence if:
- (a) Lumea Infrastructure Services ceases to be part of the Transgrid group
 - (b) Lumea Infrastructure Services enters service agreements with providers outside of the Transgrid group
 - (c) Lumea Infrastructure Services appoints members to its board who are not on the Transgrid board of directors
- 1.2.** Notification of an event in 1.1 above must be made to the ICRC in writing within 60 calendar days of the event occurring
- 1.3.** Any decision to vary or revoke the licence under this schedule will comply with the Act.

SCHEDULE 2: VARIATIONS TO THE LICENCE

Variation Number	Effective Date	Clause	Reason for variation
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SIGNED for and on behalf of)
THE INDEPENDENT COMPETITION AND)
REGULATORY COMMISSION by)
SENIOR COMMISSIONER)
Joe Dimasi)

DICTIONARY

In this licence, unless the contrary intention appears:

- (1) **'Act'** means the *Utilities Act 2000* (ACT)
- (2) **'assign'** includes assign, transfer, mortgage or otherwise deal with an interest but does not include the granting of a charge over an interest
- (3) **'Authorised Utility Services'** means the **Utility Services** referred to in the **Reference Schedule** that the **Licensee** is authorised to provide under clause 4.1
- (4) **'business day'** means a day, other than a Saturday, Sunday or public holiday in the **Territory'**
- (5) **'customer'** has the same meaning as in the **Act**
- (6) **'customer class'** means all domestic, commercial and industrial customers
- (7) **'customer contract'** has the same meaning as the **Act**
- (8) **'electricity distribution network'** has the same meaning as in the **Act**
- (9) **'electricity transmission network'** has the same meaning as in the **Act**
- (10) **'ICRC'** means the Independent Competition and Regulatory Commission established under section 5 of the *Independent Competition and Regulatory Commission Act 1997* (ACT)
- (11) **'Industry Code'** means a code approved or determined by the **ICRC** under Part 4 of the **Act**
- (12) **'Item'** means the relevant Item in the **Reference Schedule**
- (13) **'Law'** means any statute, regulation, rule, proclamation, order, ordinance or by-law whether present or future and whether Commonwealth, **Territory** or otherwise (in this subclause referred to as 'statutory provision') and includes:
 - (a) any such statutory provision as amended or re-enacted from time to time and
 - (b) any statute, regulation, rule, proclamation, order, ordinance or by-law enacted in replacement of any statutory provision
- (14) **'Licensee'** means the **Person** referred to in **Item 1** of the **Reference Schedule**
- (15) **'network facilities'** means:
 - (a) any part of the infrastructure of a **utility network**, or
 - (b) any powerline, pole or wire, any water, sewerage or gas main or pipe, or any equipment, apparatus, structure or other thing used or for use, in connection with the provision of a **utility service**

- (16) **'Person'** includes a natural person, a firm, an unincorporated association, a **Territory** agency, a corporation or any other body corporate
- (17) **'Reference Schedule'** means the **Reference Schedule** to this licence
- (18) **'security interest'** means:
- (a) a mortgage, pledge, lien, charge, assignment, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including any set off or 'flawed asset' arrangement) having the same or equivalent or commercial effect as a grant of security, or
 - (b) an agreement to create or give any arrangement referred to above
- (19) **'sewerage network'** has the same meaning as in the **Act**
- (20) **'substantial holding'** has the same meaning as in the *Corporations Act 2001* (Cth)
- (21) **'Technical Code'** means a code approved or determined by the Minister under Part 3 of the *Utilities (Technical Regulation) Act 2014* (ACT)
- (22) **'Technical Regulator'** means the Technical Regulator as defined in the *Utilities (Technical Regulation) Act 2014* (ACT)
- (23) **'Territory'** means:
- (a) when used in a geographical sense, the Australian Capital Territory and
 - (b) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth)
- (24) **'Utilities Technical Regulation Act'** means the *Utilities (Technical Regulation) Act 2014*
- (25) **'utility network'** means:
- (a) an **electricity distribution network**
 - (b) an **electricity transmission network**
 - (c) a **gas transmission network**
 - (d) a **gas distribution network**
 - (e) a **sewerage network** or
 - (f) a **water network**
- (26) **'utility services'** has the same meaning as in the **Act**
- (27) **'year'** means each period of twelve calendar months commencing on 1 July.



ICRC

independent competition and regulatory commission

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