



Power and Water Corporation Pre-Contract – Confidentiality Deed

Document version control

Author	Legal Services
Version	1.0
Date issued	31 July 2018
Approved by	General Counsel
TRIM file number	D2018/335003 (Word) D2018/342129 (PDF)

DETAILS

Item #	Reference	Detail
1.	Supplier Details	[insert entity name and ACN]
2.	Supplier Address	[insert entity address]
3.	Supplier Address for Notices	Postal address: [insert entity postal address] Email address: [insert entity email address]
4.	Approved Purpose	[insert brief description of proposed transaction or other reason for disclosure of information]
5.	Specified Confidential Information	[insert list of any specified confidential information]
6.	Special Conditions	[Insert any Special Conditions]

between:

The party specified in Item 1 of the address specified in Item 2 (“Supplier”)

and:

Power and Water Corporation (ABN 15 947 352 360) of GPO Box 1921, Darwin NT 0801 (“PWC”)

BACKGROUND

- A. PWC carries on a business transmitting and distributing electricity and providing water and sewerage services across the Northern Territory of Australia, as well as supplying gas both in the Northern Territory and elsewhere in Australia.
- B. PWC and the Supplier are working together on, or are looking to commence working together on, the Approved Purpose and as such the Parties will be given access to certain confidential information of each other.
- C. PWC and the Supplier have agreed to keep that information confidential in accordance with the terms of this Deed.

OPERATIVE PROVISIONS

1 Definitions

In this Deed:

Approved Purpose means the sole and exclusive purpose specified in Item 4.

Authority means any government or regulatory department, body, instrumentality, minister, agency or other authority.

Business Day means any day which is not a Saturday or a Sunday or a public holiday in Darwin.

Confidential Information means:

- (a) the fact that PWC and the Supplier are working together on, or are looking to commence working together on, the Approved Purpose;
- (b) that information specified in Item 5;
- (c) all confidential information of the Discloser or any of its Related Bodies Corporate disclosed to the Recipient or any of its Related Bodies Corporate including:
 - (i) technical information and other trade secrets and confidential know-how; and
 - (ii) the following information relating to the Discloser or any of its Related Bodies Corporate:

- (A) information comprised in or relating to any intellectual property rights of the Discloser;
 - (B) information relating to the business, financial position, assets or liabilities of the Discloser and any matter that does or may affect the financial position or reputation of the Discloser;
 - (C) information relating to the internal management and structure of the Discloser, or the personnel, policies and strategies of the Discloser;
- (d) Personal Information that is collected, handled or held by the Discloser;
- (e) all confidential information of which the Recipient and its employees become aware or generate in connection with the Approved Purpose;
- (f) any other information of the Discloser or any of its Related Bodies Corporate disclosed to the Recipient or any of its Related Bodies Corporate that:
- (i) is by its nature confidential;
 - (ii) is communicated by the Discloser as being confidential; or
 - (iii) the Recipient knows, or ought to know, is confidential; and
- (g) all information referred to in any of clauses (a) to (e) whether or not in material form and whether disclosed before or after the date of this Deed.

Deed means this confidentiality deed, including the Details.

Details means the table at the front of this Deed headed 'Details'.

Discloser has the meaning given in clause 3(a).

Item means an Item in the Details.

Notice has the meaning given in clause 8.1(a).

Parties means PWC and the Supplier, each a **Party**.

Personal Information has the meaning given to it in the *Information Act* (NT), except where the term is used in relation to the *Privacy Act 1988* (Cth) (in which case it has the meaning given to it in that Act).

Recipient has the meaning given in clause 3(a).

Recipient Representative means any person nominated by the Recipient and approved by the Discloser in writing.

Related Bodies Corporate has the meaning given in the *Corporations Act 2001* (Cth) and in the case of PWC includes any "subsidiary" as that term is defined in the *Government Owned Corporations Act* (NT).

Special Conditions means the special conditions as provided for in Item 6.

2 Interpretation

- (a) In this Deed, unless the context requires otherwise:
 - (i) any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;
 - (ii) references to any legislation, statute or statutory provisions include a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision includes any subordinate legislation made from time to time under that provision;
 - (iii) references to any Party include that Party's successors (whether by operation of applicable law or otherwise) and permitted assigns;
 - (iv) any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words;
 - (v) references to the singular include the plural and vice versa;
 - (vi) a reference to time is to Northern Territory time and any references to day mean a period of 24 hours running from midnight to midnight; and
 - (vii) a reference to '\$' or 'dollars' is a reference to Australian dollars.
- (b) The headings and sub headings in this Deed are inserted for convenience only and do not affect the meaning of this Deed.
- (c) If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

3 Recipient's obligations

- (a) Where one Party ("**Discloser**") discloses Confidential Information to the other Party ("**Recipient**"), the Recipient must:
 - (i) treat as strictly confidential all the Discloser's Confidential Information;
 - (ii) use all the Discloser's Confidential Information solely for the Approved Purpose;
 - (iii) not, without the prior written consent of the Recipient (which may be withheld at the Recipient's absolute discretion) publish, reproduce or otherwise disclose to any person (or allow to be published, reproduced or otherwise disclosed to any person) the Discloser's Confidential Information, except as is strictly necessary for the Approved Purpose or otherwise contemplated by this Deed; and
 - (iv) not directly or indirectly exploit the Discloser's Confidential Information in any way for the benefit, profit, advantage of the Recipient or any other person.

- (b) The Recipient must:
- (i) only disclose the Discloser's Confidential Information to a Recipient Representative to the extent necessary for the Recipient Representative to perform their duties for the Approved Purpose; and
 - (ii) ensure that each Recipient Representative to whom the Discloser's Confidential Information has been disclosed keeps that information confidential and does not do anything which would be a breach of this Deed if done by the Recipient.
- (c) The Recipient is not bound to keep confidential (and will not be taken to have breached the Recipient's obligations under this clause 3 in respect of) any Confidential Information to the extent that such Confidential Information:
- (i) is required by law to be disclosed, in which case the Recipient must:
 - (A) immediately notify the Discloser of the particulars of the required disclosure; and
 - (B) provide the Discloser with all assistance reasonably required by the Discloser to enable the Discloser to take any steps available to it to prevent that disclosure;
 - (ii) is in the public domain other than because of a breach of this Deed;
 - (iii) where PWC is the Recipient, is required by an Authority to be disclosed, in which case PWC must:
 - (A) immediately notify the Supplier of the particulars of the required disclosure; and
 - (B) provide the Supplier with all assistance reasonably required by the Supplier to enable the Supplier to take any steps available to it to prevent that disclosure; or
 - (iv) where PWC is the Recipient, is communicated or disclosed by PWC to:
 - (A) the Northern Territory of Australia;
 - (B) a Minister, Cabinet or to the Legislative Assembly of the Northern Territory of Australia;
 - (C) a committee of the Legislative Assembly of the Northern Territory of Australia; or
 - (D) to any public-sector agency (whether of the Northern Territory of Australia, a State, other Territory or the Commonwealth) where required to meet any reporting obligations on PWC or for any other government business or initiative relating to or in connection with the business or operations of PWC.

4 Recipient's security obligations

- (a) The Recipient must, at its cost:

- (i) institute effective security measures to prevent unauthorised access to, use or copying of the Discloser's Confidential Information;
 - (ii) immediately notify the Discloser of any suspected or actual unauthorised use, copying or disclosure of the Discloser's Confidential Information;
 - (iii) immediately take all steps necessary to prevent any suspected or actual unauthorised use, copying or disclosure of the Discloser's Confidential Information;
 - (iv) comply with, and ensure that each Recipient Representative complies with, any direction of the Discloser regarding any suspected or actual breach of this Deed; and
 - (v) provide the assistance reasonably requested by the Discloser, or any of its Related Bodies Corporate, in relation to any proceedings that the Discloser or any of its Related Bodies Corporate may take against any person for unauthorised use, copying or disclosure of the Discloser's Confidential Information.
- (b) If requested by the Discloser, the Recipient must provide details of the security measures instituted in accordance with clause 4(a)(i)(i) within 5 Business Days of the request to do so by Discloser.

5 Recipient does not own the information

The Recipient acknowledges that this Deed does not:

- (a) transfer to it any interest in any intellectual property in any of the Confidential Information; and
- (b) oblige the Discloser to disclose any of the Discloser's Confidential Information to the Recipient.

6 Return of information

- (a) The Discloser may at any time notify the Recipient in writing that its right to use the Discloser's Confidential Information under this Deed ceases.
- (b) On notification in accordance with clause 6(a):
 - (i) the Recipient's right to use the Discloser's Confidential Information ceases;
 - (ii) the Recipient must immediately, at the Discloser's option:
 - (A) return to the Discloser all the Discloser's Confidential Information in its possession or control;
 - (B) destroy the Discloser's Confidential Information and permit the Discloser to witness the destruction; or
 - (C) delete the Discloser's Confidential Information in the case of machine readable records; and

- (c) If requested by the Discloser, the Recipient must certify to the Discloser that all the Discloser's Confidential Information has been returned, destroyed or deleted in accordance with clause 6(b)(ii) within 5 Business Days of the request to do so by Discloser.
- (d) Clause 6(b)(ii) does not apply:
 - (i) to the extent that the Recipient is required by law to retain the Discloser's Confidential Information;
 - (ii) to the extent that it is not reasonably practicable for the Recipient to comply with clause 6(b)(ii) and the Discloser agrees (acting reasonably) that it is not reasonably practicable for the Recipient to do so (e.g. where held on backup systems/media/email and the record or document cannot be returned or destroyed without significant effort, time and expense);
 - (iii) to such reasonable number of copies of the Confidential Information as the Recipient is required to retain under the Recipient's reasonable internal record-keeping policies; and
 - (iv) where the Recipient has a licence to use items that incorporate the Discloser's Confidential Information.
- (e) The obligations of confidentiality under this Deed continue to apply to the Recipient even if:
 - (i) the Approved Purpose is completed or terminated; and
 - (ii) the Recipient has returned, destroyed or deleted the Discloser's Confidential Information.

7 Disclaimer

- (a) The Recipient:
 - (i) acknowledges that none of the Discloser, its Related Bodies Corporate, their respective officers, employees, advisers or agents has made or makes any representation or warranty, express or implied, as to the accuracy or completeness of the Discloser's Confidential Information; and
 - (ii) agrees that it must make its own assessment of all the Discloser's Confidential Information and satisfy itself as to the accuracy and completeness of that Confidential Information.
- (b) The Discloser, its Related Bodies Corporate and their respective officers, employees, advisers and agents disclaim liability for any loss or damage suffered or incurred by any person acting on any of the Discloser's Confidential Information.
- (c) The disclaimer in clause 7(b) applies even if the loss or damage arises in connection with any negligence, default, lack of care or misrepresentation or any other cause.
- (d) The Recipient, its Related Bodies Corporate and their respective officers, employees, advisers and agents release the Discloser, its Related Bodies Corporate and their

respective officers, employees, advisers and agents from liability referred to in clause 7(b).

- (e) Clauses 7(b) to 7(d) apply to the maximum extent permitted by law.
- (f) For the purposes of clauses 7(a) to 7(e), the Discloser contracts on its own behalf and as trustee of the benefit of the acknowledgment and release, for its Related Bodies Corporate and their respective officers, employees, advisers and agents.

8 General

8.1 Notices

- (a) Any notice or other communication required to be given under this Deed ("**Notice**") must be in writing and in the English language. Subject to clause 8.1(b), a Notice must be sent to each Party in accordance with the details set out below, as updated from time to time:

PWC:

Address: GPO Box 1921
Darwin NT 0801

Email: Legal.PWC@powerwater.com.au

Supplier:

The postal address and email address specified in Item 3.

- (b) A Notice may be sent by email if the relevant Notice is signed by an authorised person, scanned and attached as a PDF or other readable format to an email and sent to the receiving Party's specified email address.
- (c) Any Notice is regarded as given and received:
 - (i) if sent by mail: 3 Business Days after it is posted; and
 - (ii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first and provided that, if a Notice is sent by email after 5pm or on a day that is not a Business Day then, unless the sender receives an automated message that delivery failed, notice will be effective at 9am on the following Business Day.

- (d) Where there is a dispute in relation to the provision of a Notice by email, the sender must disclose copies of electronic records or logs to the other Party evidencing that the relevant email has been sent from its IT systems.

8.2 No assignment

A Party may not assign this Deed or otherwise transfer the benefit of this Deed or a right or remedy under it, without first getting the written consent of the other Party.

8.3 Variation and waivers

- (a) This Deed may not be varied except by way of a written document signed by the Parties.
- (b) A waiver of a provision of this Deed or a right or remedy arising under this Deed, including this clause, must be in writing and signed by the Party granting the waiver.
- (c) A single or partial exercise of a right does not preclude a further exercise of that right or the exercise of another right.
- (d) Failure by a Party to exercise a right or delay in exercising that right does not prevent its exercise or operate as a waiver.
- (e) A waiver is only effective in the specific instance and for the specific purpose for which it is given.

8.4 Continuing indemnities and survival of indemnities

- (a) Each indemnity contained in this Deed is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.
- (b) Each indemnity contained in this Deed:
 - (i) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
 - (ii) survives the termination of this Deed.

8.5 Specific performance

The Recipient acknowledges that monetary damages alone would not be adequate compensation to the Discloser for the Recipient's breach of its obligations under this Deed and that specific performance of those obligations is an appropriate remedy.

8.6 Special Conditions

The Parties agree to be bound by any Special Conditions. In the event of any conflict or inconsistency between the terms and conditions of this Deed and the Special Conditions, the Special Conditions prevail to the extent of such conflict or inconsistency and the terms and conditions of this Deed are to be read down or if necessary severed to the extent necessary to resolve the conflict or inconsistency.

8.7 Governing law

This Deed is governed by the law of the Northern Territory of Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Northern Territory of Australia.

EXECUTED AS A DEED

Supplier

Signed, sealed and delivered by **the**)
Supplier in the presence of:)

Signature of Supplier

Witness Signature

Print Name of Witness

Date

[OR]

Executed and delivered by **the Supplier**)
in accordance with section 127 of the)
Corporations Act 2001:)

Signature of Director

Signature of Director/Secretary

Print Name of Director

Print Name of Director/Secretary

Date

Date

PWC

Signed, sealed and delivered for and on)
behalf of **PWC** by its authorised)
representative in the presence of:)

Witness Signature

Signature of Authorised Representative

Print Name of Witness

Print Name of Authorised Representative

Position of Authorised Representative

Date