

## Annex D – Draft template gas distribution licence (standard licence conditions)

**[Licensee name], [Licensee ACN]**

As varied on [date] (with effect from [date])



# Gas Distribution Licence

This Licence is issued pursuant to section 26 of the *Gas Industry Act 2001*.

## Date

This Licence was last varied on [date] with effect from [date].

## Licensee

This Licence is issued to:

**[Licensee name] (Licensee ACN)** (the Licensee)

[Address]

**THE COMMON SEAL of the** )  
**ESSENTIAL SERVICES COMMISSION** )  
was affixed pursuant to the authority )  
of the commission on [date] )

.....  
Kate Symons

**CHAIRPERSON**

# Part A – Interpretation

## 1 Definitions

1.1 Unless the contrary intention appears, a term has the meaning shown opposite it:

<b>Act</b>	the <i>Gas Industry Act 2001</i> .
<b>Administrator</b>	an administrator appointed by the Commission under section 41 of the Act in respect of the Licensee's Distribution Business.
<b>Business Day</b>	a day other than a Saturday, Sunday or a public holiday in the metropolitan Melbourne area.
<b>Change of Control</b>	occurs in relation to the Licensee if: (a) an entity that Controls the Licensee ceases to Control the Licensee; or (b) an entity that does not Control the Licensee starts to Control the Licensee provided that no change of Control will be deemed to have occurred where the Ultimate Holding Company that Controls the Licensee remains the same or the change in Control results from the acquisition or cancellation of, or dealing in, securities which are traded on a recognised financial market.
<b>Commission</b>	the Essential Services Commission established under the <i>Essential Services Commission Act 2001</i> .
<b>Control</b>	has the same meaning given in section 50AA of the <i>Corporations Act 2001</i> (Cth).
<b>Customer</b>	a person to whom gas is conveyed through a distribution pipeline.
<b>Code of Practice</b>	a Code of Practice applying under Part 6 of the <i>Essential Services Commission Act 2001</i> or relevant legislation.
<b>Distribute</b>	has the meaning ascribed to that term in the Act.
<b>Distribution Area</b>	the area described in Schedule 1.
<b>Distribution Pipeline</b>	has the meaning ascribed to that term in the Act.
<b>Entity</b>	has the same meaning given in section 64A of the <i>Corporations Act 2001</i> (Cth).
<b>Gas Distribution Code of Practice</b>	The Gas Distribution Code of Practice applying under Part 6 of the <i>Essential Services Commission Act 2001</i> .
<b>Licensee</b>	[Licensee Name +ABN/ACN].

<b>Minister</b>	the person who is, from time to time, the Minister administering the Act.
<b>Supply</b>	the delivery of gas.
<b>Ultimate Holding Company</b>	has the same meaning given in section 9 of the <i>Corporations Act 2001</i> (Cth).

1.2. In this Licence, unless the context otherwise requires:

- i. headings and footnotes are each for convenience only and do not affect the interpretation of this Licence;
- ii. words importing the singular include the plural and vice versa;
- iii. words importing a gender include any gender;
- iv. an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- v. a reference to a condition, clause, or part is to a condition, clause, or part of this Licence;
- vi. a reference to any statute including the Act and regulation, proclamation, Order in Council, ministerial order, ordinance, code, guideline, procedure or by-law includes all statutes, regulations, proclamations, Orders in Council, ministerial orders, ordinances, codes, guidelines, procedures or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, Orders in Council, ministerial orders, ordinances, by-laws and determinations issued under that statute;
- vii. a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- viii. a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- ix. other parts of speech and grammatical forms of a word or phrase defined in this Licence have a corresponding meaning;
- x. a period of time:
  1. which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  2. which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- xi. an event which is required under this Licence to occur on or by a stipulated day which is not a Business Day may occur on or by the next Business Day.

## 2 Notices

2.1 A notice under this Licence is only effective if it is in writing, given in accordance with clause 2.2, and dealt with as follows:

- i. if given by the Licensee to the Commission – addressed to the Chief Executive Officer of the Commission at either the physical or email address specified below (or as otherwise notified to the Licensee by the Commission):

Essential Services Commission  
Level 8, 570 Bourke Street  
Melbourne VIC 3000  
licences@esc.vic.gov.au

- ii. if given by the Commission to the Licensee – addressed to the Chief Executive Officer of the Licensee (or such equivalent position) at either the physical or email address specified below (or as otherwise notified to the Commission by the Licensee in accordance with clause 2.5).

[Licensee's physical address]

[email]

2.2 A notice is to be:

- i. signed by or on behalf of the person giving the notice and delivered by hand; or
- ii. signed by or on behalf of the person giving the notice and sent by pre-paid post; or
- iii. transmitted electronically by or on behalf of the person giving the notice by electronic mail.

2.3 A notice is deemed to be effected:

- i. if delivered by hand – upon delivery to the relevant address;
- ii. if sent by post – upon the confirmation of delivery of the notice by the relevant delivery service, or in accordance with section 160(1) of the *Evidence Act 2008*, whichever is earlier;
- iii. if transmitted electronically – in accordance with the *Electronic Transactions (Victoria) Act 2000*.

2.4 A notice received after 5.00 pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

2.5 The Licensee must:

- i. notify the Commission of any change to the Licensee's physical or email address for the services of notices pursuant to clause 2.1; and
- ii. specify in such notice the new physical or email address and the effective date of the change,

as soon as practicable and no less than five Business Days prior to the effective date specified in the notice.

## Part B – Licence

### **3 Grant of licence**

- 3.1 Subject to clauses 3.2 and 3.3, in exercise of its powers under section 26 of the Act, the Commission grants this licence to the Licensee authorising the Licensee to provide services by means of Distribution Pipelines in the Distribution Area subject to the conditions set out in this licence.
- 3.2 This Licence only permits the Licensee to provide services by means of Distribution Pipelines in the Licensee's Distribution Area.
- 3.3 The Licensee was first granted a licence to distribute or supply gas on [Date of first licence] and the licence has been varied on the dates set out in Schedule 2.

### **4 Variation**

The Commission may vary this licence in accordance with sections 38 and 38A of the Act.

### **5 Transfer**

This licence may be transferred in accordance with section 40 of the Act.

### **6 Revocation**

- 6.1 For the purposes of section 38(3) of the Act, the Commission may revoke this Licence in accordance with the procedures of this clause 6.
- 6.2 If the Licensee notifies the Commission that it requests, or consents to, revocation of this Licence:
- i. Clauses 6.3 to 6.5 do not apply; and
  - ii. the Commission may at any time revoke this Licence by issuing a notice to the Licensee that specifies the date upon which the revocation takes effect.
- 6.3 Where the Commission proposes to revoke this Licence, the Commission will issue a notice to the Licensee, specifying:
- i. the basis upon which the Commission proposes to revoke the Licence;

- ii. the date upon which the revocation is proposed to take effect, such date to be no less than 20 Business Days after the date of the notice; and
  - iii. that the Licensee has the opportunity to make submissions on the matter and the time and date and manner in which those submissions must be made.
- 6.4 Prior to making a decision to revoke the Licence, the Commission must consider any submissions made by the Licensee in accordance with a notice issued under clause 6.3.
- 6.5 Where the Commission decides to revoke this Licence, the Commission will issue a notice to the Licensee specifying:
  - i. the basis upon which the Commission is revoking the Licence; and
  - ii. the date upon which the revocation takes effect, being no earlier than the date specified in the notice issued under clause 6.3.
- 6.6 If the Commission issues a notice under clause 6.2(ii) or 6.5, this Licence will be revoked on the date specified in the notice.

## Part C – Licence Conditions

### **7 Status of the requirements in this Part**

A failure by the Licensee to meet any of the requirements set out in this Part C is a breach of a civil penalty requirement for the purpose of the *Essential Services Commission Act 2001*.

### **8 Payment of fees**

The Licensee must pay a licence fee and charges as determined by the Minister in accordance with the provisions of section 30 of the Act.

### **9 Change of control**

- 9.1 The Licensee must give the Commission a notice if any event occurs, any decision by the Licensee is made, or any other circumstance exists that will or is likely to result, or has resulted, in:
  - i. a Change of Control of the Licensee; or
  - ii. the Licensee being under external administration within the meaning of the *Corporations Act 2001* (Cth).
- 9.2 The notice required under clause 9.1 must:
  - i. set out particulars of the relevant event, decision or circumstance; and
  - ii. be given to the Commission as soon as reasonably practicable, and in any case not later than three Business Days after the Licensee becomes aware of the event or circumstances or makes the decision.

## **10 Compliance with regulatory instruments**

- 10.1 The Licensee must comply with any procedure or guideline issued by the Commission from time to time that is expressed as being one with which the Licensee must comply, to the extent it is applicable to activities undertaken by the Licensee pursuant to its Licence.
- 10.2 The Licensee must have in place a system for monitoring its compliance with its Licence, any applicable Code of Practice and the Act.
- 10.3 At the written request of the Commission, the Licensee must participate to the extent specified by the Commission in the development, issue and review of any customer-related standards and procedures specified by the Commission.
- 10.4 If the Commission considers that:
- i. the Licensee has failed to comply with clause 10.3; or
  - ii. customer-related standards or procedures developed by the Licensee are insufficient for the purpose for which they were developed,
- the Commission may issue customer-related standards and procedures applicable to the Licensee and with which the Licensee must comply.

## **11 Deemed Distribution Contracts**

- 11.1 The Licensee:
- i. must by a date nominated by the Commission in a written notice given to the Licensee, which is not less than 20 Business Days after the notice is given to the Licensee; and
  - ii. may at any other time,
- prepare and submit to the Commission proposed terms and conditions of a deemed distribution contract for approval by the Commission.
- 11.2 As soon as practicable after approval of proposed terms and conditions of a deemed distribution contract by the Commission, the Licensee must give notice of those terms and conditions and publish them in the Government Gazette in accordance with the Act.

## **12 Provision of information to the Commission**

- 12.1 Except where expressly provided to the contrary in a Code of Practice, the Licensee must maintain comprehensive records regarding any activities undertaken pursuant to this Licence for a period of at least seven years.
- 12.2 The Licensee must provide to the Commission, in the manner and form decided by the Commission, such information as the Commission may from time to time require.



- 12.3 The Licensee must ensure that separate accounts are prepared for its distribution business in accordance with any applicable Commission guidelines published for this purpose.
- 12.4 If the Licensee becomes aware of any circumstances that may reasonably result in the Licensee seeking a variation to change the Distribution Area of this Licence, the Licensee must notify the Commission, and provide complete details of such circumstances, as soon as practicable and within 30 Business Days of becoming aware of the circumstances.

## **13 Dispute Resolution**

The licensee must enter into a customer dispute resolution scheme approved by the Commission in accordance with section 36 of the Act.

Note: The conditions identified in Part C of this Licence are not an exhaustive list of a Licensee's obligations. A licensee is required to comply with additional obligations as set out in the Act and instruments made under that Act. In addition, obligations are placed on the Licensee in Codes of Practice, in particular the Gas Distribution Code of Practice.

## Schedule 1: Distribution Area

*[insert the distribution area as presently contained in Schedule 2 to current licences]*

## Schedule 2: Variations to this licence

[Extract previous variations as set out in Schedule 3 to the existing licences]

Date	Variation
[Date]	To update the licences to reflect developments arising from the remaking of the Gas Distribution Code of Practice on [date].