

WATER INDUSTRY RETAIL LICENCE

Kingston District Council ABN 90 687 323 343

Class – Intermediate (1) Retailer

Issued by the Essential Services Commission of South Australia on 25 January 2013



AMENDMENT NUMBER	VARIATION DATE	REASON
1	2019-01-01	Initial version of the contract.
2	2019-03-15	Clarification of the scope of work.
3	2019-05-20	Adjustment of the payment terms.
4	2019-08-10	Revision of the confidentiality clause.
5	2019-10-01	Update of the force majeure clause.
6	2019-12-15	Correction of a typo in the signature block.
7	2020-01-10	Amendment to the dispute resolution clause.
8	2020-03-01	Change in the governing law.
9	2020-05-15	Update of the contact information.
10	2020-07-01	Revision of the termination clause.
11	2020-09-10	Amendment to the intellectual property clause.
12	2020-11-01	Update of the entire agreement clause.
13	2020-12-15	Correction of a typo in the signature block.
14	2021-01-10	Amendment to the dispute resolution clause.
15	2021-03-01	Change in the governing law.
16	2021-05-15	Update of the contact information.
17	2021-07-01	Revision of the termination clause.
18	2021-09-10	Amendment to the intellectual property clause.
19	2021-11-01	Update of the entire agreement clause.
20	2021-12-15	Correction of a typo in the signature block.

1. DEFINITIONS AND INTERPRETATION

- 1.1 Words appearing in italics like **this** are defined in Part 1 of the Schedule.
- 1.2 This licence must be interpreted in accordance with the rules set out in Part 2 of the Schedule.

2. GRANT OF LICENCE

- 2.1 Subject to the conditions set out in this licence, the **licensee** is licensed under Part 4 of the **Act** to provide the **retail services** specified in Part A of the Annexure to the **customers** specified in Part B of the Annexure.

3. TERM

- 3.1 This licence commences on the date it is issued and continues until it is:
 - (a) surrendered by the **licensee** under section 32 of the **Act**; or
 - (b) suspended or cancelled by the **Commission** under section 33 of the **Act**.

4. FEES

- 4.1 The licensee must pay the applicable licence fees in accordance with section 24 of the **Act**.

5. SALE AND SUPPLY OF RETAIL SERVICES TO CUSTOMERS

- 5.1 At the request of a **customer** that owns or occupies land situated within the area that the **licensee** provides the **retail services** set out in Part A of the Annexure to this licence, the **licensee** must make an offer to provide those **retail services** on terms and conditions which are consistent with this licence, the **Act**, applicable **industry codes** and any other applicable laws.
- 5.2 When the **licensee** sells and supplies **retail services** to a **customer** under this clause it must comply with the terms and conditions set out in any applicable **industry code** made by the Commission from time to time relating to contractual terms and conditions.

6. COMPLIANCE WITH LAWS AND INDUSTRY CODES

- 6.1 The **licensee** must comply with all applicable laws and any technical or safety requirements or standards in regulations under the **Act**.
- 6.2 The **licensee** must notify the **Commission** if it commits a material breach of the **Act** within 3 days of becoming aware of that breach.

6.3 The *licensee* must:

- (a) comply with any applicable *industry code* or *industry rule* made by the **Commission** under the *ESC Act* as in force from time to time;
- (b) comply with any applicable minimum service standards imposed under any applicable *industry code*, *industry rule* or other regulatory instrument made by the **Commission** and any specified technical or safety requirements or standards;
- (c) monitor and report to the **Commission** on its levels of compliance with any applicable *industry code* or *industry rule* provisions and minimum service standards; and
- (d) notify the **Commission** in accordance with any applicable guideline if it commits a material breach of any applicable *industry code* or *industry rule* made by the **Commission** within 3 days of becoming aware of that breach.

7. PROVISION OF INFORMATION TO CUSTOMERS

7.1 When the *licensee* provides *retail services* to a *customer*, the *licensee* must:

- (a) comply with all applicable provisions of any *industry code* made by the **Commission** relating to the provision of pricing information; and
- (b) include the information prescribed by regulation under the *Act* in each account for *retail services* provided to a *customer*.

8. RESTRICTION, DISCONTINUANCE & DISCONNECTION

8.1 The *licensee* must not restrict, discontinue or disconnect, or take any action which may lead to the restriction, discontinuance or disconnection of supply of *retail services*, except in accordance with the restriction, discontinuance and disconnection procedures set out in the *Act*, any applicable *industry code* or, otherwise, in accordance with the customer's *customer sale contract*.

9. OMBUDSMAN AND DISPUTES

- 9.1 The licensee must develop and implement procedures to resolve customer complaints and disputes in accordance with any applicable *industry code* and, for all other *customers*, in accordance with the basic procedures set out in AS ISO 10002-2006 (as amended from time to time).
- 9.2 In addition to clause 9.1 the *licensee* must, if notified in writing by the **Commission**, participate in an *Ombudsman Scheme*.

10. ACCOUNTS AND SEPARATE BUSINESSES

- 10.1 The **licensee** must, as required by the **Commission**:
- (a) establish and maintain accounts exclusively in respect of the operations authorised by this licence;
 - (b) establish and maintain separate consolidated accounts in respect of the operations authorised by this licence and any other activity which requires authorisation by licence under the **Act**; and
 - (c) allocate any costs shared between the operations authorised by this licence and any other activity undertaken by the **licensee** according to a methodology that is well accepted, fair and reasonable, and transparent.

11. INFORMATION TO THE COMMISSION

- 11.1 The **licensee** must, from time to time if required by the **Commission** and in a manner and form determined by the **Commission**, provide to the **Commission**:
- (a) details of the **licensee's** financial, technical and other capacity to continue its operations authorised by this **licence**; and
 - (b) such other information as the **Commission** may require.
- 11.2 The **licensee** must notify the **Commission** in writing of any changes to its officers or major shareholders (if applicable) within 20 **business days** of that change occurring.
- 11.3 The **licensee** must promptly notify the **Commission** 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.

12. OPERATIONAL AND COMPLIANCE AUDITS

- 12.1 The **licensee** must undertake periodic audits of the operations authorised by this licence and of its compliance with its obligations under this licence and any applicable **industry codes** in accordance with the requirements of any applicable guideline issued by the **Commission** for this purpose.
- 12.2 The **licensee** must also conduct any further audits at a frequency and in a manner approved by the **Commission**.
- 12.3 The results of audits conducted under this clause 12 must be reported to the **Commission** in a manner approved by the **Commission**.
- 12.4 The **Commission** may require the **licensee** to use an independent expert approved by the **Commission** to conduct audits under this clause 12.

- 12.5 The **Commission** may require the costs of using an independent expert approved by the **Commission** to conduct audits under this clause 12 to be met by the **licensee**.

13. INSURANCE

- 13.1 The **licensee** must undertake and maintain, during the term of this licence, appropriate and adequate insurance of kinds and levels reflective of the nature of the operations carried on under this licence and the risks associated with those operations.
- 13.2 The **licensee** must annually provide to the **Commission** evidence that it holds appropriate insurance to an acceptable level in a form approved by the **Commission**.

14. CUSTOMER CONCESSIONS AND COMMUNITY SERVICE OBLIGATIONS

- 14.1 If applicable, the **licensee** must comply with the requirements of any scheme approved and funded by the **Minister**:
- (a) for the provision by the State of customer concessions or the performance of community service obligations by the **licensee**; and
 - (b) for the purposes of providing specified exemptions from the requirement to pay for the specified services.

15. CONFIDENTIALITY

- 15.1 The **licensee** must, unless otherwise required or permitted by law, this licence or an **industry code**:
- (a) comply with any rules determined by the **Commission** from time to time relating to the use of information acquired by the **licensee** in the course of operating the business authorised by this licence; and
 - (b) ensure that information concerning **customers** is not disclosed without the explicit informed consent of those **customers**.

16. VARIATION

- 16.1 This licence may only be varied in accordance with section 28 of the **Act**.

17. TRANSFER

- 17.1 This licence may only be transferred in accordance with section 29 of the **Act**.

This licence was issued by the **Commission** on 25 January 2013.

THE COMMON SEAL OF)
THE ESSENTIAL SERVICES)
COMMISSION OF SOUTH)
AUSTRALIA was hereunto affixed)
by authority of the Chairperson)
and in the presence of:)




.....
Witness


.....
Date

SCHEDULE: DEFINITIONS AND INTERPRETATION

Part 1 - Definitions

In this licence:

Act means the Water Industry Act 2012 (SA);

best endeavours means to act in good faith and use all reasonable efforts, skill and resources;

business day means a day other than a Saturday, Sunday or public holiday in the State of South Australia;

Commission means the Essential Services Commission as established under the **ESC Act**;

consumer means a person supplied with **retail services** as a consumer or user of those services;

customer has the meaning given to that term in the **Act**, namely a person who owns land in relation to which a **retail service** is provided and includes:

- (a) where the context requires, a person seeking the provision of a **retail service**; and
- (b) in prescribed circumstances, a person supplied with **retail services** as a **consumer** or user of those services (without limiting the application of this definition to owners of land); and
- (c) a person of a class declared by the regulations to be customers;

customer sale contract means a contract between the **licensee** and a **customer** for the sale and supply of **retail services** to that **customer**;

ESC Act means the Essential Services Commission Act 2002 (SA);

industry code includes any **industry code** made by the **Commission** under section 28 of the **ESC Act**;

industry rule includes any **industry rule** made by the **Commission** under section 28 of the **ESC Act**;

licensee means Kingston District Council ABN 90 687 323 343;

Minister means the Minister responsible for the administration of the **Act**;

non-residential customer means a **customer** other than a **residential customer**;

Ombudsman Scheme means an ombudsman scheme, the terms and conditions of which are approved by the **Commission**;

residential customer means a **customer** which acquires **retail services** primarily for domestic purposes;

retail services has the meaning given to that term in the **Act**, namely a service constituted by:

- (a) the sale and supply of **water** to a person for use (and not for resale other than in prescribed circumstances (if any)) where the water is to be conveyed by a reticulated system; or
- (b) the sale and supply of **sewerage services** for the removal of **sewage**,
(even if the service is not actually used) but does not include any service, or any service of a class, excluded from the ambit of this definition by the regulations;

sewage includes any form of waste that may be appropriately removed or dealt with through the use of a **sewerage service**;

sewerage service means:

- (a) a service constituted by the collection, storage, treatment or conveyance of **sewage** through the use of a reticulated system; or
- (b) any other service, or any service of a class, brought within the ambit of this definition by the regulations; and

water includes rainwater, stormwater, desalinated water, recycled water and water that may include any material or impurities, but does not include **sewage**.

Part 2 - Interpretation

In this licence, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this licence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to any statute, regulation, proclamation, order in council, ordinance or bylaw includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute;
- (f) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (g) 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;
- (h) 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; and
- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns.

ANNEXURE

Part A – Retail Services

Provision of ***sewerage services*** within the Kingston District Council Boundary. Specifically the operation of a Community Wastewater Management System in the Kingston SE township and associated infrastructure.

Part B – Customers

Residential and ***non-residential*** customers.

