

WATER INDUSTRY RETAIL LICENCE

THIS REGULATORY DOCUMENT IS IN DRAFT FORM AND SHOULD BE
READ IN CONJUNCTION WITH THE DRAFT ADVICE

IT IS PROPOSED THAT, ONCE FINALISED, IT WILL APPLY TO SA WATER
WITH VARIATIONS CREATED FOR OTHER LICENSEES PROVIDING RETAIL
SERVICES WHERE APPROPRIATE

Issued by Essential Services Commission of South Australia



VARIATION HISTORY

<i>Amendment Number</i>	<i>Variation Date</i>	<i>Reason</i>

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 is to be held by the **licensee** indefinitely and cannot be surrendered, suspended or cancelled.

3. FEES

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

4. SALE AND SUPPLY OF RETAIL SERVICES TO CUSTOMERS

- 4.1 At the request of a **designated customer or designated class of customer**, the **licensee** must provide **designated services** on terms and conditions which are consistent with this licence, the **Act**, applicable **industry codes** and any other applicable laws.
- 4.2 If the **licensee** sells and supplies **designated services** to **designated customers or designated classes of customers**, it must comply with the terms and conditions set out in the **Water Retail Code** relating to standard contractual terms and conditions applying to the sale or supply of **designated services** to **designated customers or designated classes of customers**.

5. COMPLIANCE WITH LAWS AND INDUSTRY CODES

- 5.1 The **licensee** must comply with all applicable laws and any technical or safety requirements or standards in regulations under the **Act**.
- 5.2 The **licensee** must notify the **Commission** if it commits a material breach of the **Act** within 3 days of becoming aware of that breach.
- 5.3 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 minimum service standards imposed by the **Water Retail Code** or any specified technical or safety requirements or standards;

- (c) in accordance with the **Water Retail Code**, monitor and report to the **Commission** on its levels of compliance with the **Water Retail Code** and minimum service standards; and
- (d) notify the **Commission** 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.

6. PROVISION OF INFORMATION TO CUSTOMERS

- 6.1 If the **licensee** sells and supplies **retail services** to **designated customers or designated classes of customers**, the **licensee** must:
- (a) comply with the provision of any **industry code** made by the **Commission** relating to the provision of pricing information to **designated customers or designated classes of customers**; and
 - (b) include the information prescribed by regulation under the **Act** in each account for **retail services** provided to **designated customers or designated classes of customers**.

7. RESTRICTION, DISCONTINUANCE & DISCONNECTION

- 7.1 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** to a **designated customer or designated classes of customers**, except in accordance with the restriction, discontinuance and disconnection procedures set out in the **Water Retail Code** where it applies, the **Act** and, otherwise, in accordance with the customer's **customer sale contract**.

8. OMBUDSMAN AND DISPUTES

- 8.1 The licensee must develop and implement procedures to resolve customer disputes in accordance with the **Water Retail Code** for **customers** covered by that **industry code** and, for all other **customers**, within a period and on terms approved by the **Commission**.
- 8.2 In addition to clause 8.1, if the **licensee** provides **designated services** to **designated customers or designated classes of customers** the **licensee** must participate in an **Ombudsman Scheme**.

9. ACCOUNTS AND SEPARATE BUSINESSES

- 9.1 The **licensee** must:
- (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.

10. INFORMATION TO THE COMMISSION

- 10.1 The **licensee** must, from time to time as 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.
- 10.2 The **licensee** must notify the **Commission** of any changes to its officers or major shareholders (if applicable) within 20 **business days** of that change.
- 10.3 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.

11. OPERATIONAL AND COMPLIANCE AUDITS

- 11.1 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.
- 11.2 The **licensee** must also conduct any further audits at a frequency and in a manner approved by the **Commission**.
- 11.3 The results of audits conducted under this clause 11 must be reported to the **Commission** in a manner approved by the **Commission**.
- 11.4 The **Commission** may require the **licensee** to use an independent expert approved by the **Commission** to conduct audits under this clause 11.
- 11.5 The **Commission** may require the costs of using an independent expert approved by the **Commission** to conduct audits under this clause 11 to be met by the **licensee**.

12. INSURANCE

- 12.1 The **licensee** must undertake and maintain, during the term of this licence, appropriate and adequate insurance of specified kinds and levels reflective of the nature of the operations carried on under this licence and the risks associated with those operations.

12.2 The **licensee** must annually provide to the Commission a certificate of the insurer or the insurance broker by whom the insurance was arranged (in a form acceptable to the Commission) which evidences that appropriate insurance is maintained and to an acceptable level.

13. CUSTOMER CONCESSIONS AND COMMUNITY SERVICE OBLIGATIONS

13.1 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 to **designated customers or designated classes of customers** 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.

14. CONFIDENTIALITY

14.1 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 **designated customers** or **designated classes of customers** is not disclosed without the **explicit informed consent** of the **designated customers** or **designated classes of customers**.

15. VARIATION

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

This licence was issued by the **Commission** on [insert date].

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 2011 (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 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**;

“**designated services**” means services that are designated by the Minister by notice in the Gazette pursuant to section 25(6) of the **Act**;

“**designated customers or designated classes of customers**” has the meaning given to that term in the **Act**, namely, a reference to customers or classes of customers, designated by the Minister by notice in the Gazette pursuant to sections 4(2) and (3) of the **Act**;

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

“**explicit informed consent**” has the same meaning as is given to that term in the *Water Retail Code*;

“**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 [insert name of licensee];

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

“**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;

(b) any other service, or any service of a class, brought within the ambit of this definition by the regulations;

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

“**water industry**” has the meaning given to that term in the **Act**, namely any operations associated with the provision of **water services** or **sewerage services**;

“**water industry entity**” has the meaning given to that term in the **Act**, namely:

(a) a person licensed under the **Act**, or

(b) a person recognised by the Minister as a water industry entity for the purposes of the **Act**;

“**Water Retail Code**” means the Water Retail Code made by the **Commission** under section 28 of the **ESC Act**;

“**water service**” means:

(a) a service constituted by the collection, storage, production, treatment, conveyance, reticulation or supply of **water**, or

(b) any other service, or any service of a class, brought within the ambit of this definition by the regulation.

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

Part B - Customers