

Annex D: Template Electricity Distribution Licence (prepared for consultation purposes only)

**TEMPLATE ELECTRICITY DISTRIBUTION LICENCE
PREPARED FOR CONSULTATION PURPOSES ONLY**

ELECTRICITY DISTRIBUTION LICENCE

[LICENSEE NAME]

[LICENSEE ACN]

ISSUED ON

[DATE]

ELECTRICITY DISTRIBUTION LICENCE

This Licence is issued pursuant to section 19 of the *Electricity Industry Act 2000*.

Date

This Licence is issued on **[date]**

Licensee

This Licence is issued to:

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

[Licensee business 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

1.1. Definitions

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

Act	the <i>Electricity Industry Act 2000</i> .
Administrator	means an administrator appointed by the Commission under section 34 of the Act in respect of the Licensee's Retail Business.
AEMO	the Australian Energy Market Operator Limited (ACN 072 010 327).
Business Day	a day other than a Saturday, Sunday or a public holiday in Victoria.
Change of Control	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.
Commission	the Essential Services Commission established under the ESC Act.
Control	in respect of an entity has the same meaning given in section 50AA of the Corporations Act.
Code of Practice	Means a Code of Practice applying under Part 6 of the ESC Act or relevant legislation.
Distribution Area	the area described in Schedule 1.
Distributor	means a person who holds a licence to distribute electricity under the Act.
ESC Act	the <i>Essential Services Commission Act 2001</i> .
Licensee	[Name] (ACN).
Minister	the person who is, from time to time, the Minister administering the Act.
National Electricity Law	means the National Electricity (Victoria) Law as in force in Victoria under the <i>National Electricity (Victoria) Act 2005</i> .
National Electricity Rules	means the National Electricity Rules as in force from time to time under the National Electricity Law.

Objectives	the objectives specified in section 10 of the Act and section 8 of the ESC Act.
Retailer	a person who holds, or is exempt from holding, a licence to retail electricity under the Act.
Supply Points	in relation to the distribution of electricity to a person, means the point at which a supply of electricity last leaves a supply facility owned or operated by a Distributor before being supplied to the person, whether or not the electricity passes through facilities owned or operated by another person after leaving that point before being so supplied.
Ultimate Holding Company	means, in relation to an entity, an entity that: <ul style="list-style-type: none"> (a) is a holding company of the first-mentioned entity; and (b) is itself a subsidiary of no entity.
Use of System Agreement	an agreement between a Retailer (or person who has made an application for a licence to retail electricity) and a Distributor which is necessary to ensure that, subject to the Act, electricity is distributed or supplied by means of the Distributor's distribution system to the extent necessary to enable the Retailer (or other person) to sell electricity to its customers.

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, ordinance, code, guideline, procedure or by-law includes all statutes, regulations, proclamations, Orders in Council, 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, 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, and dealt with as follows:

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

Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

- ii. if given by the Commission to the Licensee – given by the Chief Executive Officer of the Commission and addressed (and marked for attention of) the Chief Executive Officer of the Licensee at the address specified below or as otherwise notified by the Licensee:

[Licensee name and address]

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 or facsimile transmission.

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, in accordance with section 160(1) of the Evidence Act 2008;
- iii. if transmitted electronically – in accordance with the Electronic Transactions (Victoria) Act 2000.

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

PART B – LICENCE

3. Grant of the Licence

3.1. Subject to clauses 3.2 and 3.3, in exercise of its powers under section 19 of the Act, the Commission grants the Licensee a licence to distribute electricity on the terms and conditions set out in this Licence.

- 3.2. This Licence only permits the Licensee to distribute electricity to Supply Points located in the Licensee's Distribution Area.
- 3.3. The Licensee was first granted a licence to distribution electricity on 3 October 1994 and the licence has been varied on the dates set out in Schedule 2.

4. Variation

- 4.1. For the purpose of section 29(1)(a) of the Act, the Commission may vary this licence in accordance with the procedures set out in this clause 4.
- 4.2. Where the Commission is of the opinion that a proposed variation to the Licence is consistent with its Objectives and:
- i. is of an administrative or trivial nature; or
 - ii. required urgently;
- the Commission may issue a notice to the Licensee varying this Licence accordingly.
- 4.3. A notice issued under clause 4.2 will include:
- i. the terms of the variation;
 - ii. the purpose of the variation;
 - iii. confirmation that the Commission is of the opinion that a proposed variation to the Licence is consistent with its Objectives and satisfies the criteria in subclauses 4.2.i. or ii; and
 - iv. the date upon which the variation will take effect.

5. Transfer

- 5.1. This licence may be transferred in accordance with section 31 of the Act.

6. Revocation

- 6.1. The Commission may revoke this Licence:
- i. at any time at the request of, or with the consent of, the Licensee; or
 - ii. in accordance with the Act.
- 6.2. Where consistent with its Objectives, the Commission may revoke this Licence if:
- i. the Licensee fails to comply with enforcement action under Part 7 of the ESC Act, including an undertaking, an order made by a court or a compliance notice;
 - ii. the Licensee breaches any condition of this Licence, including any condition deemed to apply by the Act or made by a Minister under section 33AB of the Act;
 - iii. the Licensee breaches any requirement of a Code of Practice;
 - iv. any information provided by the Licensee, including in its application for the Licence, is found to be materially false or misleading;
 - v. the Licensee's financial viability or technical capacity is such that the Commission considers that the Licensee would be unable to satisfactorily meet its obligations under this Licence, a Code of Practice or the Act;

- vi. the Licensee fails to comply with a decision, direction, determination or arrangement, including any arrangement concerning load sheeting (as the case may be), made by or agreed with the Commission, AEMO or the Minister; or
- vii. following any one of the following events:
 - 1. a petition or other application being presented, or resolution being passed, for the winding up, liquidation or dissolution of the Licensee or notice of intention to propose such a resolution being given, or the entry of the Licensee into a scheme of arrangement or compromise or deed of company arrangement with any of its creditors;
 - 2. the appointment of an Administrator, a receiver or receiver and manager or official manager or agent of a secured creditor to any of the Licensee's property;
 - 3. the Licensee ceasing to carry on business or stopping or wrongfully suspending payment to any of its creditors or stating its intention to do so;

and the Commission determines that the event, or actions arising from the event, would, or would be likely to, result in the inability of the Licensee to meet its obligations under this Licence.

- 6.3. 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 this Licence; and
 - ii. the date upon which the revocation will take effect, such date to be no less than 20 Business Days after the date upon which the notice is issued;and, subject to clause 6.4, this Licence will be revoked on the date specified in the notice.
- 6.4. The Commission may, at its discretion and by written notice to the Licensee, withdraw a notice issued under clause 6.3 at any time prior to the revocation date specified in the notice if the Commission considers that it is otherwise appropriate to withdraw the notice.

PART C – LICENCE CONDITIONS

7. Status of the requirements in this part

- 7.1. A failure by the Licensee to meet any of the requirements set out in this Part C:
 - i. is a breach of a civil penalty requirement for the purpose of the ESC Act; and
 - ii. is a breach of a condition for the purposes of clause 6.2(ii) of this Licence.

8. Payment of fees

- 8.1. The Licensee must pay a licence fee as determined by the Minister in accordance with the provisions of section 22 of the Act.

9. Change of Control

- 9.1. The Licensee must give the Commission a notice in writing if any event occurs, any decision by the Licensee is made, or any other circumstance exists that will effect a Change of Control of the Licensee.

- 9.2. The notice required under clause 9.1 must set out particulars of the relevant event, decision or circumstance and be given to the Commission as soon as practicable and in any case not later than 3 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. The Licensee must comply with the requirements of the *Electricity Safety Act 1998* and any regulations made under that legislation.
- 10.4. The Licensee must comply with the National Electricity Law and the National Electricity Rules.

11. Use of System Agreements

- 11.1. The Licensee must enter into a Use of System Agreement with each Retailer in accordance with the requirements of the Electricity Distribution Code of Practice.

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 7 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.

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 Electricity Distribution Code of Practice.

Schedule 1: Distribution Area

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

Consultation version

Schedule 2: Variations to this licence

[Extract previous variations as set out in Schedule 3 to the existing licences]	
[Date]	To update the licences to reflect developments arising from the transition of the Electricity Distribution Code to a code of practice, specifically the remaking of the Electricity Distribution Code of Practice on [date].

Consultation version