



ELECTRICITY RETAIL LICENCE

POWERDIRECT PTY LTD

ABN 28 067 609 803

**As varied on
17 March 2021**

ELECTRICITY RETAIL LICENCE

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ELECTRICITY RETAIL LICENCE

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, words and phrases appearing *like this* have the meaning given to them in part 1 of schedule 1.
- 1.2 This licence must be interpreted in accordance with the rules set out in part 2 of schedule 1.

2. GRANT OF LICENCE

- 2.1 Subject to:
- (a) the conditions set out in this licence; and
 - (b) any prohibition on the *Licensee* from selling electricity to persons or classes of persons specified by any *order* in force under section 23 of the *Act* and deemed by that section to be included in a condition of this licence,

the *Licensee* is authorised to sell electricity.

- 2.2 Under this licence, the *Licensee* may not sell electricity through the *wholesale electricity market*.

3. TERM

- 3.1 This licence first had effect on 14 January 2004 and has been varied on the dates set out in schedule 2.
- 3.2 The *Commission* may revoke this licence in accordance with clauses 3.3 or 3.4.
- 3.3 The *Commission* may at any time agree with the *Licensee* that this licence should be revoked, in which case the term of this licence ends on the day agreed.
- 3.4 The *Commission* may at any time give notice of revocation in accordance with clauses 3.5 and 3.6 to the *Licensee* if:
- (a) the *Licensee* does not comply with an *enforcement order* or an *undertaking*; and
 - (b) the *Commission* is satisfied that revocation of this licence is necessary having regard to the *objectives*,

in which case, subject to clause 3.7, the term of this licence ends on the expiration of the period of the notice.

- 3.5 If the *enforcement order* or *undertaking* relates to:
- (a) a breach of clause 4 or 5.1; or

- (b) a breach of this licence which in the *Commission's* opinion is causing serious and immediate detriment to *customers*,

the *Commission* must give at least 5 *business days* notice of revocation to the *Licensee* under clause 3.4.

- 3.6 If clause 3.5 does not apply, the *Commission* must give at least 20 *business days* notice of revocation to the *Licensee* under clause 3.4.
- 3.7 The term of this licence does not end at the expiration of the period of a notice of revocation given under clause 3.4 if, before the expiration, the *Licensee* complies with the *enforcement order* or the *undertaking* (as the case may be).

4. ELECTRICITY PURCHASE ARRANGEMENTS

- 4.1 The *Licensee* must have in place agreements or arrangements for the purchase of electricity through the *wholesale electricity market* or otherwise, and any necessary related *authorisations*, as are required if the *Licensee* is to be able to perform its obligations under contracts for the sale of electricity with *customers*.
- 4.2 The *Licensee* is deemed to comply with clause 4.1 if it is registered with *NEMMCO* as a 'Customer' under the *National Electricity Code*.

5. ENERGY ONLY CONTRACTS AND CUSTOMERS IN EMBEDDED NETWORKS

- 5.1 The *Licensee* must not enter into a contract for the sale of electricity with a *relevant customer* unless the contract also provides for the provision or procurement by the *Licensee* of *distribution services*.
- 5.2 Clause 5.1 does not apply if:
- (a) the *relevant customer* has informed the *Licensee* that the *relevant customer* has entered into an agreement with a licensed *distributor* for the provision of *distribution services*; or
 - (b) the *relevant customer* takes an intermediary distribution or supply of electricity (as defined in the *General Exemption Order*) from a *distributor* exempt from the requirement to hold a *distribution licence* under the *General Exemption Order*.

6. USE OF SYSTEM AGREEMENTS

- 6.1 Subject to clause 6.4, the *Licensee* must have a *use of system agreement* with each *distributor* in respect of whose *distribution area* the *supply point* of any *customer* of the *Licensee* is located. Each *use of system agreement* must be in *writing*.
- 6.2 If a *distributor* offers the *Licensee* a new form of *default use of system agreement* under clause 4.8 of its *distribution licence*, the *Licensee* must not unreasonably refuse to accept such an offer.

- 6.3 Any question as to whether a *use of system agreement* unreasonably discriminates, or has the effect of creating unreasonable discrimination, between *retailers* or between *customers* of any *retailer*, or whether a refusal to accept an offer of a new *default use of system agreement* is unreasonable, is to be decided by the *Commission* on the basis of the *Commission's* opinion on the matter.¹
- 6.4 If the *Licensee* is also a *distributor*, clause 6.1 does not require the *Licensee* to have a *use of system agreement* with itself. The *Licensee* instead must act on the notional basis that the *Licensee's retail business* has and must comply with a *use of system agreement* with the *Licensee's distribution business*. That notional *use of system agreement* must be in *writing*.
- 6.5 Clause 6.1 does not apply to the *Licensee* in respect of a *distributor* until 60 *business days* after the date on which the *Commission* first approved a *default use of system agreement* submitted to the *Commission* by the relevant *distributor* under its *distribution licence*.

7. CONTRACTS WITH CUSTOMERS

- 7.1 The *Licensee* must not enter into a contract for the sale of electricity with a *relevant customer* unless the terms and conditions of the contract expressly deal with each matter which is the subject of a term or condition of the *Energy Retail Code*. If a term or condition of the *Energy Retail Code* is incorporated by reference into the contract, it is taken to be expressly dealt with.
- 7.2 The *Licensee* must not enter into any contract for the sale of electricity with any *domestic or small business customer* at a tariff which is different from a tariff offered by the *Licensee* in accordance with its obligation under clause 8.1 unless the terms and conditions of the contract are materially different to the terms and conditions offered with that tariff.
- 7.3 Each term or condition of the *Energy Retail Code* is a term or condition with which a contract for the sale of electricity to a *relevant customer* must not be inconsistent.²
- 7.4 The *Licensee* must comply with the terms and conditions of any contract for the sale of electricity with a *relevant customer*.

8. OBLIGATION TO OFFER TO SELL

- 8.1 The *Licensee* must offer to supply and sell electricity to any *domestic or small business customer* in relation to the *Licensee*:

¹ This provision may be amended if the Commission approves and publishes in final form its new Electricity Ring-Fencing Guideline, so that the discrimination terminology in this provision is more consistent with the terminology in that guideline.

² For the purposes of section 36(1)(b) of the *Act*.

- (a) at tariffs determined by the *Licensee* and published by the *Licensee* in the Government Gazette at least 2 months before they take effect; and
 - (b) on terms and conditions determined by the *Licensee* and approved by the *Commission* and published by the *Licensee* in the Government Gazette at least 2 months before they take effect.
- 8.2 The obligation of the *Licensee* under clause 8.1 does not apply to the extent nominated by the *Commission* in any *communication* given to the *Licensee*.
- 8.3 An offer in accordance with clause 8.1 must be made to a *domestic or small business customer* by the *Licensee* within ten *business days* after a request from the *customer*.
- 8.4 If a *domestic or small business customer* accepts an offer made by the *Licensee* in accordance with clause 8.1, the *Licensee* must comply with the resulting contract.
- 8.5 This clause 8 applies subject to section 35 of the *Act* and to any *order* in force under section 13 of the *Act*.

9. INFORMATION TO CUSTOMERS

- 9.1 The *Licensee* must include at least the following information in a bill issued to the *customer* for the supply or sale of electricity:
- (a) the National Meter Identifier (*NMI*) assigned to the *customer's* metering installation and the *NMI* checksum or, if there is no assigned *NMI*, the meter number or another unique identifying mark assigned to the metering installation;
 - (b) the relevant tariff or tariffs applicable to the *customer*;
 - (c) if the *Licensee* directly passes through network charges to the *customer*, the separate amount of the network charge; and
 - (d) information concerning greenhouse gas emissions connected with the generation of electricity supplied to the *customer* or the generation of electricity in general.
- 9.2 If a variation is made to the tariff or to terms or conditions of a contract and unless notice of the variation has been previously provided to a *customer*, the *Licensee* must include with the *customer's* next bill, or otherwise as soon as practicable, a statement setting out details of the variation.
- 9.3 Unless clause 12 applies, the *Licensee* must give notice to a *customer* who is party to a *deemed contract* with the *Licensee* on or as soon as practicable after becoming aware of the *deemed contract* which:
- (a) informs the *customer* that there is deemed to be a contract between the *customer* and the *Licensee* for the supply and sale of electricity;
 - (b) sets out the tariff and summarises other terms and conditions under the *deemed contract*;

- (c) describes the methods by which the *deemed contract* may be terminated and related terms and conditions; and
 - (d) outlines the options available to the *customer*.
- 9.4 Where the *Act* or this licence requires or has required the *Licensee* to publish the *Licensee's* tariffs in the Government Gazette, the *Licensee* must also publish on the same day or as soon as practicable in a newspaper circulating generally in Victoria:
- (a) the tariffs; and
 - (b) a statement that the *Licensee's* related terms and conditions are available on request and free of charge in English and, if the *Licensee* has a significant number of *customers* from the same non-English speaking background, in such other languages as are agreed with the *Commission* (and the terms and conditions must actually be available in those languages).
- 9.5 If the contract between a *customer* and a *retailer* is a fixed term contract, prior to the expiry of the fixed term the *retailer* must notify the *customer*:
- (a) that the contract is due to expire;
 - (b) when the expiry will occur;
 - (c) the tariff and terms and conditions that will apply to the *customer* beyond the expiry of the *contract* if the *customer* does not exercise any other option, which the *retailer* may determine at its discretion; and
 - (d) what other options are available to the *customer*.

The information must be given no sooner than two months before, and no later than one month before, the expiration of the fixed term (unless the fixed term is less than one month in which case the information must be given to the *customer* at the commencement of the term).

- 9.6 Where the *Licensee* has financial responsibility in the *wholesale electricity market* for a *NMI* relating to premises which it knows to be vacant, the *Licensee* must, if it elects to leave the premises energised, deliver to the premises an information package relating to offers of retail contracts which are available.

10. PAYMENT METHODS

- 10.1 The *Licensee* must not implement a pre-payment meter scheme without the prior approval of the *Commission*.
- 10.2 The *Licensee* must notify the *Commission* at least 20 *business days* prior to the termination of an arrangement with any agency or payment outlet through which *customers* of the *Licensee* may pay bills.

11. COMMUNITY SERVICE OBLIGATION AGREEMENTS

If so directed by the Secretary to the Department of Human Services, the *Licensee* must enter into an agreement with the State for the provision of community services on terms and conditions determined or agreed in accordance with section 47 of the *Act*.

12. RETAILER OF LAST RESORT

12.1 On or before a date to be nominated by the *Commission* in a *communication* given to the *Licensee*, the *Licensee* must submit to the *Commission* proposed tariffs, terms and conditions upon which the *Licensee* would sell electricity in accordance with the requirement under clause 12.2.

12.2 Subject to clause 12.3, the *Licensee* must sell electricity to a *customer* at tariffs and on terms and conditions approved or determined by the *Commission* under section 27 of the *Act*.

12.3 Despite clause 7.1, in approving proposed terms and conditions under clause 12.2 the *Commission* may approve terms and conditions which do not deal with the subject matter of all of the provisions of the *Energy Retail Code*.

12.4 The requirement under clause 12.2:

- (a) applies only if the *Licensee* is so directed by the *Commission* in a *communication* given to the *Licensee*; and
- (b) imposes an obligation on the *Licensee* to sell electricity to a *customer* which:
 - (1) commences when a *last resort event* occurs in respect of the *customer's other retailer*; and
 - (2) ends:
 - (A) after three months;
 - (B) when the *customer* advises the *Licensee* in *writing* that the sale is no longer required;
 - (C) when the *customer* transfers to another *retailer*; or
 - (D) when the *customer* enters into a new contract for the sale of electricity with the *Licensee*,

whichever occurs first.

12.5 As soon as practicable after being notified by the *Commission* or otherwise becoming aware of its obligation to a *customer* under clause 12.2, the *Licensee* must give the *customer* notice in *writing*:

- (a) that a *last resort event* has occurred in respect of the *other retailer*;

- (b) that, as a result, the *Licensee* and the *customer* are deemed to have entered into a contract for the sale of electricity under section 27 of the *Act*;
- (c) of the date the *deemed contract* commenced;
- (d) of the tariff and the terms and conditions of the *deemed contract*;
- (e) that the *customer's* meter has been or will be read, or an estimate will be made, as at the date the *deemed contract* commenced so that it can be established what amount of electricity has been sold to the *customer* by the *other retailer* prior to the occurrence of the *last resort event* and what amount of electricity has been and will be sold to the *customer* by the *Licensee* after the occurrence of the *last resort event*;
- (f) of that meter reading or estimated meter reading. Notice of the meter reading or estimated meter reading may be given after notice of the other matters contemplated by this clause 12.5 is required to be given;
- (g) whether any debt owed by the *customer* to the *other retailer* or by the *other retailer* to the *customer*, as the case may be, will continue to be so owed and, if it will not, to whom and by whom it will be owed;
- (h) of alternatives available for the *customer* to arrange a transfer to another *retailer* or to obtain any different tariff, or different terms and conditions, from the *Licensee* including that the *customer* may advise the *Licensee* in *writing* that the sale of electricity by the *Licensee* is no longer required; and
- (i) of how and where to obtain further information.

12.6 If the *Licensee* must publish notice of tariffs, terms and conditions in the Government Gazette under section 27(8) of the *Act*, the *Licensee* must do so as soon as practicable after the *Commission* approves the tariffs, terms and conditions.

13. CO-OPERATION WITH VENCORP

13.1 As soon as practicable after any request made by *VENCorp*, the *Licensee* must supply such information to *VENCorp* as *VENCorp* may reasonably require to perform its functions and exercise its powers under the *Act*.

13.2 A question as to the reasonableness of a requirement by *VENCorp* for information as contemplated by clause 13.1 is to be decided by the *Commission* on the basis of the *Commission's* opinion of the reasonableness of the requirement.

14. COMPLIANCE WITH ORDERS, CODES AND GUIDELINES

14.1 As well as complying with this licence, the *Licensee* must comply with all applicable provisions of:

- (a) any *order*;

- (b) the following codes:
 - (1) the *Electricity Distribution Code*;
 - (2) the *Electricity System Code*;
 - (3) the *Electricity Customer Metering Code*;
 - (4) the *Electricity Customer Transfer Code*;
 - (5) the *Energy Retail Code*;
- (c) any *guideline*, if the *guideline* itself requires the *Licensee* to comply or the *Commission* has informed the *Licensee* that compliance is required by way of a *communication* given to the *Licensee* by the *Commission*;
- (d) a code dealing with *retailers*' marketing conduct which has been developed by *retailers*, to the extent required by the *Commission* (after consultation with the *Licensee*) in a *communication* identifying the code or *guideline*; and
- (e) if after consultation with *retailers* and representatives of *customers* there is no identified code to which paragraph (d) refers, a code or *guideline* dealing with *retailers*' marketing conduct issued by the *Commission* after further consultation with the *Licensee* and representatives of *customers* and identified in a *communication* given by the *Commission* to the *Licensee*.

14.2 The *Licensee* must monitor its compliance with this licence and any *order*, code or *guideline* it is required to comply with under clause 14.1.

14.3 If the *Licensee* becomes aware of a material breach of this licence or any *order*, code or *guideline* by the *Licensee*, the *Licensee* must notify the *Commission* of the material breach as soon as practicable.

15. REGULATORY AUDITS

15.1 Upon request by the *Commission*, the *Licensee* must appoint an independent auditor to conduct audits of:

- (a) its compliance with obligations under this licence, including obligations to comply with codes and *guidelines*; and
- (b) the reliability and quality of information reported by the *Licensee* to the *Commission*, and the consistency of that information with the *Commission's* specifications.

15.2 The *Licensee* must comply, and must require the *Licensee's* auditor to comply, with relevant aspects of any *guideline* dealing with audits under this clause 15, including any minimum requirements relating to the appointment of the auditor, the terms and conditions of the appointment of the auditor, the scope of the audit, the conduct of the audit and the reporting of the results of the audit.

16. DISPUTE RESOLUTION

- 16.1 The *Licensee* must submit to the *Commission* for its approval, and if approved implement, a scheme for the fair, reasonable and effective investigation and resolution of disputes between it and:
- (a) a *customer* about the *Licensee's* services, billing and charging; and
 - (b) aggrieved persons about the manner in which the *Licensee* conducts its business under this licence generally.
- 16.2 Unless it has been notified by the *Commission* that it need not comply with this clause 16.2, the *Licensee* must comply with clause 16.1 by submitting to the *Commission* for its approval an ombudsman scheme and implementing any such scheme that the *Commission* has approved.
- 16.3 An ombudsman scheme that is implemented by the *Licensee* to comply with clause 16.2 must contain and comply with terms and conditions that:
- (a) bind the *Licensee* to participate in the scheme and comply with its rules (as amended from time to time) from the date on which it is approved by the *Commission*;
 - (b) provide the *Licensee's customers* and aggrieved persons with ready and equal access to the scheme;
 - (c) subject to clause 16.3(d), present no cost barriers to *customers*;
 - (d) do not permit fees to be charged to, or costs to be awarded against, residential and small business *customers*;
 - (e) provide that the scheme be governed by a board consisting of an independent chairperson and equal numbers of *customer* representatives appointed by the *Commission* and representatives appointed by the members of the scheme;
 - (f) in accordance with a process approved by the *Commission*, provide for those members of the scheme and *customer* representatives that are members of the board to appoint the chairperson after consultation with the *Commission*;
 - (g) provide for the board to appoint the ombudsman;
 - (h) require the board to inform the *Commission* of any proposed amendments of the scheme;
 - (i) confer on the ombudsman the power to make rulings with which the *Licensee* is required to comply;
 - (j) provide that, if the scheme prevents a ruling of the ombudsman from exceeding in value a maximum amount, that amount must be no less than \$20,000 in respect of a complaint from an individual *customer*;

- (k) confer on the ombudsman the power to impose sanctions on the *Licensee* for a breach of a ruling;
- (l) require the ombudsman to follow fair and efficient procedures, and make decisions that are fair and reasonable having regard to the law, the licences, industry codes, *deemed contracts*, and good industry practice;
- (m) enable the *Commission* to refer complaints in relation to the conduct of the participating *Licensee's* business conducted under this licence to the ombudsman;
- (n) require the *Licensee* to bear a fair proportion of the cost of the development, establishment and operation of the ombudsman scheme;
- (o) enable a question as to the fairness of the proportion of the costs which must be borne by a *Licensee* to be decided by the *Commission* on the basis of the *Commission's* opinion of the fairness of the proportion;
- (p) require the ombudsman to report to the *Commission* as and when required by the *Commission* on the operation of the scheme in relation to the industry of which the *Licensee* is part;
- (q) require the ombudsman to publish its decisions and annual reports on the operation of the scheme and the performance of each member of the scheme in relation to the industry of which the *Licensee* is part;
- (r) require the board to conduct periodic and comprehensive reviews of the performance of the scheme in consultation with members, *customer* representatives, the *Commission* and other interested parties; and
- (s) provide for the *Licensee* to withdraw from the scheme subject to:
 - (i) the *Commission* notifying the *Licensee* that it need not comply with clause 16.2;
 - (ii) the *Licensee* providing to the *Commission* 12 months' notice in *writing* of the *Licensee's* intention to withdraw; and
 - (iii) the *Licensee* satisfying the *Commission* that the *Licensee* complies with clause 16.1.

17. SEPARATE ACCOUNTS

The *Licensee* must ensure that separate accounts are prepared for its *retail business*.

18. PROVISION OF INFORMATION TO THE COMMISSION

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.

19. PAYMENT OF LICENCE FEES

- 19.1 The *Licensee* must pay as directed by the *Commission* a licence fee determined in accordance with section 22 of the *Act*.
- 19.2 Insofar as a fee or charge determined by the *Minister* under section 22 of the *Act* in respect of this licence is an annual fee or charge, it must be paid in either four equal instalments on the last days of September, December, March and June in each year or paid in one payment on or before the last day of September in each year and in the manner notified to the *Licensee* by the *Commission*.
- 19.3 The *Licensee* must pay as directed by the *Commission* such other fees and charges in respect of this licence as are determined by the *Minister* in accordance with section 22 of the *Act*.

20. ADMINISTRATOR

- 20.1 If an *administrator* is appointed to the *Licensee's* business under section 34 of the *Act*, the *administrator* must exercise its functions and powers in such a manner as may be specified by the *Commission* in the instrument of appointment.
- 20.2 The *Licensee* is responsible for the acts and defaults of the *administrator*.

21. COMPLIANCE WITH LAWS

The *Licensee* must comply with all applicable laws.

22. VARIATION

This licence may be varied in accordance with section 29 of the *Act*.

23. TRANSFER OF LICENCE

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

24. COMMUNICATIONS

- 24.1 A *communication* must be in *writing*.
- 24.2 A *communication* is to be regarded as having been given by the sender and received by the addressee:
- (a) when delivered in person to the addressee;
 - (b) 3 *business days* after the date of posting, if the *communication* is posted within Australia;
 - (c) 7 *business days* after the date of posting, if the *communication* is posted outside Australia;

- (d) when, according to the sender's transmission report, received by facsimile transmission by the addressee; or
- (e) when it is an electronic ***communication***, in accordance with the *Electronic Transactions (Victoria) Act 2000*.

**THE COMMON SEAL of
THE ESSENTIAL SERVICES
COMMISSION**

was affixed pursuant to the
authority of the Commission
on 18 March 2021

KATE SYMONS
Chairperson

SCHEDULE 1 DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this licence:

Act means the *Electricity Industry Act 2000*.

administrator means an administrator appointed by the **Commission** under section 34 of the **Act** in respect of the **Licensee's retail business**.

authorisation means an authorisation, licence, registration, consent, declaration, exemption or waiver.

business day means a day other than a Saturday or Sunday or a public holiday appointed under the *Public Holidays Act 1993*.

Commission means the Essential Services Commission under the *Essential Services Commission Act 2001*.

communication means a notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to or in connection with this licence.

customer, unless the context otherwise permits or requires, means a person who buys or may want to buy electricity from a **retailer** and includes other **retailers**.

deemed contract means a contract for the supply or sale of electricity deemed by the **Act** to have been entered into or to otherwise be in place between a **retailer** and **customer**.

default use of system agreement means the most recent form of agreement submitted to the **Commission** by a **distributor** under clause 4.1 of its **distribution licence** and approved by the **Commission**, as amended (if at all) at the direction of the **Commission** under clause 4.7 of that licence.

distribution area in relation to a **distributor** who holds a **distribution licence**, means the area in which the **distributor** may distribute or supply electricity under the **distribution licence**.

distribution business means a business carried on by a **distributor** under a **distribution licence** or exemption granted under the **Act**.

distribution licence means a licence to distribute or supply electricity granted under the **Act**.

distribution services means the transportation and delivery of electricity through a ***distribution system*** and any other service which a ***distributor*** includes in its network tariff.

distribution system in relation to a ***distributor***, means a system of electric lines (generally at nominal voltage levels of 66 kV or below) which the ***distributor*** uses to distribute or supply electricity.

distributor means a person who holds, or is exempt from holding, a ***distribution licence***.

domestic or small business customer in relation to the ***Licensee*** and a supply of electricity from a ***supply point***, has the same meaning as in any relevant ***order***.

Electricity Customer Metering Code means the code of that name certified by the ***Commission***.

Electricity Customer Transfer Code means the code of that name certified by the ***Commission***.

Electricity Distribution Code means the code of that name certified by the ***Commission***.

Energy Retail Code means the code setting out terms and conditions relevant to contracts for the supply or sale of electricity determined by the ***Commission*** under the ***Act***.

Electricity System Code means the code of that name certified by the ***Commission***.

enforcement order means a provisional or final order made and served by the ***Commission*** under section 53 of the ***Essential Services Commission Act 2001***.

explicit informed consent has the meaning given to that term by any applicable ***guideline***.

General Exemption Order means the exemption ***order*** made under section 17 of the ***Act*** coming into effect on 1 May 2002.

guideline means a guideline published by the ***Commission***.

last resort event in respect of a ***retailer***, means:

- (a) the ***retailer's retail licence*** is suspended or revoked; or
- (b) the right of the ***retailer*** to acquire electricity from the ***wholesale electricity market*** is suspended or terminated,

whichever first occurs.

Licensee means Powerdirect Pty Ltd ABN 28 067 609 803.

Minister means the person who is the Minister for the purposes of the relevant section of the *Act*.

National Electricity Code means the Code approved in accordance with section 6(1) of the National Electricity (Victoria) Law applicable in Victoria as a result of the operation of section 6 of the *National Electricity (Victoria) Act 1997*.

NEMMCO means National Electricity Market Management Company Limited ACN 072 010 327.

NMI means a national metering identifier.

NMI standing data means each of the following in respect of a **NMI**:

- (a) the **NMI** checksum;
- (b) the transmission node identifier;
- (c) the distribution loss factor; and
- (d) the **distributor's** network tariff.
- (e) the **NMI** classification;
- (f) the read cycle date or date of next scheduled meter read (if applicable);
- (g) the characteristic of a parent or a child in an embedded network (if applicable); and
- (h) the responsible **distributor**.

objectives means the objectives specified in section 10 of the *Act* and section 8 of the *Essential Services Commission Act 2001*.

other retailer in respect of a **customer** and a **last resort event**, means the **retailer** which, immediately prior to the occurrence of the **last resort event** in respect of the **retailer**, sold electricity to the **customer**.

order means an Order in Council made or in force under the *Act*.

relevant customer, in relation to a supply of electricity from a **supply point**, has the same meaning as in any relevant **order**.

retail business means the business that a **retailer** carries on under its **retail licence** or exemption granted under the *Act*.

retail licence means a licence to sell electricity granted under the *Act*.

retailer means a person who holds, or is exempt from holding, a **retail licence**.

supply point in relation to the supply of electricity to a person, means the point at which that 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 any other person after leaving that point before being so supplied.

undertaking means an undertaking given by the **Licensee** under section 53(5)(a) of the *Essential Services Commission Act 2001*.

use of system agreement means an agreement between a **retailer** (or other person who has made an application for a **retail licence**) 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**.

VENCorp means Victorian Energy Networks Corporation continued under Part 8 of the *Gas Industry Act 2001*.

wholesale electricity market means the market for wholesale trading in electricity operated by **NEMMCO** under the *National Electricity Code*.

writing includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

2. INTERPRETATION

In this licence, unless the context otherwise requires:

- (a) headings, footnotes and schedule 2 are each 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 a condition, clause, schedule or part is to a condition, clause, schedule or part of this licence;
- (f) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement;

- (g) a reference to any statute including the *Act* and regulation, proclamation, Order in Council, ordinance or by-law 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;
- (h) 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;
- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (j) other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning;
- (k) a period of time:
 - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (l) 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*.

**SCHEDULE 2
VARIATIONS TO THE LICENCE**

Date	Reason for variation
28 December 2000	To establish the regulatory framework for full retail competition, to reflect changes established by the Electricity Industry Act 2000 and to make other minor amendments.
8 March 2001	To amend the dispute resolution clause to establish the Energy and Water Ombudsman.
6 December 2001	To bring the licence up to date for developments in the full retail competition framework and to make other minor administrative amendments.
29 April 2002	To include the framework for common arrangements for the electronic communication of customer information between distributors and retailers.
31 July 2002	To clarify the retailers' obligation to comply with guidelines published regarding confidentiality and informed consent and inclusion of information about greenhouse gas emissions on customer's bills.
28 February 2005	To make various administrative and substantive amendments following a review by the Commission of electricity generation, distribution and retail licences.
17 March 2021	To reflect a commission decision of 25 October 2017 to insert condition 14.1(b)(5), to standardise licence conditions relating to compliance with the Energy Retail Code. Due to an administrative error, this amendment was not reflected in a signed and sealed version of the licence to Powerdirect Pty Ltd at that time



ELECTRICITY RETAIL LICENCE

POWERDIRECT PTY LTD

ABN 28 067 609 803

**As varied on
17 March 2021**

ELECTRICITY RETAIL LICENCE

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ELECTRICITY RETAIL LICENCE

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, words and phrases appearing *like this* have the meaning given to them in part 1 of schedule 1.
- 1.2 This licence must be interpreted in accordance with the rules set out in part 2 of schedule 1.

2. GRANT OF LICENCE

- 2.1 Subject to:
- (a) the conditions set out in this licence; and
 - (b) any prohibition on the *Licensee* from selling electricity to persons or classes of persons specified by any *order* in force under section 23 of the *Act* and deemed by that section to be included in a condition of this licence,

the *Licensee* is authorised to sell electricity.

- 2.2 Under this licence, the *Licensee* may not sell electricity through the *wholesale electricity market*.

3. TERM

- 3.1 This licence first had effect on 14 January 2004 and has been varied on the dates set out in schedule 2.
- 3.2 The *Commission* may revoke this licence in accordance with clauses 3.3 or 3.4.
- 3.3 The *Commission* may at any time agree with the *Licensee* that this licence should be revoked, in which case the term of this licence ends on the day agreed.
- 3.4 The *Commission* may at any time give notice of revocation in accordance with clauses 3.5 and 3.6 to the *Licensee* if:
- (a) the *Licensee* does not comply with an *enforcement order* or an *undertaking*; and
 - (b) the *Commission* is satisfied that revocation of this licence is necessary having regard to the *objectives*,

in which case, subject to clause 3.7, the term of this licence ends on the expiration of the period of the notice.

- 3.5 If the *enforcement order* or *undertaking* relates to:
- (a) a breach of clause 4 or 5.1; or

- (b) a breach of this licence which in the *Commission's* opinion is causing serious and immediate detriment to *customers*,

the *Commission* must give at least 5 *business days* notice of revocation to the *Licensee* under clause 3.4.

- 3.6 If clause 3.5 does not apply, the *Commission* must give at least 20 *business days* notice of revocation to the *Licensee* under clause 3.4.
- 3.7 The term of this licence does not end at the expiration of the period of a notice of revocation given under clause 3.4 if, before the expiration, the *Licensee* complies with the *enforcement order* or the *undertaking* (as the case may be).

4. ELECTRICITY PURCHASE ARRANGEMENTS

- 4.1 The *Licensee* must have in place agreements or arrangements for the purchase of electricity through the *wholesale electricity market* or otherwise, and any necessary related *authorisations*, as are required if the *Licensee* is to be able to perform its obligations under contracts for the sale of electricity with *customers*.
- 4.2 The *Licensee* is deemed to comply with clause 4.1 if it is registered with *NEMMCO* as a 'Customer' under the *National Electricity Code*.

5. ENERGY ONLY CONTRACTS AND CUSTOMERS IN EMBEDDED NETWORKS

- 5.1 The *Licensee* must not enter into a contract for the sale of electricity with a *relevant customer* unless the contract also provides for the provision or procurement by the *Licensee* of *distribution services*.
- 5.2 Clause 5.1 does not apply if:
- (a) the *relevant customer* has informed the *Licensee* that the *relevant customer* has entered into an agreement with a licensed *distributor* for the provision of *distribution services*; or
 - (b) the *relevant customer* takes an intermediary distribution or supply of electricity (as defined in the *General Exemption Order*) from a *distributor* exempt from the requirement to hold a *distribution licence* under the *General Exemption Order*.

6. USE OF SYSTEM AGREEMENTS

- 6.1 Subject to clause 6.4, the *Licensee* must have a *use of system agreement* with each *distributor* in respect of whose *distribution area* the *supply point* of any *customer* of the *Licensee* is located. Each *use of system agreement* must be in *writing*.
- 6.2 If a *distributor* offers the *Licensee* a new form of *default use of system agreement* under clause 4.8 of its *distribution licence*, the *Licensee* must not unreasonably refuse to accept such an offer.

- 6.3 Any question as to whether a *use of system agreement* unreasonably discriminates, or has the effect of creating unreasonable discrimination, between *retailers* or between *customers* of any *retailer*, or whether a refusal to accept an offer of a new *default use of system agreement* is unreasonable, is to be decided by the *Commission* on the basis of the *Commission's* opinion on the matter.¹
- 6.4 If the *Licensee* is also a *distributor*, clause 6.1 does not require the *Licensee* to have a *use of system agreement* with itself. The *Licensee* instead must act on the notional basis that the *Licensee's retail business* has and must comply with a *use of system agreement* with the *Licensee's distribution business*. That notional *use of system agreement* must be in *writing*.
- 6.5 Clause 6.1 does not apply to the *Licensee* in respect of a *distributor* until 60 *business days* after the date on which the *Commission* first approved a *default use of system agreement* submitted to the *Commission* by the relevant *distributor* under its *distribution licence*.

7. CONTRACTS WITH CUSTOMERS

- 7.1 The *Licensee* must not enter into a contract for the sale of electricity with a *relevant customer* unless the terms and conditions of the contract expressly deal with each matter which is the subject of a term or condition of the *Energy Retail Code*. If a term or condition of the *Energy Retail Code* is incorporated by reference into the contract, it is taken to be expressly dealt with.
- 7.2 The *Licensee* must not enter into any contract for the sale of electricity with any *domestic or small business customer* at a tariff which is different from a tariff offered by the *Licensee* in accordance with its obligation under clause 8.1 unless the terms and conditions of the contract are materially different to the terms and conditions offered with that tariff.
- 7.3 Each term or condition of the *Energy Retail Code* is a term or condition with which a contract for the sale of electricity to a *relevant customer* must not be inconsistent.²
- 7.4 The *Licensee* must comply with the terms and conditions of any contract for the sale of electricity with a *relevant customer*.

8. OBLIGATION TO OFFER TO SELL

- 8.1 The *Licensee* must offer to supply and sell electricity to any *domestic or small business customer* in relation to the *Licensee*:

¹ This provision may be amended if the Commission approves and publishes in final form its new Electricity Ring-Fencing Guideline, so that the discrimination terminology in this provision is more consistent with the terminology in that guideline.

² For the purposes of section 36(1)(b) of the *Act*.

- (a) at tariffs determined by the *Licensee* and published by the *Licensee* in the Government Gazette at least 2 months before they take effect; and
 - (b) on terms and conditions determined by the *Licensee* and approved by the *Commission* and published by the *Licensee* in the Government Gazette at least 2 months before they take effect.
- 8.2 The obligation of the *Licensee* under clause 8.1 does not apply to the extent nominated by the *Commission* in any *communication* given to the *Licensee*.
- 8.3 An offer in accordance with clause 8.1 must be made to a *domestic or small business customer* by the *Licensee* within ten *business days* after a request from the *customer*.
- 8.4 If a *domestic or small business customer* accepts an offer made by the *Licensee* in accordance with clause 8.1, the *Licensee* must comply with the resulting contract.
- 8.5 This clause 8 applies subject to section 35 of the *Act* and to any *order* in force under section 13 of the *Act*.

9. INFORMATION TO CUSTOMERS

- 9.1 The *Licensee* must include at least the following information in a bill issued to the *customer* for the supply or sale of electricity:
- (a) the National Meter Identifier (*NMI*) assigned to the *customer's* metering installation and the *NMI* checksum or, if there is no assigned *NMI*, the meter number or another unique identifying mark assigned to the metering installation;
 - (b) the relevant tariff or tariffs applicable to the *customer*;
 - (c) if the *Licensee* directly passes through network charges to the *customer*, the separate amount of the network charge; and
 - (d) information concerning greenhouse gas emissions connected with the generation of electricity supplied to the *customer* or the generation of electricity in general.
- 9.2 If a variation is made to the tariff or to terms or conditions of a contract and unless notice of the variation has been previously provided to a *customer*, the *Licensee* must include with the *customer's* next bill, or otherwise as soon as practicable, a statement setting out details of the variation.
- 9.3 Unless clause 12 applies, the *Licensee* must give notice to a *customer* who is party to a *deemed contract* with the *Licensee* on or as soon as practicable after becoming aware of the *deemed contract* which:
- (a) informs the *customer* that there is deemed to be a contract between the *customer* and the *Licensee* for the supply and sale of electricity;
 - (b) sets out the tariff and summarises other terms and conditions under the *deemed contract*;

- (c) describes the methods by which the *deemed contract* may be terminated and related terms and conditions; and
 - (d) outlines the options available to the *customer*.
- 9.4 Where the *Act* or this licence requires or has required the *Licensee* to publish the *Licensee's* tariffs in the Government Gazette, the *Licensee* must also publish on the same day or as soon as practicable in a newspaper circulating generally in Victoria:
- (a) the tariffs; and
 - (b) a statement that the *Licensee's* related terms and conditions are available on request and free of charge in English and, if the *Licensee* has a significant number of *customers* from the same non-English speaking background, in such other languages as are agreed with the *Commission* (and the terms and conditions must actually be available in those languages).
- 9.5 If the contract between a *customer* and a *retailer* is a fixed term contract, prior to the expiry of the fixed term the *retailer* must notify the *customer*:
- (a) that the contract is due to expire;
 - (b) when the expiry will occur;
 - (c) the tariff and terms and conditions that will apply to the *customer* beyond the expiry of the *contract* if the *customer* does not exercise any other option, which the *retailer* may determine at its discretion; and
 - (d) what other options are available to the *customer*.

The information must be given no sooner than two months before, and no later than one month before, the expiration of the fixed term (unless the fixed term is less than one month in which case the information must be given to the *customer* at the commencement of the term).

- 9.6 Where the *Licensee* has financial responsibility in the *wholesale electricity market* for a *NMI* relating to premises which it knows to be vacant, the *Licensee* must, if it elects to leave the premises energised, deliver to the premises an information package relating to offers of retail contracts which are available.

10. PAYMENT METHODS

- 10.1 The *Licensee* must not implement a pre-payment meter scheme without the prior approval of the *Commission*.
- 10.2 The *Licensee* must notify the *Commission* at least 20 *business days* prior to the termination of an arrangement with any agency or payment outlet through which *customers* of the *Licensee* may pay bills.

11. COMMUNITY SERVICE OBLIGATION AGREEMENTS

If so directed by the Secretary to the Department of Human Services, the *Licensee* must enter into an agreement with the State for the provision of community services on terms and conditions determined or agreed in accordance with section 47 of the *Act*.

12. RETAILER OF LAST RESORT

12.1 On or before a date to be nominated by the *Commission* in a *communication* given to the *Licensee*, the *Licensee* must submit to the *Commission* proposed tariffs, terms and conditions upon which the *Licensee* would sell electricity in accordance with the requirement under clause 12.2.

12.2 Subject to clause 12.3, the *Licensee* must sell electricity to a *customer* at tariffs and on terms and conditions approved or determined by the *Commission* under section 27 of the *Act*.

12.3 Despite clause 7.1, in approving proposed terms and conditions under clause 12.2 the *Commission* may approve terms and conditions which do not deal with the subject matter of all of the provisions of the *Energy Retail Code*.

12.4 The requirement under clause 12.2:

- (a) applies only if the *Licensee* is so directed by the *Commission* in a *communication* given to the *Licensee*; and
- (b) imposes an obligation on the *Licensee* to sell electricity to a *customer* which:
 - (1) commences when a *last resort event* occurs in respect of the *customer's other retailer*; and
 - (2) ends:
 - (A) after three months;
 - (B) when the *customer* advises the *Licensee* in *writing* that the sale is no longer required;
 - (C) when the *customer* transfers to another *retailer*; or
 - (D) when the *customer* enters into a new contract for the sale of electricity with the *Licensee*,

whichever occurs first.

12.5 As soon as practicable after being notified by the *Commission* or otherwise becoming aware of its obligation to a *customer* under clause 12.2, the *Licensee* must give the *customer* notice in *writing*:

- (a) that a *last resort event* has occurred in respect of the *other retailer*;

- (b) that, as a result, the *Licensee* and the *customer* are deemed to have entered into a contract for the sale of electricity under section 27 of the *Act*;
- (c) of the date the *deemed contract* commenced;
- (d) of the tariff and the terms and conditions of the *deemed contract*;
- (e) that the *customer's* meter has been or will be read, or an estimate will be made, as at the date the *deemed contract* commenced so that it can be established what amount of electricity has been sold to the *customer* by the *other retailer* prior to the occurrence of the *last resort event* and what amount of electricity has been and will be sold to the *customer* by the *Licensee* after the occurrence of the *last resort event*;
- (f) of that meter reading or estimated meter reading. Notice of the meter reading or estimated meter reading may be given after notice of the other matters contemplated by this clause 12.5 is required to be given;
- (g) whether any debt owed by the *customer* to the *other retailer* or by the *other retailer* to the *customer*, as the case may be, will continue to be so owed and, if it will not, to whom and by whom it will be owed;
- (h) of alternatives available for the *customer* to arrange a transfer to another *retailer* or to obtain any different tariff, or different terms and conditions, from the *Licensee* including that the *customer* may advise the *Licensee* in *writing* that the sale of electricity by the *Licensee* is no longer required; and
- (i) of how and where to obtain further information.

12.6 If the *Licensee* must publish notice of tariffs, terms and conditions in the Government Gazette under section 27(8) of the *Act*, the *Licensee* must do so as soon as practicable after the *Commission* approves the tariffs, terms and conditions.

13. CO-OPERATION WITH VENCORP

13.1 As soon as practicable after any request made by *VENCorp*, the *Licensee* must supply such information to *VENCorp* as *VENCorp* may reasonably require to perform its functions and exercise its powers under the *Act*.

13.2 A question as to the reasonableness of a requirement by *VENCorp* for information as contemplated by clause 13.1 is to be decided by the *Commission* on the basis of the *Commission's* opinion of the reasonableness of the requirement.

14. COMPLIANCE WITH ORDERS, CODES AND GUIDELINES

14.1 As well as complying with this licence, the *Licensee* must comply with all applicable provisions of:

- (a) any *order*;

- (b) the following codes:
 - (1) the *Electricity Distribution Code*;
 - (2) the *Electricity System Code*;
 - (3) the *Electricity Customer Metering Code*;
 - (4) the *Electricity Customer Transfer Code*;
 - (5) the *Energy Retail Code*;
- (c) any *guideline*, if the *guideline* itself requires the *Licensee* to comply or the *Commission* has informed the *Licensee* that compliance is required by way of a *communication* given to the *Licensee* by the *Commission*;
- (d) a code dealing with *retailers*' marketing conduct which has been developed by *retailers*, to the extent required by the *Commission* (after consultation with the *Licensee*) in a *communication* identifying the code or *guideline*; and
- (e) if after consultation with *retailers* and representatives of *customers* there is no identified code to which paragraph (d) refers, a code or *guideline* dealing with *retailers*' marketing conduct issued by the *Commission* after further consultation with the *Licensee* and representatives of *customers* and identified in a *communication* given by the *Commission* to the *Licensee*.

14.2 The *Licensee* must monitor its compliance with this licence and any *order*, code or *guideline* it is required to comply with under clause 14.1.

14.3 If the *Licensee* becomes aware of a material breach of this licence or any *order*, code or *guideline* by the *Licensee*, the *Licensee* must notify the *Commission* of the material breach as soon as practicable.

15. REGULATORY AUDITS

15.1 Upon request by the *Commission*, the *Licensee* must appoint an independent auditor to conduct audits of:

- (a) its compliance with obligations under this licence, including obligations to comply with codes and *guidelines*; and
- (b) the reliability and quality of information reported by the *Licensee* to the *Commission*, and the consistency of that information with the *Commission's* specifications.

15.2 The *Licensee* must comply, and must require the *Licensee's* auditor to comply, with relevant aspects of any *guideline* dealing with audits under this clause 15, including any minimum requirements relating to the appointment of the auditor, the terms and conditions of the appointment of the auditor, the scope of the audit, the conduct of the audit and the reporting of the results of the audit.

16. DISPUTE RESOLUTION

- 16.1 The *Licensee* must submit to the *Commission* for its approval, and if approved implement, a scheme for the fair, reasonable and effective investigation and resolution of disputes between it and:
- (a) a *customer* about the *Licensee's* services, billing and charging; and
 - (b) aggrieved persons about the manner in which the *Licensee* conducts its business under this licence generally.
- 16.2 Unless it has been notified by the *Commission* that it need not comply with this clause 16.2, the *Licensee* must comply with clause 16.1 by submitting to the *Commission* for its approval an ombudsman scheme and implementing any such scheme that the *Commission* has approved.
- 16.3 An ombudsman scheme that is implemented by the *Licensee* to comply with clause 16.2 must contain and comply with terms and conditions that:
- (a) bind the *Licensee* to participate in the scheme and comply with its rules (as amended from time to time) from the date on which it is approved by the *Commission*;
 - (b) provide the *Licensee's customers* and aggrieved persons with ready and equal access to the scheme;
 - (c) subject to clause 16.3(d), present no cost barriers to *customers*;
 - (d) do not permit fees to be charged to, or costs to be awarded against, residential and small business *customers*;
 - (e) provide that the scheme be governed by a board consisting of an independent chairperson and equal numbers of *customer* representatives appointed by the *Commission* and representatives appointed by the members of the scheme;
 - (f) in accordance with a process approved by the *Commission*, provide for those members of the scheme and *customer* representatives that are members of the board to appoint the chairperson after consultation with the *Commission*;
 - (g) provide for the board to appoint the ombudsman;
 - (h) require the board to inform the *Commission* of any proposed amendments of the scheme;
 - (i) confer on the ombudsman the power to make rulings with which the *Licensee* is required to comply;
 - (j) provide that, if the scheme prevents a ruling of the ombudsman from exceeding in value a maximum amount, that amount must be no less than \$20,000 in respect of a complaint from an individual *customer*;

- (k) confer on the ombudsman the power to impose sanctions on the *Licensee* for a breach of a ruling;
- (l) require the ombudsman to follow fair and efficient procedures, and make decisions that are fair and reasonable having regard to the law, the licences, industry codes, *deemed contracts*, and good industry practice;
- (m) enable the *Commission* to refer complaints in relation to the conduct of the participating *Licensee's* business conducted under this licence to the ombudsman;
- (n) require the *Licensee* to bear a fair proportion of the cost of the development, establishment and operation of the ombudsman scheme;
- (o) enable a question as to the fairness of the proportion of the costs which must be borne by a *Licensee* to be decided by the *Commission* on the basis of the *Commission's* opinion of the fairness of the proportion;
- (p) require the ombudsman to report to the *Commission* as and when required by the *Commission* on the operation of the scheme in relation to the industry of which the *Licensee* is part;
- (q) require the ombudsman to publish its decisions and annual reports on the operation of the scheme and the performance of each member of the scheme in relation to the industry of which the *Licensee* is part;
- (r) require the board to conduct periodic and comprehensive reviews of the performance of the scheme in consultation with members, *customer* representatives, the *Commission* and other interested parties; and
- (s) provide for the *Licensee* to withdraw from the scheme subject to:
 - (i) the *Commission* notifying the *Licensee* that it need not comply with clause 16.2;
 - (ii) the *Licensee* providing to the *Commission* 12 months' notice in *writing* of the *Licensee's* intention to withdraw; and
 - (iii) the *Licensee* satisfying the *Commission* that the *Licensee* complies with clause 16.1.

17. SEPARATE ACCOUNTS

The *Licensee* must ensure that separate accounts are prepared for its *retail business*.

18. PROVISION OF INFORMATION TO THE COMMISSION

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.

19. PAYMENT OF LICENCE FEES

- 19.1 The *Licensee* must pay as directed by the *Commission* a licence fee determined in accordance with section 22 of the *Act*.
- 19.2 Insofar as a fee or charge determined by the *Minister* under section 22 of the *Act* in respect of this licence is an annual fee or charge, it must be paid in either four equal instalments on the last days of September, December, March and June in each year or paid in one payment on or before the last day of September in each year and in the manner notified to the *Licensee* by the *Commission*.
- 19.3 The *Licensee* must pay as directed by the *Commission* such other fees and charges in respect of this licence as are determined by the *Minister* in accordance with section 22 of the *Act*.

20. ADMINISTRATOR

- 20.1 If an *administrator* is appointed to the *Licensee's* business under section 34 of the *Act*, the *administrator* must exercise its functions and powers in such a manner as may be specified by the *Commission* in the instrument of appointment.
- 20.2 The *Licensee* is responsible for the acts and defaults of the *administrator*.

21. COMPLIANCE WITH LAWS

The *Licensee* must comply with all applicable laws.

22. VARIATION

This licence may be varied in accordance with section 29 of the *Act*.

23. TRANSFER OF LICENCE

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

24. COMMUNICATIONS

- 24.1 A *communication* must be in *writing*.
- 24.2 A *communication* is to be regarded as having been given by the sender and received by the addressee:
- (a) when delivered in person to the addressee;
 - (b) 3 *business days* after the date of posting, if the *communication* is posted within Australia;
 - (c) 7 *business days* after the date of posting, if the *communication* is posted outside Australia;

- (d) when, according to the sender's transmission report, received by facsimile transmission by the addressee; or
- (e) when it is an electronic *communication*, in accordance with the *Electronic Transactions (Victoria) Act 2000*.

**THE COMMON SEAL of
THE ESSENTIAL SERVICES
COMMISSION**

was affixed pursuant to the
authority of the Commission
on 18 March 2021



KATE SYMONS
Chairperson



SCHEDULE 1 DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this licence:

Act means the *Electricity Industry Act 2000*.

administrator means an administrator appointed by the **Commission** under section 34 of the **Act** in respect of the **Licensee's retail business**.

authorisation means an authorisation, licence, registration, consent, declaration, exemption or waiver.

business day means a day other than a Saturday or Sunday or a public holiday appointed under the *Public Holidays Act 1993*.

Commission means the Essential Services Commission under the *Essential Services Commission Act 2001*.

communication means a notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to or in connection with this licence.

customer, unless the context otherwise permits or requires, means a person who buys or may want to buy electricity from a **retailer** and includes other **retailers**.

deemed contract means a contract for the supply or sale of electricity deemed by the **Act** to have been entered into or to otherwise be in place between a **retailer** and **customer**.

default use of system agreement means the most recent form of agreement submitted to the **Commission** by a **distributor** under clause 4.1 of its **distribution licence** and approved by the **Commission**, as amended (if at all) at the direction of the **Commission** under clause 4.7 of that licence.

distribution area in relation to a **distributor** who holds a **distribution licence**, means the area in which the **distributor** may distribute or supply electricity under the **distribution licence**.

distribution business means a business carried on by a **distributor** under a **distribution licence** or exemption granted under the **Act**.

distribution licence means a licence to distribute or supply electricity granted under the **Act**.

distribution services means the transportation and delivery of electricity through a ***distribution system*** and any other service which a ***distributor*** includes in its network tariff.

distribution system in relation to a ***distributor***, means a system of electric lines (generally at nominal voltage levels of 66 kV or below) which the ***distributor*** uses to distribute or supply electricity.

distributor means a person who holds, or is exempt from holding, a ***distribution licence***.

domestic or small business customer in relation to the ***Licensee*** and a supply of electricity from a ***supply point***, has the same meaning as in any relevant ***order***.

Electricity Customer Metering Code means the code of that name certified by the ***Commission***.

Electricity Customer Transfer Code means the code of that name certified by the ***Commission***.

Electricity Distribution Code means the code of that name certified by the ***Commission***.

Energy Retail Code means the code setting out terms and conditions relevant to contracts for the supply or sale of electricity determined by the ***Commission*** under the ***Act***.

Electricity System Code means the code of that name certified by the ***Commission***.

enforcement order means a provisional or final order made and served by the ***Commission*** under section 53 of the ***Essential Services Commission Act 2001***.

explicit informed consent has the meaning given to that term by any applicable ***guideline***.

General Exemption Order means the exemption ***order*** made under section 17 of the ***Act*** coming into effect on 1 May 2002.

guideline means a guideline published by the ***Commission***.

last resort event in respect of a ***retailer***, means:

- (a) the ***retailer's retail licence*** is suspended or revoked; or
- (b) the right of the ***retailer*** to acquire electricity from the ***wholesale electricity market*** is suspended or terminated,

whichever first occurs.

Licensee means Powerdirect Pty Ltd ABN 28 067 609 803.

Minister means the person who is the Minister for the purposes of the relevant section of the *Act*.

National Electricity Code means the Code approved in accordance with section 6(1) of the National Electricity (Victoria) Law applicable in Victoria as a result of the operation of section 6 of the *National Electricity (Victoria) Act 1997*.

NEMMCO means National Electricity Market Management Company Limited ACN 072 010 327.

NMI means a national metering identifier.

NMI standing data means each of the following in respect of a **NMI**:

- (a) the **NMI** checksum;
- (b) the transmission node identifier;
- (c) the distribution loss factor; and
- (d) the **distributor's** network tariff.
- (e) the **NMI** classification;
- (f) the read cycle date or date of next scheduled meter read (if applicable);
- (g) the characteristic of a parent or a child in an embedded network (if applicable); and
- (h) the responsible **distributor**.

objectives means the objectives specified in section 10 of the *Act* and section 8 of the *Essential Services Commission Act 2001*.

other retailer in respect of a **customer** and a **last resort event**, means the **retailer** which, immediately prior to the occurrence of the **last resort event** in respect of the **retailer**, sold electricity to the **customer**.

order means an Order in Council made or in force under the *Act*.

relevant customer, in relation to a supply of electricity from a **supply point**, has the same meaning as in any relevant **order**.

retail business means the business that a **retailer** carries on under its **retail licence** or exemption granted under the *Act*.

retail licence means a licence to sell electricity granted under the *Act*.

retailer means a person who holds, or is exempt from holding, a **retail licence**.

supply point in relation to the supply of electricity to a person, means the point at which that 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 any other person after leaving that point before being so supplied.

undertaking means an undertaking given by the **Licensee** under section 53(5)(a) of the *Essential Services Commission Act 2001*.

use of system agreement means an agreement between a **retailer** (or other person who has made an application for a **retail licence**) 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**.

VENCorp means Victorian Energy Networks Corporation continued under Part 8 of the *Gas Industry Act 2001*.

wholesale electricity market means the market for wholesale trading in electricity operated by **NEMMCO** under the *National Electricity Code*.

writing includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

2. INTERPRETATION

In this licence, unless the context otherwise requires:

- (a) headings, footnotes and schedule 2 are each 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 a condition, clause, schedule or part is to a condition, clause, schedule or part of this licence;
- (f) a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement;

- (g) a reference to any statute including the *Act* and regulation, proclamation, Order in Council, ordinance or by-law 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;
- (h) 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;
- (i) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (j) other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning;
- (k) a period of time:
 - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
 - (ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and
- (l) 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*.

**SCHEDULE 2
VARIATIONS TO THE LICENCE**

Date	Reason for variation
28 December 2000	To establish the regulatory framework for full retail competition, to reflect changes established by the Electricity Industry Act 2000 and to make other minor amendments.
8 March 2001	To amend the dispute resolution clause to establish the Energy and Water Ombudsman.
6 December 2001	To bring the licence up to date for developments in the full retail competition framework and to make other minor administrative amendments.
29 April 2002	To include the framework for common arrangements for the electronic communication of customer information between distributors and retailers.
31 July 2002	To clarify the retailers' obligation to comply with guidelines published regarding confidentiality and informed consent and inclusion of information about greenhouse gas emissions on customer's bills.
28 February 2005	To make various administrative and substantive amendments following a review by the Commission of electricity generation, distribution and retail licences.
17 March 2021	To reflect a commission decision of 25 October 2017 to insert condition 14.1(b)(5), to standardise licence conditions relating to compliance with the Energy Retail Code. Due to an administrative error, this amendment was not reflected in a signed and sealed version of the licence to Powerdirect Pty Ltd at that time