



GAS RETAIL LICENCE

SANTOS DIRECT PTY LTD
ABN 62 108 846 288

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GAS 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 the conditions set out in this licence, the *Licensee* is licensed to sell gas by retail.
- 2.2 This licence does not authorise the sale of gas from a *supply point* to the following classes of customers:
- (a) *domestic or small business customers*; or
 - (b) *customers* (together with related bodies corporate of that **customer**) whose aggregate supply of gas taken from *supply points* or *ancillary supply points* has been, or is likely to be, less than 100,000 gigajoules in any calendar year.

3. TERM

- 3.1 This licence first had effect on 29 September 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 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. RELIABILITY OF SUPPLY

4.1 Except in relation to a sale of gas where the *customer* rather than the *Licensee* is responsible for arranging *supply*, the *Licensee* must notify the relevant *distributor* or *transmission company* (and *VENCorp* as required) of the *Licensee's* contractual arrangements with the *Licensee's customers* relating to interruption or curtailment of *supply* within 21 *business days* of entering into such arrangements.

4.2 If the *Licensee* is notified by a *distributor* or *transmission company* of any interruption or curtailment of delivery of gas at a *distribution* or transmission delivery point, the *Licensee* must use reasonable endeavours to ensure that its *customers* comply with any reasonable requirement set out in the notice.

4.3 The *Licensee* must comply with *Gas Retail Code* and, as and from 1 January 2005, the *Energy Retail Code*.

5. STATEMENT OF CHARGES

5.1 A statement issued by the *Licensee* to a *customer* requiring payment for gas sold to that *customer* must, if and when the *Commission* considers it reasonable having regard to the cost to the *Licensee*, include as a separate item the total of amounts charged by a *distributor* (if any) and the total amounts charged by a *transmission company* in respect of that *customer* based on the amounts directly attributable to that *customer* or, to the extent that amounts are attributable jointly to that *customer* and another *customer*, based on a fair and reasonable allocation of the amounts.

5.2 Any question as to the fairness and reasonableness of an allocation of an amount referred to in clause 5.1 is to be decided by the *Commission* on the basis of the *Commission's* opinion of the fairness and reasonableness of the allocation.

6. CONFIDENTIALITY

The *Licensee* must comply with any *guideline* concerning the use or disclosure of *personal information* about a *customer*.

7. CO-OPERATION WITH VENCORP

7.1 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*.

7.2 A question as to the reasonableness of a requirement by *VENCorp* for information as contemplated by clause 7.1 is to be decided by the *Commission* on the basis of the *Commission's* opinion of the reasonableness of the requirement.

8. COMPLIANCE WITH ORDERS, CODES AND GUIDELINES

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

- (a) any *order*;
- (b) any *retail rules*;
- (c) the *Gas Distribution System Code*;
- (d) 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*;
- (e) any *guideline* identified as one with which the *Licensee* must comply in section 64(a) of the *Act*;
- (f) any scheme or schemes approved by the *Commission* under sections 62 and 63 of the *Act*;
- (g) 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; and
- (h) if after consultation with *retailers* and representatives of *customers* there is no identified code to which paragraph (g) 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*.

8.2 The *Licensee* must monitor its compliance with this licence and any *order*, code or *guideline* it is required to comply with under clause 8.1.

8.3 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.

9. REGULATORY AUDITS

9.1 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.

9.2 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 9, 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.

10. DISPUTE RESOLUTION

If requested by the *Commission* the *Licensee* must develop, submit to the *Commission* for its approval and implement a scheme for the 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 *retail business* generally.

11. SEPARATE ACCOUNTS

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

12. 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.

13. PAYMENT OF LICENCE FEES

- 13.1 The *Licensee* must pay as directed by the *Commission* a licence fee determined in accordance with section 30 of the *Act*.
- 13.2 Insofar as a fee or charge determined by the *Minister* under section 30 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 financial year or paid in one payment on or before the last day of September in each financial year and in the manner notified to the *Licensee* by the *Commission*.
- 13.3 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 30 of the *Act*.

14. ADMINISTRATOR

- 14.1 If an *administrator* is appointed to the *Licensee's* business under section 41 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.

14.2 The *Licensee* is responsible for the acts and defaults of the *administrator*.

15. COMPLIANCE WITH LAWS

The *Licensee* must comply with all applicable laws (including the *Act* and *gas safety obligations*).

16. VARIATION

This licence may be varied in accordance with section 38 of the *Act*.

17. TRANSFER OF LICENCE

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

18. COMMUNICATIONS

18.1 A *communication* must be in *writing*.

18.2 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 29 September 2004

JOHN C. TAMBLYN
Chairman

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

1. DEFINITIONS

In this licence:

Act means the *Gas Industry Act 2001*.

administrator means an administrator appointed by the *Commission* under section 41 of the *Act* in respect of the *Licensee's retail business*.

ancillary supply point has the meaning given to that term by the *Gas Industry (Residual Provisions) Act 1994*.

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 gas from a *retailer* and includes other *retailers*.

distribution licence means a licence to provide services by means of a *distribution pipeline* granted under the *Act*.

distribution pipeline has the meaning given to that term by the *Act*.

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 gas from a *supply point*, has the same meaning as in any relevant *order*.

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

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

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

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

gas safety obligations means any obligation of the *Licensee* arising under or in relation to the *Gas Safety Act* 1997 or regulations made under that Act.

guideline means a guideline published by the *Commission*.

Licensee means Santos Direct Pty Ltd ABN 62 108 846 288.

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

MSO Rules has the meaning given to that term by the *Act*.

objectives means the objectives specified in section 18 of the *Act* and section 8 of the *Essential Services Commission Act* 2001.

order means an Order in Council made or in force under the *Act* or the *Essential Services Commission Act* 2001.

personal information means information or opinion which constitutes “personal information” under the *Privacy Act* 1988 (Cth) or would constitute personal information if the term “individual” as used in that Act extended to any type of *customer*, including a body corporate.

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 gas by retail granted under the *Act*.

retail rules means the relevant retail gas market rules (as defined in Division 2 of Part 4 of the *Act*) applicable to *supply points* in respect of which the *Licensee* sells gas.

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

supply point has the meaning given to that term by the *Gas Industry (Residual Provisions) Act* 1994.

transmission company means a gas transmission company within the meaning of the *Act*.

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

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

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:
 - (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; 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**

This licence which was originally issued on 29 September 2004 has been varied by the following: