

Small Customer Terms and Conditions (Market Contract) Retail Supply of Electricity



Diamond Energy Pty Ltd ABN 97 107 516 334 of 101 Greville Street, Prahran VIC 3181 (“us” or “we” or “our”) and the Customer specified in the Retail Supply Agreement (“you” or “your”) enter into an Agreement on the following terms and conditions:

1. Your Agreement with Us

- 1.1 Your Agreement with us consists of these terms and conditions, the Retail Supply Agreement and any offer, product and discount information which is stated by us to be included into the Agreement.
- 1.2 This Agreement sets out the terms on which we will sell electricity and other products to you, your payment and other obligations related to the sale of electricity and other products and services used to deliver electricity and other products to your Supply Address.
- 1.3 If any matter that is required to be included in this Agreement by an Applicable Regulation is not expressly dealt with in this Agreement, the Applicable Regulation is included as if it were a term of this Agreement.
- 1.4 If you require a copy of this Agreement or any document included by reference in it, we will send it to you after receiving your request.
- 1.5 This Agreement applies to the Residential Customer or Small Business Customer in which the Account Representative is authorized to enter into a Retail Supply Agreement.
- 1.6 If there is a discrepancy between the additional terms and conditions in the Retail Supply Agreement and these terms and conditions, the terms and conditions in the Retail Supply Agreement will take precedence.
- 1.7 If your Supply Address includes an eligible Energy Generation Facility as defined in these terms, Schedule A *Feed-in Terms & Conditions* will also apply.

2. Commencement of Your Agreement with Us

- 2.1 Your Agreement with us begins on the date you accept the Retail Supply Agreement. However, our Agreement obligations with you begin on the Commencement Date.
- 2.2 Your acceptance of this agreement may be in writing, by email, by online sign-up or verbally.
- 2.3 The Agreement will begin on the Commencement Date.
- 2.4 We may reject or cancel the Agreement at any time before the Commencement Date.
- 2.5 In accepting the Retail Supply Agreement you acknowledge that you have read and understand the Agreement and are giving your explicit informed consent to the commencement of the Agreement.
- 2.6 This Agreement ends at the end of the Agreement Term and if there is no further Agreement entered into by you, we will continue to supply you as per these terms and conditions.

3. Cancellation by You during the Cooling Off Period

- 3.1 You have the right to cancel this Agreement during a Cooling Off Period of 10 business days at no cost, even though you have accepted the Agreement. You can exercise this right by notifying us in writing, by email or verbally.
- 3.2 The Cooling Off Period starts from the later of:
 - (i) the day after you receive the details of the Agreement, and
 - (ii) the day after you accept the Agreement.
- 3.3 You will be taken to have given notice of cancellation by the end of the Cooling Off Period if by then you have posted the notice to us.

4. Cancellation by You after the Cooling Off Period

- 4.1 If you cancel the Agreement after the Cooling Off Period, and you are remaining at the Supply Address, you must give us notice as per the Applicable Regulations.
- 4.2 If you cancel the Agreement after the Cooling Off Period, and you are leaving the Supply Address, you must give us at least 3 Business Days notice.

5. Prior to Commencement of Your Agreement with Us

- 5.1 If you request us to connect you at your Supply Address you must enter an Agreement with us for the Supply Address.
- 5.2 If you have any outstanding debt owed to us relating to a previous Supply Address, outstanding payments must be made, or an agreed payment plan must be in place before we accept your request to connect at your Supply Address.
- 5.3 You must also pay any applicable connection related charges with your request to connect which we may charge you under the Applicable Regulations.
- 5.4 If you are entering into this Agreement, and we are not currently the electricity retailer responsible for your Supply Address, we will arrange for a retail transfer from your existing electricity retailer to us, and you agree to us taking all necessary steps to effect the transfer.
- 5.5 You also agree that we have the right to stop the transfer process and cancel this Agreement for any reason without penalty at any time before it is completed, including where:
 - (i) the transfer process is delayed and does not occur on your next scheduled meter read or the date we schedule a special meter read or meter changeover or meter reprogramming with you; or
 - (ii) during the course of the transfer process we form a view that you have not satisfied our credit requirements or you have failed to provide a Security Deposit that we have requested; or
 - (iii) you have failed to provide us with information that we have requested; or
 - (iv) any information you provide in the Retail Supply Agreement is incorrect.

6. Your Credit Assessment and Credit Worthiness

- 6.1 You consent to us to collect your credit information from you or from third parties, including from credit reporting bodies and other credit providers, in order to assist us in determining whether we will sell electricity and other products to you.
- 6.2 The type of credit information that we collect about you includes your name, address and contact details, your gender and date of birth, your credit history (including any repayments or late repayments you have made), any credit you have sought or obtained from other credit providers, any credit score that a credit reporting body can provide to us and details of any credit-related court proceedings or insolvency applications that relate to you.
- 6.3 You consent us to use and disclose your credit information as permitted by Part IIIA of the *Privacy Act 1988 (Cth)* and the Privacy (Credit Reporting) Code and for the purposes of perform our business functions. These purposes include:
 - (i) using your credit related information to assess an application for credit made by you to us;

- (ii) using your credit related information to collect payments that you owe us;
 - (iii) using your credit related information to assist us with developing payment plan or invoice smoothing options for you;
 - (iv) disclosing your credit related information to credit reporting bodies or other third parties, such as debt collectors, credit management agencies and our agents and other third parties which provide credit related services (such as processing applications for credit made to us);
 - (v) disclosing your credit related information to other energy providers which provide, or considering providing, credit to you;
 - (vi) disclosing your credit related information to a third party that you or we request act as a guarantor in relation to any credit provided to you;
 - (vii) using and disclosing credit related information that we hold about you in relation to any corrections that you request to us, a credit reporting provider or another credit provider;
 - (viii) using and disclosing credit related information that we hold about you in relation to any complaint that you make, whether to us, a regulator or any provider of a recognised external dispute resolution scheme;
 - (ix) using and disclosing credit related information that we hold about you as required by law or order of a court or tribunal; and
 - (x) where you otherwise expressly consent to the use or disclosure of credit related information.
- 6.4 As a result of this assessment we may request a Security Deposit. If we have requested a Security Deposit and you have refused, we may reject or cancel this Agreement.
- 6.5 Where you are applying for commercial credit you agree we may obtain a consumer credit report from a credit reporting agency containing information about you for the purpose of assessing your application.
- 7. Our Offer to You**
- 7.1 Our offer to you is based on the available information and assumptions about your Distributor, network tariff and metering configuration. If we subsequently determine that the information was incorrect we will advise you of the updated Charges that apply where applicable.
- 7.2 We may revise and/or completely withdraw our offer to you at any time where it is not fully completed, accepted by you and/or returned to us.
- 7.3 A Commission may be paid to us for the introduction of your business.
- 8. Our Charges to You**
- 8.1 The Charges for the supply of electricity and other products are set out in the Retail Supply Agreement and any offer and product information which is stated by us to be included in the Agreement at the Supply Address and will be based on your measured or estimated consumption of electricity during your Invoicing Period, in accordance with the Applicable Regulations.
- 8.2 Where stated, consumption, export or kWh based thresholds are prorated for the defined period. Any unused consumption, export or kWh based threshold amounts are not carried forward to future periods.
- 8.3 Where stated, controlled load Charges apply to customers with separately metered devices generally such as storage water heaters or thermal storage space heaters – with eligibility and hours of operation as determined by your Distributor.
- 8.4 The Charges will include any charges that your Distributor imposes on us in relation to services performed by your Distributor (or any other person) at your Supply Address, including a disconnection fee, reconnection fee, metering fee, metering upgrade fee, meter reprogramming fee and special meter reading fee. These charges are set by your Distributor and are included on our Service Fees and Charges summary on our website.
- 8.5 The Charges will include any further metering related charges incurred, including meter changeover by a certified meter provider nominated by us.
- 8.6 We may also require you to pay any reasonable costs that we incur as a result of arranging network, connection or metering services for you. These costs are in addition to any Charges that you are required to pay for those services.
- 8.7 The Charges will include any taxes, imposts, levies, regulated charges, costs, fees and charges that we have to pay (directly or indirectly) when we sell and supply electricity and other products to you.
- 8.8 The Charges will include any additional charges that may relate to an Energy Generation Facility at the Supply Address as per Schedule A (if also applicable).
- 8.9 The following additional Charges may also apply:
- (i) **Credit Card Payment Processing Fee** – a surcharge may apply if you choose to pay by Mastercard or Visa or other payment method where we incur a merchant services fee;
 - (ii) **Late Payment Fee** – a fee may apply for each Invoice paid after the Due Date;
 - (iii) **Establishment Fee** – a fee may apply if you transfer to us from another electricity retailer. Unless otherwise included in Retail Supply Agreement, this will be included in the first Invoice issued to you;
 - (iv) **Dishonoured Payment Fee** – we may recover the amount of any dishonoured payment fee from you and we may recover any additional costs we incur in the administration of the dishonoured payment; and
 - (v) **Payment Processing Fee** – an additional fee may apply if you choose to pay your Invoice by a payment method or if you choose to pay your Invoice over the counter in person at a third party retailer or outlet or via PostInvoicePay.
- 8.10 If Charges apply at the time we enter into this Agreement with you, the Charges will be set out in your Agreement and in our Service Fees and Charges summary on our website.
- 9. When we may vary Charges and discounts**
- 9.1 Unless stated otherwise in your Agreement, we may vary the Charges (including the amount, nature and structure of any of the Charges) by notifying you in accordance with the Applicable Regulations.
- 9.2 Unless stated otherwise in your Agreement, we may vary any applicable discounts by notifying you. If the metering device at your Supply Address is changed from one which measures electricity on one basis to another basis, we may vary your Charges, including the amount, nature and structure of any of the charges.

- 9.3 If the Charges are based on or linked to an amount prescribed under any Applicable Regulations and the Applicable Regulations are amended, we may vary the basis upon which the Charges are calculated in a manner consistent with that amendment.
- 9.4 If an Invoice is issued for an Invoicing Period in which there is an increase in the Charges, then the Charges for electricity and other products supplied during the period will be calculated in accordance with any Applicable Regulations.
- 10. Our Invoice to You**
- 10.1 Our Invoice will contain (amongst other things), the following:
- (i) the National Metering Identifier (“NMI”) for your electricity supply point;
 - (ii) your relevant Charges;
 - (iii) the amount you have to pay;
 - (iv) your payment options;
 - (v) the Due Date;
 - (vi) contact numbers you can use to make enquiries and report faults; and
 - (vii) charges for other products provided by us under this Agreement as a separate item in your Invoice.
- 10.2 We will measure your metered consumption of electricity at the intervals set down in the Applicable Regulations (in NSW, this will be at least once every six months). We will reconcile any amount paid by you with the consumption measured.
- 10.3 In general, if you have an interval meter, all times will be Australian Eastern Standard Time (otherwise Australian Central Standard Time in SA) and daylight savings time will apply, if relevant. If you have a basic meter, times will be set by your meter provider. Please note specific customers may have alternate time basis as set by your meter provider.
- 10.4 In general, if you are a Residential Customer we will invoice you quarterly and if you are a Small Business Customer we will invoice you monthly, unless stated otherwise in this Agreement or if your Distributors meter reading cycle dictates otherwise.
- 10.5 We will issue an Invoice to you by email to your nominated email address or to your Supply Address or to another nominated postal address in accordance with the Applicable Regulations.
- 10.6 We may change the Invoicing Period by notice to you, so long as it is no less than once a month and complies with the Applicable Regulations.
- 10.7 If you require a meter changeover or meter reprogramming, your initial Invoices may be delayed due to delays in us receiving meter data and/or payments from your Distributor.
- 10.8 Unless stated in your Agreement or otherwise agreed in writing with you, if the amount payable included in your Invoice in any Invoicing Period is in credit, and:
- (i) If you have a Direct Debit Agreement in place which includes a nominated bank account, the credit will be paid automatically to your nominated bank account on or close to the Due Date at no charge; or
 - (ii) you can contact us to arrange for the credit balance to be paid to you by a mutually agreed means. Fees may apply for payments made under this option, which we will notify you of before processing your request; or
 - (iii) the credit amount will be carried forward to the next Invoicing Period and will offset electricity and any other charges incurred in that Invoicing Period.
- 10.9 Upon cancellation, end or termination, any amount payable that is in credit remaining on your final Invoice, after allowing for payment of any remaining fees and charges as per your Agreement will be paid in accordance with Clause 10.8 (i) or (ii) regardless of the excess credit amount.
- 10.10 No interest is payable by us on credit amounts.
- 11. Your Payments to Us**
- 11.1 You must pay each Invoice in full by the Due Date included in the Invoice. If for whatever reason you cannot pay by the Due Date, you must advise us as soon as possible. We have a range of payment plans and invoice smoothing options that may assist you if you are experiencing payment difficulties which we can explain.
- 11.2 If you fail to pay the Invoice in full, including all the Charges on the Invoice, by the Due Date (unless the Invoice is under review) we may, in accordance with the Applicable Regulations, do one or more of the following:
- (i) apply any Security Deposit we hold in relation to this Agreement towards payment of the Invoice; or
 - (ii) disconnect or discontinue your supply under this Agreement after following procedures specified by the Applicable Regulations (please refer to Clause 17); or
 - (iii) refer your Invoice for collection by a debt collection agency; or
 - (iv) charge you a fee covering our reasonable costs of recovering any outstanding amount from you where we are not prohibited by Applicable Regulations from doing so.
- 11.3 Unless we make a different agreement with you in accordance with the Applicable Regulations, you can pay your Invoice by any of the payment options listed on your Invoice.
- 11.4 If your payment is dishonoured or reversed, which results in us incurring a fee, we may recover the amount of that fee from you and we may recover any additional costs we incur as a Dishonoured Payment Fee, unless we are prohibited from doing so by the Applicable Regulations.
- 11.5 If you request us to do so, we will accept payment in advance for the supply and sale of electricity and other products under this Agreement.
- 11.6 There are payment options available to you if you are suffering certain financial difficulties, including payment plans, invoice smoothing and government energy assistance schemes. If you are experiencing financial difficulty you should let us know.
- 11.7 If you request us to do so, we may provide you with estimated Invoices under an invoice smoothing arrangement.
- 11.8 If you are a Small Business Customer, we may charge you interest on a late payment where it is not prohibited by Applicable Regulations.
- 12. Over or Under Charges**
- 12.1 On request we will review your Invoice. When we are reviewing your Invoice, you must pay by the Due Date the portion of that Invoice that is not in dispute or an amount equal to the average amount of your Invoices in the previous 12 months (whichever is lower) pro-rated for the billing period, and any future Invoices that become due.

- 12.2 You may request to have your meter tested during the review. Unless your Supply Address is in Victoria, we may request that you pay in advance the costs for testing the meter. If you do not pay for the testing of your meter in advance we are not required to test the meter. If the meter or metering data is found to be faulty or incorrect we will refund any amount paid in advance (or set this off against any amount of the Invoice that is still outstanding) and you are not liable to pay the cost of testing. If your Supply Address is in Victoria and we test the meter and find it complies with the Applicable Regulations, you must pay the cost of the meter test.
- 12.3 If the Invoice under review is correct, you must pay the unpaid amount still outstanding. If the Invoice under review is incorrect, we will correct the Invoice and repay any amount overcharged.
- 12.4 We will not pay you interest for overcharged amounts unless required by the Applicable Regulations.
- 12.5 If you have been overcharged as a result of your unlawful act or omission, we will only repay, credit or refund to you the amount you were overcharged in the 12 months before the error was discovered.
- 12.6 If you were undercharged or not charged, we will only seek to recover from you amounts undercharged in the nine months prior to notifying you of the undercharge. If your Supply Address is in Victoria, this period may be 12 months in limited circumstances.
- 12.7 In the event that you are not, or you cease to be, a Residential Customer or Small Business Customer, then from the time you cease to be a Residential Customer or Small Business Customer, or from the date electricity supply starts under this Agreement (if you were not a Residential Customer or Small Business Customer at any time during the Agreement Term) we may seek to recover any amount undercharged or not charged from you without any time limit. If we do so, this will not otherwise affect our rights under this Agreement (including our right to terminate the Agreement) or affect our ability to choose to continue to supply you with electricity under this Agreement notwithstanding that you are not a Residential Customer or Small Business Customer.
- 13. Moving In or Moving Out by You**
- 13.1 If you intend to move from your Supply Address, you must give us at least 3 Business Days notice of the date when you intend to vacate, and give us a forwarding address where we can send you a final Invoice (except for electricity supply in New South Wales, in which case you must give us at least 72 hours' notice). When we receive the notice, we will use our best endeavours to ensure that the meter is read at a date and time agreed with you (or as soon as possible after that date if you do not provide access to your meter on that date).
- 13.2 If you notify us that you are vacating your Supply Address, then this Agreement will end when your site is de-energised or transferred to another electricity retailer. However your obligations under this Agreement continue until you make full payment of any outstanding amounts owing.
- 13.3 If you do not provide the required notice, or if you do not provide access to your meter, you will be liable for all charges in relation to the electricity sale and supply to your Supply Address that relate to the quantity of electricity consumed at your Supply Address and other products, until:
- (i) we become aware that you have vacated your Supply Address and your meter has been read;
 - (ii) you give us the required notice and provide safe access to your meter;
 - (iii) the electricity supply is discontinued or transferred; or
 - (iv) we enter into an Agreement in relation to the Supply Address.
- 14. Your Obligations to Us**
- 14.1 The title and risk in the electricity supplied to you under this Agreement will pass to you at the point of connection with your Supply Address.
- 14.2 Subject to the Applicable Regulations, you indemnify us:
- (i) against any liability arising out of the use of electricity supplied under this Agreement after risk in the electricity has passed to you; or
 - (ii) where we have suffered any loss or damage arising as a result of your failure to comply with this Agreement or your negligence in respect of this Agreement but only to the extent that we would otherwise have been able to recover against you for your breach of this Agreement or negligence under the principles applied by the courts. However, you are not liable to us for any loss or damage to the extent that it is caused by us (for example through our negligence or breach of this Agreement).
- 14.3 You, as our customer, and we, as your electricity retailer, must comply with the Applicable Regulations and any other relevant code or law that applies to the supply and sale of electricity, and other goods or services, to you.
- 14.4 You agree to give us (and our representatives and your Distributor and any meter provider nominated by us) safe, convenient and unhindered access to the meter at the Supply Address to read it and for connection, disconnection and reconnection purposes. If you do not give us (or our representatives or the Distributor or our nominated meter provider) such access to the meter and we estimate your electricity consumption, we may charge you an additional amount if you later request an Invoice based on an actual reading of the meter.
- 14.5 You must co-operate with any reasonable requests that your Distributor makes of you, and allow your Distributor to enforce its rights under the Applicable Regulations.
- 14.6 You must take reasonable steps to mitigate the extent of any loss or damage you suffer as a result of the provision of electricity under this Agreement (except in Victoria, where this only applies if you are a Small Business Customer).
- 14.7 You must inform us of any relevant change in your contact details as soon as possible after the change occurs.
- 15. Continuity of Supply to Your Supply Address**
- 15.1 We are an electricity retailer and have no control over production, generation or distribution of electricity.
- 15.2 Where this Agreement refers to us supplying you with electricity or connecting your Supply Address, it is a reference to us arranging for that supply or connection by your Distributor.
- 15.3 Your Distributor will supply and connect your Supply Address and is responsible for the physical delivery, quality or reliability of electricity supplied to your Supply Address. This means that:
- (i) we make no promises or assurances about the quality and reliability of your electricity supply. These are

subject to a variety of factors that are beyond our control as your electricity retailer, including accidents, emergencies, weather conditions, vandalism, system demand, the technical limitations of the distribution system and the acts of other persons (such as your Distributor), including at the direction of a relevant authority; and

- (ii) to the extent permitted by law, we give no condition, warranty or undertaking, and we make no representation to you, about the condition or suitability of electricity, its quality, fitness for purpose or safety, other than those set out in this contract.

15.4 Without limiting our rights under this Agreement you agree we may disconnect, curtail, interrupt or reduce the electricity delivered to your Supply Address:

- (i) if required by your Distributor;
- (ii) if required for the performance of any aspect of this Agreement;
- (iii) in an emergency or for safety reasons;
- (iv) for inspections, maintenance, or testing;
- (v) at the direction or request of a regulatory body; or
- (vi) for a reason specified in Applicable Regulations.

15.5 You also acknowledge that you may not receive electricity as a result of events beyond our control. These include:

- (i) your Distributor or another party interrupting supply to your Supply Address;
- (ii) a failure in the equipment used to supply you with electricity; and
- (iii) there not being enough electricity available to supply to you.

15.6 This Agreement does not vary or exclude the operation of the Applicable Regulations.

16. Force Majeure Event

16.1 If, as a result of a Force Majeure Event, either you or we would be in breach of this Agreement then your or our obligations under this Agreement are suspended to the extent that they are affected by the Force Majeure Event, except that both we and you must comply with our obligations in the Applicable Regulations. This applies for as long as the Force Majeure Event continues.

16.2 The party affected by a Force Majeure Event must give the other party prompt notice of the Force Majeure Event, including full information about the Force Majeure Event, an estimate of its likely duration, the obligations affected by it, the extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.

16.3 A person claiming a Force Majeure Event must use their best endeavours to remove, overcome or minimise the effects of the Force Majeure Event as quickly as possible. This does not require either of us to settle any industrial dispute in any way we do not want to.

17. Disconnection by Us

17.1 Subject to the Applicable Regulations and Clause 17.2, we may disconnect your electricity supply in the circumstances permitted by the Applicable Regulations or the following circumstances:

- (i) on your request; or
- (ii) if you fail to pay Charges on your Invoice related to the sale of electricity or other products by the Due Date

and we have followed any procedures required by the Applicable Regulations; or

- (iii) if you have denied us, or an authorised agent, access to your Supply Address in accordance with the Applicable Regulations for three consecutive meter readings, or where you are not the owner of the premises, have not taken all reasonable steps to ensure the owner or other person responsible for the premises allows access; or
- (iv) if you have refused to provide a Security Deposit when we have requested you to do so in accordance with the Applicable Regulations; or
- (v) if you have used electricity at the Supply Address fraudulently, or intentionally consumed electricity at the Supply Address otherwise than in accordance with electricity laws;
- (vi) if you have not agreed to an offer of a payment plan or other payment option when we have required you to do so in accordance with Applicable Regulations; or
- (vii) if, as per our residential customer hardship policy, you are a Residential Customer in our customer hardship programme and have ceased participating.

We will only disconnect your electricity supply in the circumstances permitted by the Applicable Regulations and after we have followed any procedures set out in the Applicable Regulations.

17.2 Except as permitted by the Applicable Regulations, we will not disconnect you while:

- (i) any application made by you for assistance under any Government funded rebate or relief scheme that is available to you is pending; or
- (ii) any application made by you to us for assistance under any payment plan that is available to you and operated by us is pending; or
- (iii) you are participating in our residential customer hardship program and you continue to demonstrate commitment and adhering to the agreed payment plan as per our residential customer hardship policy and the Applicable Regulations; or
- (iv) you have made a complaint, directly related to the reason for the proposed disconnection, to us under our standard complaints and dispute resolution procedures, or to the energy ombudsman in your state, and the complaint remains unresolved; or
- (v) any life support system that relies on electricity for its operation is in use at your premises.

17.3 There are restrictions on disconnecting you if you are suffering certain financial difficulties. If you are experiencing financial difficulty you should always let us know. In this circumstance, we will reconnect you in accordance with the Applicable Regulations.

18. End and extension of Your Agreement with Us

18.1 Subject to the Applicable Regulations, we can end this Agreement after the Commencement Date, if:

- (i) 10 Business Days after you have been disconnected by us in accordance with Applicable Regulations and you do not have a right to be reconnected;
- (ii) a different electricity retailer has become financially responsible in the wholesale market to pay for electricity used at the Supply Address; or

- (iii) another person commences to be supplied with electricity at the same Supply Address with us or with another supplier; or
 - (iv) you cease to be, or are likely to cease being, a Residential or Small Business Customer.
- 18.2 This Agreement ends at the end of the Agreement Term and if there is no further Agreement entered into by you, we will continue to supply you as per these terms and conditions. We may vary your Agreement, including the Charges, in accordance with the provisions of our Agreement in those circumstances.
- 18.3 If you accept another agreement to buy electricity and other products from us, you will be taken to have given us notice that you wish to end this Agreement on the date that your new agreement commences and any relevant Cooling Off Period has expired.
- 18.4 If a different electricity retailer has become financially responsible in the wholesale market to pay for electricity used at your Supply Address, and your Supply Address includes an eligible Energy Generation Facility with related Charges that apply to you for the Energy Generation Facility, your obligations in Clauses 8 – 14, Clause 16 and Clauses 18 – 29 of these terms and conditions continue for the term of your Feed-in Agreement.
- 18.5 When this Agreement ends, you are still required to make any outstanding payments to us and we have no further obligation to sell electricity and other products or other services to you under this Agreement.
- 18.6 This Agreement will end if we are no longer entitled to sell electricity due to a Last Resort Event (where applicable). Upon the occurrence of a Last Resort Event, we will provide specified customer details to the retailer of last resort within the period prescribed by the Applicable Regulations.
- 19. Warranties**
- 19.1 To the fullest extent permitted by law, all warranties implied by common law or statute are excluded from this Agreement. You have non-excludable rights under the Australian Consumer Law as a consumer of the electricity we provide to you. If any part of this Agreement is unlawful, unenforceable or invalid, that part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- 20. Laws Applicable to this Agreement**
- 20.1 This Agreement is governed by the laws in force in the State or Territory of your Supply Address. You agree to submit to the non-exclusive jurisdiction of the courts in the State or Territory of your Supply Address.
- 21. Change in Law**
- 21.1 This Agreement is subject to change as a result of any change in any of the Applicable Regulations. If in our reasonable view any change in the Applicable Regulations materially alters either Party's rights, entitlements or obligations under this Agreement, we may amend this Agreement to take into account such changes by written notice to you.
- 21.2 You give your explicit informed consent that we may modify this Agreement in accordance with this Clause 21.
- 22. Variations to Your Agreement**
- 22.1 Unless stated otherwise in your Agreement, we may vary the terms and conditions from time to time and notify you in accordance with the Applicable Regulation(s). Any variations to the terms and conditions shall commence from the date the amendments are communicated to you.
- 22.2 If amendments to the Agreement are reasonably required due to change in any applicable laws, regulations or codes, then we may make such amendments, which shall commence from the date the amendments are communicated to you.
- 22.3 No variation of the provisions of the Agreement shall be expressed or inferred from a course of dealing.
- 23. Assignment or transfer of Your Agreement**
- 23.1 You may not assign, transfer or novate this Agreement without our consent.
- 23.2 We may also assign, transfer or novate this Agreement, and/or transfer you as a customer, to any third party with your consent.
- 23.3 The Agreement is only in respect of sale to the Supply Address, and is not transferable to a new supply address.
- 23.4 If you are moving to a new supply address you must end this Agreement. We would be pleased to make you an offer to sell electricity to any new supply address, although the Charges included in that offer may differ from those under this Agreement.
- 23.5 If we are no longer entitled to sell electricity due to a Last Resort Event (where applicable) you will be transferred to a Retailer of Last Resort.
- 24. Goods and Services Tax Application**
- 24.1 Notwithstanding any other provision in this Agreement if the Supplier is or becomes liable to pay GST in connection with any Supply:
- (i) the Recipient must pay to the Supplier, in addition to the consideration for that, an additional amount equal to the amount of that GST;
 - (ii) the Recipient must pay the Agreement Price plus the additional amount of account of GST within 14 days of receiving a tax invoice from the Supplier for that Supply or as otherwise provided in this Agreement;
 - (iii) If the GST payable in relation to a Supply made under or in connection with this Agreement varies from the additional amount paid or payable by the Recipient under paragraph (a) such that a further amount of GST is payable in relation to the Supply or a refund or credit of GST is obtained in relation to the Supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under paragraph (a). If an adjustment event occurs in relation to a Supply, the Supplier must issue an adjustment note to the Recipient in relation to that Supply within 14 days after becoming aware of the adjustment;
 - (iv) where a party reimburses the other party for an expense or other amount incurred in connection with any wholly or partly creditable acquisition or any wholly or partly creditable importation made by that other party, the amount reimbursed shall be net of any input tax credit claimable in respect of that acquisition or importation (as the case may be).

24.2 In this Clause:

- (i) Agreement Price means the consideration to be provided under this Agreement for the Supply (other than under this Clause).
- (ii) Recipient means the party that receives the Supply from the Supplier.
- (iii) Supplier means the party that provides the Supply to the Recipient and includes the representative member of the GST Group if the Supplier is a member of a GST Group.
- (iv) Supply means any supply to the Recipient by the Supplier pursuant to this Agreement. However, if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply will be attributable, such part of the supply will be treated as a separate supply for the purposes of this Clause.
- (v) All italicized and emboldened terms in this Clause have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and in the GST law.

25. Privacy of Your Information

25.1 As per our privacy policy, we:

- (i) collect, use, hold and disclose your personal, credit related and confidential information (including metering data) where it is required under the Applicable Regulations and in order to provide you with our products and services under this Agreement with you.
- (ii) may disclose this information to third parties in the conduct of our business;
- (iii) may also collect sensitive information about you or third parties (for example if you notify us that life support equipment is used at your Supply Address).

25.2 If you do not provide the information we request, we may not be able to provide our products or services to you.

25.3 If you provide us with personal information about another person (such as a Secondary Representative), please make sure you inform them that their information has been provided to us and make them aware of our privacy policy.

25.4 Our privacy policy also includes our credit reporting policy and explains the type of credit information we collect and how we may use and disclose your credit information.

25.5 You understand that in the course of doing business, we may elect to disclose your credit information to a third party such as a credit reporting agency which may lead to changes in your credit history.

25.6 You can access our privacy policy on our website or contact us to request a copy to be sent to you.

26. Notices

26.1 Unless the Applicable Regulations contemplate notice being provided in a different manner, a notice given by us under or in connection with this Agreement will be in writing and given to you:

- (i) personally, by email or fax; or
- (ii) by post, addressed to your Supply Address or any other address you nominate from time to time.

26.2 The notice will be taken to be received by you:

- (i) by e-mail if you have provided us with an email address; or
- (ii) by fax if you have provided us with a fax address; or
- (iii) on the third Business Day after the date of posting to that address.

27. General provisions

27.1 This Agreement represents the entire agreement between us and you and supersedes all prior arrangements or understandings.

27.2 If any term or Clause of your Agreement is or becomes invalid or unenforceable, then the other terms remain valid and unaffected and will continue for the duration of your Agreement.

27.3 If we do not exercise or enforce any right or power under your Agreement, that failure will not amount to a waiver of that right or power. Any delay in doing so, will also not amount to a waiver of that right or power.

28. Interpretation

28.1 A reference to:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) a person includes a firm, an unincorporated association, a government agency or body corporate;
- (iii) any Applicable Regulation is to that as amended, re-enacted, extended, consolidated, or replaced, including any subordinate legislation issued in relation to that Applicable Regulation;
- (iv) a Clause is a Clause of your Agreement unless otherwise specified;
- (v) a government agency includes a government agency to which the functions of a former government agency are or have been allotted or assumed;
- (vi) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (vii) a monetary amount is to Australian dollars, unless otherwise stated;
- (viii) if a party consists of more than one person, your Agreement binds each person separately and any two or more of them jointly;
- (ix) an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly;
- (x) 'including' and similar expressions are not words of limitation; and
- (xi) headings are for convenience only and do not form part of these terms and conditions or affect its interpretation.

29. Feedback or Complaints by You

29.1 If you have an enquiry, complaint or dispute relating to our service or your Invoice, including relating to any electricity marketing activity conducted on our behalf, you can contact us and we will investigate your concerns.

29.2 We will handle your complaint in accordance with our complaints handling procedures which are available on our website or can be provided to you upon request.

29.3 We will inform you of the outcome of the investigation of any complaint.

29.4 If you still believe that your complaint has not been satisfactorily resolved, you can contact the energy and water ombudsman in each state:

- (i) for customers in **New South Wales**: New South Wales Energy and Water Ombudsman on 1800 246 545 or at www.ewon.com.au
- (ii) for customers in **South Australia**: the South Australian Energy Industry Ombudsman on 1800 665 565 or at www.ewosa.com.au
- (iii) for customers in **Queensland**: the Queensland Energy Ombudsman on 1800 662 837 or at www.ewoq.com.au
- (iv) for customers in **Victoria**: the Victorian Energy and Water Ombudsman on 1800 500 509 or at www.ewov.com.au

30. Efficient energy consumption

30.1 You can access information on our website about efficient energy consumption and smart energy tips.

31. Definitions

Account Representative means the person that is authorised to enter into the Agreement at the Supply Address or make changes to the details of the account with us.

Agreement means the Retail Supply Agreement, Small Customer Terms and Conditions and any offer and product information which is stated by us to represent the complete arrangement between us and the Residential Customer or Small Business Customer.

Agreement Term means the period of this Agreement as set out in the Agreement, or if no period is set out in the Agreement, the period ending when this Agreement is ended by one of the parties to it.

Applicable Regulation(s) means any act, regulation, code, guideline, order-in-council, ordinance, by-law or rule, proclamation, or standard that applies to the generation, transmission, distribution and sale of electricity on the NEM, specifically including:

- (i) In New South Wales, the ACT, Queensland, and South Australia, the National Energy Retail Law, the National Energy Retail Rules, the Electricity Retail Code published by the ACCC, the Australian Consumer Law, the Privacy Act 1988 (Cth) and the Privacy (Credit Reporting) Code;
- (ii) in Victoria, the Energy Retail Code, the Electricity Industry Act (2000) (Vic), the National Electricity (Vic) Act 2005, Electricity Industry Amendment (Premium Solar Feed-in Tariff) Act 2009, Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Act 2011,

Bill means the same as Invoice.

Billing Period means the same as Invoicing Period.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in the State or Territory in which your Supply Address is located.

Charges means the charges, rates, fees, surcharges and other amounts payable by you under this Agreement, including those described in these terms and conditions, the Retail Supply Agreement, the Service Fees and Charges summary or passed through as contemplated by this Agreement.

Commencement Date is the date on which all of the following conditions precedence have been satisfied:

- (i) you have accepted the Agreement with us and you have provided your explicit informed consent;
- (ii) the expiry of any Cooling Off Period applying to this Agreement;
- (iii) you have provided us with any Security Deposit we have asked for;
- (iv) if you are transferring from another electricity retailer, your supply address has been transferred to us; and
- (v) if you are establishing a new connection to your Supply Address, your Supply Address has been connected.

Commission means a contribution, payment, fee or other consideration.

Cooling Off Period means the period in which you can cancel this Agreement at no cost, even though you have accepted the Agreement.

Customer means the person or persons named in the Retail Supply Agreement and if there are more than one, means each of them separately and every two or more of them jointly.

Distributor means:

- (i) in the case of Supply Addresses in Victoria, New South Wales and Queensland, the holder of a distribution licence or authority in respect of the distribution system to which your Supply Address is connected; and
- (ii) in the case of Supply Addresses in South Australia, a nominated distributor, as that term is defined under the National Energy Retail Law.

Direct Debit Agreement means an agreement with you for us to debit or credit your bank account or nominated card payment account an amount.

Distribution Network means the electricity power lines and associated equipment and structures that are used to distribute electricity to the Supply Address;

Due Date means the later of the date stated on your Invoice; or such other date as we agree with you, by which you must pay your Invoice.

Energy Generation Facility means a generator which is installed at your Supply Address as defined in Schedule A *Feed-in Terms & Conditions*.

Force Majeure Event means an event outside the reasonable control of a party to this Agreement.

GST has the meaning given to it in the GST Law.

GST Law has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

Invoice means the same as Bill.

Invoicing Period means the same as Billing Period and means any period for which an Invoice is or may be issued.

Last Resort Event means an event or circumstance that triggers the operation of the retailer of last resort scheme under the Applicable Regulations.

NMI means National Metering Identifier for the meter that measures electricity at the Supply Address as defined in the Applicable Regulations;

Party: being either you or us or both as the context requires.

Rate: has the same meaning as in the Retail Supply Agreement.

Regulator means:

- (i) in Victoria, the Essential Services Commission established under the Essential Services Commission Act (2001) (Vic) or other body responsible for the publication of the Energy Retail Code and setting minimum Feed-in Tariff rates under the Applicable Regulations;
- (ii) in New South Wales, the Independent Pricing and Regulatory Tribunal which sets Feed-in Tariff rates under the Applicable Regulations;
- (iii) in South Australia, the independent economic regulator, Essential Services Commission of South Australia (ESCOSA); and
- (iv) in Queensland, the Queensland Competition Authority established under the Queensland Competition Authority Act (1997) (Qld)

Residential Customer means a customer who purchases electricity principally for personal, domestic or household use.

Retail Supply Agreement means the online or paper application form with customer details, Supply Address, associated information and containing details of our offer to you and any special terms and conditions related to the offer.

In the case an Energy Generation Facility is installed or to be installed at your Supply Address, the Retail Supply Agreement may be incorporated into a Retail Supply & Feed-in Agreement and include additional offer details related to supply and selling to us of Export Electricity.

Retailer of Last Resort means the retailer nominated as per the last resort scheme under the Applicable Regulations

Secondary Representative means additional person or persons in addition to the Account Representative that may be authorised to enter into the Agreement at the Supply Address or make changes to the details of the account with us.

Security Deposit means the amount of money or other arrangement we request from you as a security against you not paying your final Invoice.

Service Fees and Charges means the additional charges in relation to management of your electricity account, meter and / or Supply Address as included on our website.

Small Business Customer means a customer who is not a Residential Customer and consumes less than 160MWh per annum in Victoria, NSW or South Australia, or consumes less than 100 MWh per annum in Queensland.

Supply Address means the premises specified in the Retail Supply Agreement where you take purchase from us and take supply under the terms of this Agreement.

Termination means that as specified in Clause 18 of this Agreement.

Contact Details:

Diamond Energy Pty Ltd
101 Greville Street, Prahran VIC 3181

Telephone: 1300 838 009

Facsimile: 03 9006 9031

Email: customerservice@diamond-energy.com

Website: www.diamondenergy.com.au

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