

**Non-domestic Alternative Fuel Payments  
in Great Britain and Northern Ireland**

**Terms and Conditions**

**6 April 2023**

**Secretary of State for Energy Security and Net Zero**

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## Terms and Conditions

### 1 Definitions and Interpretation

#### 1.1 In these Terms and Conditions:

**Alternative Fuel** means any fuel which is not taken from the gas grid and which for the avoidance of doubt includes Kerosene;

**Applicant** means a person who has submitted an application (or applications) for a Support Claim and has agreed to be bound by these Terms and Conditions;

**Application Information** means information provided or to be provided by an Applicant under Clause 10 and accepted by the Secretary of State;

**Bribery Act** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

**Crown Body** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**Data Protection Legislation** means (i) the UK GDPR (as defined in section 3(10) of the Data Protection Act 2018); (ii) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy; and (iii) all applicable Law relating to the processing of Personal Data and privacy;

**Duplicate Funding** means energy price support (as defined in section 19(4) of the Energy Prices Act 2022, and including pursuant to the Scheme) provided by the Secretary of State in respect of any Alternative Fuel, which is in addition to the Energy Cost Support provided to the Applicant under this Scheme in respect of the same Alternative Fuel (and for the avoidance of doubt duplicate funding shall mean energy price support provided by the Secretary of State to an Applicant under this Scheme in respect of the same Alternative Fuel under paragraph 5.1(a) and 5.1(b) of these Terms and Conditions);

**EIR** means the Environmental Information Regulations 2004;

**Energy Cost Supports** and each an **Energy Cost Support** means financial assistance, under the Scheme, for a Qualifying Customer in the form of a ND AFP and/or Top-Up Payment;

**Event of Default** means an event or circumstance set out in Clause 22.1;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**HMRC** means HM Revenue and Customs;

**Ineligible Energy** has the meaning given in Clause 6.2;

**Information Acts** means the Data Protection Legislation, FOIA and the EIR, as amended from time to time;

**Kerosene** means kerosene heating oil;

**Law** means any applicable law, statute, byelaw, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation;

**Losses** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **Loss** will be interpreted accordingly;

**MPAN** means Meter Point Administration Number;

**ND AFP** means a fixed £150 payment to a ND AFP Qualifying Customer under Clause 5;

**ND AFP Qualifying Customer** has the meaning given to it in Clause 5;

**Non-Domestic Customer** or **Customer** means a person whose Premises are used primarily for a purpose other than as a domestic domicile;

**Party** means the Secretary of State and the Applicant which is party to these Terms and Conditions;

**Period of Eligible Purchase** means:

- (a) the period from 1 September 2021 to 31 August 2022 (inclusive); or
- (b) where an Applicant became responsible for the Premises after 1 September 2021 (but before 1 December 2021), means the period from when the Applicant's responsibility started until the date that is 12 months from the date the Applicant became responsible for the Premises; or
- (c) where an Applicant became responsible for a Premises after 1 December 2021, the Period from when the Applicant's responsibility started until 31 November 2022;

**Personal Data** has the meaning given to it in the Data Protection Legislation as amended from time to time;

**Premises** means the premises of a Non-Domestic Customer where Alternative Fuels are used as a fuel;

**Prohibited Act** means:

- (a) directly or indirectly offering, giving or agreeing to give to any servant of the Secretary of State or the Crown any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of these Terms and Conditions; or

- (ii) showing or not showing favour or disfavour to any person in relation to the Scheme;
- (b) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to the Scheme; or
- (c) defrauding or attempting to defraud or conspiring to defraud the Secretary of State or the Crown.

**Qualifying Customer** means a ND AFP Qualifying Customer and/or a Top-Up Payment Qualifying Customer (as applicable);

**Representatives** means any of the Secretary of State's or the Applicant's duly authorised directors, employees, officers, agents, professional advisors and consultants;

**Scheme** has the meaning given in Clause 2.1;

**Secretary of State** means the Secretary of State for Energy Security and Net Zero;

**Support Claim** means an application for Energy Cost Support in relation to an Applicant's Premises (noting that, for the avoidance of doubt separate applications should be submitted per Premises) in accordance with Clause 9;

**Terms and Conditions** has the meaning given to them in Clause 2.1;

**Third Party** means any person or organisation other than the Secretary of State or the Applicant;

**Top-Up Payment** means a variable payment made to a Top-Up Payment Qualifying Customer calculated in accordance with Clause 6.1; and

**Top-Up Payment Qualifying Customer** has the meaning given to it in Clause 6.

1.2 In these Terms and Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words **including, other, in particular, for example** and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words **without limitation**;

- (f) references to **writing** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly;
- (g) references to **representations** will be construed as references to present facts, to **warranties** as references to present and future facts and to **undertakings** as references to obligations under these Terms and Conditions;
- (h) unless otherwise provided, references to Clauses are to clauses of the main body of these Terms and Conditions;
- (i) the headings in these Terms and Conditions are for ease of reference only and will not affect the interpretation or construction of these Terms and Conditions;
- (j) references to these Terms and Conditions are to these Terms and Conditions as from time to time amended in accordance with these Terms and Conditions.

## 2 Introduction

2.1 This document (**Terms and Conditions**) sets out the terms of a scheme (the **Scheme**) to provide support to:

- (a) non-domestic high users of Kerosene;
- (b) those who:
  - (i) consume any Alternative Fuel which is not taken from the gas grid; and
  - (ii) have no connection to both the gas grid and the electricity grid; and
- (c) those who:
  - (i) consume any Alternative Fuel which is not taken from the gas grid;
  - (ii) have no connection to the gas grid; and
  - (iii) have a connection to the electricity grid but whose MPAN is an eligible MPAN (as determined by the Secretary of State in its sole discretion),

by helping them meet costs related to their use of such Kerosene or Alternative Fuel (noting that: (i) an application under Clause 2.1(a) shall not be to the exclusion of an application of 2.1(b) or 2.1(c) above; and (ii) an application under either Clause 2.1(b) or 2.1(c) above is to the exclusion of the other).

2.2 Any Applicant who has submitted an application for a Support Claim has agreed to be bound by these Terms and Conditions, under which the Secretary of State for Energy Security and Net Zero (the **Secretary of State**) provides financial support.

## 3 Representations and Warranties

3.1 Each Applicant warrants and represents to the Secretary of State that:

- (a) where the applicant is a body corporate:

- (i) it has full capacity and authority and all necessary consents to enter into and to perform its obligations under these Terms and Conditions;
  - (ii) it is applying on behalf of itself and as the entity who directly incurred the costs of Alternative Fuels and/or Kerosene during the Period of Eligible Purchase;
  - (iii) the obligations expressed to be assumed by the Applicant in these Terms and Conditions are legal, valid, binding and enforceable obligations;
  - (iv) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under the Terms and Conditions;
  - (v) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Applicant or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Applicant's assets or revenue;
  - (vi) in applying for and accepting Energy Cost Support, the Applicant is not in breach of any Law; and
- (b) in the case of an individual:
- (i) is not insolvent;
  - (ii) is not subject to any contractual obligation, compliance with which is likely to have an effect on their ability to perform obligations under these Terms and Conditions;
  - (iii) directly incurred the costs of Alternative Fuels during the Period of Eligible Purchase;
  - (iv) has full capacity to enter into and to perform its obligations under these Terms and Conditions; and
  - (v) in applying for and accepting Energy Cost Support, the Applicant is not in breach of any Law;
- (c) in all cases;
- (i) that the application for a Support Claim is in respect of one Premises only (noting that a single Applicant may submit a Support Claim per Premises);
  - (ii) that any information it is required to give pursuant to these Terms and Conditions and as part of the Scheme is true and accurate;
  - (iii) that it has diligently made full and proper enquiry of the matter pertaining to the information given; and
  - (iv) that any data it provided pursuant to an application for Energy Cost Support may be shared within the powers conferred by legislation with other organisations for the purpose of preventing or detecting crime.

3.2 The representations and warranties given in Clause 3.1 are deemed to be repeated on each occasion that an Applicant makes a Support Claim.

#### **4 Energy Cost Support**

4.1 Where the Secretary of State has accepted an application for a Support Claim by an Applicant, the Secretary of State will pay the relevant Energy Cost Support or Energy Cost Supports to the Applicant, subject to the provisions of these Terms and Conditions, in accordance with the payment arrangements set out in Clause 11 of these Terms and Conditions.

4.2 The Applicant declares that it has not applied for or obtained, and shall not apply for or obtain, Duplicate Funding.

4.3 The Applicant agrees that the Secretary of State may refer the Applicant to the police should it dishonestly and intentionally obtain Duplicate Funding.

4.4 The Secretary of State will have no liability to the Applicant for any Losses caused by a delay in the payment of a Support Claim howsoever arising.

4.5 The Secretary of State reserves the right not to pay any Support Claims, which are incomplete, incorrect or submitted without the full supporting documentation.

4.6 The Applicant shall promptly notify and repay immediately to the Secretary of State any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where the Applicant is paid in error before it has complied with its obligations under these Terms and Conditions. Any sum, which falls due under this Clause 4.6, shall fall due immediately. If the Applicant fails to repay the due sum immediately or within any other timeframe specified by the Secretary of State, the sum will be recoverable summarily as a civil debt.

#### **5 Qualifying Customers for a ND AFP**

5.1 A Customer may apply to the Secretary of State for Energy Cost Support relating to a ND AFP:

- (a) where the Customer:
  - (i) uses a Premises which is not connected to the gas grid and not connected to the electricity grid; and
  - (ii) purchased Alternative Fuel for use as a fuel on site at the Premises between September 2022 and January 2023 (inclusive); or
- (b) where the Customer:
  - (i) uses a Premises:
    - (A) which is not connected to the gas grid; and
    - (B) is connected to the electricity grid but whose MPAN is an eligible MPAN (as determined by the Secretary of State in its sole discretion); and



- (ii) purchased Alternative Fuel for use as a fuel on site at the Premises between September 2022 and January 2023 (inclusive).

(a **ND AFP Qualifying Customer**).

## **6 Qualifying Customers for a Top-Up Payment**

6.1 A Customer may apply to the Secretary of State for Energy Cost Support relating to a Top-Up Payment where the:

- (a) Customer's Premises is not connected to the gas grid;
- (b) Customer is the user of Kerosene as a fuel on site at the Premises they are applying for;
- (c) amount of Kerosene purchased for the relevant Premises in the Period of Eligible Purchase is more than or equal to 10,000 litres; and
- (d) Support Claim is not in respect of Ineligible Energy,

(a **Top-Up Payment Qualifying Customer**).

6.2 In preparing their Energy Cost Support application for a Top-Up Payment, an Applicant shall disregard (and for the avoidance of doubt the Secretary of State shall not take into account when considering or confirming the level of any Top-Up Payment) any of the following relevant to its application which are not eligible for a Top-Up Payment under the Scheme:

- (a) energy in a form other than Kerosene;
- (b) Customer's Kerosene that has been used to generate or is for the purpose of generating grid-delivered electricity or has been stored for the purposes of generating grid delivered electricity at a later date;
- (c) its Premises are in Northern Ireland and it has made arrangements under which:
  - (i) the Customer's Kerosene may be made available to an end-user at premises located outside Northern Ireland; or
  - (ii) heating, hot water or electricity may be made available, using the Customer's Kerosene, to an end user at premises located outside Northern Ireland;
- (d) arrangements whereby Kerosene is on-sold or subject to other wholesale distribution; or
- (e) arrangements whereby Kerosene is used for the purpose of fuelling transportation,

(Clauses 6.2(a) to (e) above are together referred to as **Ineligible Energy**).

6.3 The Secretary of State reserves the right to refuse any Energy Costs Support application in respect of Kerosene in whole or in part where the Secretary of State in its absolute discretion believes that such application or part thereof relates to Ineligible Energy.

## 7 Arrangements which abuse the Scheme

- 7.1 For the purposes of this Clause 7 a **relevant arrangement** is an arrangement made by an Applicant (an **arrangement party**) the purpose or main purpose of which is to obtain where otherwise ineligible (including by fraud, misrepresentation or such equivalent act) Energy Cost Support, or, by such acts to increase the amount of Energy Cost Support that may be obtained, under the Scheme.
- 7.2 Where the Secretary of State considers that an Applicant has made a relevant arrangement, the Secretary of State may take such steps as (in its absolute discretion) it considers appropriate, which may include:
- (a) rejecting an application by an arrangement party;
  - (b) requiring a change to such an application as a condition of accepting it;
  - (c) determining that the Applicant is not eligible for Energy Cost Support in respect of all or some of the Kerosene that it has consumed;
  - (d) rejecting a Support Claim by an arrangement party;
  - (e) excluding an amount in respect of Energy Cost Support from payment under a Support Claim;
  - (f) adjusting, in such manner and to such extent as the Secretary of State considers appropriate, the amount paid in respect of Energy Cost Support under a Support Claim; or
  - (g) requiring repayment to the Secretary of State of any amount already paid in respect of Energy Cost Support.

## 8 Amount of Top-Up Payment

- 8.1 Top-Up Payment Qualifying Customers who have purchased the following volumes of Kerosene during the Period of Eligible Purchase shall be provided with one of the following Top-Up Payments:
- (a) 10,000 and 19,999 litres (inclusive) - £750;
  - (b) 20,000 to 59,999 litres (inclusive) - £1,950; or
  - (c) 60,000 to 149,999 litres (inclusive) - £5,800.
- 8.2 For Top-Up Payment Qualifying Customers with a purchase of Kerosene of 150,000 litres (inclusive) or more in the Period of Eligible Purchase, the Top-Up Payment Qualifying Customer shall be paid £0.07 per litre (for the total litres of Kerosene in aggregate).

For example:

Tiering	Kerosene volume bandwidths (L)	Top-up payment (£)
Tier 1	10,000 - 19,999	750

<b>Tier 2</b>	20,000 - 59,999	1,950
<b>Tier 3</b>	60,000 - 149,999	5,800
<b>Tier 4</b>	150,000 or more	0.07 per litre

8.3 For the avoidance of doubt, a Top-Up Payment Qualifying Customer shall only be entitled to a Top-Up Payment under one of Clauses 8.1 (a), (b), (c) or 8.2.

## **9 Application for Energy Cost Support**

9.1 Any person who may be eligible to receive Energy Cost Support (of either type or both), may make a Support Claim.

9.2 Before submitting a Support Claim, a person (the Applicant) must first agree to be bound by these terms and conditions by:

- (a) submitting such claim via the Secretary of State online portal; or
- (b) such other means as the Secretary of State may in its absolute discretion determine.

9.3 To submit a Support Claim an Applicant must complete and submit to the Secretary of State the information contained in Clause 10.

9.4 Before deciding whether to accept a Support Claim, the Secretary of State:

- (a) will carry out due diligence checks in respect of the Applicant; and
- (b) may require (in its absolute discretion) the Applicant to submit any further supporting information.

9.5 Only one person may submit a Support Claim for each relevant Premises and the Secretary of State may take such measures as it decides in its absolute discretion to ensure this requirement is met.

9.6 If an Applicant has been paid by the Secretary of State any amount which is greater than the amount of Energy Cost Support to which the Applicant is entitled under the Scheme, the Applicant must repay that amount to the Secretary of State on demand.

## **10 Application Information to be provided**

10.1 An Applicant must provide the following information to receive Energy Cost Support:

- (a) an organisation or business registration number such as Companies House number or registered charity number, if applicable;
- (b) UK bank or building society account details;
- (c) a contact email address; and
- (d) any further information which the Secretary of State, acting reasonably, may require the applicant to submit.

- 10.2 To receive the Top-Up Payment, a Customer must also provide:
- (a) invoices that evidence the purchase of 10,000 litres or more of Kerosene for use at the Premises covering the Period of Eligible Purchase; and
  - (b) the MPAN of the electricity meter that supplies the Premises, if it is connected to the electricity grid.
- 10.3 To receive the ND AFP, a Customer must also provide one invoice that evidences the purchase of Alternative Fuels for use as a fuel at the Premises, dated between September 2022 to January 2023 (inclusive).
- 10.4 To receive the ND AFP under paragraph 5.1(b), a Customer must also provide their MPAN for the Premises.

## 11 Payment of Support Claims

- 11.1 Clause 11.2 applies if, or if the Secretary of State has reasonable grounds to consider that:
- (a) a Support Claim is not made, or an amount claimed in a Support Claim is not calculated, in accordance with these Terms and Conditions;
  - (b) any information in a Support Claim is incomplete or inaccurate; or
  - (c) the Applicant is not in compliance with these Terms and Conditions,
- (each a **relevant defect or circumstance**).
- 11.2 In the circumstances in Clause 11.1, the Secretary of State may, unless and until the relevant defect or circumstance is cured or corrected to the satisfaction of the Secretary of State:
- (a) decline to accept the Support Claim;
  - (b) determine that part only of the amount claimed in the Support Claim is payable, and pay that part; or
  - (c) withhold payment of all or part of the amount payable in respect of the Support Claim.
- 11.3 Where an amount is payable in respect of a Support Claim, the Secretary of State will:
- (a) pay that amount in pound sterling (GBP) into the bank account (being an account with a bank branch located in Great Britain or Northern Ireland) specified in the Applicant's Application Information; and
  - (b) send to the Applicant a statement in respect of the payment.
- 11.4 If under these Terms and Conditions, an Applicant is liable to repay any amount paid in respect of a Support Claim:
- (a) the Secretary of State will send to the Applicant an invoice or statement setting out:
    - (i) the amount to be paid; and
    - (ii) when and why it is to be paid; and

- (b) the Applicant must pay that amount in pound sterling (GBP) into the bank account specified by the Secretary of State, by the date specified in the invoice or statement.

## **12 Errors and corrections of Support Claims**

12.1 If there is any error in a Support Claim, or any information included in the Support Claim is or becomes inaccurate:

- (a) the Applicant must, as soon as it becomes aware of the error or inaccuracy (and whether before or after payment has been made in respect of the claim) give notice to the Secretary of State correcting the error or inaccuracy, and stating what it considers to be the amount by which the Support Claim requires adjustment (the **adjustment amount**) (if any);
- (b) if the Secretary of State becomes aware of such an error or inaccuracy, the Secretary of State may give notice of it to the Applicant;
- (c) where payment has not yet been made in respect of the Support Claim, the Secretary of State may cancel the Support Claim and the Applicant may be entitled to reapply for the relevant Energy Cost Support; and
- (d) where payment has been made in respect of the Support Claim:
  - (i) the Secretary of State may at its discretion pay an adjustment amount to the Applicant; and
  - (ii) the Applicant shall pay any adjustment amount to the Secretary of State.

12.2 Where there is any change to an Applicant's email address or telephone number submitted in an application the Applicant must promptly give notice to the Secretary of State of such change.

## **13 Amendment of these Terms and Conditions**

13.1 The Secretary of State may amend these Terms and Conditions (including replacing them, or ending the Scheme) by publishing:

- (a) the amendment or the amended terms;
- (b) the date on which the amendment is made; and
- (c) if different, the date from which the amended terms are in force, which may be before or after the date in Clause 13.1(b) above.

13.2 Subject to Clause 13.3, an amendment of these Terms and Conditions shall not materially adversely affect the interests of an Applicant under the Scheme in respect of a Support Claim made before the date on which the amendment is made.

13.3 Clause 13.2 does not apply in respect of an amendment made for the purposes of preventing, limiting, or removing the benefits of, any arrangement or behaviour which the Secretary of State considers manipulates or otherwise abuses the Scheme.

## **14 Monitoring and Reporting**

14.1 The Applicant shall:

- (a) provide the Secretary of State with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as the Secretary of State may require, from time to time;
- (b) allow any person authorised by the Secretary of State or appointed under Clause 15.1 reasonable access, with or without notice, to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Applicant's fulfilment of its obligations under these Terms and Conditions and will, if so required, provide appropriate oral or written explanations to such authorised persons as required; and
- (c) notify the Secretary of State as soon as reasonably practicable of any actual or potential failure to comply with any of its obligations under these Terms and Conditions, which includes those caused by any administrative, financial or managerial difficulties.

## **15 Auditing and Assurance**

15.1 The Secretary of State or a person nominated by the Secretary of State may, at any time during and up to three years after the date on which the Applicant submitted its application for a Support Claim, conduct additional audits or ascertain additional information where the Secretary of State considers it necessary.

15.2 The Secretary of State may, upon giving notice to an Applicant, audit the books, records, systems and processes of the Applicant for the purposes of:

- (a) ascertaining whether the Applicant is in compliance with these Terms and Conditions;
- (b) ascertaining whether pursuant to these Terms and Conditions any amount is payable by the Applicant to the Secretary of State;
- (c) otherwise ensuring the proper accounting for, tracing or control of public money under the Scheme.

## **16 Retention of documents**

The Applicant shall retain all invoices, receipts, accounting records and any other documentation (including but not limited to, correspondence) relating to the Energy Cost Support for a period of four years from the date on which the Applicant submitted its Support Claim.

## **17 Financial Management and Prevention of Bribery, Corruption, Fraud and other Irregularity**

17.1 The Applicant will at all times comply with all applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.

17.2 The Applicant must have a sound administration and audit process, including internal financial controls to safeguard against fraud, theft, money laundering, counter terrorist financing or any

other impropriety, or mismanagement in connection with the administration of Energy Cost Support.

- 17.3 All cases of fraud or theft (whether proven or suspected) relating to Energy Cost Support or otherwise in connection with the Scheme must be notified to the Secretary of State as soon as they are identified. The Applicant shall explain to the Secretary of State what steps are being taken to investigate the irregularity and shall keep the Secretary of State informed about the progress of any such investigation. The Secretary of State may however request that the matter referred (which the Applicant is obliged to carry out) to external auditors or other Third Party as required.
- 17.4 The Secretary of State will have the right, at its absolute discretion, to insist that the Applicant address any actual or suspected fraud, theft or other financial irregularity and/or to suspend payment of Energy Cost Support to the Applicant. Any grounds for suspecting financial irregularity includes what the Applicant, acting with due care, should have suspected as well as what it actually proven.
- 17.5 The Applicant agrees and accepts that it may become ineligible for Energy Cost Support and may be required to repay all or part of Energy Cost Support if it engages in tax evasion or aggressive tax avoidance in the opinion of HMRC.
- 17.6 For the purposes of Clause 17.4, **financial irregularity** includes (but is not limited to) potential fraud or other impropriety, mismanagement. The Applicant may be required to provide statements and evidence to the Secretary of State or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.
- 17.7 The Applicant shall have in place and maintain adequate procedures to manage and monitor any actual or perceived bias or conflicts of interest with any of their obligations in relation to these Terms and Conditions.

## **18 Confidentiality**

- 18.1 The Privacy Notice accepted by the Applicant as part of the application for a Support Claim forms part of these Terms and Conditions.
- 18.2 Nothing shall prevent the Secretary of State disclosing any information obtained from the Applicant:
- (a) to any person who provides or is provided with Energy which is provided by or to the Applicant, or who provides services in respect of the provision of such Energy, where the Secretary of State considers it necessary or expedient to do so in connection with the proper and efficient implementation of the Scheme; or
  - (b) where disclosure is required by Law, including under the Information Acts,

provided that in disclosing information under paragraph (a), the Secretary of State only discloses the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

## **19 Transparency**

The Secretary of State and the Applicant acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of these Terms and Conditions are not confidential.

## **20 Statutory Duties**

- 20.1 The Applicant agrees to adhere to its obligations under the Law including but not limited to the Information Acts.
- 20.2 Where requested by the Secretary of State, the Applicant will provide reasonable assistance and cooperation to enable the Secretary of State to comply with its information disclosure obligations under the Information Acts.
- 20.3 The Applicant acknowledges that the Secretary of State, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose information concerning the Applicant and these Terms and Conditions without consulting the Applicant.
- 20.4 The Secretary of State will take reasonable steps to notify the Applicant of a request for information to the extent that it is permissible and reasonably practical for it to do so. Notwithstanding any other provision in these Terms and Conditions, the Secretary of State will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

## **21 Assignment and Subcontracting**

- 21.1 The Applicant will not transfer, assign, novate or otherwise dispose of the whole or any part of these Terms and Conditions or any rights under it, to another organisation or individual, without the Secretary of State's prior approval.
- 21.2 The Secretary of State may subcontract the performance of any of its duties or obligations under these Terms and Conditions to any person.

## **22 Clawback, Events of Default, Termination and Rights Reserved for Breach and Termination**

### ***Events of Default***

- 22.1 The Secretary of State may exercise its rights set out in Clause 22.3 if any of the following events (**Events of Default**) occur:
- (a) the Applicant fails to comply with its obligations under these Terms and Conditions, in a respect which is material in the opinion of the Secretary of State;
  - (b) the Applicant is, in the opinion of the Secretary of State, performing its obligations under these Terms and Conditions in a negligent manner (in this context negligence includes but is not limited to failing to prevent or report actual or anticipated fraud or corruption);
  - (c) the Applicant obtains or seeks to obtain Duplicate Funding;



- (d) the Applicant provides the Secretary of State with any materially misleading or inaccurate information and/or any of the information submitted in or with a Support Claim or in any subsequent supporting correspondence is found to be incorrect or incomplete;
- (e) the Applicant commits or has committed a Prohibited Act or fails to report a Prohibited Act to the Secretary of State, whether committed by the Applicant, its Representatives, or a Third Party on its behalf, as soon as it becomes aware of it;
- (f) the Secretary of State determines (acting reasonably) that the Applicant or any of its Representatives has:
  - (i) acted dishonestly at any time during the term of these Terms and Conditions and to the detriment of the Secretary of State;
  - (ii) taken any actions which unfairly brings or are likely to unfairly bring the Secretary of State's name or reputation and/or the Secretary of State into disrepute. Actions include omissions in this context; or
  - (iii) failed to act in accordance with the Law; howsoever arising, including incurring expenditure on unlawful activities;
- (g) the Applicant ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (h) the Applicant becomes insolvent as defined by section 123 of the Insolvency Act 1986, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
- (i) a court, tribunal or independent body or authority of competent jurisdiction requires any Energy Cost Support paid to be recovered.

22.2 Where the Secretary of State determines that an Event of Default has or may have occurred, the Secretary of State shall notify the Applicant to that effect, and details of any action that the Secretary of State intends to take or has taken.

***Rights reserved for the Secretary of State in relation to an Event of Default***

22.3 Where the Secretary of State determines that an Event of Default has or may have occurred, the Secretary of State may (in addition to any step it may be entitled to take under Clause 7 of these Terms and Conditions) take any one or more of the following actions:

- (a) suspend or terminate the payment of Energy Cost Support;
- (b) require the Applicant to repay to the Secretary of State the whole or any part of the amount of Energy Cost Support previously paid to the Applicant. Such sums shall be recovered as a civil debt;
- (c) give the Applicant an opportunity to remedy the Event of Default (if remediable); and/or

(d) terminate these Terms and Conditions.

## **23 Dispute Resolution**

- 23.1 The Secretary of State and the Applicant will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises under the Scheme.
- 23.2 The Secretary of State may establish and publish procedures in respect of a dispute under these Terms and Conditions and where the Secretary of State has established and published such procedures, an Applicant must follow such procedures in connection with any such dispute.

## **24 Limitation of Liability**

- 24.1 The Secretary of State accepts no liability for any consequences, whether direct or indirect, that may come about from the use of Energy Cost Support or from withdrawal, withholding or suspension of Energy Cost Support. The Applicant shall indemnify and hold harmless the Secretary of State and its Representatives with respect to all actions, claims, charges, demands Losses and proceedings arising from or incurred by the non-fulfilment of obligations of the Applicant under these Terms and Conditions or its obligations to Third Parties.
- 24.2 Subject to Clause 24.1, the Secretary of State's liability under these Terms and Conditions is limited to the amount of Energy Cost Support outstanding.

## **25 Governing Law**

These Terms and Conditions will be governed by and construed in accordance with the laws of England and Wales and both the Secretary of State and the Applicant irrevocably submit to the jurisdiction of the English courts.