

# Accelerated Loss of Mains Change Programme (ALoMCP)

## Terms and Conditions

### Execution Version 1.11

#### Application of these Terms and Conditions

These terms and conditions (the “**Contractual Terms**”) apply as between a distribution network operator or an independent distribution network operator (“the **Distributor**”) and any owner of a generating facility connected to the Distributor’s network (hereinafter referred to as the “**Provider**”) who has applied to participate in the Accelerated Loss of Mains Change Programme (“**ALoMCP**” or the “**Programme**”) and whose application has been accepted by the Distributor.

#### 1. Definitions and interpretation

1.1 In these Contractual Terms, unless the context otherwise requires, the following words shall have the following meanings:

“**Acceptance**” means an acceptance of an Application, as communicated by the Distributor to the Provider through the Portal.

“**Application**” means an application to participate in the Programme, as communicated by the Provider to the Distributor through the Portal.

“**ALoMCP Provider Contract**” means the contract between the Distributor and the Provider for undertaking the Works on the basis of the Application and these Contractual Terms, formed upon the Distributor issuing its Acceptance.

“**Auditing**” means any further work required, including a potential site visit, to support a programme wide audit instigated by National Grid Electricity System Operator or an appropriate body.

“**Authority**” means the Gas and Electricity Markets Authority established by section 1 of the Utilities Act 2000.

“**Business Day**” means a day other than a Saturday, a Sunday, a public or bank holiday in England or Scotland as the case may be.

“**Commencement Date**” means the date on which the Provider, following receipt of Acceptance from the Distributor confirms the Works Completion Date via the Portal.

“**Confidential Information**” means all confidential information which is disclosed, or made available, directly or indirectly by one party to the other whether before, on or after the date of the ALoMCP Provider Contract, and whether orally, in writing, in electronic form or other media, which relates to a party’s business including without limitation its products, operations, processes, plans or intentions, developments, trade secrets, know-how, market opportunities, personnel, suppliers and customers of the party disclosing it, any other information which is identified as being of a confidential nature or would appear to a reasonable person to be confidential and all information derived from any of the above together with the existence or provisions of the ALoMCP Provider Contract.

“**Delivery Assurance Policy**” means the policy with that title, published on the Electricity Network Association’s (ENA) website, that sets out the procedures whereby Distributors will verify that the Works implemented by Providers have been completed appropriately.

"**Distribution Code**" has the meaning given to that term in the Distributor's Distribution Licence.

"**Distribution Licence**" means a licence granted under section 6(1)(c) of the Electricity Act 1989.

"**Distribution Network**" means the electricity distribution system owned and operated by the holder of a Distribution Licence.

"**Embedded Generating Facility**" means a generating facility that is connected to a Distribution Network.

"**EREC G59**" means Engineering Recommendation G59 (Issue 3, Amendment 7), as may be amended from time to time.

"**Facility**" a generating facility owned by the Provider and connected to the Distributor's Distribution Network.

"**Party**" means the Distributor or the Provider (as the context requires) and "**Parties**" means the Distributor and the Provider taken together.

"**Payment Process Specification**" means the document with that title in the form and terms published from time to time on the ENA's website.

"**Portal**" means the online portal (<http://www.ena-eng.org/ALoMCP>) accessible via the ENA's website through which the owner of an Embedded Generating Facility can apply to participate in the Programme.

"**Programme**" means the incentive scheme by which the owner of an Embedded Generating Facility may agree early compliance with the requirements of EREC G59 in return for a payment on the basis of the Application and these Contractual Terms.

"**Protection Device**" means the loss of mains ("**LOM**") protection in place at the Facility.

"**Protection Requirements**" means in relation to a Protection Device, the requirements that apply to it in EREC G59.

"**Sample Site Visits**" refers to a site visit made by the Distributor after completion of Works, to check that the Works have been completed satisfactorily.

"**Type Tested**" shall have the meaning in EREC G59.

"**Witness Testing**" means the witnessing – and overseeing if so desired – by the Distributor of Works having being undertaken and completed satisfactorily.

"**Works**" means, in relation to a Facility, the works necessary for each Protection Device at the Facility to be able to meet the Protection Requirements.

"**Works Completion Date**" means the planned date by which the Provider indicates that it will have completed all the Works required at a Facility.

1.2 In these Contractual Terms, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a statute or statutory provision includes:

- (i) any subordinate legislation (as defined in section 21(1), Interpretation Act 1978) made under it; and
  - (ii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it whether such statute or statutory provision comes into force before or after the date of this Agreement;
- (c) a reference to:
- (i) any party includes its successors in title and permitted assigns; and
  - (ii) a party, clause and schedule is to a party to, a clause of and a schedule to this Agreement;
  - (iii) a person includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality)
- (d) the words "includes" or "including" shall be construed as illustrative only and shall not limit the generality of the preceding words; and
- (e) the table of contents and headings are inserted for convenience only and shall not affect the interpretation of these Contractual Terms.

## 2. Commencement and Term

- 2.1 The ALoMCP Provider Contract shall be effective on and from the Commencement Date and shall continue in full force and effect until the earlier of:
- a) the date on which the Protection Requirements become mandatory under the Distribution Code;
  - b) the issue of a termination notice in accordance with clause 11 (*Termination*).

## 3. Warranties and Representations

- 3.1 The Provider warrants and represents to the Distributor that:
- (a) it has full capacity and authority to enter into and perform the requirements of the ALoMCP Provider Contract and that those submitting the Application were duly authorised to bind the Provider contractually;
  - (b) the relevant generating equipment in the Provider's Facility was connected to the Distributor's Distribution Network and commissioned before 1 February 2018;
  - (c) the relevant generating equipment has discrete rate of change of frequency (RoCoF) or vector shift LoM protection settings (as described in EREC G59) which can be set on site by the Provider, the Provider's agent, or by the manufacturer (or the manufacturer's agent);
  - (d) the relevant generating equipment at the Facility operates in long-term parallel mode (as described in EREC G59) with the Distributor's Distribution Network, irrespective of whether the generating equipment exports to that Distribution System or not;
  - (e) Interface Protection settings used at its Facility on 1 February 2018 were not those already required by EREC G59 and that where new settings have been applied it can provide evidence to the reasonable satisfaction of the Distributor that these have not been subject to payment under previous change programmes; and

- (f) its Facility is connected to the Distributor's Distribution Network, as stated in the Provider's Application.

#### 4. **Works Required**

4.1 The Provider will implement, as applicable, the following changes and thereafter maintain for the duration of the ALoMCP Provider Contract and thereafter in accordance with G59, to the Interface Protection settings compliant with the requirements of G59, as follows:

- (i) Where vector shift functionality is used (ie where vector shift settings are applied) as LoM protection, this must be removed or disabled in every instance where it is used or applied in all equipment at the Facility; and
- (ii) The following settings are applied;
  - (A) where Rate of Change of Frequency ("RoCoF") Protection Devices are used for LoM protection, the applied setting must be  $1.0\text{Hzs}^{-1}$ , with a definite time delay of 500 ms; or
  - (B) where the requisite RoCoF setting cannot be achieved:
    - 1. For synchronous generation and for double fed induction generator types new Protection Device must be installed compliant with the requisite RoCoF settings in (ii) (A) above); and
    - 2. For all other generation, the LoM protection must be replaced, removed or disabled entirely.
- (iii) Where practical (ie where the existing Protection Device or other protection relay is capable) a single stage overfrequency setting of 52.0 Hz, 500 ms definite time delay should be applied. If this overfrequency setting is not possible, then the existing setting may remain.
- (iv) In all cases the over and under voltage and frequency protection functionality should be preserved unchanged.

#### 5. **Witness Testing, Sample Site Visits and Auditing**

5.1 The Distributor may attend the Provider's site to:

- (a) Witness the completion of the Works by the Provider at the time of completion, for which no separate fee will be payable by the Distributor to the Provider beyond the fees for Works undertaken as laid out in the Payment Process Specification;
- (b) Undertake a Sample Site Visit after Works have been completed, for which a fee will be payable by the Distributor to the Provider as laid out in the Payment Process Specification, to reflect potential additional costs incurred by the Provider in hosting this separate site visit; or
- (c) Support a programme audit - should one be instigated by National Grid Electricity System Operator or other appropriate body - for which no separate fee will be payable by the Distributor to the Provider.

5.2 The Provider shall:

- (a) provide such access to the relevant Facility to the Distributor, its officers, representatives and agents as shall be required for the Witness Testing, Sample Site Visit or Auditing under clause 5.1 to take place including co-ordination of the Works to provide the opportunity for the Witness Testing, Sample Site Visits or Auditing to take place; and
  - (b) co-operate fully with the Distributor and assist with any reasonable requests made by the Distributor in connection with the planning, carrying out or completion of a successful Witness, Sample Site Visit or Audit under clause 5.1, such co-operation to include making available such of the Provider's officers, staff, agents or other personnel during normal working hours who are qualified and competent to be able to carry out the Works and demonstrate the changes carried out to ensure the Witness Testing, Sample Site Visit or Auditing can be carried out successfully.
- 5.3 The Distributor agrees not to charge any fee to the Provider in respect of the first successful Witness Test, Sample Site Visit or Audit, carried out within normal working hours, for the purposes of clause 5.1. If the Witness Test, Sample Site Visit or Audit is not successful on the first attempt then the Distributor reserves the right to charge the Provider a fee to cover the costs it has borne. Furthermore, if additional visits are required as a result of the Provider's failure to comply with its obligations in clause 4 and clause 5.2, the Distributor may charge a fee to the Provider to cover the cost of undertaking further visits or Works required to satisfactorily complete the Witness Testing, Sample Site Visit or Auditing.
- 6. Provision of Evidence of Change**
- 6.1 The Provider shall complete in full the proforma headed 'Pro-forma record of Loss of Mains Change Service' and published on the Portal and submit the same to the Distributor in accordance with the Delivery Assurance Policy.
- 6.2 In addition to completing and submitting the proforma in accordance with clause 6.1, the Provider will also provide the following to the Distributor in accordance with Delivery Assurance Policy:
- (a) Timestamped photographic evidence showing the LoM protection device and its settings both prior to and after the change;
  - (b) Timestamped photographic evidence of any other relevant works on site (eg disconnected tripping circuits etc);
  - (c) Printouts, screenshots or other details of protection device settings or setting files; and
  - (d) Records of tests undertaken and/or any associated test certificates.
- 7. Completion and Payment**
- 7.1 The Distributor will review the evidence submitted by the Provider in accordance with clause 6 (*Provision of Evidence of Change*) together with the outcome of any Witness Testing, Sample Site Visit and Auditing and, provided that all such evidence is compliant with the requirements of EREC G59, and the requirements of these Contractual Terms, make payment to the Provider in accordance with the procedure and on the basis of the timescale set out in the Payment Process Specification or such other timescale as the Distributor may, acting reasonably, notify to the Provider.
- 7.2 The payment by the Distributor to the Provider will be on the basis of the Works identified by the Provider and for which payment was applied for. Payments for Works completed and assured satisfactorily will not exceed the value of the Provider's application, even if additional necessary work is identified and carried out at a later date.

## 8. Liability

8.1 Nothing in this Agreement shall limit or exclude a Party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or wilful default by that Party; and
- (c) anything else which it cannot by law limit or exclude its liability.

8.2 The Distributor's liability for physical damage to the Provider's tangible property occurring during any audit performed under clause 5 (Witness Testing, Sample Site Visits and Auditing) and which was caused by negligence by or on the part of the Distributor, shall be limited to an amount equal to ten thousand pounds sterling (£10k) in aggregate.

8.3 The Provider acknowledges and agrees that it will be obliged to meet the Protection Requirements from the date on which the Protection Requirements become mandatory under the Distribution Code and that its performance and completion of the Works under the ALoMCP Contractual Terms involves the Provider discharging no obligations other than those to which it will need to meet in compliance with the Distribution Code. Accordingly, save as provided in clause 8.1 and 8.2, the Distributor will not be liable to the Provider for the following loss or damage, whether arising in tort (including negligence), contract or breach of statutory duty, and even if foreseeable by the Distributor:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of contracts;
- (d) loss of revenue;
- (e) loss of production;
- (f) loss arising from any claim made against the Provider by any other person; or
- (g) any indirect or consequential loss.

8.4 Except for the liabilities accepted by Distributor under sub-clause 8.1 and 8.2, each Party's liability under or arising out of the ALoMCP Provider Contract shall be limited to fifty thousand pounds sterling (£50k) in aggregate.

8.5 The Distributor and the Provider acknowledge and agree that the provisions of this clause 8 are understood and are fair and reasonable having regard to the circumstances as at the date hereof.

## 9. Disputes

9.1 Subject to clause 9.3 if a dispute arises out of or in connection with these ALoMCP Provider Contract, the Parties shall:

- (a) within 7 days of written notice of the dispute being received by the receiving Party in good faith seek to resolve the dispute through negotiations between the Parties' senior representatives who have the authority to settle it;
- (b) not pursue any other remedies available to them until at least 28 days after the first written notification of the dispute.



- 9.2 The Parties shall use all reasonable endeavours to resolve the dispute through their respective senior representatives appointed under clause 9.1.
- 9.3 Nothing in this clause 9 shall prevent either Party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.
10. **Confidentiality**
- 10.1 Each Party receiving Confidential Information ("**Recipient**") from the other ("**Disclosing Party**") shall keep that information confidential and shall:
- (a) use the Disclosing Party's Confidential Information solely for the purposes of performing its obligations or exercising its rights under the ALoMCP Contractual Terms;
  - (b) keep the Disclosing Party's Confidential Information secure and take no lesser security measures and degree of care to protect the Disclosing Party's Confidential Information than the Recipient applies to its own confidential information and in any event no lesser than that which a reasonable person or business would take in protecting its own confidential information;
  - (c) not disclose the Disclosing Party's Confidential Information to any third party except with the prior written consent of the Disclosing Party or as permitted by clause 10.2.
- 10.2 Notwithstanding clause 10.1, the Recipient may disclose the Disclosing Party's Confidential Information to its directors and employees and any sub-contractors or other third parties (including National Grid Electricity System Operator Limited, the Energy Networks Association Limited and the Authority) which are directly involved in, and strictly need to know such Confidential Information for the purpose of, enabling the Recipient to perform its obligations or exercise its rights under this Agreement. The Receiving Party shall ensure that all such directors, employees, sub-contractors and third parties are aware of the confidential nature of the information and the Receiving Party shall impose upon them, and procure compliance with, confidentiality obligations which are substantially the same as those which are set out in this clause 10 except that disclosure by such sub-contractors or other third parties shall be prohibited.
- 10.3 The Receiving Party shall immediately inform the Disclosing Party in writing if the Receiving Party becomes aware that any Confidential Information has been disclosed to any unauthorised third party.
- 10.4 The obligations of confidentiality set out in this clause 10 shall not apply:
- (a) where the Disclosing Party has given its specific prior written consent to the disclosure;
  - (b) to Confidential Information which has entered the public domain, other than as a result of a breach of this clause 10;
  - (c) where the Recipient can show that the information was obtained, free from any restrictions as to its use or disclosure, from a third party who was free to divulge it; and
  - (d) where the information was developed by, or for, the Recipient independently of any information received under the ALoMCP Provider Contract and by persons who had no access to, or knowledge of, that information.
- 10.5 The Recipient shall not be in breach of this clause 10 where it is required to disclose the Disclosing Party's Confidential Information by a court or regulatory authority of competent jurisdiction. Where the Recipient is so required to make such a disclosure, it shall, where practicable and/or permissible, consult with the Disclosing Party as to the terms, content or

timing of the disclosure, and shall use reasonable endeavours to limit the scope of the required disclosure and to maintain the confidentiality of the disclosed Confidential Information to the extent possible.

- 10.6 To the extent that the Disclosing Party's Confidential Information is no longer required by the Recipient to enable the Recipient to perform its obligations or exercise its rights under the Agreement, the Recipient shall (and shall procure that its directors, employees, sub-contractors and other relevant third parties shall) either return to the Disclosing Party immediately upon demand such Confidential Information together with any copies, notes, analyses or records of such Confidential Information and any documents and other material (including all electronically generated or stored data) containing, reflecting or deriving from the Confidential Information which are in its possession or under its control, or (at the Disclosing Party's option) destroy it.
- 10.7 The Parties acknowledge that damages may not be an adequate remedy for a breach of this clause 10 or the confidentiality undertakings entered into by their directors, employees, sub-contractors and other third parties pursuant to clause 10.2. Each Party shall be entitled to seek any legal or equitable relief, including injunctive relief or specific performance, upon the breach (or reasonably anticipated breach) of any part of this clause 10 or of the confidentiality undertakings which the Receiving Party is required to obtain for the purposes of disclosure pursuant to clause 10.2.

## 11. Termination

- 11.1 Without prejudice to any other rights or remedies, either Party may, by written notice to the other, terminate the ALoMCP Provider Contract with immediate effect at any time after the happening of any of the following events:
- (a) the other Party commits a material breach of these Contractual Terms which is incapable of remedy; or
  - (b) the other Party commits a material breach of these Contractual Terms which is capable of remedy and fails to remedy such material breach within 20 Business Days after receiving written notice requiring it to remedy that material breach; or
  - (c) the other Party suspends, or threatens to suspend payment of its debts or is deemed unable to pay its debts within the meaning of section 123(1), Insolvency Act 1986 or, in the case of an individual, is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case within the meaning of section 268, Insolvency Act 1986, or, in the case of a partnership, has any partner to whom any of the foregoing apply; or
  - (d) a moratorium is declared in respect of any indebtedness of the other Party; or
  - (e) the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (f) a petition is presented or a resolution is passed, or an order is made, for the winding up, provisional winding up, or bankruptcy of the other Party, other than for the sole purpose of a solvent amalgamation or solvent reconstruction of that other Party; or
  - (g) a receiver, administrative receiver, administrator, compulsory manager or any similar officer is appointed in respect of the other Party or any of its assets, or any step is taken towards the appointment of any such officer; or
  - (h) the other Party commences negotiations in relation to, or enters into, any arrangement, compromise, assignment or composition with its creditors or any class of them (with or without first having sought or obtained a moratorium); or



- (i) enforcement of any security over any assets of the other Party; or
- (j) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(c)-(i) inclusive.

## 12. Notices

12.1 Any notice to be given to a Party under the ALoMCP Provider Contract shall be in writing, signed by or on behalf of the Party giving it, and shall be delivered personally, by email or sent by recorded delivery, to the address or email of the party as provided in the emails sent via the Portal to the Provider. Either Party may, by a notice given in accordance with this clause, change its address for the purposes of this clause.

12.2 A notice shall be deemed to have been served:

- (a) At the time provided on the email correspondence; or
- (b) at the time of delivery if delivered personally (unless received after 5pm in which case it shall be deemed served on the next Business Day); or
- (c) 2 Business Days after posting.

## 13. No partnership or agency

Nothing in the ALoMCP Provider Contract is intended to or shall operate to create a partnership or joint venture between the Parties, or to authorise either Party to act as agent for the other and neither Party shall have authority to act in the name of or on behalf of the other, or to enter into any commitment or make any representation or warranty or otherwise bind the other in any way.

## 14. Assignment and subcontracting

Neither Party may assign, transfer, charge or otherwise encumber, declare a trust over or deal with in any other manner the ALoMCP Provider Contract or any right, benefit or interest under it, or subcontract any of its obligations under it, without the prior written consent of the other Party.

## 15. Exclusive remedies

The rights and remedies provided to the Parties in these Contractual Terms are exclusive and not cumulative and exclude and are in place of all substantive rights or remedies express or implied and provided by common law or statute in respect of the subject matter of the ALoMCP Provider Contract, including (without limitation) any rights either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives to the fullest extent possible such rights and remedies provided by common law or statute and releases the other Party, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the ALoMCP Provider Contract and undertakes not to enforce any of the same except as expressly provided herein.

## 16. Exclusion of third party rights

Unless expressly provided in these Contractual Terms, no term of the ALoMCP Provider Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

**17. Severance**

17.1 If any court or competent authority finds that any provision of the ALoMCP Provider Contract (or part of any provision) is invalid, illegal or unenforceable, that provision (or part) shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the ALoMCP Provider Contract shall not be affected.

17.2 If any invalid, unenforceable or illegal provision of the ALoMCP Provider Contract would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

**18. Variation**

Except as expressly set out in these Contractual Terms, no purported variation of the ALoMCP Provider Contract shall be valid unless it is in writing and signed by or on behalf of each Party.

**19. Waiver**

No failure or delay by a party to enforce or exercise any right or remedy under the ALoMCP Provider Contract or by law shall be deemed to be a waiver of that or any other right or remedy, nor shall it operate so as to bar the enforcement or exercise of that or any other right or remedy at any time subsequently. Any waiver of any breach of the ALoMCP Provider Contract shall not be deemed to be a waiver of any subsequent breach.

**20. Entire agreement**

20.1 The ALoMCP Provider Contract (incorporating these Contractual Terms) and the Payment Process Specification constitute the entire agreement and understanding of the Parties with respect to the subject matter of the ALoMCP Provider Contract and supersede any prior agreements, representations, understandings or arrangements between the parties (oral or written) in relation to such subject matter. Each Party acknowledges that:

- (a) upon entering into the ALoMCP Provider Contract, it does not rely, and has not relied, upon any representation (whether negligent or innocent), statement or warranty made or agreed to by any person (whether a party to this Agreement or not) except those expressly set out in the ALoMCP Provider Contract or the Payment Process Specification; and
- (b) the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a claim for damages for breach of contract under this Agreement.

20.2 Nothing in this clause 20 shall limit or exclude any liability for fraud.

**21. Further assurance**

At its own expense, each Party shall, and shall use reasonable endeavours to procure that any necessary third party shall, promptly execute all such documents and do all such other acts as are necessary to give full effect to the ALoMCP Provider Contract.

**22. Governing law and jurisdiction**

22.1 The ALoMCP Provider Contract and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with

- (a) the law of England and Wales where the Facility is in England or Wales

(b) the law of Scotland where the Facility is in Scotland

Each Party irrevocably agrees that, where paragraph (a) applies, the courts of England and Wales and, where paragraph (b) applies, the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the ALoMCP Provider Contract, its subject matter or formation.