

GENERAL TERMS & CONDITIONS FOR ANCILLARY SERVICES AND GRID LOSSES

Contract for Tertiary Control Service

Contract reference: [●]

between:

[Company], a company established under [Country] law with registered offices at [Address], company registration number [Number] and validly represented by [Name1] and [Name2], in their capacity of [Role1] and [Role2]

Hereinafter referred to as the “BSP”.

and

ELIA SYSTEM OPERATOR S.A./N.V., a company established under Belgian law with registered offices at Keizerslaan 20, B-1000 Brussels, registered at the Crossroad Bank for Enterprises under number 476.388.378, and represented by [Name1] and [Name2], in their capacity of [Role1] and [Role2];

Hereinafter referred to as “ELIA”.

ELIA and the BSP are referred to individually as “a Party” and collectively as “the Parties”.

Whereas:

- ELIA is responsible for the operation of the Belgian Transmission Grid over which it has a property or at least a user right (hereinafter, the “Transmission Grid”);
- ELIA has been appointed as Transmission System Operator (“TSO”), in accordance with the Belgian law of 29 April 1999 concerning the organisation of the electricity market (“Electricity law”) and supervises the safety, reliability and efficiency of the Transmission Grid;
- ELIA must therefore ensure the provision of the requisite ancillary services – in particular Tertiary Control (also referred as Manual Frequency Restoration Reserve) - in accordance with the relevant provisions of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (“EBGL”), the Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (“SOGL”) and the Belgian legislation (Art. 239 et seq. of Federal Grid Code) ;
- The BSP has expressed its willingness to become a service provider of Tertiary Control;
- The BSP has the required facilities in order to provide ELIA with the Tertiary Control Service by CIPU Technical Units in accordance with the applicable legal provisions;

AND/OR

- The BSP has an agreement with one or more grid users who have the required facilities to provide ELIA with the Tertiary Control Service by Non-CIPU Technical Units in accordance with the applicable legal provisions;

The following points have been agreed:

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1.— FIELD OF APPLICATION

These General Terms & Conditions apply to all contracts for the so-called Ancillary Services as well as to the contract for Grid Losses. These different contracts as listed below will be known as the "Contracts".

- Contract for Primary Control Service
- Contract for Demand Side Service of Primary Control
- Contract for the cross-border Primary Control Service
- Contract for Secondary Control Service
- Contract for Tertiary Control Service
- Contract for Voltage Control and Reactive Power Service
- Contract for Interruptibility Service
- Contract for Black Start Service
- Contract for the Coordination of Injection by the Production Units ("CIPU")
- Contract for the Coordination of Injection by the off-shore wind Production Units ("CIPU Offshore")
- Contract for the supply of energy to compensate for Grid Losses

No deviation from the present General Terms & Conditions will be permitted, unless expressly stated otherwise in the constitutive elements of the Agreement as defined in article 3.1. Such deviations in any case only apply to the Agreement under which they were agreed.

PART 1: GENERAL CONDITIONS

2.— DEFINITION

1. DEFINITIONS

Except for a further specification which would be applied in order to achieve the purposes of the Contract — though without ignoring the public order stipulations — the terms defined in the Electricity Law, the Technical Regulation and in other implementing provisions of the Electricity Law, are also understood for the purposes of the Contract according to their meaning under legislative or regulatory definitions.

Consequently, the following definitions shall apply for the purposes of the Contract:

<u>Access Responsible Party</u> <u>Balance Responsible Party or</u> <u>"BRP"</u>	<u>any natural person or legal entity listed in the register of Access Responsible Parties in accordance with the Technical Regulation for Transmission; in the Technical Regulations for Distribution, Local and Regional Transmission. Also indicated by the term 'balance responsible party'; Any natural person or legal entity, as defined in article 2 (7) of the Electricity Balancing Guideline, and listed in the register of balancing responsible parties in accordance with the Federal Grid Code;</u>
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Active Power	The electrical power that can be converted into other forms of power, such as mechanical, thermal or acoustic power;
Appendix	All appendices to the Contract;
Agreement	the agreement between ELIA SYSTEM OPERATOR NV (hereinafter, "ELIA") and the Supplier, by which the latter undertakes to supply the agreed service(s) to ELIA SYSTEM OPERATOR NV, materialized by the constitutive elements listed in Art. 3.1;
Balancing Service Provider or "BSP"	<u>Any natural person or legal entity, as defined in article 2 (6) of the Electricity Balancing Guideline, and with whom ELIA has concluded a Contract to provide Balancing Services;</u>
Balancing Services	<u>As defined in article 2 (3) of the Electricity Balancing Guideline</u>
Black Start Service	the service to guarantee the availability of Production Unit(s) suitable for starting up and delivering Active Power to the grid without any supply coming from the grid (cf. article 261 of the Technical Regulation);
"CIPU" or "CIPU contract"	Contract for the Coordination of Injection by the Production Units;
"Contract" or "Contracts"	general term indicating one or all of the contracts for ancillary services and the contracts for Grid Losses, such as explained in more detail in Article 1;
Control Area	the area for which ELIA has been designated transmission grid operator in accordance with the Electricity law of 29 April 1999;
Demand Side Service of Primary Control	the reserve power made available to ELIA, consisting of an automated and local response to frequency deviations through the means of temporary alteration of off-take;
Electricity Law	the law of 29 April 1999 regarding the organisation of the electricity market, as amended from time to time;
ELIA	Elia System Operator, the operator of the High Voltage grid;
ENTSO-E	"European Network of Transmission System Operators for Electricity" (when expressly specified in this Contract, the ENTSO-E rules and recommendations that apply and which are used as the reference for the relations between the Parties, except for any contrary stipulation in the Contracts);
General Terms & Conditions" (GC)	the present General Conditions governing the "Contracts";
Grid Codes	<u>The Federal Grid Code for Transmission (Arrêté royal du 19 decembre 2002 établissant un règlement technique pour la gestion du réseau de transport de l'électricité et l'accès à celui-ci) as amended from time to</u>

	<u>time and the Grid Codes for Local and Regional Transmission;</u>
Grid Losses	the energy that is lost in the Elia Grid through the physical mechanism known as the Joule Effect;
Indirect Damage	any incidental, consequential damage, loss or injury such as, but not limited to loss of revenue, loss of profit, loss of data, loss of business opportunities, loss of (prospective) clients, missed savings, etc;
Interruptibility Service	the reserve power made available by one or more grid users to ELIA, allowing the latter to temporarily reduce the off-take of the load(s) connected to the grid;
Law of 2 August 2002	The Law of 2 August 2002 against payment arrears in commercial transactions (B.S. 7 August 2002, p. 34281) as amended from time to time;
Party	either ELIA or the Supplier, jointly referred to as the "Parties";
Production Unit	a physical unit that includes a generator for producing electricity;
Primary Control Service	the reserve power made available to ELIA, consisting of an automated and local response to frequency deviations through the means of temporary alteration of injection of a Production Unit;
Reactive Power	the electrical power needed to generate magnetic fields (e.g., in motors and transformers) or electrical fields (e.g., in condensers). The quantity is equal to $\sqrt{3} U I \sin(\phi)$, whereby U and I are the effective values of the fundamental components of the voltage wave (between a phase and earth) and the current wave (in that phase) and whereby phi represents the phase difference between the fundamental components of the voltage wave and the current wave;
Secondary Control Service	the reserve power made available to ELIA, allowing ELIA, by its activation, to limit the exchanges of energy between the Control Area and other control areas of the ENTSO-E grid to the value set in accordance with the rules and recommendations of the ENTSO-E. The service can consist of: <ul style="list-style-type: none"> • Upwards Secondary Reserve: a power reserve which allows a power plant to increase its output in case of activation by ELIA • Downwards Secondary Reserve: a power reserve which allows a power plant to reduce its output in case of activation by ELIA.
Service(s)	<u>the works, deliveries, and/or services forming the object of the Contracts. Depending on the boxes ticked under Art. 2.1, Tertiary Control Service by CIPU Technical Units and/or Tertiary Control Service by Non-CIPU Technical Units and/or Tertiary Control Non-Reserved Service by CIPU Technical Units and/or Tertiary Control Non-Reserved Service by Non-CIPU Technical Units</u>
Supplier	the natural or legal person with whom ELIA SYSTEM OPERATOR has concluded an Agreement
Technical Regulation	shall mean the Technical Regulation such as organized under the « Arrêté royal du 19 décembre 2002 établissant un règlement technique pour la gestion du réseau de transport de l'électricité et l'accès à celui-ci » such as amended from time to time.

<u>Terms and Conditions</u>	<u>The Terms and Conditions for the provision of the Service in compliance with article 18 of the EBGL ;</u>
<u>Tertiary Control or "R3"</u>	<u>The increase of active power, for a duration of a multiple of 15 minutes, on the ELIA Grid based on a request of ELIA. Also indicated in the Guideline on electricity balancing by the term "Manual Frequency Restoration Reserve" or "mFRR";</u>
<u>Tertiary Control Service</u>	<u>The reserve of power made available to ELIA, described in Art. 157 of the Technical Regulation, with which ELIA can restore the balance between supply of and demand for Active Power within the Control Area.</u>
<u>Tertiary Control Non-Reserved Service by CIPU Technical Units</u>	<u>The Tertiary Control Non-Reserved service supplied by CIPU Technical Units and that is governed by the Tertiary Control Contract, comprising at least the following:</u> <ul style="list-style-type: none"> - <u>the submission of Bid Prices; and</u> - <u>the activation of Incremental or Decremental R3 NR Requests in accordance with the provisions of the Contract;</u>
<u>Tertiary Control Non-Reserved Service by Non-CIPU Technical Units</u>	<u>The Tertiary Control Non-Reserved service supplied by Non-CIPU Technical Units and that is governed by the corresponding Contract, comprising at least the following:</u> <ul style="list-style-type: none"> - <u>the submission of Energy Bids; and</u> - <u>the complete or partial activation of these Energy Bids in accordance with the provisions of the Contract;</u>
<u>Tertiary Control Service by CIPU Technical Units</u>	<u>The Tertiary Control service supplied by CIPU Technical Units and that is governed by the Tertiary Control Contract, comprising at least the following:</u> <ul style="list-style-type: none"> - <u>the provision of the Tertiary Control Power Obligations; and</u> - <u>the activation of this Tertiary Control Power in accordance with the provisions of the Contract;</u>
<u>Tertiary Control Service by Non-CIPU Technical Units</u>	<u>The Tertiary Control service supplied by Non-CIPU Technical Units and that is governed by the Tertiary Control Contract, comprising at least the following:</u> <ul style="list-style-type: none"> - <u>the provision of the Tertiary Control Power Obligations; and</u> - <u>the activation of this Tertiary Control Power in accordance with the provisions of the Contract;</u>
<u>Voltage Control Service</u>	<u>the Reactive Power made available to ELIA, which complies with the requirements of articles 257, 258, 259 and 260 of the Technical Regulation;</u>
<u>Working Day</u>	<u>any calendar day except for Saturday, Sunday and Belgian public holidays;</u>

2. SCOPE OF SERVICES AND CONTRACTUAL STRUCTURE

2.1. Scope of services

By the signature of this Contract, the BSP undertakes to abide by the following Terms and Conditions and to provide the Service(s) described in these Terms and Conditions: [TICK THE RELEVANT BOX(ES)]

<input type="checkbox"/>	<u>The Terms and Conditions for Tertiary Control Service by CIPU Technical Units</u>
<input type="checkbox"/>	<u>The Terms and Conditions for Tertiary Control Service by Non-CIPU Technical Units</u>
<input type="checkbox"/>	<u>The Terms and Conditions for Tertiary Control Non-Reserved Service by CIPU Technical Units</u>
<input type="checkbox"/>	<u>The Terms and Conditions for Tertiary Control Non-Reserved Service by Non-CIPU Technical Units</u>

2.2. Contractual Structure

The present Contract between the Parties lays down their mutual rights and obligations in relation to the procurement by ELIA from the BSP and the eventual provision by the BSP to ELIA of Tertiary Control Service(s) within the ELIA Control Area.

The Contract is structured as follows:

- Part 2: The Terms and Conditions for Tertiary Control Service by CIPU Technical Units (including all Annexes) adopted by Elia on the basis of Art. 18 EBGL and as approved by the CREG (the full text of these Terms and Conditions will only be added to this Contract if the BSP has ticked the first box in article 2.1 above).
- Part 3: The Terms and Conditions for Tertiary Control Service by Non-CIPU Technical Units (including all Annexes) adopted by Elia on the basis of Art. 18 EBGL and as approved by the CREG (the full text of these Terms and Conditions will only be added to this Contract if the BSP has ticked the second box in article 2.1 above).
- Part 4: The Terms and Conditions for Tertiary Control Service by CIPU Technical Units (including all Annexes) adopted by Elia on the basis of Art. 18 EBGL and as approved by the CREG (the full text of these Terms and Conditions will only be added to this Contract if the BSP has ticked the first box in article 2.1 above).
- Part 5: The Terms and Conditions for Tertiary Control Service by Non-CIPU Technical Units (including all Annexes) adopted by Elia on the basis of Art. 18 EBGL and as approved by the CREG (the full text of these Terms and Conditions will only be added to this Contract if the BSP has ticked the second box in article 2.1 above).

The Parties shall ensure that the proper performance of this Contract is always based on the existence and proper performance of the requisite contractual agreements with third parties involved.

3. ADDITIONAL RULES OF INTERPRETATION

2.1 Interpretation

~~The titles and headings in the Agreements are only included to simplify references and in no way express the intentions of the Parties. They will not be taken into consideration when interpreting the clauses of the Agreements.—~~

~~The Appendices to the Contracts constitute an integral part of the Contracts. Any reference to the Contracts includes the Appendices and vice-versa. If there is a conflict of interpretation between an Appendix to a Contract and one or more clauses in this Contract, the clauses in this Contract shall take precedence.—~~

In case of contradiction between the Terms and Conditions (Part 2, 3, 4 or 5) and the General Conditions (Part 1), the Terms and Conditions shall prevail.

In case of contradiction between the main body of Part 2, 3, 4 or 5 and its respective Annexes, the main body shall prevail.

This Contract supersedes all previous agreements and documents exchanged between the Parties relating to the same subject matter.

Furthermore, by signing this Contract, the BSP explicitly renounces to apply its own general conditions, special or otherwise, regardless of the time when they were issued or the form of their issuance.

The substantiation in ~~an Agreement~~this Contract of a specific obligation or stipulation listed in the ~~Technical Regulation~~Grid Codes shall in no way be considered as derogating from the obligations or stipulations which, under the ~~Technical Regulation~~Grid Codes, must be applied to the relevant situation.—

The titles and headings in this Contract are for convenience only and do not affect their interpretation.

~~3.—~~ **AGREEMENT**

~~1.—~~ Constitutive elements

~~The Agreement shall be composed at least of the following documents, in the possession of the Supplier:—~~

- ~~• The Contract signed by ELIA and the Supplier, including all the Appendices;—~~
- ~~• The General Terms & Conditions;—~~

~~If there is a difficulty in interpretation or a contradiction between the constitutive elements of the Agreement, each document shall take precedence~~

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~~over the following one in the order in which they are enumerated in the contract or in the purchase order, and in the absence of such an enumeration, in the order in which they are mentioned above.~~

~~If there is a difficulty in interpretation or a contradiction between an element of the Agreement and its supplements and appendices, the principal document shall take precedence.~~

~~The documents exchanged between ELIA and the Supplier prior to the date of conclusion of the Agreement may never take precedence over the clauses of this Agreement, nor be merged therewith. They may only be invoked for the purpose of clarifying clauses in the Agreement that are open to several interpretations.~~

~~2. Conclusion of the Agreement~~

~~If not mentioned in the Contract, the Agreement shall commence each year on 1 January and end on 31 December of the same year.~~

4. PERFORMANCE OF THE CONTRACT

1. Determination of monthly remunerations

Monthly remunerations are calculated by dividing the total yearly remuneration by 12, leading to a fixed value for each month of the year, unless specified otherwise in the Contract.

2. Indexation

This article is only applicable in case a yearly indexation is foreseen in the Contract.

For the year Y the new unit price (€/MW/h) is calculated as follows:

$$P(Y) = P(Y-1) * \frac{NI}{BI}$$

With:

- P(i) = the unit price of the year i
 - Y = year for which the new price is determined
 - Y-1 = year before
- NI = New index, equal to the average of the monthly consumption index as published on (<http://statbel.fgov.be/nl/statistieken/cijfers/economie/consumptieprijzen/>) of the first 9 (nine) months of the year Y-1.
- BI = Base index, equal to the average of the monthly consumption index as published on (<http://statbel.fgov.be/nl/statistieken/cijfers/economie/consumptieprijzen/>) of the months of year Y-2

3. Rounding rules

All indexes and prices are rounded 2 digits after the comma. When the 3th digit after the comma is smaller or equal to 5, the number should be rounded down. When the 3th digit after the comma is greater than 5, the number has to be rounded up.

4. ENTRY INTO FORCE AND DURATION OF THIS CONTRACT

4.1. Entry into force of this Contract

This Contract shall enter into force once it has been validly signed by all Parties.

Once this Contract has entered into force between the Parties, the BSP shall be bound by the Terms and Conditions as detailed under Part 2 and/or Part 3 and/or Part 4 and/or Part 5 of this Contract (depending on which box(es) the BSP has ticked in article 2.1 above).

4.2. Duration of the Contract

This Contract terminates on December 31st, 2021.

4.5. INVOICING AND PAYMENT

4.1-5.1. Invoicing matters – General instructions

The absence of one of the prescribed legal or contractual stipulations shall nullify the invoice and render it valueless. In such a case, ELIA reserves the right to return the invoice to the SupplierBSP within a period of 15 (fifteen) Working Days. Returning the invoice in this way shall constitute rejection of the invoice, without any other reaction from ELIA being necessary. Failure by the SupplierBSP to observe the instructions of ELIA regarding invoicing will give rise to an incorrect invoice, which will be the subject of a credit note to ELIA.

4.2-5.2. Payment matters

Payments will be made within 30 calendar days following the end of the month in which the invoice is received. ELIA shall pay the SupplierBSP by direct transfer to the stated bank account. Within the scope of this article, an invoice will be considered received on the third Working Day following the date when the invoice was sent (postmark will serve as proof). If the value of the invoice is disputed, the undisputed value will be settled.

4.3-5.3. Interest for delayed payment

Late payment will automatically and without notice of default incur interest on the total amount of the invoice as specified in Art. 5 of the Law of 2 August 2002 from the day following the due date, up to and including the day when payment in full is made.

2.6. LIABILITY

2.1-6.1. Without prejudice to the obligation to pay penalties as provided by the AgreementContract, the ~~continual~~ provision of the Services by the SupplierBSP is an obligation of means (“middelenverbintenis – obligation de moyens”).

2.2-6.2. The Parties shall do their utmost effort, during the lifetime of the Contract, to prevent damage by one Party to the other and, as the case may be, to limit it.

2.3-6.3. The ~~Supplier is~~Parties are not liable for Indirect or unpredictable damage.

2.4-6.4. The SupplierBSP shall however hold ELIA harmless from any liability to and claim by a third party for any direct and/or Indirect, material and/or immaterial damage arising from and/or relating to a fault by the SupplierBSP in performing ~~the Contract~~its obligations; the said fault being one, which under similar circumstances, an experienced,

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professional ~~supplier~~BSP acting according to the rules and taking all reasonable precautions would in no case have committed.

~~2.5-6.5.~~ As soon as one of the Parties has knowledge of any claim to pay compensation, including a claim for compensation arising from a claim by a third party, for which the latter might institute proceedings against the other Party, that Party shall inform the other Party thereof without delay. This notification shall be made by means of a registered letter, mentioning the nature of the claim, the amount thereof (if known) and the method of calculation – all in reasonable detail and with reference to the legislative, regulatory or contractual provisions on which the claim might be based.

~~2.6-6.6.~~ Any compensation due, as the case may be, by the Parties is in any case limited to a maximum of twice the value of the Contract per year, the amount of which cannot exceed €12.5 million (twelve and a half million Euro) per year.

~~3.7.~~ **FORCE MAJEURE**

~~3.1-7.1.~~ Without prejudice to the rights and obligations of the Parties in cases of emergency, as defined in the applicable laws and/or regulations, and without prejudice to the application of the rescue and restoration ~~code laid down provisions, as defined in implementation of Articles 312 et seq of the Technical Regulation~~ applicable laws and/or regulations, the Parties will be discharged of their respective obligations under this Contract in a case of force majeure that prevents the performance of the Agreement ~~their obligations under this Contract~~, either partly or entirely, with the exception of the financial obligations that arose before the force majeure.

~~1.~~ The term “*force majeure*” shall mean any events that could not reasonably be predicted, which occurred after conclusion of the Agreement, and which could not be ascribed to a fault by either of the Parties and which make performance of the Agreement impossible, either temporarily or permanently.

~~7.2.~~ The term “*force majeure*” shall mean, without prejudice to the definition of force majeure in applicable laws and/or regulations, any unforeseeable or unusual event or situation beyond the reasonable control of a Party, and not due to a fault of the Party, which cannot be avoided or overcome with reasonable foresight and diligence, which cannot be solved by measures which are from a technical, financial or economic point of view reasonably possible for the Party, which has actually happened and is objectively verifiable, and which makes it impossible for the Party to fulfil, temporarily or permanently, its obligations in accordance with this Contract and which occurred after conclusion of the Contract.

A market mechanism, including e.g. the imbalance price, cannot be qualified as force majeure.

The following situations, among others, will be considered as *force majeure*, provided they comply with the description given in the previous sentence:

1. natural disasters arising from earthquakes, floods, storms, cyclones or other climatologically exceptional situations recognized as such by a public authority habilitated for this;
2. a nuclear or chemical explosion and its consequences;
3. a computer virus, a computer crash or another unavailability of installations for reasons other than aging, improper use, or lack of maintenance of this system;
4. the temporary or continuing technical impossibility for the grid to exchange electricity because of disruptions within the Control Area caused by electrical currents resulting from energy exchanges within another Control Area or between two or more other Control Areas and of which the identity of the market participants involved in those energy exchanges is unknown by ~~Elia~~ELIA and which ELIA could not reasonably be expected to know;
5. a collective dispute that gives rise to a unilateral measure by employees (or groups of employees) or any other labour dispute;
6. fire, explosion, sabotage, acts of terrorism, acts of vandalism, damage caused by criminal acts, criminal coercion and threats of a similar nature;
7. state of war (declared or not), threat of war, invasion, armed conflict, blockade, revolution or uprising;
8. a measure imposed by the authorities.

~~3.2.7.3.~~ 3.2.7.3. The Party that invokes a situation of force majeure shall inform the other Party as soon as possible of the circumstances following which it cannot fulfil its obligations, either wholly or in part, how long such non-fulfilment might reasonably be expected to last, and of the measures it has taken to counteract the situation.

~~3.3.7.4.~~ 3.3.7.4. Nevertheless, the Party that invokes a situation of force majeure shall do everything possible to limit the consequences of the non-fulfilment of its obligations and to once again fulfil its obligations.

~~3.4.7.5.~~ 3.4.7.5. If the period of force majeure persists for 30 (thirty) successive days or more, and one of the Parties, as a result of the force majeure situation, is unable to fulfil ~~theits~~ essential obligations of the ~~Agreement, one Contract, each~~ of the Parties may ~~cancel~~terminate the ~~Agreement Contract~~ with immediate effect by a reasoned registered letter.

4.8. CONFIDENTIALITY

4.1.8.1. The Parties and/or their employees undertake to treat any information that they exchange with one another within the framework or in relation to the ~~Agreement~~Contract in the strictest confidence and not to divulge it to third parties unless at least one of the following conditions is met:

1. if ELIA and/or the Supplier~~BSP~~ is called to give evidence in court or in their relations with the competent regulatory, administrative and judicial authorities. The Parties shall, as far as possible, inform each other of the situation in advance, and will reach an agreement concerning the form and content of the communication of this information;
2. if a prior written agreement has been obtained from the Party issuing the confidential information;
3. with regard to ELIA, in consultation with operators of other grids or within the framework of contracts and/or rules with the foreign grid operators, ~~insofar as is necessary for the safety, reliability or efficiency of the transmission grid and/or the grids linked thereto and or regional security coordinators~~, insofar as the addressee of that information undertakes to accord the same degree of confidentiality to that information as that accorded by ELIA;
4. if such information is easily and normally accessible or available to the public;
5. if the divulgence of such information by ELIA and/or the Supplier~~BSP~~ to persons such as subcontractors and/or their employees and/or their representatives and/or regional security coordinators is essential for technical or safety reasons, insofar as those addressees are bound by rules of confidentiality that appropriately guarantee the protection of confidentiality;
6. if the information is already legally known by ELIA and/or the Supplier~~BSP~~ and/or their employees and work agents at the time of transmission, and which has not been communicated by the notifying Party, prior to the transmission, directly, indirectly, or by breaching an obligation of confidentiality;
7. the information which, after transmission, has been brought to the attention of the recipient Party and/or its staff and work agents via a third party, without breaching an obligation of confidentiality with regard to the notifying Party;
8. the divulgence of the information is foreseen by applicable legislation and/or regulation.

4.2.8.2. The Supplier~~BSP~~ declares that it has been personally and specifically informed by ~~ELIA~~ELIA and has familiarised itself with the specific provisions on confidentiality obligations regarding the operator of the Belgian electricity transport network (at both federal and regional levels).

~~4.3-8.3.~~ The Parties accept that the confidentiality of information may not be invoked mutually, or with regard to other persons involved in the implementation of the ~~Agreement~~Contract.

~~4.4-8.4.~~ A Party ~~may~~must not, for reasons of confidentiality, refuse to divulge information that is essential and pertinent to the implementation of the ~~Agreement~~Contract. The other Party to whom such information is communicated guarantees that it will maintain the confidential nature thereof.

~~4.5-8.5.~~ The ~~Supplier~~BSP declares and guarantees that the confidential information will only be used for the purposes of establishing the bid/performance of the Services and not for other purposes.

~~4.6-8.6.~~ Both Parties shall take the requisite measures to ensure that this confidentiality obligation shall also be strictly observed by their employees, as well as any person who, without being an employee of one of the Parties but for whom that Party is nonetheless responsible, might properly receive such confidential information. In addition, confidential information shall only be divulged on a “need-to-know” basis, and reference will always be made thereby to the confidential nature of the information.

~~4.7-8.7.~~ Any infringement to this confidentiality obligation shall be considered as serious misconduct by the Party that violates that obligation. Such infringement shall give rise to the payment of compensation for any direct and Indirect, material and immaterial damage (~~as distinct in~~ deviation from Art. 6.3) that the other ~~Part~~Party can reasonably demonstrate.

~~4.8-8.8.~~ Each of the Parties shall maintain full ownership of that confidential information, even when it has been divulged to other Parties. The transmission of the confidential information does not entail any transfer of property nor of any other right other than those mentioned in the ~~Contract~~(s).

~~4.9-8.9.~~ Without prejudice to the applicable laws and regulations, the aforementioned confidentiality obligations remain in force for a period of 5 (five) years after termination of the ~~Agreement~~Contract or in the event that the ~~Contract~~(s) is not concluded, after the notification of the confidential information.

~~7. CHANGE OF CIRCUMSTANCES - HARDSHIP~~

~~1. Each Party must continue to honour its obligations, even if they become more difficult to perform, either because the costs of doing so have increased, or because the value of the return it receives has fallen.~~

~~2. However, if an event arises:~~

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- ~~1. after conclusion of the Agreement;—~~
- ~~2. which is of such a nature that it could not reasonably have been taken into account when concluding the Agreement;—~~
- ~~3. for which the Party that invokes it does not have to bear the risk under the Agreement;—~~
- ~~4. which cannot be ascribed to a fault by the Party that invokes such event; and—~~
- ~~5. by which the balance of the Agreement is considerably and permanently disturbed;~~

~~In such a case the Parties are compelled to enter into negotiations in accordance with the procedure specified in Articles 10.2—10.4 below for the purpose of amending or dissolving the Agreement.~~

9. OBLIGATION OF INFORMATION

The Parties undertake, for the duration of this Contract, to inform one another as soon as possible of any event or information that the Party who has knowledge thereof must reasonably consider as an event or information that might have a detrimental effect on the Contract or on the fulfilment of the obligations specified in the Contract towards the other Party.

5.10. REVIEW

- ~~3. The Parties agree to jointly examine the possibilities and/or modalities of a review of the Contract at the request of the first Party to take action, in the following circumstances:~~
 - ~~1. in the case described in Art. 9.2;—~~
 - ~~2. in the case that the government takes measures beyond the control of the Supplier and/or ELIA, by which the Supplier and/or ELIA are seriously and permanently disadvantaged in the fulfilment of their contractual obligations;~~
 - ~~3. if there is a change to one or more rules, recommendations and/or procedures of ENTSO-E with regard to the subject of the Contract, in order to adapt the Contract for it to stay in line with the changed ENTSO-E rules, recommendations and procedures;~~

~~4. in case of a modification, for whatever reason, to the CIPU contract;~~

~~5. if the legal or regulatory requirements render the review of the Contract essential;~~

~~4. The Party that wishes to have the Contract modified or reviewed in this way shall inform the other Party of:~~

~~1. the clauses of the Contract which are the subject of the request for modification or review;~~

~~2. the reasons why such modification or review is being requested;~~

and shall

~~3. provide a concrete proposal for modification or review, including a proposal for the new clause;~~

~~5. The Parties undertake to consult one another as soon as possible, but no later than 10 (ten) Working Days after one of the Parties has received a request for a modification or revision of the Contract, and to do everything possible in this case to supplement, modify, revise or replace the clauses of the Contract to which the request for a modification or revision refers with appropriate amendments. The aim of both Parties is thereby to uphold and abide by the principles of cooperation as specified by the Contract when signing it.~~

~~If within 30 (thirty) Working Days which follow the first meeting regarding the modification or revision of the totally or part of the Contract the Parties have not reached an agreement, the dispute procedure specified in Article 13 shall apply. The competent tribunal may, at the request of the first Party take action to:~~

~~1. dissolve the Contract on the date and under the conditions it shall specify, or~~

~~2. amend the Contract for the purpose of distributing the profit and loss arising from the change of circumstances fairly between the Parties.~~

~~In both cases the competent tribunal may allocate compensation for the loss incurred due to a Party's refusal to negotiate or if such negotiations are contrary to the requirements of good faith.~~

10.1. Before modifying the Contract, ELIA will consult stakeholders, including the BSPs and the CREG, on the draft proposal for a period of not less than one month. The consultation will exclusively concern the amended parts of the Contract.

10.2. ELIA will duly consider the views of stakeholders resulting from the consultation prior to the submission of the Contract for regulatory approval. In all cases, a sound justification for including or not including the views resulting from the consultation, and exclusively related to the amended parts of the Contract, will be provided together with the submission and published in a timely manner before or simultaneously with the publication of the proposal for an amended Contract.

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10.3. After approval by the CREG of the amendments to the Contract, these amendments shall enter into force between the Parties, as will be indicated in the notification via registered mail with acknowledgement of receipt, sent by Elia to the BSP, but however not earlier than 14 days after such notification.

10.4. In case the BSP does not agree with the amendments to the Contract, the BSP can terminate the Contract.

10.5. Any modification to the contact information taken up under Part 2 and/or Part 3 and their respective Annexes must be communicated to the other Party no later than 7 (seven) Working Days before the date on which that modification comes into effect.

6.11. PREMATURE DISSOLUTION IN CASE OF DEFAULT

The ~~Agreement~~Contract may be terminated unilaterally by one of the Parties without judicial intervention if the other Party (the 'defaulting Party') does not rectify ~~the~~a fault within 15 (fifteen) Working Days after the defaulting Party has received a registered letter with proof of receipt in which the fault is mentioned and in which that Party was notified that the ~~Agreement~~Contract would be dissolved without any further notice if the aforementioned fault is not fully rectified within the stated deadline. The ~~Agreement~~Contract will be terminated subject to the reserve of any legal action available to the Party not in default against the defaulting Party, including a claim for damages.

7.12. MISCELLANEOUS CLAUSES

~~9. 12.1~~ — The fact that one of the Parties renounces permanently or temporarily to the application of one or more clauses of ~~an Agreement~~the Contract may under no circumstances be considered as a renunciation of the rights of that Party arising from that particular clause or those clauses.

~~7.2-12.2.~~ Without prejudice to the application of the relevant laws and regulations, the ~~Agreement and its Appendices~~Contract comprises ~~7~~ the entire agreement concluded between the Parties and includes all the agreements made by the Parties ~~within~~regarding the ~~framework of the Agreements~~subject matter thereof.

~~7.3-12.3.~~ Any notification, as required under the ~~Agreement~~Contract, will be made in accordance with the provisions of ~~Appendix~~Part 2. ~~Any modification to the information relative to that Appendix must be communicated to the other Party no later than 7 (seven) Working Days before the date on which that modification comes into effect; and/or Part 3 and their respective Annexes.~~

~~7.4.12.4.~~ The rights and obligations specified in the ~~AgreementContract~~ may under no circumstances be transferred, either wholly or in part, without the prior written permission of the other Party. That permission shall not be refused or postponed unreasonably.

~~7.5.12.5.~~ On condition that this has no effect on the subject of the ~~AgreementContract~~ itself, the invalidity of one or more clauses in the ~~AgreementContract~~ shall not affect the validity, interpretation and/or implementation of the other clauses of the ~~AgreementContract~~.

~~7.6.12.6.~~ If one or more clauses of the ~~AgreementContract~~ have to be declared invalid or impossible to implement, the Parties shall consult one another at the request of the first Party to take action in order to amend such clause(s). This will be done in accordance with the procedure specified in Art. 10 of the present ~~General Terms & ConditionsContract~~.

~~The Parties undertake, for the duration of the Agreement, to inform one another as soon as possible of any event or information that the Party who has knowledge thereof must reasonably consider as an event or information that might have a detrimental effect on the Agreement or on the fulfilment of the obligations specified in the Agreement towards the other Party.~~

~~8.13.~~ **APPLICABLE LAW – RULES REGARDING DISPUTES**

~~8.1.13.1.~~ The ~~Agreements areContract~~ is governed by and interpreted according to Belgian law.

~~13.2.~~ Any dispute regarding the conclusion, validity, interpretation or implementation of ~~an Agreementthe Contract~~ or subsequent agreements or operations that might arise therefrom, together with any other dispute concerning or relating to the ~~AgreementContract~~ shall be laid before the courts of Brussels.

**PART 2 - THE TERMS AND CONDITIONS FOR TERTIARY CONTROL SERVICE
BY CIPU TECHNICAL UNITS**

**PART 3 - THE TERMS AND CONDITIONS TERTIARY CONTROL SERVICE BY
NON-CIPU TECHNICAL UNITS**

PART 4 - THE TERMS AND CONDITIONS FOR TERTIARY CONTROL NON-RESERVED SERVICE BY CIPU TECHNICAL UNITS

PART 5 - THE TERMS AND CONDITIONS FOR TERTIARY CONTROL NON-RESERVED SERVICE BY NON-CIPU TECHNICAL UNITS

Drawn up in Brussels in two originals, of which each Party concerned acknowledges having received one. The official version has been drawn up in Dutch and French, without one version taking precedence over the other; the English version is solely for information purposes.

ELIA SYSTEM OPERATOR N.V./S.A., represented by:

[•] _____ [•]

[•] _____ [•]

Date: _____ Date:

[•], represented by:

[•] _____ [•]

[•] _____ [•]

Date: _____ Date: