

# Access Responsible Party Contract

## ARP contract

**!! FOR INFORMATION PURPOSES ONLY !!**

Contract reference: [•]

between:

**ELIA SYSTEM OPERATOR N.V.**, a company established under Belgian law, whose registered offices are located at 1000 Brussels, Keizerslaan 20, company registration number 476.388.378, validly represented by **Erik De Schrijver** and **Stefaan Vanden Berghe**; in the capacity of **Manager Customers Support & Services** and **Manager Commercial Department**,

referred to hereinafter as “Elia”,

and

[•], a company established under [•], whose registered offices are located at [•], company registration number [•], validly represented by [•] and [•], in the capacity of [•] and [•]

referred to hereinafter as “ARP”.

Elia and [ARP] may also each be referred to as “the Party” or jointly as “the Parties”.

**Whereas:**

- Elia owns or at least has the right to use or operate the largest part of the Belgian transmission grid,
- Elia has been officially designated as the transmission system operator,
- [ARP] has expressed its willingness to become an access responsible party according to the terms and condition of this Contract,
- [ARP] understands the importance for the safety and reliability of the Elia grid of complying with all of its balancing responsibilities, as defined below in this Contract, at all times during the fulfilment of this Contract,
- the Parties understand that this Contract is not a contract granting [ARP] access to the Elia grid.

**The following points have been agreed:**

# Contents

<b>SECTION I: DEFINITIONS AND SUBJECT OF THE CONTRACT .....</b>	<b>5</b>	
<b>1</b>	<b>Definitions.....</b>	<b>5</b>
<b>2</b>	<b>Additional rules of interpretation .....</b>	<b>8</b>
<b>3</b>	<b>Subject of the contract .....</b>	<b>8</b>
<b>SECTION II: GENERAL CONDITIONS .....</b>	<b>9</b>	
<b>4</b>	<b>Proof of the financial solvency of [ARP] .....</b>	<b>9</b>
<b>5</b>	<b>Invoicing and payment terms .....</b>	<b>9</b>
5.1	Invoices .....	9
5.2	Disputes .....	9
5.3	Procedure used for collecting any unpaid amounts.....	10
<b>6</b>	<b>Notification to third parties of confidential or commercially sensitive information .....</b>	<b>10</b>
<b>7</b>	<b>Settlement of disputes.....</b>	<b>11</b>
<b>8</b>	<b>Steps to be taken in the event of an emergency or force majeure .....</b>	<b>11</b>
8.1	Definitions and consequences of force majeure and emergencies .....	11
8.2	Measures .....	13
<b>9</b>	<b>Termination or suspension of this Contract .....</b>	<b>13</b>
9.1	Termination of this Contract by [ARP].....	13
9.2	Suspension and termination of this Contract by Elia .....	13
9.3	Termination of this Contract by both Parties.....	14
9.4	Additional consequences .....	15
<b>10</b>	<b>Balancing obligations of [ARP] .....</b>	<b>15</b>
<b>11</b>	<b>Allocation to the Balancing perimeter .....</b>	<b>16</b>
11.1	Injection and/or Off-take points .....	16
11.2	Distribution Off-take Position(s) on distribution networks other than Elia grid.....	17
11.3	Losses .....	17
11.4	Import and Export.....	17
11.5	Internal transfers of energy .....	17
<b>12</b>	<b>Nominations .....</b>	<b>18</b>
12.1	Submission and conditions for the submission of Nominations.....	18
12.1.1	With regard to Nominations for Injection and Off-take points and for Distribution Off-take Positions.....	18
12.1.2	With regard to Nominations for Import and/or Export and Internal transfers of energy .....	18
12.2	Evaluation of submitted Nominations.....	18
12.2.1	Nominations involving Off-take at an Off-take Point .....	18
12.2.2	Nominations involving Injection at an Injection Point.....	19
12.2.3	Nominations involving international exchanges on Northern and/or Southern Border.....	19

12.2.4	Nominations involving Internal Day-ahead transfers of energy .....	19
12.2.5	Nominations involving Internal Intra-day transfers of energy.....	20
12.3	Confirmation or rejection of Nominations .....	21
<b>13</b>	<b>Full or partial refusal of Nominations on Day D-1 and full or partial suspension of Nominations on Day D.....</b>	<b>21</b>
13.1	Full or partial refusal of Nominations on Day D-1 .....	21
13.1.1	Principle.....	21
13.1.2	Notification procedure .....	21
13.2	Full or partial suspension of Nominations on Day D.....	22
13.2.1	Principle.....	22
13.2.2	Notification procedure .....	22
<b>SECTION III: PARTICULAR CONDITIONS.....</b>		<b>23</b>
<b>14</b>	<b>Suspensive conditions to the execution of this Contract .....</b>	<b>23</b>
<b>15</b>	<b>Duration of this Contract.....</b>	<b>23</b>
<b>16</b>	<b>Tariffs for Imbalances and external inconsistencies .....</b>	<b>23</b>
<b>17</b>	<b>Payment guarantee .....</b>	<b>24</b>
17.1	General.....	24
17.1.1	Adjustment/ renewal / modification of the guarantee .....	24
17.1.2	Return of the bank guarantee .....	25
<b>18</b>	<b>Metering data.....</b>	<b>25</b>
<b>19</b>	<b>Pooling Agreement .....</b>	<b>25</b>
<b>20</b>	<b>Liability.....</b>	<b>26</b>
<b>21</b>	<b>Miscellaneous conditions .....</b>	<b>27</b>
21.1	Changes to the Contract .....	27
21.2	Notification .....	27
21.3	Information and recording .....	27
21.4	Non-transferability of rights .....	28
21.5	Supersedes all previous Agreements .....	28
21.6	No waiver .....	28
21.7	Invalidity of a clause.....	28
21.8	Licences .....	28
21.9	Applicable law .....	29
Annex 1	Access rights for Import and Export on the Southern Border .....	31
Annex 2	Access rights on the Northern Border.....	32
Annex 3	Imbalance.....	33
Annex 4	Bank Guarantee .....	34
Annex 5	Procedure for Nominations .....	37
Annex 6	Contact information .....	40
Annex 7	Pooling Agreement.....	44

# SECTION I: Definitions and subject of the Contract

## 1 Definitions

Except where there is further specification aimed at application for the purposes of the Contract, and without ignoring the stipulations of public order, the principles defined in the Electricity Act, Electricity Decrees and/or Orders in relation to the organisation of the electricity market and/or the various applicable Technical Regulations (as defined hereunder) are also included for the purposes of the Contract in the sense of these statutory or regulatory definitions.

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

**“Access Point”**: an Injection point and/or Off-take Point;

**“Access Responsible Party”**: ARP; any natural person or legal entity listed in the register of Access Responsible Parties. in accordance with the Technical Regulations for Transmission; in the Technical Regulations for Distribution, Local and Regional Transmission. Also indicated by the term ‘balance responsible party’;

**“Act of 2nd August 2002”**: the Act of 2nd August 2002 regarding the fight against payment arrears in trading transactions, as amended from time to time;

**“Active Power”**: the electrical power that can be transformed into any other form of power such as, for instance, mechanical, thermal and acoustic power. The value of Active Power equals  $3 U I \cos \varphi$  in which U and I are the effective values of the fundamental components of the voltage (between a phase and the earth) and the current (in that phase) and whereby  $\varphi$  represents the phase difference (angle) between the fundamental components of voltage and current;

**“Balancing Perimeter”**: any Off-take and Injection allocated to [ARP] as defined in article 11 of this Contract;

**“Banking days”**: the days on which the banking sector in Belgium works;

**“Block Delivery”**: the Active Power on a quarter hour basis for an Off-take Point that is nominated by an access responsible party, and confirmed by the Grid User. in question The Balancing Perimeter of [ARP] is adjusted for all relevant Block Deliveries. The specifications for Block Deliveries are described in the standard access contract;

**“Connected Foreign Transmission Grid”**: either the French Transmission Grid (which is operated by RTE) or the Dutch Transmission Grid (which is operated by TenneT) as the case may be;

**“Contract”**: this access responsibility contract concluded between Elia and [ARP];

**“CREG”**: Commission for Regulation of Electricity and Gas ;

**“Day D”**: any calendar day for which the implementation of a Nomination is scheduled;

**“Day D-1”**: the calendar day before D Day;

**“Day D+1”**: the calendar day after D Day;

**“Dispute Settlement Authority”**: the dispute settlement authority established by article 29, § 2 of the Electricity Act;

**“Distribution Off-take Position”**: means the energy allocated to the Balancing Perimeter of an Access Responsible Party by a distribution grid operator, other than Elia, which is part of the Belgian control area operated by Elia, on a quarter hourly basis;

**“Electricity Decree and/or Order”**: the Decree issued by the Flemish Community on 17th July 2000 governing the organisation of the electricity market, the Decree issued by the Walloon Region on 12th April 2001 regarding the organisation of the regional electricity market and the Brussels Order issued on 19th July 2001 regarding the organisation of the electricity market in the Brussels Capital Region, as amended from time to time;

**“Electricity Act”**: the Act of 29th April 1999 regarding the organisation of the electricity market, as published in the Belgian Official Journal on 11th May 1999, as amended from time to time;

**“Elia grid”**: the transmission grid for which Elia has the right of ownership or at least the use and operating rights and for which Elia is nominated as the transmission system operator;

**“Export”**: an international exchange of Active Power on the Northern Border from the Elia grid to the Dutch Transmission Grid, or an international exchange of Active Power on the Southern Border from the Elia grid to the French Transmission Grid, as the case may be;

**“Grid User”**: any natural person or legal entity connected to the transmission grid as electricity producer or electricity consumer;

**“Hours”**: the normal hours of a day, expressed in Belgian time;

**“Imbalance”**: the difference per quarter hour between the total Injection into the Elia grid belonging to the Balancing Perimeter of [ARP] and the total Off-take from the Elia grid belonging to the Balancing Perimeter of [ARP] as described in Annex 3;

**“Import”**: an international exchange of Active Power on the Northern Border from the Dutch Transmission Grid to the Elia grid, or an international exchange of Active Power on the Southern Border from the French Transmission Grid to the Elia grid, as the case may be;

**“Injection”**: the injection of Active Power:

- at an Injection Point connected to the Elia grid; or
- the Distribution Off-take Position, if it is a net injection; or
- by means of an Import; or
- by means of an Internal transfer of energy (“purchase” – “buyer”);

**“Injection point”**: the physical location and voltage level of a point where power is injected into the Elia grid;

**“Internal transfer of energy”**: an exchange of energy within the Elia control area between [ARP] and another Access Responsible Party which has been authorised by Elia to exchange energy on a bilateral basis, for which a Nomination has to be submitted to Elia by the said Access Responsible Parties in accordance with this Contract. Any reference to an Internal exchange of energy in this Contract covers both Internal Day-Ahead exchanges of energy and Internal Intra-day exchanges of energy;

**“Internal Day-Ahead exchange of energy”**: an Internal exchange of energy for which the Nomination must be submitted to Elia at the latest on D Day-1, in accordance with the stipulations of this Contract;

**“Market Operator”**: a company that meets the conditions laid down in the Royal Decree Exchange;

**“Market coupling”**: the coupling of the day-ahead electricity exchanges Belpex and, among others, APX and Powernext i.e., the coordinated determination of price and volume on those electricity exchanges for which it is necessary that the concerned transmission operators inform those electricity exchanges of the available daily capacity on the borders concerned, so that such capacity can (implicitly) be allocated to the participants at those electricity exchanges in a market-based manner;

**“Internal Intra-day exchange of energy”**: an Internal exchange of energy for which the Nomination must be submitted to Elia by the Access Responsible Parties at the latest on D Day+1, in accordance with the stipulations of this Contract;

**“Off-take”**: the off-take of Active Power:

- at an Off-take Point connected to the Elia grid; or
- the Distribution Off-take Position if it is a net off-take; or
- by means of an Export; or
- by means of an Internal transfer of energy (“sale” – “seller”);

**“Royal Decree Exchange”**: The Royal Decree of 20 October 2005 concerning the creation and organisation of a Belgian market for the exchange of energy blocks;

**“Off-take Point”**: the physical location and the voltage level of a point where power is taken from the Elia grid;

**“Shared Injection”**: the Active Power on a quarter-hour basis for an Injection Point that is been Nominated by an Access Responsible Party. The Injection will be allocated on a percentage basis to the Balancing Perimeters of more than one Access Responsible Party. The specifications for Shared Injections are described in the standard access contract;

**“Nomination”**: a table which contains a series of data such as the characteristics of an access to the Elia grid for a specific D Day, including the quantity of Active Power per time frame to be injected and/or taken by the Party related to the said Nomination;

**“Northern Border”**: all of the interconnection points between the Elia grid and the Dutch transmission grid;

**“Register of Access Responsible Parties”**: the register, kept and updated by Elia, listing all Access Responsible Parties which have entered into a valid and enforceable Access Responsible Party contract with Elia;

**“Southern Border”**: all interconnection points between the Elia grid and the French transmission grid;

**“Technical Regulations for Transmission”**: the Royal Decree issued on 19th December 2002 containing the regulations for the operation of the electricity transmission grid and access thereto, as amended from time to time;

**“Technical Regulations”**: the Technical Regulations for Transmission and the Technical Regulations for Distribution, Local and Regional Transmission.

**“Technical Regulations Distribution, Local and Regional Transmission”**: the technical regulations for the distribution, local or regional transmission of electricity that apply or will apply in Flanders, Brussels and Wallonia, as amended from time to time.

**“UCTE”**: “Union for the Co-ordination of the Transmission of Electricity”

## **2 Additional rules of interpretation**

The headings and main points of articles and/or annexes to the Contract are only included for simplicity of reference and in no way express the intention of the Parties. They will not be taken into consideration in the interpretation of the conditions of the Contract.

The Annexes of this Contract form an integral part of the Contract. Any modification to the Contract will include the Annexes, and vice versa. If there is a conflict of interpretation or conflict between an Annex of this Contract and one or more conditions of this Contract, the conditions of this Contract will take precedence. If [ARP] has any practical questions regarding the interpretation of any procedure stated in this contract or in the Annex thereof, it will submit these questions to Elia.

The carrying out in the Contract of a specific obligation or definition included in the Technical Regulations will, under no circumstances, be considered as a breach of the obligations of the definitions which, pursuant to the Technical Regulations, must be applied in the relevant situation.

## **3 Subject of the contract**

This Contract and its Annexes define:

- the definitions and conditions, including the technical and operational requirements that [ARP] must comply with in order to be granted the status of Access Responsible Party and to retain this status throughout the period of this Contract. [ARP] understands and accepts that the fulfilment of all or part of the conditions of this Contract, including all or part of the rights granted to it therein, may be subject to other contractual, statutory, administrative or regulatory conditions; and
- the contractual obligations of the Parties to pay or credit, as the case may be, the applicable Imbalance charge that arises as the result of an Imbalance, as defined in this Contract; and
- all other rights and obligations incumbent upon the Parties in this regard, including the consequences of possible Imbalances, as defined herein.

Each Party is aware of the interconnection that exists between the connection contract, the Access Responsible Party contract and the access contract that are each a necessary accessory with regard to one another for the safety, reliability and the efficiency of the Elia grid and which as a result are essential for the fulfilment of the contractual relationship.

The Parties will ensure that their contractual relationship with regard to one another will always be based on the existence and proper fulfilment of the necessary contractual arrangements with any relevant third Parties that may enter into a connection contract and/or access contract with Elia or any other transmission system operator within the Belgian control area.



## SECTION II: General Conditions

### 4 Proof of the financial solvency of [ARP]

Entering into the Contract assumes that [ARP] is able to provide evidence of its financial solvency.

Demonstrating the financial solvency of [ARP] when entering into the Contract assumes that [ARP] complies with the special conditions relating to financial guarantees, as agreed in the Contract.

Throughout the entire period of the Contract, [ARP] must, at the reasoned request of Elia, provide evidence to Elia of its financial solvency.

The financial solvency of [ARP] during the fulfilment of the Contract is an essential constituent of the Contract entered into with Elia and commitments entered into by Elia.

### 5 Invoicing and payment terms

#### 5.1 Invoices

Elia will send invoices or credit notes, as the case may be, to [ARP] to the invoice address stated in **Annex 6** of this Contract.

Invoices or credit notes are payable/credited by Parties within 15 (fifteen) days of the date they are received. Receipt of the invoice by [ARP] is assumed to have taken place three (3) days after the invoice was sent out.

In the event of the Parties failing to pay or credit part of any invoices or credit notes within the period of 18 days mentioned above, interest for late payment will be calculated at a rate determined according to article 5 of the Act of 2nd August 2002 and this interest will be due from the due date of the invoice or credit note until payment or credit has been made in full.

Notwithstanding their entitlement to reimbursement of legal costs in accordance with the Civil Code, the Parties are then also entitled to the damages provided for in article 6 of the Act of 2nd August 2002. The stipulations stated above in no way detract from the Parties' other rights pursuant to applicable laws and regulations and in accordance with the conditions of the Contract.

#### 5.2 Disputes

In order to be admissible, any dispute regarding an invoice or credit note must be sent by registered letter to the other Party before the due date of the disputed invoice or credit note and a detailed explanation must be provided as to why the invoice or credit note is being disputed.

Any such dispute in no way relieves the obligation to pay the invoice according to the terms of articles 5.1. of the Contract, except where the dispute lodged by [ARP] is clearly well-founded.

### **5.3 Procedure used for collecting any unpaid amounts**

Failure to pay the invoice within seven (7) days of ARP receiving a notice of default by registered letter from Elia, which is deemed to have taken place within three (3) days after it was sent, Elia will have the right, notwithstanding the application of the aforementioned conditions, to invoke the financial guarantee, as detailed in article 17 of the Contract. The measures used by Elia for collecting unpaid amounts will be applied in a non-discriminatory and reasonable fashion.

## **6 Notification to third parties of confidential or commercially sensitive information**

The Parties undertake to treat as confidential any information that they exchange with one another and receive from one another in the context and as a result of this Contract, and which the Party issuing the information has stamped as confidential and/or which ought to be considered as confidential, in accordance with the applicable laws and regulations. The Parties also undertake not to divulge the confidential information mentioned above to third parties, except where at least one of the following conditions has been complied with:

- 1) if Elia and/or [ARP] is/are called upon to give evidence in court or in their dealings with the control authorities for the electricity market or other official administrative bodies;
- 2) if there is prior written consent from the Party from which the confidential information comes;
- 3) with regard to Elia, in consultation with other grid operators or in the context of contracts and/or regulations with foreign grid operators and insofar as the recipient of this information undertakes to treat this information with the same level of confidentiality as that given by Elia;
- 4) if this information can be accessed easily and normally, or is available to the public;
- 5) if disclosure of the information by Elia and/or [ARP] is essential for technical or safety/security reasons, including the (sub)contractors and/or their employees and/or their representatives, insofar as these recipients are bound by rules of confidentiality that guarantees the safeguarding of the confidentiality of the information in the appropriate manner;
- 6) if disclosure by Elia is necessary for the continuity of the responsibility of balance for Access Points and Distribution Off-take Positions allocated to the perimeter of [ARP], as laid down in article 9.4 of this Contract.

The Parties accept that the confidentiality of data cannot be invoked between themselves, or in relation to other persons, including Grid Users, who may be involved in the fulfilment of the Contract.

Without prejudice to the applicable laws and regulations, this condition will in any event remain in effect for a period of 5 years after termination of the Contract.

Notwithstanding the confidentiality clause above, in the access agreement or in any other agreement or document between [ARP] and Elia, Elia will publish the name of the Access Responsible Party and its status as a Party at its website. All Annexes or parts thereof, that are not specific for the Contract, may also be published by Elia at its website.

## **7 Settlement of disputes**

In accordance with the Royal Decree issued on 3rd May 1999 relating to the operation of the national electricity transmission grid, and more specifically article 14, [ARP] hereby states that it has been informed by Elia, prior to signing the Contract, about its rights arising from this article 14 and among other matters, that disputes relating to access to the Elia grid, the application of the Technical Regulations for Transmission or the charges dealt with in article 12 of the Electricity Act, may be submitted, depending on its preference, to either mediation or arbitration, in accordance with the regulation dealt with in article 28 of the Electricity Act.

Any dispute relating to the conclusion, validity, interpretation or fulfilment of the Contract or of any subsequent contracts or operations that may arise there from, as well as any other dispute relating to or in connection with the Contract shall, at the discretion of the more diligent Party:

- come under the jurisdiction of the Commercial Tribunal in Brussels; or
- be submitted to mediation or arbitration service organised by the relevant regulatory body with jurisdiction, in accordance with the applicable laws or regulations; or
- be submitted to an ad hoc arbitration procedure, in accordance with the conditions of the Belgian Legal Code.

In view of the complexity of the matter, the Parties hereby accept, for the purpose of applying the rules relating to coherency or intervention, to make it possible in the event of related disputes either to waive any ruling of arbitration in favour of other legal proceedings, or, the other way round, to waive any legal proceedings in order to take part in multi-party arbitration. In the event of disagreement, preference will be given to the first proceedings lodged.

This condition in no way detracts from the right of either of the Parties to lodge a dispute relating to access to the transmission grid before the dispute settlement authority, provided this authority has jurisdiction to rule on disputes.

## **8 Steps to be taken in the event of an emergency or force majeure**

### **8.1 Definitions and consequences of force majeure and emergencies**

The fulfilment of the obligations that are the subject of the Contract, for which a case of force majeure and/or an emergency situation, as defined in the Technical Regulations, is invoked, are temporarily suspended for the duration of an incident that results in a case of force majeure and/or an emergency situation.

Force majeure includes any event that could not reasonably have been predicted that may occur after the Contract has been entered into and for which blame cannot be attributed to either of the Parties, that renders fulfilment of the Contract temporarily or permanently impossible. Situations of force majeure include:

- 1) natural disasters resulting from earthquakes, floods, storms, cyclones or other exceptional weather-related situations;
- 2) a nuclear or chemical explosion and its aftermath;
- 3) a computer virus, computer crash for reasons other than the old age or lack of maintenance of the computer system;
- 4) the temporary or permanent technical inability of the Elia grid being able to exchange electricity on account of disruptions caused within the control area by flows of electricity resulting from exchanges of energy in another control area or between two or more other control areas for which the identity of the market participants for these exchanges of energy is not known and cannot reasonably be known to Elia;
- 5) the inability of the Elia grid being used on account of a collective dispute leading to unilateral action 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 the same nature;
- 7) any undeclared state of war, threat of war, invasion, armed conflict, blockade, revolution or uprising;
- 8) measures taken by the authorities.

Any Party that invokes a situation of force majeure and/or an emergency, will as soon as possible inform the other Party, by telephone and/or e-mail and/or fax, on the grounds on which this Party cannot execute partly or totally its obligations and the anticipated duration of this non-execution.

Any Party that invokes a situation of force majeure and/or an emergency will nevertheless do everything in its power to restrict the consequences of the non-fulfilment of its obligations to the other Party, the Elia grid or third parties and begin fulfilling its obligations once again.

If the period of force majeure and/or emergency should last for 30 consecutive days or more and this results in one of the Parties no longer being able to abide by the essential obligations of the Contract as the result of the case of force majeure or emergency situation, that Party may terminate the Contract with immediate effect by sending a registered letter stating its reasons.

## **8.2 Measures**

In the event of an emergency situation or complex incident occurring, as defined in the Technical Regulations, or if Elia is of the opinion that an emergency might reasonably arise, Elia is permitted to take any necessary measures, preventative if required, that are laid down in the Technical Regulations, including the application of the rescue code and the rebuilding code.

The rescue code defines the operational procedures in the context of an emergency situation and also contains the disconnection plan, which defines, among other things, the procedures and priorities regarding the disconnecting of grid users.

The rebuilding code contains the operational procedures for reconstructing of the electricity system.

The rescue code and rebuilding code may be viewed at the request of [ARP]. These codes may be modified at any time by Elia, depending on statutory and regulatory stipulations.

The statutory and regulatory stipulations that apply in relation to the rescue code and rebuilding code, as well as any subsequent modifications, apply to the Parties.

[ARP] undertakes to comply immediately with all measures in accordance with the aforementioned conditions that are notified to it by Elia by telephone and/or e-mail and/or fax for the purpose of preventing and/or remedying emergency situations.

## **9 Termination or suspension of this Contract**

### **9.1 Termination of this Contract by [ARP]**

[ARP] is permitted to terminate this Contract at the earliest 3 months after giving notification of the termination to Elia by registered letter and on condition that at the end of this three-month period of notice:

- i. it has notified the fact to the access holder(s) that have designated [ARP]; and
- ii. all Injection points and Off-take points in the balance perimeter of [ARP] have been allocated in a valid manner to one or more other Access Responsible Parties and that the Distribution Off-take Position(s) of [ARP] are set to zero; and

In the event of [ARP] still not complying with all of its contractual obligations at the end of the three-month period of notice, the Contract for the fulfilment of these undertakings will continue to operate until such time as all of the contractual obligations of [ARP] have been met, in accordance with the Contract.

### **9.2 Suspension and termination of this Contract by Elia**

Without prejudice to its other rights or claims in law, Elia may suspend this Contract unilaterally, stating its reasons in a registered letter and without any prior legal authorisation being required, if:

- a) [ARP] commits a gross breach of the technical stipulations stated in the Technical Regulations for Transmission, such as those set down in articles 10 and 12 of this Contract, which places the safety/security of the Elia grid in immediate danger; in this case, suspension will be applied with immediate effect; or
- b) [ARP] commits a gross breach of the technical stipulations stated in the Technical Regulations for Transmission, such as those set down in articles 10 and 12 of this Contract, which places the safety/security of the Elia grid in danger; insofar as [ARP] has not remedied this breach within 10 calendar days after the registered letter was sent; in this case, the suspension will come into effect from the date stated in the registered letter in which the suspension was notified; or
- c) [ARP] does not comply with articles 14 or 17 of this Contract, in which case, suspension will be applied with immediate effect.

Without prejudice to its other rights or claims in law, Elia may suspend this Contract unilaterally, stating its reasons in a registered letter and without any prior legal authorisation being required if [ARP] has not remedied the breach within ten (10) calendar days after the date of the registered letter alluded to, if:

- 1) repeated breaches of a), b) of c) above are noted after the abovementioned suspension; or
- 2) designation as a federal transmission system operator is withdrawn, refused or not renewed.

### **9.3 Termination of this Contract by both Parties**

Without prejudice to the other cases of suspension and/or termination in accordance with the applicable laws and regulations and/or the Contract, either Party may terminate this Contract provided prior legal authorisation is obtained :

- in the event of one Party committing a breach of its contractual obligations;
- in the event of a significant and detrimental change in the legal status, legal structure, activities, or control of the financial situation of the other Party, that might reasonably lead to the conclusion that the stipulations and conditions of the Contract cannot be complied with by this Party.

This stipulation does not contravene the right of [ARP] to gain access once again to the Elia grid, in accordance with article 15 of the Electricity Act, as soon as all of the commitments of [ARP] have been met and it is again in a position to comply with the undertakings of an ARP.

#### **9.4 Additional consequences**

In all cases of suspension or termination of this Contract, Nominations for Day D, submitted in fulfilment of this Contract, but for which the relevant Day D falls after the date of the effective termination or suspension, will automatically lapse.

In all cases of suspension or termination of this Contract, the Parties are bound to meet all of their payment obligations arising from the fulfilment of this Contract or as a result of its suspension or termination. In the cases covered in articles 9.2 and 9.3, the payment obligations stated become due immediately.

In all cases of suspension and/or termination of the Contract by Elia, Elia will inform the access holders for the Access points allocated to the Perimeter of [ARP] and/or the distribution grid operators of the Distribution Off-take Position(s) of [ARP] and CREG of the suspension and/or the termination of the Contract.

In all cases of suspension or termination of this Contract, entry in the Register of Access Responsible Parties will be withdrawn temporarily or permanently.

#### **10 Balancing obligations of [ARP]**

In accordance with the Technical Regulations for Transmission, [ARP] will at all times during the implementation of this Contract provide and deploy all reasonable resources in order to remain in balanced on a quarter-hourly basis. As stated in article 1 of this Contract, an Imbalance occurs when there is a difference for each quarter of an hour between the total Injection into the Elia grid allocated to the Balancing perimeter of [ARP] and the total Off-take from the Elia grid allocated to the Balancing perimeter of [ARP], as laid down in **Annex 3** of this Contract.

[ARP] will provide Elia, at Elia's first reasoned request, with evidence that the appropriate resources have been deployed to enable it to comply with the obligation of balance. If [ARP] is in Imbalance, [ARP] will pay the charge for Imbalance in accordance with article 16 of this Contract. Payment of the charge stated above for Imbalance does not discharge [ARP] of its liability defined in accordance with article 20 of this Contract.

## 11 Allocation to the Balancing perimeter

The Balancing Perimeter of [ARP] consists of:

- Injection and/or Off-take points; and/or
- Distribution Off-take Position(s) on Distribution Network(s) other than the Elia grid; and/or
- Losses in accordance with articles 161 and 162 of the Technical Regulations for Transmission, and, if applicable, in accordance with the Technical Regulations for Distribution, Local and Regional Transmission; and/or
- Import and Export; and/or
- Internal transfers of energy

that are allocated to the Balancing Perimeter of [ARP].

The following principles shall apply for the allocation to the Balancing Perimeter of [ARP]:

### 11.1 Injection and/or Off-take points

Injection and/or Off-take Points are allocated to the Balancing Perimeter of [ARP]:

- for all the Injection and/or Off-take points, for which the access holder (either the Grid User, [ARP] or supplier), in accordance with the applicable regulations and/or contractual stipulations, have gained rights of access by entering into a valid and enforceable access contract with Elia; and
- for which [ARP] has been validly nominated as the Access Responsible Party in relation to the Injection and/or Off-take points stated in the access contract mentioned.

This allocation to the Balancing Perimeter of [ARP] will be made on the basis of the measured Active Power and is subject to specific rules relating to Block Deliveries for Off-take Points and Shared Injection for Injection Points as defined in the relevant access contract.

If [ARP] has entered into an agreement for the provision of support services, the Balancing perimeter of [ARP] is adjusted on account of the participation of [ARP] in these support services. This adjustment corresponds with the Active Power that is taken or injected in addition by [ARP] for the purpose of being able to comply with its obligations stated in the agreement for the provision of support services.

In case of a modification or interruption by Elia of the Off-take at an Off-take Point belonging to the Balancing Perimeter of [ARP], within the framework of load-shedding services contracted by Elia, Elia will replace the actual Off-take (or, in case, net injection) that has been attributed to the Balancing Perimeter of [ARP] by the corresponding Nomination for the duration of the modification or interruption (including the first and last quarter hour of the modification or interruption by Elia).



In case of such a modification or interruption, Elia will, as soon as possible and at the latest within 15 minutes following such modification or interruption, inform [ARP] hereof by telephone and/or e-mail and/or fax (contact 24h on 24h available as determined in Annex 6 of this Contract).

### **11.2 *Distribution Off-take Position(s) on distribution networks other than Elia grid***

The Distribution Off-take Position(s) of [ARP] notified to Elia by (a) distribution system operator(s), defined in the context of the access right to this (these) distribution network(s), is (are) allocated to [ARP].

### **11.3 *Losses***

For the measured Off-take on Off-take points and for the Distribution Off-take Positions (in the event of net Off-take), a percentage of loss from these Off-takes is allocated additional to the Balancing perimeter of [ARP], in accordance with articles 161 and 162 of the Technical Regulations on Transmission and, if applicable, in accordance with the Local Technical Regulations for Distribution, Local and Regional Transmission. This percentage is published at the Elia website and if necessary can be adjusted based on the metered losses.

### **11.4 *Import and Export***

Confirmed and executed Nominations for Import and/or Export at the South and/or Northern Border related to [ARP]'s access rights are allocated to [ARP]'s Balancing Perimeter.

The procedure for obtaining access rights at the Southern Border is described in **Annex 1** of this Contract.

The procedure for obtaining access rights at the Northern Border is described in **Annex 2** of this Contract.

### **11.5 *Internal transfers of energy***

Confirmed and executed Nominations for Internal transfers of energy nominated by [ARP] are allocated to the Balancing Perimeter of [ARP].

The rights and obligations of [ARP] to nominate and implement Internal transfers of energy are governed by this Contract.

Any Access Responsible Party who is a Market Operator and who, in addition to the Nominations of the transactions as described in the Royal Decree Exchange, nominates other activities that belong to his Balance Perimeter, must:

- request a separate Balance Perimeter from Elia (identified with a separate EIC/Elia code) for the Nominations of the transactions as described in the Royal Decree Exchange, and
- Inform all the Access Responsible Parties who nominate those Internal Energy Transfers with him about this double Balance Perimeter, mentioning which Balance Perimeter applies to which Nomination

If [ARP] proceeds with a Nomination for Internal Energy Transfer with an Access Responsible Party who is a Market Operator, [ARP] must – if the Market Operator has more than one Balance Perimeter – use the Balance Perimeter as communicated by the Market Operator.

## **12 Nominations**

### **12.1 Submission and conditions for the submission of Nominations**

When [ARP] submits Nominations to Elia regarding its Balancing Perimeter, [ARP] will ensure that for each quarter hour the total Injection (which is the sum of all nominated Injections from [ARP]) equals the total Off-take (which is the sum of nominated Off-takes from [ARP]). Furthermore, [ARP] shall abide by the following rules.

#### **12.1.1 With regard to Nominations for Injection and Off-take points and for Distribution Off-take Positions**

All Nominations for Injection points and Off-take points and for Distribution Off-take Positions allocated to its Balancing perimeter must, in accordance with the procedure and before the cut-off time stated in Annex 5, be submitted by [ARP] to Elia.

Nominations submitted for Injection points and Off-take points and for Distribution Off-take Positions allocated to the Balancing perimeter of [ARP] must correspond as closely as possible with actual Off-take and Injection.

#### **12.1.2 With regard to Nominations for Import and/or Export and Internal transfers of energy**

All Nominations for Import and /or Export insofar as the necessary access rights have been obtained, and for Internal Transfers of energy must be submitted by [ARP] to Elia according to the procedure and before the cut-off time stated in Annex 5.

With regard to the abovementioned Nominations, [ARP] will avoid any External inconsistency as defined in articles 12.2.3, 12.2.4 and 12.2.5 of this Contract.

Nominations for Import and Export must comply at all times with the access rights and capacities, obtained according to the procedure described in Annexes 1 and 2 of this Contract.

### **12.2 Evaluation of submitted Nominations**

As stipulated in Article 12.1 of this Contract, Elia will evaluate the Nominations below for Day D, in the context of its duties in operating and maintaining the Elia grid, including considerations of safety/security, reliability and the efficiency of the Elia grid, in accordance with articles 216 and 217 of the Technical Regulations for Transmission.

#### **12.2.1 Nominations involving Off-take at an Off-take Point.**

Elia will evaluate the Nomination in relation to Off-take at an Off-take point in accordance with the legislation in effect and in particular, in the case of a Block Delivery, in accordance with articles 218 and 219 of the Technical Regulations for Transmission.

### 12.2.2 *Nominations involving Injection at an Injection Point*

Elia will evaluate Nominations involving Injections at an Injection point in accordance with the legislation in effect and in particular in accordance with articles 194, 220-222 of the Technical Regulations for Transmission. Shared injection is governed by article 194 §3 of the Technical Regulations for Transmission.

### 12.2.3 *Nominations involving international exchanges on Northern and/or Southern Border*

Elia will evaluate Nominations involving International exchanges on the Northern and Southern Borders in accordance with the legislation in effect and in particular in accordance with articles 224-226 of the Technical Regulations for Transmission.

[ARP] has sufficient experience with the functioning of international exchanges of energy and understands and accepts that Elia, like any other grid operator, must, prior to the fulfilment of any contractual obligations mentioned herein, follow and comply with international rules regarding such exchanges.

For the application of this Article and related Annexes or Articles, an external inconsistency will exist:

- a) when a Nomination of [ARP] contains an international exchange that, while it has been notified officially to Elia by the operator of the Connected Foreign Transmission Grid in question, it has not been accepted by the latter; or
- b) when a Nomination of [ARP] contains an international exchange that, while it has been notified officially to Elia by the operator of the Connected Foreign Transmission Grid in question, differs for a given unit of time from the agreed international exchange accepted by the operator of the of the Connected Foreign Transmission Grid in question.

In both cases, Elia can either:

- a) reject the Nomination mentioned above involving an international exchange; or
- b) partially accept the Nomination mentioned above involving an international exchange; or
- c) accept the Nomination mentioned above involving an international exchange and then charge [ARP] the rate for an external inconsistency.

### 12.2.4 *Nominations involving Internal Day-ahead transfers of energy*

Elia will evaluate the Nominations involving the Internal Day-ahead transfers of energy in accordance with the legislation in effect and in particular in accordance with articles 224-226 of the Technical Regulations for Transmission.

For the application of this article and the associated Annexes and Articles, there is an external Inconsistency when a Nomination of [ARP]:

- a) contains an Internal Day-Ahead transfer of energy with another Access Responsible Party, and the Nomination of this Internal Day-Ahead transfer of energy is not notified to Elia by means of a Nomination of this other Access Responsible Party; or
- b) contains an Internal Day-Ahead transfer of energy with another Access Responsible Party, and the Nomination of this Internal Day-Ahead transfer of energy differs for any given quarter hour from the corresponding Nomination of this other Access Responsible Party.

In both cases, Elia is entitled either:

- i. not to accept the said Nomination of [ARP] involving the Internal Day-Ahead transfer of energy; or
- ii. to accept the said Nomination of [ARP] in relation to the Internal Day-ahead transfer of energy and to charge [ARP] the full rate for external inconsistency if the case mentioned above in a) applies, or 50% of the rate for external inconsistency if the case mentioned above in b) applies.

#### 12.2.5 *Nominations involving Internal Intra-day transfers of energy*

Elia will evaluate the Nominations involving Internal Intra-day transfers of energy in accordance with the legislation in effect and in particular in accordance with articles 224-226 of the Technical Regulations for Transmission.

For the application of this article and the associated Annexes and Articles, there is an external Inconsistency when a Nomination of [ARP]:

- a) contains an Internal Intra-day transfer of energy with another Access Responsible Party, and the Nomination of this Internal Intra-day transfer of energy is not notified to Elia by means of a Nomination of this other Access Responsible Party; or
- b) contains an Internal Intra-day transfer of energy with another Access Responsible Party, and the Nomination of this Internal Day-ahead transfer of energy differs for any given quarter hour from the corresponding Nomination of this other Access Responsible Party.

Such external inconsistencies, will under no circumstances be accepted by Elia for Internal Intra-day transfers of energy.

In the event of repeated Day-ahead Nominations on Day D-1 for which the total Injection does not equal total Off-take per quarter hour on Day D (without taking rounding off inaccuracies into account), [ARP] may under no circumstances use the facilities of Internal Intra-day transfers of energy for a period of 30 calendar days, beginning from when Elia issues notification thereof. In this case, the term "repeated" means 3 consecutive calendar days or 5 calendar days in a calendar month.

This ban also applies if Elia detects a non-negligible and systematic difference between the Nominations of [ARP] for Off-take points and Distribution Off-take Positions and the metered Off-take at Off-take points and Distribution Off-take Positions of [ARP] received from Grid operators other than Elia and should this situation persist after Elia has notified [ARP] thereof.

### **12.3 Confirmation or rejection of Nominations**

The confirmation-status of Nominations means that Nominations have been accepted by Elia and can be executed by [ARP].

Elia will inform [ARP]:

- on Day D-1 whether or not it confirms [ARP]'s Nominations in accordance with the conditions mentioned above for Nominations that have to be submitted on Day D-1. If [ARP] has not been informed before 6.00 pm on Day D-1, [ARP] will contact Customer Services (Annex on Contact Information for the submission of Nominations) by telephone in order to obtain confirmation.
- on Day D+1 whether or not it confirms [ARP]'s Nominations in accordance with the conditions mentioned above for Internal Intra-day transfers of energy. If [ARP] has not been informed before 6.00 pm on Day D+1, [ARP] will contact Customer Services (Annex on Contact Information for the submission of Nominations) by telephone in order to obtain confirmation.

Elia will provide the reasons for decisions where the Nominations of [ARP] are rejected.

## **13 Full or partial refusal of Nominations on Day D-1 and full or partial suspension of Nominations on Day D**

### **13.1 Full or partial refusal of Nominations on Day D-1**

#### **13.1.1 Principle**

In accordance with Article 217 §1, paragraph 1 of the Technical Regulations for Transmission, Elia is entitled on Day D-1 to refuse to carry out the daily Nominations in full or in part if these Nominations threaten the balancing of the control area, or endanger the safety/security, reliability or efficiency of the Elia grid.

#### **13.1.2 Notification procedure**

Elia will inform [ARP] of its decision for refusing to carry out the daily Nominations in full or in part, giving reasons, by e-mail as soon as possible. This notification will be sent to the contact point of [ARP] laid down in annex 6 of the Contract, for which 24 hours accessibility must be guaranteed.

## **13.2 Full or partial suspension of Nominations on Day D**

### **13.2.1 Principle**

In accordance with Article 217 §1, paragraph 2 of the Technical Regulations for Transmission, Elia is entitled on Day D to suspend the daily Nominations in full or in part if these Nominations threaten the balancing of the control area, or endanger the safety/security, reliability or efficiency of the Elia grid.

### **13.2.2 Notification procedure**

Elia will inform [ARP] of its decision for suspending the daily Nominations in full or in part, giving reasons, by telephone at least fifteen (15) minutes before the suspension comes into effect. This notification will be sent to the contact point of [ARP] laid down in annex 6 of the Contract, for which 24 hours accessibility must be guaranteed.

## SECTION III: Particular conditions

### 14 Suspensive conditions to the execution of this Contract

Pursuant to article 151 §2 of the Technical Regulations for Transmission [ARP] is required to comply with the following suspensive conditions:

- a) [ARP] must supply proof of the financial guarantees laid down in article 17 of this Contract.
- b) [ARP] must supply proof of the availability and maintenance of the necessary and sufficient means required, using its own resources or in any other way, to guarantee round-the-clock operations, in accordance with the Technical Regulations for Transmission.

### 15 Duration of this Contract

Subject to compliance of [ARP] with the conditions stated in article 14 above, this Contract comes into effect on the date it is signed by all the Parties. [ARP] will be registered in the Register of Access Responsible Parties no later than three (3) days after Elia has received an original of this Contract duly signed by [ARP], provided all of the suspensive conditions stated in this Contract have been complied with.

Without prejudice to article 9 of this Contract, this Contract is of indefinite duration.

### 16 Tariffs for Imbalances and external inconsistencies

In accordance with article 10 of this Contract, Elia will determine, after the end of each calendar month, inasmuch and at the latest one calendar month after Elia has received all necessary data regarding Distribution Off-take Position(s) of [ARP], the Imbalance and/or external inconsistencies, if any, of [ARP] for each quarter of an hour.

The tariffs for Imbalance and external inconsistencies, as approved by CREG, are published by Elia at its website ([www.elia.be](http://www.elia.be)). If CREG has not yet approved the annual charges, the most recent CREG-approved charges will apply on a temporary basis until such time as CREG has approved new charges, in which case the latter will be applied with retroactive effect.

In the case of an imbalance that [ARP] has not been able to prevent in spite of taking all reasonable measures and which arises from one of the following extraordinary situations:

- i. Force majeure;
- ii. An emergency situation;
- iii. A fault by Elia; or
- iv. A total or partial curtailment by Elia of the nominations of the [ARP];

for reasons not due to [ARP] and whereby the proof of that extraordinary situation must be provided by [ARP], the imbalance charges for those extraordinary situations, approved by the CREG and as published on Elia's web site, will be applied by Elia, provided [ARP] provides proof of the occurrence and, in such cases, the consequences of one of the situations listed in points (i) to (iv) above which he invokes.

In the absence of such proof, as in all other cases of imbalance by [ARP], Elia will apply the imbalance charges which are applicable in general to all imbalance situations, with the exception of those listed in points (i) to (iv) above

Elia will be responsible for the invoices or credit notes raised on the basis of the applicable tariffs.

If the total amount to pay or receive is less than €250, this amount will be carried forward to the next invoice or credit note.

[ARP] acknowledges that part of the data required for establishing its Imbalances, more specifically the data relating to the Distribution Off-take Positions, must be provided to Elia by the distribution system operators in question other than Elia and that as a result Elia is not responsible for any lack of monthly invoices/credit notes or for incorrect invoices/credit notes relating to that Imbalance that can be attributed to the lack of necessary data or incorrect data relating to the Distribution Off-take Positions on account of the distribution system operators mentioned above.

## **17 Payment guarantee**

### **17.1 General**

As a suspensive condition for entering into this Contract, and at the latest by the time the Contract is validly signed, [ARP] will provide Elia with a guarantee that complies with the terms and conditions below for the entire period of this Contract, plus three months.

The guarantee is a security for the requested and timely implementation of all of the obligations arising from this Contract, including, but not restricted to, the payment of charges for Imbalance and/or external inconsistencies.

The guarantee must take the form of a first demand bank guarantee issued by a financial institution with an official credit rating of at least "BBB" issued by the credit rating agency Standard & Poors, or with an official credit rating of at least "Baa2" issued by the credit rating agency Moody's. The amount and the specifications for any modifications permitted in relation to this first demand bank guarantee are laid down in accordance with the criteria stated in **Annex 4**.

The guarantee must have an initial term of at least one calendar year and will be renewed in good time by [ARP] in order to maintain the required security for the entire period of the Contract, plus three months.

The standard form for this first demand bank guarantee is included in **Annex 4** of this Contract.

#### **17.1.1 Adjustment/ renewal / modification of the guarantee**

[ARP] will proceed with adjustments to the amount of the bank guarantee in accordance with the stipulations of Annex 4 of this Contract.

At least one calendar month before the existing bank guarantee expires, [ARP] will provide Elia with proof that the financial institution issuing the guarantee has extended the period of the guarantee without making any changes to it, or will issue a new guarantee that meets all of the terms and conditions stated in this article.



The financial institution issuing the guarantee must meet the minimum rating requirements stated above. In the event of the minimum required rating being lost, [ARP] must submit a new guarantee from another financial institution that meets the conditions stated in this article to Elia within a period of 20 Banking days of the loss of the required rating by the first financial institution.

Should Elia have to invoke the guarantee, [ARP] will submit proof to Elia, within a period of fifteen (15) Banking days after Elia invoked the guarantee, that the financial institution issuing the guarantee has adjusted the amount of the bank guarantee to the required level, or else [ARP] will submit a new guarantee that meets the conditions stated in this article.

#### 17.1.2 *Return of the bank guarantee*

At the end of the Contract, for whatever reason, Elia will return the bank guarantee to [ARP] on condition that [ARP] has complied with all of its obligations arising from this Contract and the termination thereof.

## 18 **Metering data**

Elia will make the accumulated and validated metering data from the Access Points of [ARP] available to [ARP] at the latest on the 10th of the month following the month in which the data was collected. In the case of Block Deliveries or Shared Injection, only that part allocated to the Balancing Perimeter of [ARP] will be made available to [ARP].

Elia will also make the accumulated and non-validated metering data from the Access Points of [ARP] available to [ARP] on a daily basis, except if this is not possible for Elia for technical reasons.

Elia is not responsible for the validity of non-validated metering data and will under no circumstances accept liability for any possible damage caused by non-validated metering data.

The metering data relating to Injection and/or Off-take Points connected to a distribution network other than the Elia grid will be supplied to [ARP] by the distribution system operator in question, in accordance with the Technical Regulations for Distribution, Local and Regional Transmission.

## 19 **Pooling Agreement**

Without prejudice to the respective responsibilities, [ARP] may, in conjunction with one or more other Access Responsible Parties that have signed an enforceable Access Responsible Party contract with Elia, pool its Imbalance with the Imbalances of the other Access Responsible Party(ies) mentioned above. Such an agreement is referred to hereinafter as a "Pooling Agreement".

The Pooling agreement must comply with the requirements laid down in **Annex 7** ("Pooling Agreement") of this Contract.

[ARP] can either:

- enter into one (1) pooling agreement designating another Access Responsible Party to be invoiced for their global Imbalance; or
- enter into (a) pooling agreement(s) in which [ARP] is designated by another Access Responsible Party to be invoiced for their Imbalance charge based on their global Imbalance.

When more than one Pooling Agreement exists in which the total Imbalance is invoiced to [ARP] for each Pooling Agreement, all of these global Imbalances will be further combined and determined on the basis of the synchronised Imbalances for all the aforementioned Pooling Agreements.

The Pooling Agreement must be notified jointly by the Pooling Parties to Elia and must be signed validly by each of them. This joint notification will indicate to Elia which of the Pooling Parties the total Imbalance created by the pooling is to receive the invoice from Elia.

If the Access Responsible Party designated by other Access Responsible Parties in the Pooling Agreement to pay their overall Imbalance charge, does not fulfil, for whatever reason, its payment obligations under the Pooling Agreement and the terms of this Contract in relation to Elia, Elia will suspend the validity of the said Pooling Agreement relating to Elia for as long as the said payment obligations are not fulfilled. Elia will then send individual invoices to the respective Access Responsible Parties as if there were no Pooling Agreement. These invoices will then be retroactive to the due date of the invoice(s) for the total Imbalance charge and late-payment interest will be added in accordance with the provisions of the Law of 2nd August 2002.

The Pooling Agreement does not create specific obligations for Elia except for what is specifically stated herein.

## **20 Liability**

Parties to this Contract shall be liable to each other for any damage resulting from any contractual breach and/or fault (by debt). The Party in breach and/or at fault will indemnify the other Party and compensate it for any direct damage, including for claims by third parties in relation to such direct damage. Except in the case of fraud or wilful fault, the Parties will under no circumstances be liable to one another for compensating or indemnifying the other party, including for claims by third parties, for indirect damage or consequential loss, including and not restricted to, loss of profits, loss of earnings, loss of contracts or loss of goodwill.

## **21 Miscellaneous conditions**

### **21.1 Changes to the Contract**

The general conditions of this Contract may be modified by Elia in accordance with article 152 § 2 and § 3 of the Technical Regulations for Transmission.

All changes will come into effect within a reasonable period of time to be determined by Elia, taking account of the nature of the scheduled change and the conditions associated with it in terms of the safety/security, reliability and efficiency of the Elia grid. The reasonable period of time stated above may never be shorter than two weeks following the date on which Elia sent out notification by registered letter informing [ARP] of the change.

### **21.2 Notification**

Notification must be made in accordance with Annex 6.

[ARP] will provide Elia with the information requested in Annex 6 prior to or at the time of signing the Contract.

The Parties will do everything in their power to ensure that the contact persons stated under "Operation" in Annex 6 can be contacted permanently and at all times by telephone or by some other method. Their contact details are stated in Annex 6.

Any changes to the contact details relating to Annex 6 must be notified to the other Party at least seven (7) days before the change comes into effect. Changes to Annex 6 of this Contract may be carried out at any time by [ARP] for its own details and will be binding on Elia as soon as Elia has been notified of the change and that Elia has confirmed it. Changes to Annex 6 of this Contract may be carried out at any time by Elia for its own details and will be binding on [ARP] once notification has been sent to [ARP] by registered letter.

### **21.3 Information and recording**

Because most of the information exchanged between the Parties in the context of this Contract, including the Nominations provided by [ARP] to Elia, may have an effect in one way or another on Elia's operation of the Elia grid, it is of essential importance for Elia, including for the safety/security of the Elia grid, that the information provided by [ARP] to Elia, is verified extremely carefully by [ARP] before being given to Elia.

In this context, and in order to provide additional protection for the exchange of verbal information between the Parties and/or between their representatives, including employees, both Parties hereby accept that verbal communication, including telecommunication, is recorded. The Parties will inform their representatives and all of their employees who need to be in communication with the other Party of these recordings before such communication is made. The Parties will take appropriate steps to ensure that these recordings are kept safe and that access to such recordings is restricted exclusively to those persons who have a justified need to have access to the recordings. These recordings may not be used in any claim made against a natural person.

#### **21.4 Non-transferability of rights**

The Parties agree that under no circumstances will the rights and obligations arising from this Contract be transferred wholly or in part (including transfers by way of mergers, demerger or the transfer or addition of a universality or a business division (whether or not by virtue of automatic transfer rules) to a third party, without the prior, express and written permission of the other Party, which may not unreasonably withhold or postpone such permission, particularly with regard to a possible merger or demerger of companies.

Nevertheless, the contract and the rights and obligations that go with it, can be transferred to companies that are deemed to be associated with one of the Parties in the sense of Article 11 of Belgian Company Law, on condition that the acquiring party also undertakes to transfer these rights and obligations back to the party making the transfer (and the party making the transfer undertakes to accept this transfer), as soon as the link between the party making the transfer and the acquiring party is deemed to exist.

#### **21.5 Supersedes all previous Agreements**

Both Parties confirm that this Contract supersedes and replaces any and all previous and on-going Access Responsible Party agreements between the Parties referring to the same subject matter. If at the time of signing this Contract, the Parties are already bound by an on-going Access Responsible Party contract for the current year, this Contract supersedes, terminates and replaces any on-going contract.

#### **21.6 No waiver**

The fact that one of the Parties at any time fails to demand strict compliance by the other Party of any of the terms, covenants and conditions laid down in this Contract, this may not be construed as a continuing waiver or relinquishment thereof, and each party may at any time demand strict and complete performance by the other of any or all of the said terms, covenants and conditions.

#### **21.7 Invalidity of a clause**

The nullity or invalidity of any or more provision(s) of this Contract shall not affect the validity of its remaining provisions. Any provision that is null or invalid under any applicable law shall be deemed omitted here from, but such omission shall not affect the remaining provisions hereof, which shall remain in full force and effect.

#### **21.8 Licences**

[ARP] shall at all time during the duration of this Contract have all of the government permits, licences and/or approvals needed to fulfil the obligations or rights stipulated herein for or on behalf of [ARP]. If at any given time during this Contract any such permit, licence or approval is suspended and/or withdrawn, Elia may immediately terminate this Contract.

**21.9 *Applicable law***

This Contract is governed by and interpreted in accordance with Belgian law.

Drawn up in duplicate in Brussels, with each Party acknowledging that it has received an original copy.

**ELIA SYSTEM OPERATOR N.V.**, represented by:

**Erik De Schrijver**

Manager Customers Support & Services

Date: [•]

**Stefaan Vanden Berghe**

Manager Commercial Department

Date: [•]

[•], represented by:

[•]

[•]

Date:

[•]

[•]

Date:

## **Annex 1: Access rights for Import and Export on the Southern Border**

### **1 Annual and monthly capacities for Imports and Exports on the South Border**

The available annual and monthly capacities for Imports and Exports on the Southern Border may be obtained by [ARP] via the explicit annual and monthly auctions whose conditions are laid down in the “Allocation Rules for Capacities on the France-Belgium Interconnection” (“IFB Rules”) as published on the Eli Website.

### **2 Daily capacities for Imports and Exports on the South Border**

The available daily capacity for Imports and Exports on the South Border is allocated via an implicit auction organised within the framework of Market Coupling.

If the daily capacity of the South Border cannot be allocated through Market Coupling, explicit auctions for these daily capacity will be organised taking into account the circumstances and to the best of the ability, as laid down in the IFB Rules on the Elia website. The Access Responsible Parties who are registered in accordance with the aforementioned IFB Rules will be notified by e-mail of the explicit day auction. Elia and RTE will publish an announcement on their respective websites.

## **Annex 2: Access rights on the Northern Border**

### **1 Annual and monthly capacities for Imports and Exports on the North Border**

The annual and monthly capacities for the Imports and Exports on the North Border may be obtained by [ARP] via the explicit annual and monthly auctions conducted by the auction office, located in the Netherlands at Utrechtsesteenweg 310, 6812 AR Arnhem, on behalf of TenneT and Elia in respect of the North Border. The terms and conditions of these auctions are defined in the “Regulations for the auctioning of cross-border electricity transfer capacity on the extra-high-voltage Belgium-Netherlands and Germany-Netherlands Interconnectors” as published on the Elia Website.

### **2 Daily capacities for Imports and Exports on the South Border**

The available daily capacity for Imports and Exports on the North Border is allocated via an implicit auction organised within the framework of Market Coupling.

If the daily capacity on the North Border cannot be allocated through Market coupling, explicit auctions for this daily capacity will be organised, taking into account the circumstances and to the best of the ability, in accordance with the conditions as laid down in the rules for explicit day auctions on the North Border. These rules are published on the Elia website. The Access Responsible Parties who are registered in accordance with the aforementioned rules will be notified by e-mail of the explicit day auction. Elia and TenneT will published an announcement on their respective websites.



### **Annex 3: Imbalance**

The Imbalance per quarter hour of [ARP] is the difference per quarter hour between the total Injection into the Elia grid belonging to the Balancing Perimeter of [ARP] and the total Off-take from the Elia grid belonging to the Balancing Perimeter of [ARP]<sup>1</sup>.

The total Injection belonging to the Balancing Perimeter of [ARP] for one given quarter hour equals the sum of:

- all Imports nominated and executed by [ARP] for that quarter hour, and
- all actual injections at the Injection Points allocated to [ARP], inter alia in the context of the coordination of generation units, for that quarter hour, taking account of all relevant Shared Injections, and
- all Distribution Off-take Positions allocated to [ARP] if the result adds up to a net injection, and
- all injections by Internal transfers of energy nominated by [ARP] (“as the buyer”) for that quarter hour.

The Total Off-take belonging to the Balancing Perimeter of [ARP] for one given quarter hour equals the sum of:

- all Exports nominated and executed by [ARP] for that quarter hour, and
- all actual Off-takes at Off-take points allocated to [ARP] for that quarter hour, taking account of all relevant Block Deliveries, just as with all concerned activations of load-shedding services contracted by Elia, and
- all Distribution Off-take Positions allocated to [ARP] if the result adds up to a net Off-take, and
- all Off-takes by Internal transfers of energy nominated by [ARP] (“as the buyer”) for that quarter hour, and
- for the metered Off-take at Off-take points and for the Distribution Off-take Positions (if it is a net Off-take), in accordance with articles 161 and 162 of the Technical Regulations for Transmission and, where appropriate, in accordance with the applicable regional legislation, a loss percentage of this Off-take is allocated additionally to the Balancing Perimeter of [ARP] This percentage is published at the Elia website and can, if necessary, be adjusted annually on the basis of the metered losses.

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<sup>1</sup> The Imbalance will be adjusted for each participation in ancillary services by [ARP].

## Annex 4: Bank Guarantee

### 1 Amount of the required Bank Guarantee

The amount of the bank guarantee is a variable amount based on the position of [ARP]. The position of [ARP], without prejudice to the stipulations in relation to the first month of this Contract, as indicated below, is the highest of the daily Off-take averages allocated to [ARP] calculated on the basis of the previous calendar month. The daily averages are based on the daily quarter hourly values of:

- the metered Off-takes at Off-take points and allocated to the Balancing Perimeter of [ARP], and
- all Distribution Off-take Positions, if these produce a net Off-take, allocated to the Balancing Perimeter of [ARP], and
- the Export Nominations allocated to the Balancing Perimeter of [ARP], and
- the Nominations for Internal transfers of energy (sales transactions) of [ARP] with other Access Responsible Parties and allocated to the Balancing Perimeter of [ARP].

This position is shown in the table below, from which the required bank guarantee is derived. The amounts of the variable bank guarantee are calculated by taking 5% of the upper limit of each block over a period of 31 days, multiplied by € 50 / MWh.

the position of ARP (ARP-P)	Variable bank guarantee amount
$ARP-P \leq 50 \text{ MW}$	€ 93,000
$50 \text{ MW} < ARP-P \leq 100 \text{ MW}$	€ 186,000
$100 \text{ MW} < ARP-P \leq 200 \text{ MW}$	€ 372,000
$200 \text{ MW} < ARP-P \leq 300 \text{ MW}$	€ 558,000
$300 \text{ MW} < ARP-P \leq 450 \text{ MW}$	€ 837,000
$ARP-P > 450 \text{ MW}$	€ 1,162,000

#### 1.1 First month of the Contract: setting the bank guarantee

The position of [ARP] for its first month in the Contract is determined by mutual agreement between the Parties, based on the estimated highest position of [ARP] for the coming three months. This value will form the basis for determining the set-point for the value of the bank guarantee. In all cases, the minimum guarantee is always € 93,000.

## 1.2 Monitoring and control of the bank guarantee for each Access Responsible Party

On its own initiative, [ARP] will adjust its bank guarantee in accordance with the rules set out below. Elia will check in good time to ensure that [ARP] has complied with its obligations.

- If the Position of [ARP] is more than 20% higher than the position for which the bank guarantee has been determined for more than 2 days in any given month, [ARP] will immediately, and at the latest within three weeks of this position occurring, increase its bank guarantee to the required level. The Position of [ARP] may never exceed more than 40% above the position for which a bank guarantee has been issued.
- Also, if the value of the bank guarantee is lower than the average of the last two invoices sent out to [ARP], [ARP] will immediately, and at the latest within three weeks of the occurrence of this situation, increase its bank guarantee to this average level.

If for a period of at least one month the position of [ARP] is lower than the level covered by the bank guarantee, [ARP] may obtain a reduction in its bank guarantee in accordance with the table above. Elia will approve this reduction in the bank guarantee under the aforementioned circumstances.

## 2 Standard Bank Guarantee form for [ARP]

First demand bank guarantee issued by [•] bank in favour of [•].

Elia System Operator NV, a company established under Belgian law, whose registered offices are at 1000 Brussels, Keizerslaan 20, company registration number 0476.388.378.

Features of our payment guarantee < > (to be stated in all your correspondence)

Our customer ([•]name and address of the Belgian customer) informs us that it has entered into an Access Responsible Party contract (reference and date of the contract) with you in relation to access responsibilities in connection with access to the Elia grid.

The terms of this contract provide for the issuing of an irrevocable bank guarantee payable on first demand in the amount of [•] (**Euro and amount in figures**) in order to secure the payment obligations of our customer.

As a result we, [•] bank, hereby irrevocably and unconditionally undertake to pay a maximum amount of [•] (**currency and amount of the guarantee in figures and words**) on your first demand and without being able to dispute the grounds for such payment.

This guarantee comes into effect from today.

To be valid, any invoking of this guarantee:

If the guarantee is destined for another country / for the purposes of identification, any demand for payment must be made through a bank that confirms that the signatures on your letter of demand are validly binding on you.

- must reach us at the latest on [•] (**expiry date of the guarantee**), and
- must be accompanied by your written statement to the effect that (name of the customer) has not complied with its obligations arising from this ARP contract and has not carried out its payments, despite the fact that you, as the supplier, have provided the services in accordance with the contract,
- must be accompanied by a copy of the unpaid invoice(s) and a copy of your letter of default.

If it is not invoked in accordance with the conditions stated above or unless the grant of a guarantee is approved by us, this guarantee automatically becomes null and void on the first calendar day after [•] (**expiry date of the guarantee**).

This guarantee is subject to Belgian law and Belgian courts alone have the jurisdiction to rule on any dispute in relation to this guarantee.

## **Annex 5: Procedure for Nominations**

### **1 Procedure for nominations**

#### **1.1 Nominations involving international exchanges on the Northern and/or Southern Border**

Nominations for Day D concerning access rights for monthly and annual capacity on the North and South Border will be submitted by [ARP] to Elia before 8.00a.m. on Day D-1. If the daily capacity on the North and/or South Border cannot be allocated through Market Coupling, the Nominations for day D for access rights in respect of the allocated daily capacity in the explicit auctions on the North and/or South Border will be submitted by [ARP] to Elia in accordance with Elia's instructions.

Nominations involving international exchanges on the Northern Border have to be submitted with an accuracy of 0.1 MW. Nominations involving international exchanges on the Southern Border have to be submitted with an accuracy of 1 MW. Nominations will contain an Active Power value for each hour of the day with regard to the corresponding access right of [ARP].

[ARP] must mention its counter-party on the Nomination Form (its counter-party being the party submitting the corresponding Nomination to the operator of the Connected Foreign Transmission Grid; on the Southern Border this party must be [ARP] itself).

#### **1.2 Nominations involving Off-take points or Injection Points**

Nominations for Day D relating to access rights allocated in accordance with the procedures laid down in article 11.1 by [ARP] must be lodged with Elia before 2.00 pm on Day D-1.

Nominations involving Off-take Points connected to the Elia grid must be submitted for each Off-take Point with an accuracy of 0.1 MW. Nominations involving Injection Points connected to the Elia grid must be submitted for each Injection Point and per alternator with an accuracy of 0.1 MW. The Nominations will contain an Active Power value for each quarter hour of the day with regard to the corresponding access right of [ARP].

#### **1.3 Nominations involving Distribution Off-take Positions**

Nominations involving Off-take Points or Injection Points connected to a grid other than the Elia grid and belonging to the balancing area operated by Elia must be submitted for each distribution network with an accuracy of 0.1 MW before 2.00 pm on Day D-1. Nominations will contain an Active Power value for each quarter hour of the day with regard to the corresponding access right of [ARP].

If Injection Points connected to a grid other than the Elia grid have an impact on the Elia grid, then the Nominations for those Injections must be submitted for each Injection Point.

## 1.4 Nominations involving Internal transfers of energy

Nominations for Day D involving Internal Day Ahead transfers of energy must be submitted by [ARP] to Elia before 1.00 p.m. on Day D-1.

Nominations for Day D involving Internal Intra Day transfers of energy must be submitted by [ARP] to Elia before 1.00 p.m on Day D+1 and the submission can start on Day D-1 after 11.00 pm at the latest.

Nominations involving Internal transfers of energy must be submitted with an accuracy of 0.1 MW. The Nominations will contain an Active Power value for each quarter hour of the day. [ARP] must mention its counter-party on the Nomination Form (its counter-party being the Access Responsible Party with which the energy is exchanged). The name of the counter-party on the nomination form must be the ARP code (the ARP code of the Access Responsible Party is stated at the website under "List of ARPs").

Each Nomination involving an Internal transfer of energy with another Access Responsible Party has to be confirmed by a corresponding Nomination submitted by this other Access Responsible Party. Elia will inform [ARP] by means of its E-Nominations system on Day D-1 whether or not a Nomination involving an Internal transfer of energy has been confirmed by the equivalent Nomination submitted by the corresponding other Access Responsible Party.

In the event both Nominations for an Internal energy transfer are not equal, for one or more quarter Hours, [ARP] has the possibility to correct the Nomination in question until 2.00 pm on Day D-1 for an Internal Day Ahead energy transfer and on Day D+1 for an Internal Intra Day energy transfer. If for any reason, [ARP] cannot access Elia's E-Nominations system and therefore is not informed whether its Nomination has been confirmed or not by an equivalent Nomination from the corresponding Access Responsible Party, [ARP] should contact Elia's Customer Service (see Annex 6 – Contact information - Submission of Nominations or see our website under "Documentation").

## 2 Nomination system

### 2.1 Nominations involving Internal transfers of energy, international exchanges on the Northern or Southern Borders and Off-take points and Distribution Off-take Positions (in the case of net Off-take positions)

Nominations involving Internal transfers of energy and international exchanges on the Northern or Southern Border, for Off-take Points and for Distribution Off-take Positions (in case of net Off-take positions) must be submitted with Elia's E-Nominations system at the Elia Nominations website.

Access to the Elia E-Nomination system van Elia is only possible with a valid user identification and password.

ARPs must take all necessary measures to prevent any abuse or misuse of the user ID provided by Elia. In the event of abuse or misuse of this user ID, Elia will not be liable in any way. The ARP will indemnify Elia for any loss, costs and damages incurred resulting from the said abuse or misuse of the user ID and will protect Elia against any claims from third parties related to the abuse or misuse of the user ID.

For information about the Elia E-Nomination system and access to this system, contact Elia's Customer Service (see Annex 6 – Contact information - Submission of Nominations or see our website under "Documentation").

Receipt of Nominations by Elia is not guaranteed. [ARP] will check on Elia's E-Nominations system to see whether the Nomination submitted by [ARP], has been safely received by Elia.

## 2.2 Nominations involving Injection Points and Distribution Off-take Positions (in case of a net injection)

Nominations involving Injection Points and Distribution Off-take Positions (in case of a net injection) must be submitted as stipulated in the corresponding agreement regarding the coordination of Production Units (see article 198 of the Technical Regulations for Transmission).

## **Annex 6: Contact information**

Except where expressly stated otherwise, all notifications and requests needed and required in accordance with this document and/or Contract, shall be deemed duly given if and when they are made or sent by telephone, fax, e-mail or registered airmail, whether or not with acknowledgement of receipt, carriage prepaid, to the following fax number or address, which may be subject to change:

### **For Elia:**

#### Contractual aspects:

Erik De Schrijver  
Customer Support & Services  
Rodestraat 125  
1630 Linkebeek  
Tel.: + 32 2 382 22 87  
Fax: + 32 2 382 21 06  
e-mail: [erik.deschrijver@elia.be](mailto:erik.deschrijver@elia.be) or the mailbox of the commercial department  
[commercial.dpt@elia.be](mailto:commercial.dpt@elia.be)

#### Submission of Nominations:

##### Contact:

Energy Scheduling Office  
Tel. : + 32 2 382 21 33  
Fax : + 32 2 382 21 07  
E-mail: : [dngriidaccess@elia.be](mailto:dngriidaccess@elia.be)

#### Submission of Nominations involving Internal transfers of energy, international exchanges on the Northern or Southern Border or Off-take Points

All Nominations sent by the E-Nominations system must be submitted via the following URL:

#### **For the Business-to-Customer interface (B2C):**

<http://nominations.elia.be>

(Please note that if this website is not available, it will be redirected to the fallback website.)

#### **For the Business-to-Business interface (B2B):**

<https://nominations.elia.be/NxProXml/b2b/normal> for normal mode and  
<https://nominations.elia.be/NxProXml/b2b/fallback> for fallback mode

In the event of Internet connections not being possible, please use Remote Access Service:

numbers: +32.2.243.15.00 and +32.2.383.12.00

(note receipt of Nominations is not guaranteed.)



Submission of Nominations involving Injection points:

See the contract for the coordination of production units, as laid down in article 198 of the Technical Regulations for Transmission.

On-line operation (Day D): National Dispatching Linkebeek

Tel. : + 32 2 382 23 97 (if no reply: 22.97)  
Fax : + 32 2 382.21.39  
E-mail: : [dispatching@elia.be](mailto:dispatching@elia.be)

Invoices:

Christian da Cruz  
Rodestraat 125  
1630 Linkebeek – Belgium  
Tel. : + 32 2 546 73 12  
Fax : + 32 2 382 23 54  
E-mail : [access.settlement@elia.be](mailto:access.settlement@elia.be)

**For [ARP]:**

EAN code: [•]

EIC CODE: [•]

**Contractual aspects:**

specify name, telephone number, fax number and e-mail address

[•]

[•]

Tel.: [•]

Tel.: [•]

Fax: [•]

Fax: [•]

e-mail: [•]

e-mail: [•]

**Submission of Nominations:**

specify the e-mail addresses to which notifications for [ARP] are to be sent (if possible, just one generic e-mail address or a maximum of 5 e-mail addresses):

[•]

specify a telephone number for contacts:

[•]

Specify a telephone number, a fax number and an e-mail address (**available 24 hours a day and with sufficient knowledge of the specifications and conditions regarding Nominations**)

[•] - [•] - [•]

Invoices:

specify the company name, address of head office, VAT number, contact person (incl. telephone, fax number and e-mail address).

<b>Contact person</b>	
Name	[•]
Tel.:	[•]
Fax:	[•]
e-mail:	[•]
<b>Invoice address</b>	
Company	[•]
Address	[•]
VAT n°.	[•]

## **Annex 7: Pooling Agreement**

The “Pooling Agreement” stated in Article 19 of this Contract must be notified to Elia at the address stated in Annex 6 of this Contract (for the attention of the contact person for contractual aspects) and to be valid must only contain the wording and information below, and no other wording or information (except the missing information stated under \*\*\* must be entered validly by the Parties entering into the Pooling agreement and replaced):

### **Pooling Agreement**

\*\*\* (A = name and details (contract references of the Access Responsible Party) for all of the Access Responsible Parties forming a pool, referred to hereinafter as the “Pooling Parties”)

\*\*\*\* (B = name and details of the Access Responsible Party to which Elia should send its invoices)

\*\*\* (start date of the pool)

\*\*\* (end date of the pool (if defined))

*Declaration of all the Pooling Parties:*

We, the undersigned Access Responsible Parties, hereby declare to Elia that we will abide by the terms of our respective Access Responsible Party contracts and, notwithstanding the said pooling, will carry out and fulfil all of our obligations, as agreed with Elia, as set out in the aforementioned agreements.

Regardless of any existing arrangements, contracts, agreements or any other form or circumstance that we, the Pooling Parties may have between ourselves, we will at all times during our respective Access Responsible Party contracts give priority to our obligations as per the aforementioned Access Responsible Party contracts.

Elia is hereby expressly entitled to benefit from all the stipulations or agreements provided, directly or indirectly, herein and may act, if and when necessary, in relation to any of the Pooling Parties mentioned herein. All of the Pooling Parties mentioned above are bound to Elia for their respective obligations to Elia pursuant to their respective Access Responsible Party contracts.

\*\*\*\* Date of notification to Elia.

\*\*\*\* Signature by the authorised persons of each Pooling Party.