

GENERAL TERMS & CONDITIONS FOR ANCILLARY SERVICES AND GRID LOSSES

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.

2. 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:

Access Responsible Party 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';

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 Contracts;
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;
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 Losses	the energy that is lost in the Elia Grid through the physical mechanism known as the Joule-Effect, in accordance with articles 161 and 162 of the Technical Regulation;
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 temporary 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 (<i>B.S. 7 August 2002, p. 34281</i>) 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.

	<p>The service can consist of:</p> <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.
Services	the works, deliveries, and/or services forming the object of the Contracts.
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.
Tertiary Control Service	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.
Voltage Control Service	the Reactive Power made available to ELIA, which complies with the requirements of articles 257, 258, 259 and 260 of the Technical Regulation;
Working Day	any calendar day except for Saturday, Sunday and Belgian public holidays;

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.

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

3. AGREEMENT

3.1. 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 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.

3.2. 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

4.1. 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.

4.2. 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/consumptieprijsen/>) 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/consumptieprijsen/>) of the months of year Y-2

4.3. 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.

5. INVOICING AND PAYMENT

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 Supplier 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 Supplier 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.

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 Supplier 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.

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.

6. LIABILITY

- 6.1. Without prejudice to the obligation to pay penalties as provided by the Agreement the continual provision of the Services by the Supplier is an obligation of means ("middelenverbintenis – obligation de moyens").
- 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.
- 6.3. The Supplier is not liable for Indirect or unpredictable damage.
- 6.4. The Supplier 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 Supplier in performing the Contract; the said fault being one, which under similar circumstances, an experienced, professional supplier acting according to the rules and taking all reasonable precautions would in no case have committed.
- 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.
- 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.

7. FORCE MAJEURE

- 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 in implementation of Articles 312 *et seq* of the Technical Regulation, the Parties will be discharged of their respective obligations in a case of *force majeure*

that prevents performance of the Agreement, either partly or entirely, with the exception of the financial obligations that arose before the *force majeure*.

- 7.2. 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.

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;
 2. a nuclear or chemical explosion and its consequences;
 3. a computer virus, a computer crash 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 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.
- 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.
- 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.
- 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 the essential obligations of the Agreement, one of the Parties may cancel the Agreement with immediate effect by a reasoned registered letter.

8. CONFIDENTIALITY

- 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 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 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 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 to persons such as subcontractors and/or their employees and/or their representatives 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 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;
- 8.2. The Supplier declares that it has been personally and specifically informed by 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).
- 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.
- 8.4. A Party may not, for reasons of confidentiality, refuse to divulge information that is essential and pertinent to the implementation of the Agreement. The

other Party to whom such information is communicated guarantees that it will maintain the confidential nature thereof.

- 8.5. The Supplier 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.
- 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.
- 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 from Art. 6.3) that the other Part can reasonably demonstrate.
- 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).
- 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 or in the event that the Contract(s) is not concluded, after the notification of the confidential information.

9. CHANGE OF CIRCUMSTANCES - HARDSHIP

- 9.1. 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.
- 9.2. However, if an event arises:
 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.

10. REVIEW

- 10.1. 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;
- 10.2. 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;
- 10.3. 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.
- 10.4. 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.

11. PREMATURE DISSOLUTION

The Agreement may be terminated unilaterally by one of the Parties without judicial intervention if the other Party (the 'defaulting Party') does not rectify the 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 would be dissolved without any further notice if the aforementioned fault is not fully rectified within the stated deadline. The Agreement 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.

12. MISCELLANEOUS CLAUSES

- 12.1 The fact that one of the Parties renounces permanently or temporarily to the application of one or more clauses of an Agreement may under no circumstances be considered as a renunciation of the rights of that Party arising from that particular clause or those clauses.
- 12.2. Without prejudice to the application of the relevant laws and regulations, the Agreement and its Appendices comprises, the entire agreement concluded between the Parties and includes all the agreements made by the Parties within the framework of the Agreement.
- 12.3. Any notification, as required under the Agreement, will be made in accordance with the provisions of Appendix 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.
- 12.4. The rights and obligations specified in the Agreement 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.
- 12.5. On condition that this has no effect on the subject of the Agreement itself, the invalidity of one or more clauses in the Agreement shall not affect the validity, interpretation and/or implementation of the other clauses of the Agreement.
- 12.6. If one or more clauses of the Agreement 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 & Conditions.

- 12.7. 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.

13. APPLICABLE LAW – RULES REGARDING DISPUTES

- 13.1 The Agreements are governed by and interpreted according to Belgian law.
- 13.2. Any dispute regarding the conclusion, validity, interpretation or implementation of an Agreement or subsequent agreements or operations that might arise therefrom, together with any other dispute concerning or relating to the Agreement shall be laid before the courts of Brussels.