

Contract for Secondary Control Service

Contract reference: [●]

between:

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

Hereinafter referred to as the “BSP”,

and

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

Hereinafter referred to as “ELIA”.

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

Whereas:

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

The following points have been agreed:

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PART 1: GENERAL CONDITIONS

1. DEFINITIONS

Balance Responsible Party or "BRP"	Any natural person or legal entity, as defined in article 2 (7) of the Electricity Balancing Guideline, and listed in the register of balancing responsible parties in accordance with the Federal Grid Code;
Balancing Service Provider or "BSP"	Any natural person or legal entity, as defined in article 2 (6) of the Electricity Balancing Guideline, and with whom ELIA has concluded a Contract to provide Balancing Services;
Balancing Services	As defined in article 2 (3) of the Electricity Balancing Guideline
Grid Codes	The Federal Grid Code for Transmission (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) as amended from time to time and the Grid Codes for Local and Regional Transmission;
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;
Law of 2 August 2002	The Law of 2 August 2002 against payment arrears in commercial transactions (<i>B.S.</i> 7 August 2002, p. 34281) as amended from time to time;
Secondary Control or "R2"	The increase/decrease of active power based on a signal sent by ELIA. Also indicated in the Guideline on electricity balancing by the term "Automatic Frequency Restoration Reserve" or "aFRR";
Secondary Control Service by CIPU Technical Units	The Secondary Control service supplied by CIPU Technical Units and that is governed by the Secondary Control Contract, comprising at least the following: <ul style="list-style-type: none">- the provision of the Secondary Control Power Obligations; and- the activation of this Secondary Control Power (activated upwards and/or downwards) in accordance with the provisions of the Contract;
Service(s)	Depending on the boxes ticked under Art. 2.1, Secondary Control Service by CIPU Technical Units
Terms and Conditions	The Terms and Conditions for the provision of the Service in compliance with article 18 of the EBGL ;
Working Day	any calendar day except for Saturday, Sunday and Belgian public holidays;

2. SCOPE OF SERVICES AND CONTRACTUAL STRUCTURE

2.1. Scope of services

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

<input type="checkbox"/>	The Terms and Conditions for Secondary Control Service by CIPU Technical Units
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2.2. Contractual Structure

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

The Contract is structured as follows:

- Part 1: General conditions
- Part 2: The Terms and Conditions for Secondary Control Service by CIPU Technical Units (including all Annexes) adopted by Elia on the basis of Art. 18 EBGL and as approved by the CREG (the full text of these Terms and Conditions will only be added to this Contract if the BSP has ticked the first box in article 2.1 above).

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

3. ADDITIONAL RULES OF INTERPRETATION

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

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

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

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

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

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

4. ENTRY INTO FORCE AND DURATION OF THIS CONTRACT

4.1. Entry into force of this Contract

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

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

4.2. Duration of the Contract

This Contract terminates on December 31st, 2021.

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 BSP 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 BSP 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 BSP 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 Contract, the provision of the Services by the BSP 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 Parties are not liable for Indirect or unpredictable damage.
- 6.4. The BSP 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 BSP in performing its obligations; the said fault being one, which under similar circumstances, an experienced, professional BSP 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 provisions, as defined in the applicable laws and/or regulations, the Parties will be discharged of their respective obligations under this Contract in a case of force majeure that prevents the performance of their obligations under this Contract, 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, without prejudice to the definition of force majeure in applicable laws and/or regulations, any unforeseeable or unusual event or situation beyond the reasonable control of a Party, and not due to a fault of the Party, which cannot be avoided or overcome with reasonable foresight and diligence, which cannot be solved by measures which are from a technical, financial or economic point of view reasonably possible for the Party, which has actually happened and is objectively verifiable, and which makes it impossible for the Party to fulfil, temporarily or permanently, its obligations in accordance with this Contract and which occurred after conclusion of the Contract.

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

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

1. natural disasters arising from earthquakes, floods, storms, cyclones or other climatologically exceptional situations recognized as such by a public authority habilitated for this;

2. a nuclear or chemical explosion and its consequences;
 3. a computer virus, a computer crash or another unavailability of installations for reasons other than aging, improper use, or lack of maintenance of this system;
 4. the temporary or continuing technical impossibility for the grid to exchange electricity because of disruptions within the Control Area caused by electrical currents resulting from energy exchanges within another Control Area or between two or more other Control Areas and of which the identity of the market participants involved in those energy exchanges is unknown by ELIA 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 its essential obligations of the Contract, each of the Parties may terminate the Contract 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 Contract in the strictest confidence and not to divulge it to third parties unless at least one of the following conditions is met:
1. if ELIA and/or the BSP is called to give evidence in court or in their relations with the competent regulatory, administrative and judicial authorities. The Parties shall, as far as possible, inform each other of the situation in advance, and will reach an agreement concerning the form and content of the communication of this information;

2. if a prior written agreement has been obtained from the Party issuing the confidential information;
 3. with regard to ELIA, in consultation with operators of other grids or within the framework of contracts and/or rules with the foreign grid operators or regional security coordinators, insofar as the addressee of that information undertakes to accord the same degree of confidentiality to that information as that accorded by ELIA;
 4. if such information is easily and normally accessible or available to the public;
 5. if the divulgence of such information by ELIA and/or the BSP to persons such as subcontractors and/or their employees and/or their representatives and/or regional security coordinators is essential for technical or safety reasons, insofar as those addressees are bound by rules of confidentiality that appropriately guarantee the protection of confidentiality;
 6. if the information is already legally known by ELIA and/or the BSP and/or their employees and work agents at the time of transmission, and which has not been communicated by the notifying Party, prior to the transmission, directly, indirectly, or by breaching an obligation of confidentiality;
 7. the information which, after transmission, has been brought to the attention of the recipient Party and/or its staff and work agents via a third party, without breaching an obligation of confidentiality with regard to the notifying Party;
 8. the divulgence of the information is foreseen by applicable legislation and/or regulation.
- 8.2. The BSP 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 Contract.
 - 8.4. A Party must not, for reasons of confidentiality, refuse to divulge information that is essential and pertinent to the implementation of the Contract. The other Party to whom such information is communicated guarantees that it will maintain the confidential nature thereof.
 - 8.5. The BSP declares and guarantees that the confidential information will only be used for the purposes of establishing the bid/performance of the Services and not for other purposes.
 - 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 (in deviation from Art. 6.3) that the other Party 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.
- 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 Contract or in the event that the Contract is not concluded, after the notification of the confidential information.

9. OBLIGATION OF INFORMATION

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

10. REVIEW

- 10.1. Before modifying the Contract, ELIA will consult stakeholders, including the BSPs and the CREG, on the draft proposal for a period of not less than one month. The consultation will exclusively concern the amended parts of the Contract.
- 10.2. ELIA will duly consider the views of stakeholders resulting from the consultation prior to the submission of the Contract for regulatory approval. In all cases, a sound justification for including or not including the views resulting from the consultation, and exclusively related to the amended parts of the Contract, will be provided together with the submission and published in a timely manner before or simultaneously with the publication of the proposal for an amended Contract.
- 10.3. After approval by the CREG of the amendments to the Contract, these amendments shall enter into force between the Parties, as will be indicated in the notification via registered mail with acknowledgement of receipt, sent by Elia to the BSP, but however not earlier than 14 days after such notification.
- 10.4. In case the BSP does not agree with the amendments to the Contract, the BSP can terminate the Contract.
- 10.5. Any modification to the contact information taken up under Part 2 and/or Part 3 and their respective Annexes must be communicated to the other Party no later than 7 (seven) Working Days before the date on which that modification comes into effect.

11. PREMATURE DISSOLUTION IN CASE OF DEFAULT

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

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 the Contract may under no circumstances be considered as a renunciation of the rights of that Party arising from that particular clause or those clauses.
- 12.2. Without prejudice to the application of the relevant laws and regulations, the Contract comprises the entire agreement concluded between the Parties and includes all the agreements made by the Parties regarding the subject matter thereof.
- 12.3. Any notification, as required under the Contract, will be made in accordance with the provisions of Part 2 and/or Part 3 and their respective Annexes.
- 12.4. The rights and obligations specified in the Contract 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 Contract itself, the invalidity of one or more clauses in the Contract shall not affect the validity, interpretation and/or implementation of the other clauses of the Contract.
- 12.6. If one or more clauses of the Contract 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 Contract.

13. APPLICABLE LAW – RULES REGARDING DISPUTES

- 13.1. The Contract is governed by and interpreted according to Belgian law.
- 13.2. Any dispute regarding the conclusion, validity, interpretation or implementation of the Contract or subsequent agreements or operations that might arise therefrom,

together with any other dispute concerning or relating to the Contract shall be laid before the courts of Brussels.

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

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

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

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Date:

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Date:

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Date:

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Date: