



Contract ELIA-Supplier for the Exchange of Data Related to the Transfer of Energy

Contract reference

Between:

ELIA TRANSMISSION BELGIUM, a limited liability company incorporated under Belgian law, with registered office at Boulevard de l'Empereur 20, 1000 Brussels, Belgium, registered with the Register of Legal Entities (Brussels) under number 0731.852.231 and represented by David Zenner and Amandine Leroux, authorized signatories;

hereinafter referred to as "ELIA",

and

[•], a company established under [•] law with head office at [•], Belgium, company registration number [•] and represented by [•] and [•], authorized signatories;

hereinafter referred to as "Supplier",

ELIA and the Supplier are referred to as the "Parties".

[Supplier Name] – [Contract reference]

Initials on behalf of ELIA

Initials on behalf of Supplier

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WHEREAS:

ELIA is responsible for the operation of the Belgian transmission grid over which it has a property right or at least a user right (hereinafter, the “Transmission Grid”);

ELIA has been appointed as transmission grid operator, in accordance with the law of 29 April 1999 concerning the liberalization of the electricity market and supervises the safety, reliability and efficiency of the Transmission Grid.

As provided by art. 19ter §1 of the Electricity Law, ELIA is responsible for flexibility data management and, in particular, for the communication of flexibility data in order to facilitate the financial compensation foreseen in relation with the Transfer of Energy. In accordance with art.19bis §2 of the Electricity Law, ELIA has been appointed to define the Rules for the Organization of the Transfer of Energy, under the approval of the CREG.

This Contract is governed by the last valid version of the Rules for the Organization of the Transfer of Energy, as approved by the CREG.

As provided by art.23 §2 13° of the Electricity Law, flexibility data management involving Transfer of Energy is monitored by the CREG according to criteria and modalities set forth by the CREG.

It is consequently agreed as follows:

1 Definitions

Access Contract	The Contract between ELIA and the Grid User or any other legal or natural person designated by the Grid User, stipulating the terms and conditions relating to the granting of Access to the ELIA Grid;
Access Point	An Injection Point and/or an Offtake Point to Transmission or Public Distribution Grid, or to a CDS;
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 Service	As defined in article 2 (3) of the Electricity Balancing Guideline;
Balancing Service Contract	Contract concluded between ELIA and a BSP for the provision of a Balancing Service;
CDS	The closed distribution system (or, according to the Electricity Act and the electricity decrees and/or ordinances, closed industrial system or closed professional system) is the grid directly connected to the ELIA Grid and recognized by the relevant authorities as a Closed Distribution System;
Contract	Contract ELIA-Supplier for the Exchange of Data Related to the Transfer of Energy;
Contract with Valorization of the Deviation	Contract between the Grid User and the Supplier by which the Supplier valorizes the deviation between the nomination and the final position;
CREG	The federal regulatory authority of gas and electricity markets in Belgium;
Public Distribution Grid	The electricity distribution system for which the Distribution System Operator has proprietary rights or at least user or operating rights and for which it is the designated Distribution System Operator as licensed by the Regional Regulator or the competent regional authorities;
ELIA Grid	The electricity grid to which ELIA holds the property right or at least that of using and operating it, and for which ELIA has been designated as the transmission and local transmission system operator;
Electricity Law	The law of 29 April 1999 related to the organization of the electricity market, as modified where appropriate ;
Federal Grid Code	The Royal Decree of 19 December 2002 as amended from time to time establishing a grid code for operating the electricity transmission grid and access thereto;

Final Client	Any physical person or legal entity buying electricity for its own use. For contractual relations with ELIA, the Final Client is the Grid User itself or is represented by the Grid User;
Flexibility Service Provider or “FSP”	As defined in article 2, 64° of the Electricity Law. If the FSP proposes Balancing Services, it takes the role of Balancing Service Provider (BSP);
Force Majeure Event	As defined in art. 7.1;
Grid Codes	The Grid Code for Transmission and the Grid Codes for Local and Regional Transmission;
Grid Codes for Local and Regional Transmission	The Grid Codes for local or regional transmission of electricity that are or shall be applicable in Flanders, Brussels and Wallonia, as amended from time to time;
Grid User	The natural person or legal entity connected to the ELIA Grid, CDS or Public Distribution Grid as producer or consumer;
Grid User Declaration	Official declaration of the Grid User, as provided by template foreseen in the Balancing Service Contract, authorizing the BSP to offer the Balancing Service using his delivery point;
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, at the exception of costs (including legal costs) to call on the bank guarantee as foreseen by CREG Decision 1677 dated on 15 March 2018;
Rules for the Organization of the Transfer of Energy or “ToE Rules”	A document, validated by the CREG, describing the rules for the organization of the Transfer of Energy in accordance with article 19bis §2 of the Electricity Law;
Supplied Energy	The quantity of energy physically supplied by the BSP;
Supplier	Any physical person or legal entity who sells electricity to one or more Final Client(s). The Supplier produces or buys electricity sold to the Final Client(s);
Transfer of Energy or “ToE”	As defined in art. 19bis §2 of the Electricity Law;

2 Application of the Contract

General

- 2.1 Transfer of Energy only applies for Balancing Service Contracts duly listed in the Rules for the Organisation of the Transfer of Energy.
- 2.2 For avoidance of doubt, the Parties are aware of the mutual relationships that exist between the present Contract, the Access Contract, Balancing Service Contracts and the Rules for the Organization of the Transfer of Energy. The observance of the rules set out in the aforementioned contracts is necessary for the proper implementation of the Contract.
- 2.3 To the extent that the Supplier, via contracts for services, sale contracts, lease contracts and/or other contracts, shall rely, or has to rely, on one or more third parties for the performance of all or part of its contractual obligations, the Supplier shall, without prejudice to more severe clauses of this Contract, make all necessary and reasonable efforts in the context of its contractual relations with these third party(ies), in order to ensure that such intervention of these third parties does not constitute a barrier or obstacle for the exercise by ELIA of all of its contractual rights and obligations, with regard to the Supplier. The intervention of the third party does not affect the liability, under this Contract, of the Supplier relying on this third party(ies) for the performance of all or part of its obligations foreseen by this Contract.
- 2.4 The Supplier hereby renounces his own general terms and conditions.

Participation of Access Points

- 2.5 The present Contract applies for any Access Point included in the portfolio of the Supplier in case the following conditions are simultaneously met:
 - i. The Grid User of the concerned Access Point has signed a Grid User Declaration with a BSP, as required by the Balancing Service Contract, allowing the BSP to offer its flexibility or part of it;
 - ii. The BSP responsible for this Balancing Service Contract has informed ELIA by providing all requested documents, as requested by the Balancing Contract concerned, enabling the application of a Transfer of Energy for the concerned Access Point;
- 2.6 For an Access Point connected to the ELIA Grid, the corresponding Supplier is identified based on the last valid Annex 3 of the Access Contract of the concerned Grid User.
- 2.7 For an Access Point connected to the Public Distribution Grid or to a CDS, the corresponding Supplier is identified based on the Access Register as defined in the Grid Codes for Local and Regional Transmission.
- 2.8 ELIA updates the list of Access Points, for which the present Contract applies, 5 working days before the 1st of month M. The updated list is valid as of 1st of month M.

3 Object of the Contract

General

- 3.1 The Contract lays down the respective rights and obligations of the Parties, as well as the modalities, to carry out the communication of flexibility data involving any Access Point included in the portfolio of the Supplier for which a Transfer of Energy applies, consequently to the participation of the concerned Access Point in a Balancing Service Contract.
- 3.2 The Contract does not create any obligation nor legal nor contractual relationship between ELIA and the Supplier other than as agreed in this Contract.

Special dispositions for Contract with Valorisation of the Deviation

- 3.3 The Supplier shall communicate to ELIA the list of **all** Access Points involved in a Contract with Valorisation of the Deviation, regardless of their participation to a Balancing Service Contract. This list is drawn up in Annex 1 of this Contract.
- 3.4 For each Access Point included in a Contract with Valorisation of the Deviation, the template as provided in Annex 2, has to be fulfilled and signed by the Supplier and the concerned Grid User.
- 3.5 In case of modification of this list of Access Points, the Supplier shall communicate the updated list to ELIA 10 working days before the entry into force of the modification by sending an updated Annex 1 by e-mail to the contractual responsible designated in Annex 3, as foreseen in art.11.1.

Provisions for communication of the data

- 3.6 In accordance with art.19ter §1 of the Electricity Law and the Rules for the Organization of the Transfer of Energy, ELIA is responsible for the provision of the information required to determine volumes of Supplied Energy from Access Points of the Supplier portfolio for which a Transfer of Energy applies, consequently to their participation in a Balancing Service Contract.
- 3.7 ELIA puts at disposal of the Supplier, through an exchange platform, at the latest by the end of month M+2 the volumes of Supplied Energy during month M as follows:
 - Volumes of Supplied Energy are determined on a quarter-hourly basis and taking into account the Access Points in respect with conditions specified in art. 2.5;
 - ELIA provides to the Supplier the amount of Supplied Energy upwards (respectively downwards) aggregated per BSP in order to ensure the confidentiality of sensitive commercial data, as provided by art. 19ter §1 of the Electricity Law;
 - For each Access Points included in a Contract with Valorisation of the Deviation in respect with conditions specified in art 2.5, ELIA provides the volume of Supplied Energy upwards (respectively downwards) per Access Point concerned, in accordance with the Rules for the Organisation of the Transfer of Energy.
- 3.8 The Parties acknowledges that a non-confidentiality principle applies between themselves with regard to the data exchanged for the execution of the present Contract and without prejudice to other mechanisms to protect confidential information from third parties involved.

- 3.9 The communication of the volumes of Supplied Energy, as foreseen by art.3.7, never implies a transfer of ownership of these data to the Supplier in accordance with article 19bis, §1, al. 2 of the Electricity law. ELIA grants the Supplier a perpetual, non-transferable, non-exclusive licence to use the communicated data.

4 Duration and termination

- 4.1 The Contract enters into force as of its signature by both Parties and remains valid for an unlimited period of time.
- 4.2 Without prejudice to the other circumstances leading to a termination pursuant to the applicable laws and regulations, each Party will be entitled, subject to prior court's approval, to terminate this Contract at the expense of the other Party in case:
- i. the other Party commits a serious breach of one of its obligations;
 - ii. a material and disadvantageous modification occurs as regards the legal position, the legal structure, the activities, the board of directors or the financial condition of the other Party, that may reasonably lead to the conclusion that the provisions and conditions of this Contract will not be complied with by this Party.
- 4.3 The Party invoking the termination will send a notification by registered letter to the other Party with a notice period of one (1) month.
- 4.4 The termination of this Contract by Elia in accordance with this provision does not affect the right for the Supplier to enter into a new Contract with Elia when it will again be able to comply with its provisions and conditions.

5 Consultation and disputes

- 5.1 If the Supplier wants to dispute the data provided in accordance with art. 3.7, he must notify it to ELIA by registered letter within 25 calendar days starting from the day following ELIA's publication of the concerned data. In this case, the Parties should enter into negotiations with each other in a view to reach an agreement in accordance with art. 5.2.
- 5.2 If there is a dispute or conflict of interpretation between the Parties regarding one of the clauses of the Contract or regarding the implementation thereof, the Parties shall try to settle their dispute or conflicting interpretation amicably, before resorting to legal action. The amicable settlement will not prevent the Parties to exercise all legal means required by the occurrence of an extreme urgency, including but not limited to summary proceedings in court. The Parties undertake to organize a consultative meeting within 10 calendar days of receiving a registered letter in which the dispute is raised by one of the Parties. If the Parties cannot reach agreement within 30 calendar days of that first meeting, art. 5.4 applies.
- 5.3 The Contract is governed by and interpreted according to Belgian law.
- 5.4 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 brought before the courts of Brussels.

6 Liabilities

- 6.1 The Parties undertake to notify each other immediately any event that could cause a damage to the other Party.

- 6.2 The Parties may only be held liable to each other for direct damages caused by fraud, willful misconduct and gross fault.
- 6.3 The parties can never be held liable, including in case of gross fault, for:
- i. Indirect Damage;
 - ii. incorrect, improper or unauthorized use of the data provided in accordance with art.3.7, nor for any associated consequences;
- 6.4 ELIA may never be held liable for disputes arising between the BSP and the Supplier, and in particular those related to the financial compensation due by the BSP. In particular, the Supplier cannot require Elia to guarantee the financial compensation.
- 6.5 The Parties' maximum liability to each other such as defined in art. 6.1 and 6.3 is limited to maximum 25,000 € for all damages generated by the same fraud, including claims of third parties with whom the Party invoking the liability has a contractual relationship.
- 6.6 If several suppliers, other than the Supplier, suffer damage caused by the same gross fault, ELIA's maximum liability is limited to 100,000 € in aggregate (for all damages of all suppliers). In case ELIA's aggregate liability towards all the suppliers is higher than 100,000 €, the damages will be allocated between the suppliers *pro rata* of their claims.
- 6.7 The Parties hold each other harmless from any claims of third parties, other than third parties with whom the Party invoking the liability has a contractual relationship as referred to in art. 6.5, generated by their fraud, willful misconduct or gross fault in the limits provided in art. 6.5 and 6.6.
- 6.8 The Parties must take the necessary and reasonable measures in order to mitigate their damage, including consulting the other Party on this matter as the case may be. This article does not release the Parties from their obligation to correct the data and communicate those corrected data to the other Party.

7 Force majeure

- 7.1 Without prejudice to the applicable legislation, for the purposes of this Contract, the events and situations set out below shall be deemed cases of force majeure, provided that they are unforeseeable or unusual, definitely cannot be controlled or attributed to any fault on the part of a Party, cannot be avoided or overcome in spite of any reasonable due diligence or preventive measures, cannot be corrected by reasonable technical, financial or economic measures envisaged by the Party, actually occurred and are objectively verifiable, and temporarily or permanently prevented the Party from fulfilling its obligations as specified in this Contract:
- a. natural disasters resulting from earthquakes, floods, storms, cyclones or other climatic conditions recognized as exceptional by a public authority known to be authorized for that purpose;
 - b. a nuclear or chemical accident and the consequences thereof;
 - c. exceptional or uncategorisable hazards in the course of which elements of the transmission system or of an electricity generating unit are suddenly rendered unavailable for reasons other than obsolescence, lack of maintenance or the competency of the operators, including the unavailability of the IT system, whether or not caused by a virus when all state-of-the-art precautions had been taken;

- d. the transmission system's temporary or permanent technical inability to exchange electricity, owing to disturbances within the control zone caused by flows of electricity resulting from energy exchanges within another control area or between two or more other control areas, and where ELIA does not and cannot reasonably be expected to know the identity of the market players involved in these energy exchanges;
 - e. an inability to operate the transmission system or equipment forming a functional part thereof due to a labour dispute that gives rise to a unilateral measure by the employees (or groups of employees) or any other social conflict;
 - f. fire, explosion, sabotage, acts of a terrorist nature, acts of vandalism, damage caused by criminal acts, criminal coercion or threats of the same nature or acts that have the same consequences;
 - g. war, whether declared or not, the threat of war, invasion, armed conflict, embargoes, revolution or an uprising;
 - h. government fiat, including situations in which the competent authority declares an emergency and imposes exceptional and temporary measures on system operators and/or grid users with a view to maintaining or restoring all systems to safe and reliable operation, including load-shedding orders issued as part of the procedure for dealing with power shortages;
 - i. unexpected phenomena.
- 7.2 If a Party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("Affected Party"), this Affected Party will not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations provided that it has complied with this article.
- 7.3 The Affected Party will notify to the other Party (i) the Force Majeure Event, (ii) its potential duration and its potential effects on its ability to perform its obligations as soon as reasonably practicable.
- 7.4 The corresponding obligations of the other Party will be suspended for the duration of the Force Majeure Event.
- 7.5 The Affected Party will demonstrate the necessary efforts to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 7.6 If the Force Majeure Event may not be remedied within a reasonable period, the Parties may terminate the Contract in accordance with art. 4.2 to 4.4.

8 Modifications to the Contract

- 8.1 ELIA has the responsibility to have the same Contract for all Suppliers.
- 8.2 Before modifying the Contract, ELIA will consult stakeholders on the draft proposal.. The purpose of the consultation is exclusively limited to the proposed modifications. ELIA will duly consider the views of stakeholders resulting from the consultation but reserves its rights to decide whether or not to take into account the feedback received during the above mentioned consultation. 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. The modifications will be applicable at the soonest after a period of thirty calendar days following the notification hereof.

- 8.3 In case of modifications to the Contract requested by the Supplier to ELIA, ELIA reserves its right to decide whether or not to launch a consultation, as described in art. 8.2, here over. If it decides to implement the requested changes, ELIA will observe art. 8.1.

9 Severability

- 9.1 The nullity of an article of this Contract will not result in nullity of the entire Contract but only of the concerned article. The latter will be replaced by a valid provision that respects both Parties' intentions and which they will negotiate in good faith.

10 No waiver

- 10.1 No waiver by either Parties with respect to any breach or default or any right or remedy will be deemed to constitute a continuing waiver of any other breach or default or of any right and remedy, unless it is expressed in writing.

11 Contact persons

- 11.1 All contacts between the Supplier and ELIA regarding the present Contract should take place between the persons designated in Annex 3.
- 11.2 Both Parties shall keep the contact details up to date throughout the validity of the Contract, by exchanging the filled out template in Annex 3. These exchanges and updates can be done via e-mail.



Contract ELIA-Supplier for the Exchange of Data Related to the Transfer of Energy

Drawn up in Brussels in duplicate, with each Party declaring having received an original copy.

ELIA TRANSMISSION BELGIUM S.A., represented by:

Amandine Leroux
Contract Manager

Date:

David Zenner
Head of Customer Relations

Date:

[...], represented by:

Name:
Position:
Date:

Name:
Position:
Date:



ANNEX 1 LIST OF ACCESS POINTS INCLUDED IN A CONTRACT WITH VALORISATION OF THE DEVIATION

In accordance with art. 3.3 the Supplier must declare **all** Access Points included in his portfolio for which a Contract with Valorisation of the Deviation has been signed.

The list of Access Point(s) concerned must be presented by the Supplier to ELIA.

Updates of this list must be exchanged, following the rules set forth in art. 3.5, and sent upon via e-mail to the contracting responsible as per art. 11.1 and to contracting_AS@elia.be.

Name: [Supplier]
Version: [date submission Supplier]
Validity Period: [start] – [end]

Grid User Name	Access Point Name	Access Point EAN	Supply direction(s)	Start date of Contract	End date of Contract	System Operator* [if known]	Supplier-Grid User Declaration provided
			[Injection / Offtake / Injection & Offtake]	DD/MM/YYYY	DD/MM/YYY		[Y/N]

*Expected value: Elia, Fluvius, Sibelga, Ores, Resa, AIEG, AIESH, Régie de Wavre

[Supplier Name] – [Contract reference]

ANNEX 2 TEMPLATE FOR THE SUPPLIER-GRID USER DECLARATION

Supplier: [name]
Grid User: [name]
Expiry date: [date]

By signature of the present declaration, the Grid User and the Supplier acknowledges that:

1. The Access Points listed in point 6 of the present declaration are included in a Contract with Valorisation of the Deviation.
2. All given information in this declaration is true and accurate.
3. The Grid User hereby renounces any possible legal claims that he might invoke against ELIA because of the implementation of the Contract ELIA-Supplier for the Exchange of Data Related to the Transfer of Energy.
4. The present document is valid until either its respective expiry date or the submission by another Supplier of a new declaration for the Access Point(s) concerned signed and validated by the Grid User.
5. The Grid User hereby gives explicit permission to ELIA to provide the Supplier with the volumes of Supplied Energy for Balancing Service Contract (if any) for which a Transfer of Energy applies per Access Point.
6. Details of the Access Points for which the present declaration applies:

Access Point Name	Access Point identification (EAN)

Supplier Signature

Grid User Signature

Date :

Date:

[Supplier Name] – [Contract reference]

ANNEX 3 TEMPLATE CONTACT PERSONS

Version: [Date]

1) ELIA

Contractual aspects

Amandine Leroux
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1000 Bruxelles

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amandine.leroux@elia.be

2) Supplier

Contractual aspects

[Name]
[Address]

[Phone number]
[e-mail]

[Supplier Name] – [Contract reference]

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Initials on behalf of ELIA

Initials on behalf of Supplier

ANNEX 4 COMPANY DETAILS

List of GLN and/or EIC codes used by the Supplier

GLN Codes	EIC Codes