

# CAPACITY CONTRACT<sup>1</sup>

## CAPACITY REMUNERATION MECHANISM (CRM)



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<sup>1</sup> Unofficial translation of the French and Dutch versions of the Capacity Contract, which are both equally authentic. In case of contradiction between the English version and the French/Dutch versions, the French/Dutch versions prevail.

Between

ELIA TRANSMISSION BELGIUM SA/NV, a company incorporated under Belgian law with its registered office at Boulevard de l'Empereur 20, B-1000 Brussels, registered under company number 0731.852.231 and represented by its duly authorised agents XXX and XXX,

hereinafter referred to as "ELIA",

And

XXX, located at ... /a company incorporated under ... law with its registered office at XXX/..., registered under company number XXXX.XXX.XXX and represented by its duly authorised agent(s) XXX,

hereinafter referred to as the "CAPACITY PROVIDER",

ELIA and the CAPACITY PROVIDER are jointly referred to as the "Parties".

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## WHEREAS:

- ELIA operates the ELIA grid, over which it has an ownership right or at least a right of use (hereinafter referred to as the “ELIA Grid”);
- ELIA was appointed as transmission system operator in accordance with the Act of 29 April 1999 on the organisation of the electricity market (hereinafter the ‘Electricity Act’). This appointment was made under the Ministerial Decree of 13 January 2020 appointing Elia Transmission Belgium SA/NV as system operator in accordance with Article 10 of the Electricity Act;
- ELIA is also appointed as operator of the regional or local transmission grid in each of Belgium’s regions under the electricity decrees and ordinance in force;
- ELIA is amongst other in charge of ensuring the safety, reliability and efficiency of the ELIA Grid;
- The Electricity Act establishes a Capacity Remuneration Mechanism (hereinafter referred to as ‘CRM’) to address the adequacy issue between electricity supply and demand;
- After publication of the Auction results as foreseen in Article 7undecies, §10 of the Electricity Act, or after validation of the transaction on the Secondary Market, the Capacity Providers sign a Capacity Contract with ELIA;
- The Electricity Act stipulates that the tasks assigned to ELIA under the Capacity Remuneration Mechanism are public service obligations whose net costs are financed in accordance with the detailed rules laid down in Article 21quinquies of the Electricity Act. According to Article 7undecies, § 11 of the Electricity Act, the financing rules of this provision must enable ELIA to have the necessary financial resources to pay the Monthly Remuneration; for this reason, these financing rules are essential to perform the Contract.
- Article 7undecies §11 of the Electricity Act prescribes that the Capacity Contract complies with the CRM Functioning Rules;
- The standard capacity contract is published on ELIA’s website following its approval by the CREG, in accordance with Article 7undecies §11 of the Electricity Act.

## IT IS HEREBY AGREED AS FOLLOWS:

### Article 1. DEFINITIONS

1.1. Unless otherwise specified, the definitions contained in Regulation (EU) 2019/943, in the Electricity Act, in its implementing decrees, and in particular, the Federal Technical Regulation and the Functioning Rules adopted pursuant to Article 7undecies §12 of the Electricity Act are applicable to this Contract.

1.2. The following definitions apply for the purposes of the Contract:

1	Annex	An annex to this Contract.
2	Belgian Control Area	The Control Area for which ELIA has been appointed system operator in accordance with the Electricity Law.
3	Contract	This contract, which complies with the standard capacity contract as approved by the CREG pursuant to Article 7undecies §11 of the Electricity Act.
4	CREG	The Commission for Electricity and Gas Regulation as defined in Article 2, 26° of the Electricity Act.
5	ENTSO-E	The European Network of Transmission System Operators for Electricity, referred to in Article 28 of Regulation (EU) 2019/943 of the European Parliament and Council of 5 June 2019 on the internal market for electricity.
6	Financial Penalty	A financial penalty provided for in Chapter 8 of the Functioning Rules.
7	Functioning Rules	The rules referred to in Article 7undecies, §12 of the Electricity Act.
8	Law of 2 August 2002	The Law of 2 August 2002 on combating late payment in commercial transactions, as amended.
9	<u>Market Time Unit (MTU)</u>	<u>As defined in Article 2 (9) in Annex 1 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (CACM).</u>
109	Monthly Remuneration	The remuneration described in Article 7undecies, §11 of the Electricity Act.

119	RCC	The regional coordination centre established in the sense of Article 35 of Regulation (EU) 2019/943 of the European Parliament and Council of 5 June 2019 on the internal market for electricity.
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## Article 2. INTERPRETATION

- 2.1. The titles and headings in the Contract are only given in order to simplify references and in no way express the intentions of the Parties. They are not taken into account when interpreting the clauses of the Contract.
- 2.2. The Annexes to the Contract constitute an integral part of the Contract. Any reference to the Contract also refers to the Annexes and vice versa. In the event of a conflict between an Annex to the Contract and the other provisions of the Contract, the latter takes precedence.
- 2.3. The implementation in the Contract of the Functioning Rules can, in no way, be considered as a derogation to the Functioning Rules.
- 2.4. Without prejudice to exchanges between Parties pursuant to the Functioning Rules prior to the conclusion of the Contract, the documents exchanged between ELIA and the CAPACITY PROVIDER before the date of conclusion of the Contract can in no circumstances take precedence over the provisions of this Contract nor be substituted for it.
- 2.5. If a deadline provided in the Contract expires on a Saturday, Sunday or Belgian official public holiday, it is extended until the first next Working Day.

## Article 3. CONCLUSION OF THE CONTRACT

- 3.1. Subject to an early termination of the Contract pursuant to the Contract's provisions and to the Functioning Rules, the validity period of the Contract covers the Transaction Period(s) and, as the case may be, the associated Pre-delivery Period(s), the respective durations of which are specified, for a Contracted Capacity of the CMU, or, as the case may be, for CMUs related to Linked Capacities, in the corresponding Annex(es) A.1. Notwithstanding the previous sentence, the obligations regarding confidentiality, payment, liability, applicable law and settlement of disputes, as well as those related to the protection of personal data may exceed this validity period in respect of the execution of the obligations arising in, and in relation to, the Transaction Period(s) and, as the case may be, the Pre-delivery Period(s) associated with it.
- 3.2. The CAPACITY PROVIDER informs the Grid User(s) or CDS User(s) which it calls upon to form the CMU or, as the case may be, the CMUs related to Linked Capacities of the scope of the provisions of

this Contract and, when applicable, of any related amendments to this Contract. In its contractual relations with such Grid User(s) or CDS User(s), the CAPACITY PROVIDER shall make every reasonable effort to ensure that the intervention of such Grid User(s) or CDS User(s) does not constitute an obstacle or difficulty to the exercise by ELIA of its rights and obligations, as set out in this Contract and the Functioning Rules with regard to the CAPACITY PROVIDER. Without prejudice to ELIA's obligations, the CAPACITY PROVIDER may not invoke the behaviour attributable to the said Grid User(s) or CDS User(s), and the cause of respectively a Missing Volume or a Missing Capacity, to avoid the application, as the case may be, of the Financial Penalty or of the Unavailability Penalty or its other obligations resulting from the Functioning Rules or this Contract.

- 3.3. The CAPACITY PROVIDER waives, towards ELIA and within the limits of this Contract, its general, specific or other terms and conditions, regardless of when and how they were transmitted.
- 3.4. The Parties ensure that their own mutual contractual relations are always based on the existence and proper performance of the requisite contractual agreements with the parties concerned who have concluded one of the other Regulated Contracts with ELIA or with another system operator within the Belgian Control Area.
- 3.5. The CAPACITY PROVIDER confirms, using the form mentioned in Article 3, § 2 alinea 2 of the Royal Decree on 'Eligibility Criteria' included in Annex C, its waiver of the right for functioning aid for the relative CMU during the concerned Transaction Period(s). The CAPACITY PROVIDER undertakes not to request any operational aid for the CMU concerned or, where appropriate, the CMUs concerned, in the case of Connected Capacities, for the Transaction Period(s) concerned.

## **Article 4. SUBJECT MATTER OF THE CONTRACT**

- 4.1. In accordance with Article 7undecies, §11 of the Electricity Act, the Contract covers the rights and obligations of ELIA and of the CAPACITY PROVIDER for the CMU, or, as the case may be, for the CMUs related to Linked Capacities, from the time it is subject to at least one Transaction that is either the result of the validation of the results of the Auction by CREG (if the Transaction results from the Primary Market) or the result of the validation by ELIA of the transaction on the Secondary Market (if the Transaction results from the Secondary Market, but subject to a request by CREG to ELIA to cancel the transaction on the Secondary Market validated by ELIA ) within ten (10) Working Days after this validation). The Contract is signed electronically by the Parties. For each Transaction, an Annex A.1 is created or, as the case may be, amended and is signed electronically. In case of a Joint Offer, Annex A.2 listing the Associated Delivery Points is adapted for each Delivery Period. Annex A.2 is also signed electronically.
- 4.2. By entering into this Contract for one or more Transactions, the CAPACITY PROVIDER undertakes to perform the obligations resulting from the Functioning Rules and the Contract, throughout each

Transaction Period and, as the case may be, throughout each Pre-Delivery Period associated to it, without prejudice to 3.1.

- 4.3. As a counterpart to the performance of the obligations resulting from the Functioning Rules and the Contract during a Transaction Period, the CAPACITY PROVIDER is entitled to the Capacity Remuneration pursuant to Article 7undecies §11 alinea 4 of the Electricity Act and following the modalities of Article 5 of the Contract.
- 4.4. Without prejudice to Article 7, any breach of the Pre-delivery and/or Availability Obligations is sanctioned by one or more penalties as foreseen in the Functioning Rules. Said breaches are the subject of a pre-delivery activity report for the Pre-Delivery Obligations and of a delivery activity report for the Availability Obligations, issued by ELIA as described in paragraph 5.3.
- 4.5. The CAPACITY PROVIDER also has a Payback Obligation to ELIA insofar this Payback Obligation is applicable. The terms of this obligation are set out in the Royal Decree on 'Methodology' as well as in the Functioning Rules.

## **Article 5. REMUNERATION, PENALTIES AND PAYBACK OBLIGATION**

### **5.1. Determination of the Remuneration**

- 5.1.1. The Functioning Rules govern the determination of the Capacity Remuneration ('pay-as-bid').
- 5.1.2. The Capacity Remuneration is expressed in euros (€) per MW per year (euros/MW/year) and covers the Contracted Capacity for each Transaction, limited to the Transaction Period, and listed in Annex A.1 to this Contract. The Capacity Remuneration is paid under the form of a Monthly Remuneration, as from the first month of the Transaction Period in accordance with the formula and the modalities set out below.
- 5.1.3. The Monthly Remuneration is subject to an ex-ante invoicing issued by the CAPACITY PROVIDER based on the formula provided in paragraph 5.1.5, subject to the monthly statement mentioned in paragraph 5.1.4. The ex-ante invoice is paid according to the modalities provided in Article 6, subject to the possibility of challenging the ex-ante invoice in accordance with paragraph 5.4.1. For a Transaction with a Transaction Validation Date falling later than the fifth (5th) Working Day prior to the first day of month M, no ex-ante invoicing will be applied, but the Monthly Remuneration for this Transaction will be invoiced based on the monthly statement as provided in paragraph 5.3.2.
- 5.1.4. The Monthly Remuneration is also subject to a monthly statement prepared by ELIA based on the formula provided in paragraph 5.1.5 and within the time frame provided for in paragraph



5.3.2. The potential difference between the monthly statement and the ex-ante invoicing is subject to, as the case may be, a corrective invoice or a corrective credit note (~~pro-forma and later on final~~) issued by the CAPACITY PROVIDER in accordance with the modalities described in Article 6.

5.1.5. The Monthly Remuneration for each Transaction is equal to the sum for each ~~hour~~Market Time Unit (MTU) of the Transaction Period for the relevant month of the product of the Contracted Capacity for the ~~hour~~Market Time Unit (MTU) multiplied by the Capacity Remuneration and divided by the number of ~~hours~~Market Time Units (MTUs) in the relevant Delivery Period. This is represented by the following formula:

$$\begin{aligned} & \text{Monthly Remuneration (Transaction}_{id}, \text{relevant month } M) \\ & = \\ & \sum_{t=1}^w \left( \text{Contracted Capacity (Transaction}_{id}, t) \right. \\ & \left. \frac{\text{Capacity Remuneration (Transaction}_{id}, t)}{\text{* Number of } \del{hours}\text{Market Time Units (MTU) of the Delivery Period that the relevant Month contains}} \right) \end{aligned}$$

Where:

- *Transaction<sub>id</sub>* is the unique identifier of the Transaction, as specified in the CRM IT Interface and in Annex A.1 of the Contract;
- *relevant month M* is the month covered in whole or in part by the Transaction Period and forming part of the Delivery Period;
- *t* and *w* represent respectively the ~~hours~~Market Time Units (MTUs) and total number of ~~Market Time Units (MTUs) hours~~ for the relevant month of a Transaction Period;
- *Contracted Capacity(Transaction<sub>id</sub>, t)* is the Contracted Capacity of the Transaction of a CMU per ~~hour~~Market Time Unit (MTU), available in the Contract and in the CRM IT Interface;
- *Capacity Remuneration (Transaction<sub>id</sub>, t)* is the remuneration granted to CAPACITY PROVIDERS in exchange for making their capacity available, and is determined for each Transaction as specified in Annex A.1 and expressed in €/MW/Year;
- *Number of ~~hours~~Market Time Units of the Delivery Period that the relevant month M contains* is the number of ~~hours~~Market Time Units (MTUs) in the Delivery Period including the month M in question.

5.1.6. The Monthly Remuneration may be reduced by the following elements, in accordance with the Functioning Rules:

- o The Unavailability Penalties applicable as limited by the monthly/annual cap;
- o The temporary or permanent reduction in Monthly Remuneration as provided for, in accordance with section 9.6.4 of the Functioning Rules.
- o If applicable, the Payback Obligations applicable and as limited by the Stop-Loss.

## **5.2. Determination of penalties and of the Payback Obligation**

### **5.2.1. Financial Penalties determined during the Pre-delivery Period**

5.2.1.1. In accordance with Chapter 8 of the Functioning Rules, when ELIA identifies a Missing Volume (MW) per Contracted Capacity, ELIA applies Financial Penalties to the CAPACITY PROVIDER as set out in paragraph 5.3.1 and Article 6 and within the limits of section 8.4.3 of the Functioning Rules.

### **5.2.2. Unavailability Penalties determined during the Delivery Period**

5.2.2.1. In accordance with Chapter 9 of the Functioning Rules, when ELIA determines a Missing Capacity (MW) for the CMU for one month of the Transaction included in Annex A.1, Elia applies Unavailability Penalties to the CAPACITY PROVIDER for the month in question, in accordance with paragraph 5.3.2 and Article 6.

5.2.2.2. The total amount of the Unavailability Penalties that the CAPACITY PROVIDER may be charged for the CMU, both monthly and annually, for its Transaction(s) on the Primary Market or for its Transaction(s) resulting from the Secondary Market, for which the Transaction Period covers one (or more) full Delivery Period(s), is limited in accordance with section 9.6.2 of the Functioning Rules.

### **5.2.3. Payback Obligation determined during the Delivery Period and Stop-Loss**

5.2.3.1. In accordance with section 12.4 of the Functioning Rules, the Payback Obligation(s) linked to a Transaction is applied by ELIA to the CAPACITY PROVIDER as set out in paragraph 5.3.2 and in Article 6.

5.2.3.2. For a Transaction for which the Transaction Period corresponds to one (or more) full Delivery Period(s), the total of the Payback Obligations applied by ELIA for this Transaction to the CAPACITY PROVIDER cannot exceed, over a Delivery Period, the Stop-Loss Amount for that Transaction, as defined in the Functioning Rules, section 12.3.3.

## **5.3. Issuing pre-delivery and delivery activity reports and the monthly statements**

### 5.3.1. Pre-delivery Period

5.3.1.1. The electronic issuance of the report on pre-delivery activities, in which, where applicable, the Missing Volume and the Financial Penalties are specified, is based on the status of the CMU, namely, as appropriate:

- If the CMU is an Existing CMU: ELIA communicates this pre-delivery activity report to the CAPACITY PROVIDER, according to the modalities established in section 8.4.4 of the Functioning Rules, and within a maximum period of time of:
  - Thirty (30) Working Days from the time of the pre-delivery control ( $t_{control1}$  and/ or  $t_{control2}$ ); or
  - Ten (10) Working Days from the date of the additional pre-delivery control mentioned in § 444 of the Functioning Rules, in case of contestation of the pre-delivery activity report, pursuant to the modalities of § 443 of the Functioning Rules.
- If the CMU is an Additional or Virtual CMU: ELIA communicates this pre-delivery activity report to the CAPACITY PROVIDER, in accordance with the modalities set out in section 8.4.4 of the Functioning Rules, within twenty (20) Working Days of the  $t_{control1}$  and/or  $t_{control2}$  control moments.

### 5.3.2. Delivery Period

5.3.2.1. For each month M, ELIA issues, electronically, for the attention of the CAPACITY PROVIDER, for its Transaction(s) for the CMU as determined in Annex(es) A.1, the following two (2) documents and at the latest on the 15<sup>th</sup> of Month M+2:

- A monthly statement specifying for said month M, or if applicable for a month preceding the month of emission of the monthly statement, details of the Monthly Remuneration for each related Transaction, and the details of the ex-ante invoice of the Monthly Remuneration invoiced based on paragraph 5.1.3 and on paragraph 6.2.2;
- A delivery activity report detailing, for month M or if applicable for a month preceding the month of emission of the delivery activity report, for a CMU and its Transaction(s), the following elements:
  - The Available Capacity of the CMU;
  - As the case may be, the determined Missing Capacity;
  - As the case may be, the determined amount of Unavailability Penalties and the associated monthly Penalty Cap;

- As the case may be, the determined amount of the Payback Obligations and the associated Stop-Loss Amount.

## 5.4. Contestation

### 5.4.1. Ex-ante invoicing

5.4.1.1. In case of non-compliance of the ex-ante invoice, and without prejudice to the monthly statement mentioned in paragraph 5.1.4 and to the contestation pursuant to paragraph 5.4.2, ELIA provides notification of such non-compliance electronically within ten (10) Working Days of the invoice's issuance. The invoice's non-compliance is assessed:

- using the requirements established for the issuance of the invoice as described in paragraph 6.1 ; and
- the correctness of the amount on the ex-ante invoice based on the formula described in section 5.1.5, taking into account the number of ~~hours~~ Market Time Units (MTU) applicable to the Transaction(s) limited to the duration of month M and to the potential reductions of the Monthly Remuneration mentioned in paragraph 5.1.6, 2nd bullet communicated by ELIA to the CAPACITY PROVIDER before the ex-ante invoicing.

5.4.1.2. In case of rejection of the ex-ante invoice by ELIA in accordance with paragraph 5.4.1.1, the ex-ante invoice is subject to, as far as applicable via the use of a credit note in order to correct the wrong elements from the ex-ante invoice, a correction by the CAPACITY PROVIDER at the latest within ten (10) Working Days and is paid in accordance with paragraph 6.3.1, if the corrected invoice complies. If the corrected invoice does not comply, paragraph 5.4.1.1 and this paragraph apply again.

### 5.4.2. Monthly statement

5.4.2.1. To be admissible, any contestation concerning the whole or a part of the difference between the amount of the ex-ante invoice and the amount resulting from the monthly statement as specified in paragraph 5.3.2, are to be sent to ELIA by email, with acknowledgement of receipt, within twenty (20) Working Days from the receipt of the said statement. Such email contains the grounds for the objection, which must be explained as comprehensibly and in as much detail as possible.

5.4.2.2. The Parties negotiate in good faith with a view to reaching an agreement on the disputed amount of the monthly statement, within sixty (60) Working Days after receipt of the email as specified in paragraph 5.4.2.1.

5.4.2.3. In the event of partial or full agreement between the Parties on the difference between the amount of the non-contested ex-ante invoice, and the amount resulting from the monthly statement, the new undisputed amount, resulting from the agreement reached, is then the subject of an invoice respectively credit note that the CAPACITY PROVIDER must issue in accordance with Article 6,

depending on whether the total or partial agreement results in an additional debt or receivable for ELIA in relation to the amount invoiced in advance. In the absence of such an additional debt or receivable no invoice or credit note is issued by the CAPACITY PROVIDER.

- 5.4.2.4. In the absence of partial or full agreement between the Parties on the amount of the Monthly Remuneration, resulting from the monthly statement, within the first period of sixty (60) Working Days as referred to in paragraph 5.4.2.2, the disputed amount or the disputed part of the amount of the Monthly Remuneration is the subject of a separate invoice or separate credit note, to be issued by the CAPACITY PROVIDER, covering the difference between the ex-ante invoice relating to the payment or, as the case may be, of the partial agreement mentioned in paragraph 5.4.2.3 and the amount of the monthly statement, if and insofar as the amount of the ex-ante invoice relating to the payment or, as the case may be, of the partial agreement referred to in point 5.4.2.3 is lower or respectively higher than the amount of the monthly statement.
- 5.4.2.5. At the same time, the two Parties continue to seek an amicable agreement within the sixty (60) Working Days following the end of the first period as specified in paragraph 5.4.2.2. In the event an amicable agreement is reached between the Parties, this agreement will result, depending on the case, in a corrective invoice or a corrective credit note, to be issued by the CAPACITY PROVIDER, in accordance with Article 6. In the absence of such an additional debt or receivable for ELIA, no invoice or credit note is issued by the CAPACITY PROVIDER.
- 5.4.2.6. If an agreement has still not been reached after the second period of sixty (60) Working Days, the Parties may start the dispute procedure as described in Article 15.

#### 5.4.3. Financial Penalties and Unavailability Penalties

- 5.4.3.1. To be admissible, any dispute relating to all or part of the amount of the Financial Penalties or Unavailability Penalties arising from the pre-delivery or delivery activity reports referred to respectively in paragraphs 5.3.1 and 5.3.2 must comply with the rules of sections 8.4.4.2 and 9.6.3 of the Functioning Rules.
- 5.4.3.2. In the event of a partial or full agreement between the Parties, during the first period of sixty (60) Working Days as specified in sections 8.4.4.2 and 9.6.3 respectively of the Functioning Rules, on the amount of the Financial Penalties or the Unavailability Penalties resulting respectively from the pre-delivery / delivery activity reports, the new uncontested amount, being the subject of the agreement, is then the subject of a credit note, to be issued by the CAPACITY PROVIDER in accordance with Article 6.
- 5.4.3.3. In accordance with sections 8.4.4.2 and 9.6.3 of the Functioning Rules, in the absence of partial or full agreement between the Parties on the amount of the Financial Penalties or of the Unavailability Penalties arising from the reports on the pre-delivery/delivery activities within the first period of sixty (60) Working Days referred to in sections 8.4.4.2 and 9.6.3 of the Functioning Rules, for the disputed amount or the disputed part of the amount of the penalties a separate credit note is drawn up in accordance with Article 6.

5.4.3.4. In the event of an amicable agreement between the Parties during the second period of sixty (60) Working Days as specified in sections 8.4.4.2 and 9.6.3 respectively of the Functioning Rules, such agreement shall result, as the case may be, in a corrective invoice relating to the amount which had been the subject of the separate credit note, in accordance with Article 6.

5.4.3.5. If no amicable agreement is reached after the second period of sixty (60) Working Days, the Parties may start the dispute procedure mentioned in Article 15.

#### 5.4.4. Payback Obligation

5.4.4.1. To be admissible, any contestation relating to the whole or part of the amount of the Payback Obligation resulting from the delivery activity report specified in paragraph 5.3.2, must comply with the rules set out in section 12.4.6 of the Functioning Rules.

5.4.4.2. In the event of partial or full agreement between the Parties, during the first period of sixty (60) Working Days as set out in section 12.4.6 of the Functioning Rules, on the amount of the Payback Obligation resulting from the delivery activity report, the new uncontested amount agreed, is then the subject of an invoice to be issued by ELIA in accordance with §870 of the Functioning Rules and Article 6.

5.4.4.3. In accordance with section 12.4.6 of the Functioning Rules, in the absence of partial or full agreement between the Parties on the amount of the Payback Obligation resulting from the delivery activity report, within the first period of sixty (60) Working Days as set out in section 12.4.6 of the Functioning Rules, the disputed amount or the disputed part of the contested amount of the Payback Obligation is the subject of a separate invoice in accordance with Article 6.

5.4.4.4. In the event an amicable agreement is reached between Parties during the second period of sixty (60) Working Days as set out in section 12.4.6 of the Functioning Rules, this agreement will result, as the case may be, in ELIA issuing a corrective credit note for the amount which had been the subject of the separate invoice, in accordance with Article 6.

5.4.4.5. If no amicable agreement is reached after the second period of sixty (60) Working Days, the Parties may start the dispute procedure mentioned in Article 15.

#### 5.4.5. Compliance with the Functioning Rules

5.4.5.1. Any agreement concluded within the scope of this Article must comply with the Functioning Rules.

## Article 6. INVOICING AND PAYMENT

### 6.1. Requirements for issuing an invoice or a credit note

6.1.1. Every ~~pro forma or final~~ invoice or credit note, must contain at least the following elements:

- Full name and address of the Party issuing the invoice or credit note and, respectively of the invoiced Party or of the beneficiary Party;
- VAT number of the Party issuing the invoice or credit note and, respectively of the invoiced Party or of the beneficiary Party;
- Amount invoiced or credited, expressed in euros, as well as the corresponding detail for each Transaction (including the ID of the Transaction(s) concerned and for the CMU (CMU ID));
- VAT according to the rules of the Belgian VAT Code;
- Bank account and bank address (including IBAN number and BIC code) to be used to make the relevant payment;
- Invoice or credit note number;
- Date the invoice or credit note is issued;
- Indication of the Delivery Period and delivery month concerned;
- Reference as the case may be to the statement, the pre-delivery or delivery activity report, the agreement or contestation or any other reference required in advance by ELIA;
- Payment deadline in accordance with paragraph 6.3 below.

6.1.2. Each invoice or credit note, ~~whether pro forma or final~~, issued by the relevant CAPACITY PROVIDER under this Contract, must:

- Cover all Transactions to which the Transaction Period relates in whole or in part for the month in question;
- Comply with the data provided by the CAPACITY PROVIDER in its Prequalification File;
- Be issued within the time limits set out in paragraph 6.2.

## 6.2. Terms and conditions for issuing the credit note or invoice

6.2.1. Subject to paragraphs 6.2.2 and 6.2.3 relating to the issuance of ex-ante invoices, for the Monthly Remuneration, the issuance of invoices or credit notes within the context of this Contract takes place based on monthly statements or pre-delivery / delivery activity reports set out in paragraph 5.3. Subject to the consequences of the dispute procedure described in paragraph 5.4 and the ex-ante invoicing described in paragraphs 6.2.2 and 6.2.3, the Monthly Remuneration is, as the case may be, subject of a corrective invoice or credit note issued by the CAPACITY PROVIDER. The Financial Penalties and the Unavailability Penalties are the subject

of a credit note issued by the CAPACITY PROVIDER and the Payback Obligation is the subject of an invoice from ELIA. In the event of a dispute, paragraph 5.4 describes which document can be issued, i.e. an invoice or a credit note. With the exception of the ex-ante invoices falling under paragraphs [6.2.1](#) and [6.2.2](#), paragraphs [6.2.4](#) through [6.2.10](#) apply to the conditions for issuance of all invoices and credit notes.

6.2.2. The ex-ante invoice for the Monthly Remuneration for delivery in the month M for a Transaction must be issued by the CAPACITY PROVIDER to ELIA at the latest the second (2<sup>nd</sup>) Working Day before the first ([1<sup>st</sup>](#)) day of this month M and requires that the Transaction Validation Date of this Transaction does not fall later than the fifth (5<sup>th</sup>) Working Day prior to the first day of this month M.

6.2.3. The CAPACITY PROVIDER cannot issue an ex-ante invoice of the Monthly Remuneration for the delivery in month M for a Transaction to the extent that the Transaction Validation Date falls less than five (5) Working Days prior to the first day of this month M. As a result, the Monthly Remuneration for delivery in month M for such a Transaction can only be invoiced based on the monthly statement as determined in paragraph 5.3.2. In addition, to the extent the Transaction Validation Date later falls than the fifth (5<sup>th</sup>) Working Day prior to the fifteenth day of month M+2, the Monthly Remuneration for delivery in month M shall be invoiced on the basis of the monthly statement relating to month M+1 or later as provided in section 5.3.2.

~~6.2.4. With the exception of ex-ante invoices from the CAPACITY PROVIDER and invoices and credit notes issued by ELIA, invoices and credit notes are issued in two phases: first by means of a pro forma invoice or a pro forma credit note, which must be approved by ELIA, and then by means of a final invoice or credit note, which is the subject of payment.~~

~~6.2.5.~~ [6.2.4.](#) The CAPACITY PROVIDER issues an ~~pro forma~~ invoice or credit note and ELIA issues an invoice or credit note by email or via the CRM IT Interface, as the case may be, within twenty (20) Working Days following receipt of the monthly statement, or of the pre-delivery or delivery activity report, or, in case of contestation by the CAPACITY PROVIDER of this monthly statement or this pre-delivery or delivery activity report, at the latest within five (5) Working Days after concluding the agreement or the establishment of a lack thereof, as set out in paragraphs 5.4.2, 5.4.3 and 5.4.4.

~~6.2.6.~~ [6.2.5.](#) The monthly statement only gives rise to a corrective invoice or credit note in the event of a difference between the amount of the ex-ante invoice and the amount resulting from the monthly statement.

~~6.2.7.~~ [6.2.6.](#) Within ten (10) Working Days of receipt, ELIA validates or rejects, electronically and in a motivated manner, the ~~pro forma~~ invoice or credit note on the basis of an evaluation of compliance with the requirements set out in paragraph 6.1. - the statement of account, the pre-delivery of delivery activity report, the agreement of dispute or any other reference required in advance by ELIA.



~~6.2.8. For each pro forma invoice or credit note validated by ELIA, the CAPACITY PROVIDER issues the final invoice or final credit note to ELIA as soon as possible and within a maximum of ten (10) Working Days following the date of receipt of the validation email from ELIA (paragraph 6.2.7).~~

~~6.2.9.6.2.7.~~ For each ~~pro forma~~ credit note or invoice rejected by ELIA, the CAPACITY PROVIDER is invited to run through the process described in paragraph ~~6.2.46.2.46.2.46.2.46.2.5~~ of this Contract once more.

~~6.2.10.6.2.8.~~ Upon a Party's request, and without prejudice to the other provisions of Articles 5 and 6 of this Contract, the Parties may organise conciliation meetings by mutual agreement, in order to facilitate the search for solutions to possible inconsistencies related to the content and follow-up of the ~~pro forma~~ credit notes and invoices.

~~6.2.11. For any final credit note or final invoice issued by the CAPACITY PROVIDER, which does not comply with the pro forma version as validated by ELIA, the latter is entitled to refuse the related document. It is then the CAPACITY PROVIDER's responsibility to correct the credit note or invoice as soon as possible, by sending an invoice or credit note cancelling the first one and also sending a new credit note or invoice with the correct amount validated by ELIA. The payment deadline only starts from the date of receipt by ELIA of a credit note or invoice complying with the requirements set out in paragraph 6.1.~~

~~6.2.12.6.2.9.~~ In the absence of an ~~pro forma or final~~ invoice or credit note issued by the CAPACITY PROVIDER within the time limits provided for in paragraph ~~6.2.46.2.36.2.36.2.46.2.46.2.5~~, respectively paragraph ~~6.2.66.2.46.2.46.2.66.2.66.2.7~~:

- ELIA issues a final credit note to replace the missing invoice on the basis of the settlement or of the pre-delivery or delivery activity report or, if the settlement or pre-delivery or delivery activity report have been contested, on the basis of the agreement on the amount, respectively;
- ELIA issues an invoice to replace the missing credit note, based on the pre-delivery or delivery activity report or, if this pre-delivery or delivery activity report is disputed, based on the agreement on the amount or, if such amount remains in dispute, the disputed amount of the Penalty or the Payback Obligation.

~~6.2.13.6.2.10.~~ Credit notes and invoices in replacement are equivalent to an invoice, respectively credit note of the CAPACITY PROVIDER, for the application of the Functioning Rules and, where applicable, for the application of paragraphs 6.3.1 and 6.3.4 and for the application of the Financial Securities referred to in said Functioning Rules.

~~6.2.14.6.2.11.~~ For information purposes, and without prejudice to the applicable provisions, the following table provides an overview of the various documents relating to invoicing:

Period	Documentation underlying the invoice/credit note from the CAPACITY PROVIDER	Result	<del>Pro-forma and final</del> invoice or credit note (to be issued by the CAPACITY PROVIDER) (§5.4.2-5.4.3 and 6.2) or by ELIA (§5.4.4 and 6.2)	Corrective invoice of credit note, if necessary <del>accompanied by a credit note or invoice to compensate for the incorrect amount</del> (§6.2.16-2.11)	Fall-back system: Invoice or credit note <del>(pro-forma and final)</del> as a replacement (to be issued by ELIA) (§6.2.96-2.96-2.96-2.96-2.12-6.2.106-2.106-2.106-2.106-2.13)
Pre-delivery Period	Pre-delivery activity report (§5.3.1)	Financial Penalty (due from the CAPACITY PROVIDER)	Credit note (CAPACITY PROVIDER)	<del>Offset invoice and corrective credit note</del> Corrective invoice	Replacement <del>in</del> invoice
Delivery Period	Validation of the Transaction (§5.1.3-6.2.2-6.2.3)	Monthly Remuneration (due from ELIA)	Ex- ante invoice (CAPACITY PROVIDER)	Credit note (§5.4.1.1 - 5.4.1.2) <del>/</del>	/
Delivery Period	Statement (§5.3.2)	Deviation from the Monthly Remuneration (due from ELIA) invoiced ex-ante	<del>/ Invoice or credit note (correcting the ex-ante invoice) (CAPACITY PROVIDER)</del>	Invoice or credit note (correcting the ex-ante invoice) (CAPACITY PROVIDER) <del>Offset invoice and corrective credit note</del>	Replacement <del>C</del> credit note
Delivery Period	Delivery activity report (§5.3.2)	Unavailability penalty (due from the CAPACITY PROVIDER)	Credit note (CAPACITY PROVIDER)	<del>Offset</del> Corrective invoice and corrective credit note	Replacement <del>in</del> invoice
Delivery Period	Delivery activity report (§5.3.2)	Payback Obligation (due from the CAPACITY PROVIDER)	Invoice (ELIA)	Corrective <del>Offset</del> credit note and corrective invoice	/

### 6.3. Payment modalities

6.3.1. Without prejudice to paragraph 6.3.3, ELIA proceeds with the payment of conforming ex-ante invoices (mentioned in paragraphs 5.1.3, 5.4.1, 6.2.2 and 6.2.3) and of conforming ~~final~~ invoices ~~(mentioned in paragraph 6.2.8)~~ issued by the CAPACITY PROVIDER at the latest by the end of the month following the the month during which the said invoice was received, by email or introduced in the CRM IT Interface (paragraph ~~6.2.46-2.46-2.46-2.46-2.5~~), by direct transfer of the amount invoiced to the bank account indicated.

6.3.2. Without prejudice to paragraph 6.3.3, for ~~final~~-credit notes and ~~final~~-invoices issued by the CAPACITY PROVIDER and, as the case may be, the invoices issued by ELIA:

- During the Pre-delivery Period, payment by the CAPACITY PROVIDER is made at the latest by the end of the month following the month during which the said invoice was received, by email or introduced in the CRM IT Interface, via transfer of the credit note issued by the CAPACITY PROVIDER or the invoice issued by ELIA;
- During the Delivery Period, ELIA deducts the amount of the credit note issued by the CAPACITY PROVIDER and the invoices issued by ELIA, as the case may be, from the ~~ex-ante~~ invoices or ~~final~~-invoices issued by the CAPACITY PROVIDER within the context of this Contract. In the event of no balance (or no future invoice), of which ELIA informs the CAPACITY PROVIDER, payment by the CAPACITY PROVIDER is made at the latest by the end of the month following the month during which the said invoice was received by email or the or introduced in the CRM IT Interface, via transfer of the credit note issued by the CAPACITY PROVIDER or of the invoice issued by ELIA.

6.3.3. In case of contestation of the pre-delivery or delivery activity reports or of the monthly statements, the payment obligation linked to separate invoice or credit notes set out in paragraphs 5.4.2.4, 5.4.3.3 and 5.4.4.3 is suspended until the contestation is resolved, as the case may be after the dispute process or after having reached an amicable agreement, without prejudice to the provisions of paragraph 6.3.5.

6.3.4. Any late payment relating to Financial Penalties may result in ELIA calling on the Financial Security provided by the CAPACITY PROVIDER, as described in the Functioning Rules and according to the modalities (amongst which the need for a reminder letter taking the form of a formal notice and the default declaration) described in §806 of the Functioning Rules, the due date being the one resulting from paragraph 6.3.1.

6.3.5. Without prejudice to paragraph 6.3.4, any late payment automatically, and without formal notice, gives rise, including in case of contestation, to interest on the total amount of the invoice or of the credit note in accordance with Article 5 of the Act of 2 August 2002 from the day following the due date up to and including the day on which full payment is made.

6.3.6. Without prejudice to the legal or regulatory provisions which might, as the case may be, be applicable, if the CAPACITY PROVIDER benefited from an illegal state aid or judged non-compliant (that is to say contrary to Articles 107 and 108 of the Treaty on the Functioning of the European Union) and must refund such aid on the basis of an enforceable refunding decision, ELIA shall suspend in whole or in part the payment of the Capacity Remuneration.

ELIA shall only proceed with the suspension of the payment of the Capacity Remuneration insofar as ELIA is notified by the Directorate-General for Energy that it is obliged to suspend the payment of the Capacity Remuneration due to non-refunding of the illegal state aid obtained by

the CAPACITY PROVIDER. The obligations of the CAPACITY PROVIDER are not suspended in case of suspension by ELIA of the payment of the Capacity Remuneration.

ELIA will resume the payment of the Capacity Remuneration – including the Capacity Remuneration due during the period of suspension of payments – as from the moment it is notified by the Directorate-General for Energy that the illegal or non-compliant state aid has been refunded and that ELIA may resume payment of the Capacity Remuneration.

#### **6.4. Compliance with Functioning Rules**

6.4.1. Any agreement concluded within the scope of this Article must comply with the Functioning Rules.

### **Article 7. LIABILITY**

#### **7.1. Notification of the breach**

7.1.1. In the event that a CAPACITY PROVIDER or ELIA remains in default of performing an obligation under this Contract, the other Party shall notify the defaulting party of said default as soon as possible and in any case within sixty (60) Working Days. The defaulting Party is required to respond within fifteen (15) Working Days as of the notification. Failure to respond within this period shall be deemed to constitute an acknowledgement of the facts set out in the notification.

#### **7.2. Liability of the CAPACITY PROVIDER and ELIA**

7.2.1. Subject to the application of the Penalties provided for in the Functioning Rules, the CAPACITY PROVIDER or ELIA may, in the context of the CRM, only be liable for the Direct Damage suffered by the other Party as a result of gross negligence on its part. No limitation of liability shall apply in the event of fraud or willful misconduct.

7.2.2. Direct Damage is defined as damage that is the direct and immediate result of a fault on the part of the CAPACITY PROVIDER or ELIA, its employees, subcontractors or agents in the performance of its obligations under this Contract. Under no circumstances, except in cases of fraud or willful misconduct, will the CAPACITY PROVIDER and ELIA be mutually liable or obliged to guarantee or indemnify each other against claims for indirect or consequential damages, including, but not limited to, any loss of profit, loss of revenue, loss of use, loss of contracts or loss of goodwill.

7.2.3. In all cases, the liability of a CAPACITY PROVIDER in respect of ELIA in the event of gross negligence is limited to a maximum amount of EUR 600 multiplied by the sum of the Nominal

Reference Power, expressed in MW, of all the CMUs of this CAPACITY PROVIDER, it being understood that this maximum amount may not be less than EUR 50,000 per claim and per year and may not exceed EUR 2,500,000 per claim and per year. ELIA's liability towards the CAPACITY PROVIDER for gross negligence is limited to a maximum amount of EUR 600 multiplied by the sum of the Nominal Reference Power, expressed in MW, of all CMUs of this CAPACITY PROVIDER, it being understood that this maximum amount is not less than EUR 50,000 per CAPACITY PROVIDER or exceed EUR 5,000,000 per claim, allocated, where applicable, on a pro-rata basis with respect to the amount of the compensation order. However, ELIA's liability is limited to a total amount of EUR 24 15,000,000 per year, regardless of the number of claims. There is no limitation of liability in the event of willful misconduct.

7.2.4. The imposition of penalties as provided for in the Functioning Rules, if the CAPACITY PROVIDER breaches its obligations, does not exclude ELIA's right to compensation for Direct Damages it suffers as a result of such non-compliance, provided that ELIA establishes that said Direct Damage is the result of fraud, willful misconduct or gross negligence on the part of the CAPACITY PROVIDER, on the one hand, and that non-compliance affects ELIA's assets, on the other. Within the meaning of this provision, ELIA's assets are only affected if ELIA is unable to remedy the consequences of the said breach via the mechanisms established by this Contract or in the Functioning Rules or via other regulatory mechanisms provided for by or by virtue of the Electricity Act and covered in accordance with Articles 12 and 21quinquies of said Electricity Act.

7.2.5. The CAPACITY PROVIDER is liable in respect of ELIA for gross negligence committed by Grid Users and/or CDS Users to which the CAPACITY PROVIDER calls upon to form a CMU or, as the case may be, multiple CMUs in the case of Linked Capacities, within the liability limits applicable between the Parties. In the event of combined gross negligence on the part of several of these Grid Users or CDS Users and/or the CAPACITY PROVIDER, the CAPACITY PROVIDER's liability will be limited to the maximum amount stipulated in paragraph 7.2.3. ELIA may not take direct action against the aforementioned Grid Users or CDS Users.

### 7.3. Warranty clause

7.3.1. Without prejudice to the application of penalties as provided for in the Functioning Rules, the CAPACITY PROVIDER and ELIA will guarantee each other against any compensation order for damage suffered by a third party resulting from their gross negligence, fraud or willful misconduct in the performance of their obligations under this Contract.

7.3.2. Save for fraud or willful misconduct, the warranty referred to in the previous section may not, under any circumstances, exceed the amount of EUR 5,000,000 per claim and per year.

## 7.4. Interaction with other regulated contracts

- 7.4.1. Without prejudice to the application of Penalties as provided for in the Functioning Rules, the amount due by the CAPACITY PROVIDER or ELIA as compensation for liability under another Regulated Contract concluded between them shall be deducted from the amount of compensation due pursuant to paragraphs 7.2 and 7.3.
- 7.4.2. The Regulated Contracts referred to in the previous section refer to the contracts listed in Article 3 § 1 of the Code of Conduct and the regulated contracts at regional level. Save for that which is provided in paragraph 7.4.1, this Contract does not limit in any way the application of the provisions of said contracts, even if the non-performance of an obligation under this Contract has an impact on the performance of an obligation under the Regulated Contract.

## 7.5. Limitation of liability clauses in other contracts and third party rights

- 7.5.1. When a CAPACITY PROVIDER or ELIA enters into a contract with a third party for the purpose of participating in the CRM, the liability limitation clauses set out in said contract shall reflect the principles and thresholds set out in this chapter, in such a way that said third party cannot assert more rights in respect of the CAPACITY PROVIDER and ELIA than the latter are entitled to assert between themselves. Any contractual provision to the contrary shall be deemed not to have been written.
- 7.5.2. The Grid Users or CDS Users with whom the CAPACITY PROVIDER forms the CMU or, as the case may be, CMUs related to Linked Capacities, cannot take direct action against ELIA. For Direct Damage that may have been suffered by said Grid Users or CDS Users, the CAPACITY PROVIDER is subrogated with respect to the rights of said Grid Users or CDS Users, within the liability limits that apply between the Parties.
- 7.5.3. Third parties may only assert claims against the CAPACITY PROVIDER or ELIA if they can prove that it is guilty of gross negligence in respect of performance of the obligations set out in the Functioning Rules. The liability of the CAPACITY PROVIDER or ELIA in the event of gross negligence may not exceed the maximum amount set out in paragraph 7.2.3. No limitation of liability shall apply in the event of fraud or willful misconduct.

## Article 8. FORCE MAJEURE

- 8.1. Without prejudice to the definition of Force Majeure given in the applicable legal and regulatory provisions, the term 'Force Majeure' means any unforeseeable or unusual event or situation which is beyond the reasonable control of the CAPACITY PROVIDER or ELIA, which is not attributable to any fault on the part of the CAPACITY PROVIDER or ELIA, which cannot be avoided or overcome in spite

of all reasonable due diligence or preventive measures deployed, which cannot be corrected by measures that it would be reasonable in technical, financial or economic terms for the CAPACITY PROVIDER or ELIA to undertake, and which temporarily or permanently prevent the CAPACITY PROVIDER or ELIA from fulfilling its obligations under the Functioning Rules and this Contract.

8.2. Without prejudice to the provisions of the Capacity Contract, the following situations, among others, are to be considered as Force Majeure provided they meet the conditions of Force Majeure set out in the previous section:

- natural disasters resulting from earthquakes, floods, storms, cyclones or other exceptional weather conditions recognised as such by a public body with authority in this area, as well as epidemics and pandemics;
- a nuclear or chemical explosion and the consequences thereof;
- situations of exceptional risk (or 'non-categorised' risk) during which the sudden unavailability of one or more electricity or gas distribution or transmission grids (including closed grids) or of Capacity or CMU or, as the case may be, CMUs related to Linked Capacities is caused by reasons other than ageing, lack of maintenance or the qualifications of 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;
- the temporary or permanent technical inability of the grid to exchange electricity because of disruptions within the Belgian Control Area caused by electricity flows resulting from energy exchanges within another Control Area or between two or more other Control Areas, where the identity of the market players involved in said energy exchanges is not, and cannot reasonably be, known to ELIA;
- the inability to operate the electricity or gas distribution or transmission grid (including closed grids), equipment forming a functional part of the grid, or installations of the Capacity Provider due to a collective dispute that gives rise to a unilateral measure by the employees (or groups of employees) or any other social conflict;
- 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;
- war (whether declared or not), the threat of war, invasion, armed conflict, embargo, revolution or uprising;
- a situation in which a competent authority imposes exceptional and temporary measures on the CAPACITY PROVIDER, including Grid Users, CDS Users to which the CAPACITY PROVIDER calls upon to form a CMU or, as the case may be, CMUs related to Linked Capacities or ELIA,



such as the measures necessary to maintain or restore the safe and efficient functioning of grids, including load-shedding order in the event of shortages;

- a decision or measure adopted by any competent public authority.

8.3. The CAPACITY PROVIDER or ELIA who invokes Force Majeure must immediately notify the other Party in writing via the CRM IT Interface, or by telephone provided that the matters discussed and agreed upon verbally are confirmed by official correspondence within three (3) Working Days of the said discussion. The written or verbal notification must be made in any event within three (3) Working Days of the appearance of the situation of Force Majeure or the time at which it should reasonably have discovered it. The Party that invokes Force Majeure must describe precisely the event that it qualifies as Force Majeure and indicate the measures it intends to take to remedy the situation as soon as possible. In the absence of any notification within said deadline, the CAPACITY PROVIDER or ELIA will no longer be entitled to invoke a situation of Force Majeure.

8.4. The CAPACITY PROVIDER or ELIA who proves a situation of Force Majeure is discharged from its contractual obligations, without prejudice to financial obligations which arose before the situation of Force Majeure. The suspension of obligations only lasts for the duration of the situation of Force Majeure, insofar as the latter prevents the Party from fulfilling its obligations. To the same extent, the other Party is not obliged to perform its counter-obligations. Nevertheless, the Party that invokes a situation of force majeure shall do everything possible to limit the consequences of the non-performance of its obligations in respect of the other Party and to once again fulfil said obligations.

8.5. If, as a result of a situation of Force Majeure, the CAPACITY PROVIDER or ELIA is unable to fulfil its obligations under the Functioning Rules and if this situation of Force Majeure persists for at least one hundred and eighty (180) consecutive days, the Party that invoked Force Majeure may be definitively released from its obligations under the Functioning Rules by sending a registered letter or an email with acknowledgement of receipt in which it describes the reasons.

## Article 9. CONFIDENTIALITY

9.1. The provisions of the Functioning Rules concerning confidentiality shall apply to any exchange of information of a commercial, technical, strategic, financial nature, or other sensitive information that is not publicly known and that is commonly regarded as valuable and confidential in the context of the performance of this Contract.

9.2. Any breach of this confidentiality obligation is considered as Gross Negligence on the part of the Party that violates said obligation. Such a breach gives rise to compensation for any Direct Damage that the other Party can demonstrate, subject to the limitations provided for in paragraph 7.2.3.



## Article 10. OBLIGATION TO INFORM

10.1. Provided that this does not contravene their legal or contractual confidentiality obligations, 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 which has knowledge thereof should reasonably consider to be an event or information that might have a detrimental effect on the Contract and/or on the performance of the obligations specified in the Contract towards the other Party.

## Article 11. REVISION AND AMENDMENT OF THE CONTRACT AND OF THE STANDARD CAPACITY CONTRACT

11.1. The Contract may only be revised in the following cases:

- 1° in the cases set out in the Electricity Act, its implementing decrees including the Functioning Rules;
- 2° without prejudice to 3°, in the event that a competent authority, or a competent institution (such as Entso-E or the RCC) takes a binding measure, whatever its nature, which makes it necessary to amend the Contract;
- 3° in the cases where the CREG decides that an approved amendment of the standard Capacity Contract or of the Functioning Rules must apply to ongoing Contracts.

11.2. The amendment of the Contract in the cases set out in paragraph 11.1 is initiated by the most diligent Party. ELIA shall uphold, within this framework, the equality and non-discrimination principle between the CAPACITY PROVIDERS.

11.3. In case of identified delay in Infrastructure Works on the ELIA Grid, ELIA applies the operational procedure set forth in section 8.5.2 of the Functioning Rules. In case of identified delay in Infrastructure Works on a grid other than the ELIA Grid, the CAPACITY PROVIDER, duly informed by the relative system operator pursuant to the operational procedure set out in section 8.5.2 of the Functioning Rules, informs ELIA of the impact of such delay on the potential beginning of the delivery and on the initial Contracted Capacity.

ELIA amends the Contract accordingly by postponing the start of the Delivery Period for the Transaction(s) concerned by one (1) year, and notifies this to the CAPACITY PROVIDER. At the latest ninety (90) Working Days following such notification, the CAPACITY PROVIDER may notify ELIA of its decision to terminate the Contract.

If the delay in the Infrastructure Works persists, the start of delivery for the relevant Transaction(s) is again postponed by one (1) year. After each postponement, the CAPACITY PROVIDER may notify

ELIA of its decision to terminate the Contract. As from the third postponement, ELIA is also authorised to notify its decision to terminate the Contract.

Except in the event of gross negligence, fraud or willful misconduct, no compensation is payable by ELIA to the CAPACITY PROVIDER following the application of this operational procedure, or after the termination of the Contract by the CAPACITY PROVIDER, as provided for in this paragraph.

## Article 12. SUSPENSION AND EARLY TERMINATION

12.1. Without prejudice to the penalty regime provided for in the Functioning Rules and to the liability regime of one of the Parties, the Contract or one or more of the specific Transaction(s) concerned listed in Annex A.1, or the resulting rights and obligations may be suspended or terminated unilaterally by ELIA without prior judicial intervention, in the cases and according to the terms of suspension and termination provided for in the Electricity Act, in its implementing decrees, in the Functioning Rules and in the other Articles of this Contract or in this Article.

When no other terms are provided:

- on the one hand, in the absence of default of the CAPACITY PROVIDER, the suspension or early termination are notified by ELIA by email and take effect within thirty (30) Working Days after the notification and,
- on the other hand, in case of default of the CAPACITY PROVIDER, the suspension and termination take effect as from the notification by email by ELIA of the fact that the CAPACITY PROVIDER did not remedy a default, within thirty (30) Working Days after a first notification by email, in which email the possibility is given to the CAPACITY PROVIDER to remedy within this deadline of thirty (30) Working Days the default which gave rise to such notification, it being understood that at the same time as such first notification, ELIA also has the possibility to suspend all or parts of the contractual rights and obligations with immediate effect, insofar as such default implies a sudden and imminent danger in terms of security, reliability and efficiency of the ELIA Grid or the security of persons or goods.

From a general standpoint, ELIA justifies the suspension or termination measure in light of the non-discrimination, proportionality, objectivity and transparency principles, and informs the CREG accordingly.

12.2. ELIA may suspend its contractual obligations related to one or more of the specific Transaction(s) listed in Annex(es) A.1 if ELIA finds that the Contracted Capacity for the CMU or, as the case may be, the CMUs related to Linked Capacities does not comply with the prequalification conditions, with effect within thirty (30) Working Days after notification of the suspension motivated by email and until it has been found by ELIA that the CMU's Contracted Capacity complies with the prequalification conditions.

Such suspension does not prejudice the application of, and the payment of, the Financial Penalty or the Unavailability Penalty, nor the other obligations of the CAPACITY PROVIDER under the Functioning Rules or this Contract.

12.3. In the event that ELIA determines that the Contracted Capacity of the CMU or, as the case may be, the CMUs related to Linked Capacities does not comply with the prequalification obligations, repeatedly, it may terminate the specific Transaction(s) concerned with effect within thirty (30) Working Days after notification of the termination motivated by email.

12.4. If, due to the cases set forth in paragraphs 11.1, 2° and 3°, the need to amend the Contract will cause a Party damage so severe and permanent in economic terms for the performance of its contractual obligations that it renders the continuation of the Contract impossible, such Party sends to the other Party, at the latest thirty (30) Working Days after receipt of the Contract amendment proposal, a registered letter or email with acknowledgement of receipt demonstrating the existence of the damage suffered and notification of early termination of the Contract.

The early termination takes effect at the end of the ongoing Delivery Period. ELIA informs the CREG of the early terminations which occurred within this context.

12.5. The measures that the CREG or ELIA are allowed to take, pursuant to the Functioning Rules or the Royal Decree setting out the 'Investment Thresholds' or the 'Methodology' Royal Decree related to reducing the Capacity Category, reducing the Total Contracted Capacity, downwardly revising the Monthly Remuneration or rejecting the request to deviate from the intermediate price cap derogation request, cannot constitute a ground for requesting a termination of the Contract.

12.6. In case of application of the Financial Penalty at the time of control  $t_{control1}$  for an Additional CMU, the CAPACITY PROVIDER has a deadline of thirty (30) Working Days to notify ELIA of its decision to terminate the Contract by registered letter or email with acknowledgement of receipt. Such termination is only effective as from full payment of the Financial Penalty by the CAPACITY PROVIDER.

Upon the third application of the Financial Penalty, ELIA is also authorised to notify the CAPACITY PROVIDER of its decision to terminate the Contract by registered letter or email with acknowledgement of receipt.

12.7. ELIA may terminate the Contract unilaterally without prior judicial intervention in the event of insolvency proceedings or bankruptcy of the CAPACITY PROVIDER.

## Article 13. TRANSFER OF THE CONTRACT

13.1. For all intents and purposes, it is specified that the transfer of the Contract under the terms of this Article must be distinguished from the transfer of obligations resulting from a transaction on the Secondary Market, in accordance with the terms of Chapter 10 of the Functioning Rules.

13.2. The Contract may not be transferred by the CAPACITY PROVIDER, either in whole or in part, without prior written permission from ELIA. Said permission cannot be unreasonably refused or delayed. Said permission shall however be subject to compliance with the following conditions:

- The transferee must be a CRM Candidate;
- The transfer relates to all the Transactions associated with a CMU or Linked Capacities;
- Proof is provided of compliance with all obligations due;
- Subject to the hypothesis mentioned in the following point, the transferred CMU or, as the case may be, the transferred CMUs related to Linked Capacities is (are) covered by a Financial Security with the transferee (bank guarantee, parent company guarantee or cash payment) in accordance with the conditions described in the Functioning Rules;
- If the transfer concerns an Existing CMU or, as multiple CMUs in the case of Linked Capacities and occurs within a Delivery Period, the transferor is responsible, jointly with the transferee as the case may be, for the obligations and debts not yet due which originated prior to the transfer.

13.3. In the event of a change in the system operator, the Contract is transferred by ELIA to the company which, in its stead, is designated or will be designated by the competent authority, as system operator. The consent of the CAPACITY PROVIDER is not required for this; however, ELIA will make every effort to inform the CAPACITY PROVIDER of the planned transfer to the above-mentioned company as soon as possible and insofar as is possible, and to take account of the legal restrictions regarding insider information. Any other transfer of the Contract by ELIA is not allowed.

## Article 14. MISCELLANEOUS PROVISIONS

14.1. The CAPACITY PROVIDER remains bound and obligated by the information and data that it provided as part of the CRM.

14.2. If, at any time during the period of validity of the Contract, one of the Parties fails to enforce the application of one or more clauses of the Contract, or to exercise any right resulting from the Contract, such failure cannot be considered as a waiver of that Party to such clauses or to such rights and does not impact the right of said Party to invoke such provisions or to exercise its rights at a later stage.

14.3. Without prejudice to the application of the relevant laws and regulations, and the Prequalification File, the Contract, including its Annexes, comprises the entire agreement concluded between the Parties.

14.4. Except if otherwise provided for in the Contract, any notification required by the Contract shall be sent by email to the contact persons specified in Annex B and served in accordance with that provided for in Annex B. Any change to the information contained in Annex B will take effect seven (7) Working Days after notification of the change, without prejudice to the application §106 of the Functioning Rules.

14.5. The invalidity of one or more provisions of this Contract, insofar as said invalidity does not affect the actual purpose of the Contract, shall not affect the validity, interpretation and/or implementation of the other provisions of the Contract.

14.6. If one or more provisions of the Contract should be declared invalid or unenforceable, the Parties shall consult one another at the request of the first Party to take action in order to make the required changes. This shall be done in accordance with the revision procedure.

## Article 15. APPLICABLE LAW – SETTLEMENT OF DISPUTES

15.1. The Contract is governed by Belgian law and interpreted in accordance therewith.

15.2. In accordance with the provisions on dispute settlement contained in the Functioning Rules, any dispute regarding the conclusion, validity, interpretation or implementation of the Contract, as well as any other dispute concerning or relating to the Contract, is referred to the Enterprise Court of the district of Brussels or to the Disputes Committee referred to in the Functioning Rules, in accordance with the procedures set out in the Functioning Rules.

15.3. In accordance with the provisions on dispute settlement contained in the Functioning Rules, the Parties shall try to settle the dispute or the conflict of interpretation amicably before initiating legal action, subject to any legal means required due to urgency, including in this case interim proceedings before the President of the Enterprise Court of the district of Brussels or the interim measures procedures before the Disputes Committee referred to in the Functioning Rules. Unless the dispute has already been the subject of consultation provided for elsewhere in the Contract, the Parties may follow the consultation procedure provided for in section 14.2 of the Functioning Rules. If the Parties do not reach an agreement within the deadline provided for in this consultation procedure, the most diligent Party may bring the case before the Enterprise Court or before the Disputes Committee referred to in the Functioning Rules.

ELIA

CAPACITY PROVIDER

Date:

## ANNEX A.1 – CONTRACTUAL PARAMETERS PER TRANSACTION

CAPACITY PROVIDER ID
CMU ID
Transaction ID
Market Type (Primary/Secondary)
Financial security ID
Contracted Capacity (MW) per Delivery Period
Transaction Period
Pre-delivery Period
Transaction Date
Transaction Validation Date
Calibrated Strike Price
Auction Type (Y-4; Y-1)
Year of Auction
Derating Factor
Derating Factor without Associated Delivery Points, if applicable
<u>Service Level Agreement - SLA in hours (only for Energy Constrained CMUs)</u>
Capacity Remuneration

# ANNEX A.2 – CONTRACTUAL PARAMETERS RELATING TO THE ASSOCIATED DELIVERY POINTS

CAPACITY PROVIDER ID
Associated Delivery Point ID
CMU-ID to which the Associated Delivery Point is associated
Transaction ID
Associated Delivery Period

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## ANNEX B – COMMUNICATION AND CONTACT PERSONS

### CAPACITY PROVIDER

The CAPACITY PROVIDER's Contact Persons are those specified in the request form (§ 71 of the Functioning Rules).

### ELIA:

#### Contractual relations

First name*	
Last name	
Job title*	
Telephone	
Mobile*	
Email*	

#### Metering and measuring

First name*	
Last name	
Job title*	
Telephone	
Mobile*	
Email*	

#### Invoicing

First name*	
Last name	
Job title*	
Telephone	
Mobile*	
Email*	

#### Payment



First name*	
Last name	
Job title*	
Telephone	
Mobile*	
Email*	

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**ANNEX C – WAIVER TO OPERATIONAL AID FORM**

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