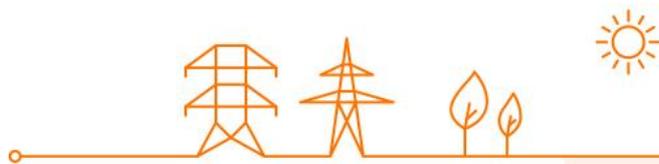


PROPOSAL OF CAPACITY CONTRACT¹

CAPACITY REMUNERATION MECHANISM (CRM)



¹ 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.

[20/11/202005/02/2021](#)

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 731.852.231 and represented by its duly authorised agents XXX and XXX,

hereinafter referred to as 'ELIA',

and

XXX, resident 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 being together referred to as the 'Parties'.



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 systems in each of Belgium's regions under the electricity decrees and ordinance in force;
- ELIA is in charge of ensuring the safety, reliability and efficiency of the ELIA Grid;
- An Act of 22 April 2019 amended the Electricity Act by adding to it a Capacity Remuneration Mechanism (hereinafter 'CRM') in order to address the adequacy issue ~~of the balance~~ between electricity supply and demand;
- ~~In accordance with the Electricity Act, After~~ ~~the end of~~ the Auction result publication date or after validation of the Transaction on the Secondary Market, the Capacity Providers sign a Capacity Contract with ELIA;
- The Article 7undecies §7 of the Electricity Act prescribes that the Capacity Contract complies with the CRM Functioning Rules;
- The standard capacity contract is published on ~~the~~ ELIA's website following its approval by the Belgian Federal Commission for Electricity and Gas Regulation (CREG).



IT IS HEREBY AGREED AS FOLLOWS:

Article 1. DEFINITIONS

1. Unless otherwise specified, the definitions contained in Regulation (EU) 2019/943, in the Electricity Act, in the implementing decrees, and in particular, the Federal Technical Regulation and the Functioning Rules adopted pursuant to Chapter IIbis of said Act are applicable to this contract.
2. The following definitions apply for the purposes of the Contract:

| | | |
|----|--------------------------------|--|
| 1. | Annex | An annex to this Contract. |
| 2. | (Capacity) Contract | This Capacity C contract which is in conformity with the standard capacity contract, <u>i.e. the Capacity Contract as defined in the Functioning Rules, and approved by CREG</u> Article 7 undecies §7 of the Electricity Act. |
| 3. | Connection Contract | The connection contract as defined in the applicable Grid Code, which is in conformity <u>compliant</u> with the standard connection contract approved by the competent regulator. |
| 4. | CREG | The commission 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 5 June 2019 on the internal market for electricity. |
| 6. | Direct Damage | Damage, <u>excluding Indirect Damage</u> , caused to the other Party as the direct and immediate result of negligence by a Party, its employees, subcontractors or agent <u>performing agents</u> and, in the case of the CAPACITY PROVIDER, by any Grid Users <u>users of the ELIA Grid, or of a Public Distribution Grid or of a Closed Distribution System (CDS) Users for whom it acts as a Capacity Provider to form a CMU. When this other Party is the CAPACITY PROVIDER, its Direct Damage includes the Direct Damage suffered, as a result of the aforementioned negligence, by any Grid Users or CDS Users for whom it acts as a Capacity Provider to form a CMU</u> The additional cost incurred by ELIA as a result of the need to conclude one or more additional Capacity Contracts due to negligence by the CAPACITY PROVIDER is deemed to constitute Direct Damage. |
| 7. | Indirect Damage | Damage which, due to negligence by a Party, its employees, subcontractors or agent <u>performing agents</u> and, in the case of the |



| | | |
|-----|-----------------------------|--|
| | | CAPACITY PROVIDER, by any users of the ELIA-Grid <u>Users or, of a Public Distribution Grid or of a CDS Users</u> for whom it acts as a Capacity Provider <u>to form a CMU</u> , arises from specific obligations (such as penalty clauses, fixed fines, take-or-pay clauses, etc.) of the other Party towards third parties, <u>or which constitutes a loss of profit, loss of earnings or loss of goodwill</u> who, in the case of the CAPACITY PROVIDER, are not users of the ELIA-Grid, of a Public Distribution Grid or of a CDS for whom it acts as a Capacity Provider. |
| 8. | Gross Negligence | An act of negligence, other than a <u>S</u> simple <u>Fault</u> mistake , which a normally prudent and diligent party adhering to the rules and taking all reasonable precautions would in no way have committed in similar circumstances. The classing of an act of negligence as Gross Negligence under this <u>ELIA-C</u> contract in no way prejudices its interpretation as Gross Negligence in another context and the consequences that may arise therefrom. |
| 9. | Simple Fault | An act, omission or situation, of which a normally prudent and diligent Party that follows the rules and takes all reasonable measures may consider the possibility of damage resulting therefrom to be limited. |
| 10. | Data Protection Legislation | The applicable legal provisions on the protection of personal data, in particular Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and the Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data, as amended. |
| 11. | Act of 2 August 2002 | The Act of 2 August 2002 on combating late payment in commercial transactions, as amended. |



| | | |
|-----|--------------------------|---|
| 12. | Applicable Grid Codes | <ul style="list-style-type: none"> • The Royal Decree of 22 April 2019, as amended, establishing a grid code for operating and accessing the electricity transmission system, also referred to hereafter as Federal Technical Regulation; • The grid code of 29th May 2020 for local electricity transmission system, approved by VREG decision (BESL-2020-11) (BM of 16/06/2020) and entered into force on 26 June 2020; • The grid code of 20th May 2019 for electricity distribution approved by VREG decision (BESL-2019-60) (BM of 14/10/2019) and entered into force on 24 October 2019; • The Walloon government order of 26th January 2012 relating to the revision of the grid codes for the management of and access to the local electricity transmission network in the Walloon Region; • The Walloon Government Order of 3rd March 2011 approving the grid codes for the management of and access to electricity distribution networks in the Walloon Region; • The Decree of the Government of the Brussels-Capital Region of 13th July 2006 approving the grid codes for the management of the regional electricity transmission network; and - The grid codes for the management of and access to the electricity distribution network in the Brussels-Capital Region, approved by Brugel's decision of 5th December 2018 (BM of 05/02/2019) and coming into force on 1st January 2019 (with the exception of Article 267ter, which will come into force on the date set by Brugel), <p>each as amended.</p> |
| 13. | Functioning Rules | The rules referred to in Article 7undecies, §8 of the Electricity Act. |
| 14. | Monthly Remuneration | The remuneration described in article 5, paragraph 20 of this Contract. |
| 15. | Public Distribution Grid | The distribution grid as defined in regional regulations. |



| | | |
|-----|----------------------|---|
| 16. | ELIA Grid | The electricity transmission grid or local or regional transmission grid over which ELIA holds a right of ownership or at least a right of use and operation, and for which ELIA has been appointed as system operator. |
| 17. | Control Area | The area in which the system operator oversees a permanent balance between electricity supply and demand, taking into account active power exchanges between areas. |
| 18. | Belgian Control Area | The e Control Area for which ELIA has been appointed transmission system operator in accordance with the Electricity Act. |

Article 2. INTERPRETATION

3. The headings and designations in the Contract are only given in order to simplify references and in no way express the intentions of the Parties. They ~~shall are~~ not ~~be~~ taken into account when interpreting the clauses of the Contract.
4. 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 parts of the Contract, the latter ~~shall~~ takes precedence.
5. The substantiation in the Contract of a specific obligation or provision included in the Functioning Rules shall, in no way, be considered as a departure from the obligations or provisions ~~that which must~~ apply to the relevant situation in accordance with the Functioning Rules. In the event of a conflict between the Functioning Rules and this Contract, the Functioning Rules ~~shall~~ takes precedence.
6. 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 ~~shall never~~ takes precedence over the provisions of this Contract nor be merged with this Contract.

Article 3. CONCLUSION OF THE CONTRACT

7. The validity period of the Contract corresponds to a Transaction Period and the associated Pre-delivery Period the respective durations of which are specified, for each Contracted Capacity, in the corresponding Annex A. Notwithstanding the previous sentence, the obligations regarding confidentiality and payment, applicable law and settlement of disputes, as well as those related to the GDPR may exceed this validity period for the execution of the obligations arising in and for the Transaction Period and its Pre-delivery Period.



8. ~~In the event that Additional Capacity is selected in the framework of an Auction, the CAPACITY PROVIDER shall sign, or shall guarantee that the Users of the ELIA Grid, the Public Distribution Grid or the CDS for whom it acts as a Capacity Provider will sign, where applicable and within the time limits prescribed in the Applicable Grid Codes, a Connection Contract in accordance with the prior technical agreement included in the Prequalification File. Failure to sign the Connection Contract within the time limits prescribed in the Applicable Grid Codes constitutes a condition precedent to the Capacity Contract and gives rise to the application of the penalties prescribed in the Functioning Rules before the Capacity Contract can be validly signed.~~

9.8. The CAPACITY PROVIDER informs the Grid Users or of the ELIA Grid, the Public Distribution Grid or the CDS Users for whom it acts as a Capacity Provider to form a CMU of the scope of the provisions of the present Contract and when applicable, of any related amendments to this Contract. The CAPACITY PROVIDER makes all efforts reasonably necessary in the context of its contractual relations with such ~~Users of the ELIA Grid User(s) or, the Public Distribution Grid or the CDS User(s)~~ so that the intervention of such Grid User(s) of the ELIA Grid, the Public Distribution Grid or the 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 in the Functioning Rules towards that CAPACITY PROVIDER. In the event of a penalty owed by the CAPACITY PROVIDER as a result of conduct attributable to ~~its said Grid Users or CDS Users or co-contractors~~, and except in the event of ELIA's ~~gross~~ Gross negligence ~~Negligence~~, it is up to the CAPACITY PROVIDER to exercise any recourse against said Grid Users or CDS Users ~~its co-contractors~~ to the exclusion of any recourse against ELIA.

9. The CAPACITY PROVIDER waives, towards ELIA and within the framework of the present Contract, its general, specific or other terms and conditions, regardless of when and how they were transmitted.

10. ~~The Parties ensure that their own mutual contractual relations are always based on the existence and proper performance of the requisite necessary 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.~~

Article 4. SUBJECT MATTER OF THE CONTRACT

11. The Contract covers the obligations of ELIA and of the CAPACITY PROVIDER as described in the Functioning Rules, from the time ~~that~~ it is subject to at least one Transaction validated either by CREG (if the Transaction results from the Primary Market) or by ELIA (if the Transaction results from the Secondary Market, but subject to cancellation by CREG within ten (10) Working Days from the validation). The Contract is signed electronically by the Parties and may cover several Transactions. For each validated or modified Transaction, an Annex A is signed electronically.

Any Annex A signed as part of a Contract is self-supporting and has no interaction or dependency whatsoever with any other annex A signed by the CAPACITY PROVIDER.



12. The Contract covers one (or more) Transaction Period(s) and the respective Pre-delivery Period(s), each relating to one Transaction.
13. By entering into this Contract for one or more Transactions, the CAPACITY PROVIDER undertakes ~~to~~ ELIA to provide the Service, as specified in the Functioning Rules, throughout each Transaction Period and its respective Pre-Delivery Period.
14. The CAPACITY PROVIDER is entitled to the Capacity Remuneration following the modalities of Article 5.
15. ~~Without prejudice to article 7, a~~Any breach of the Pre-delivery and/or Availability Obligations ~~shall is~~ sanctioned by one (or more) penalty~~ie(ies)~~ as foreseen in the Functioning Rules. Said penalty(ies) is(are) subject of a pre-delivery activity report for the Pre-Delivery Obligations and of a delivery activity report for the Availability Obligations, ~~sent-issued~~ by ELIA ~~according to the modalitiesas~~ described in Article 5.3.
16. The CAPACITY PROVIDER also has a Payback Obligation to ELIA. 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

- 15-17. The Functioning Rules govern the determination of the Capacity Remuneration («pay-as-bid » / « pay-as-cleared »).
- 16-18. The Capacity Remuneration is expressed in euros (€) per MW per year and covers the Contracted Capacity for each Transaction, limited to the Transaction Period, and listed in Annex A to this Capacity Contract. The Capacity Remuneration is paid under the form of a Monthly Remuneration.
- 17-19. The Monthly Remuneration linked to each Transaction ~~shall is be~~ specified in a monthly statement and ~~shall is be the~~ subject toof a single monthly invoice (pro forma and later on final) by the CAPACITY PROVIDER as described in article 6.
- 18-20. The Monthly Remuneration for each Transaction, as specified in the corresponding report, is equal to the sum over each hour of the Transaction Period for the relevant month of the product of the Contracted Capacity over the hour multiplied by the Capacity Remuneration and divided by the number of hours in the relevant Delivery Period. This is represented by the following formula:

Monthly Remuneration (Transaction_{id}, relevant month M)

$$= \sum_{t=1}^w \left(\text{Contracted Capacity (Transaction}_{id}, t) * \frac{\text{Capacity Remuneration (Transaction}_{id})}{\text{Number of hours in the Delivery Period}} \right)$$



where:

- $Transaction_{id}$ is the unique identifier of the Transaction, as specified in the CRM IT Interface and in Annex A of the Contract;
- *relevant month M* is the month covered in whole or in part by the Transaction Period of the Transaction and forming part of the Delivery Period;
- t and w represent respectively the hours and total number of hours in a Transaction Period for the relevant month;
- *Contracted Capacity* ($Transaction_{id}, t$) is the Contracted Capacity in the Transaction of a CMU over the hour, available in the ~~Capacity~~ Contract and in the CRM IT Interface;
- *Capacity Remuneration* ($Transaction_{id}$) 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 and expressed in €/MW/Year;
- *Number of hours in the Delivery Period* is the number of hours in the Delivery Period containing the month in question.

19-21. During the Delivery Period, the Monthly Remuneration may be ~~impacted~~ reduced by the following elements, in accordance with the Functioning Rules:

- The Unavailability Penalties applicable, and as limited by the monthly/annual cap;
- The temporary and permanent reduction in remuneration as provided for during the Delivery Period and as specified in the Functioning Rules;
- 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

22. In accordance with the Functioning Rules, as soon as ELIA identifies a Missing Volume (MW) for a Transaction and a corresponding Contracted Capacity, ELIA ~~shall~~ calculates financial penalties and applies them to the CAPACITY PROVIDER as set out in article 5.3.1 and article 6.



5.2.2. Unavailability Penalties determined during the Delivery Period

~~20-23.~~ In accordance with the Functioning Rules, as soon as ELIA identifies a Missing Capacity (MW) for the related CMU(s), ELIA ~~shall~~ calculates the Unavailability Penalties and apply them to the CAPACITY PROVIDER, for each month of the Delivery Period, as set out in article 5.3.2 and article 6.

~~21-24.~~ In accordance with the Functioning Rules, section 8.6.2, ~~the~~ total amount of the Unavailability Penalty of a CMU, that a CAPACITY PROVIDER may receive, both on a monthly and annual basis, for its Transaction(s) on the Primary Market or Transaction(s) on the Secondary Market covering one (or more) full Delivery Period(s), is limited ~~, in accordance with the Functioning Rules, section 8.6.2.~~

5.2.3. Payback Obligation determined during the Delivery Period

~~22-25.~~ In accordance with the Functioning Rules, section 11.4, the Payback Obligation(s) linked to a Transaction ~~shall is be~~ applied by ELIA to the CAPACITY PROVIDER as set out in article 5.3.2.

5.2.4. Stop-Loss

~~26.~~ For a Transaction for which the Transaction Period corresponds to one (or more) full Delivery Period(s), the total of the Payback Obligations applied for this Transaction to the CAPACITY PROVIDER by ELIA ~~shall can~~ not exceed, over a Delivery Period, the Stop-Loss Amount for that Transaction, ~~over a Delivery Period,~~ in accordance with the Functioning Rules, section 11.3.6.

5.3. Monthly statement and activity reports issuance

5.3.1. Pre-delivery Period

~~23-27.~~ The issuance of the pre delivery activity report identifying, where necessary, the Missing Volume as well as the corresponding financial penalties, depends on the status of the CMU, namely :

- For Existing CMUs : ELIA communicates this report to the CAPACITY PROVIDER, according to the process described in the Functioning Rules, and within a maximum period of time of:
 - o Thirty (30) Working Days from the date of the pre-delivery control ($t_{control}$); or
 - o Ten (10) Working Days from the date of the (second) pre-delivery test, as chosen by the CAPACITY PROVIDER.
- For Additional and Virtual CMUs : ELIA communicates this report to the CAPACITY PROVIDER within twenty (20) Working Days from the date(s) of the ~~tcontrol~~ oûl e-1 and/or ~~tcontrol~~ ontrol e-2 test, as specified in the Functioning Rules, sections 7.3.2.1.3.1 and 7.3.2.1.3.2.



5.3.2. Delivery Period

~~24-28.~~ For each month M of the Delivery Period, ELIA ~~shall issues,~~ through the IT CRM Interface, for the attention of the CAPACITY PROVIDER, and for each CMU and its Transaction(s) as determined in Annex A, the following two (2) documents:

- On the 10th of month M+1, a monthly statement detailing at least for month M details of the Monthly Remuneration for each related Transaction.
- On the 15th of month M+2, a delivery activity report detailing for month M, at least, for each CMU and its Transaction(s), the following items:
 - o The Available Capacity of the CMU;
 - o The determined Missing Capacity;
 - o The determined amount of Unavailability Penalties and the associated monthly (penalty) ~~ceilingcap~~;
 - o The determined amount of the Payback Obligations and the associated Stop-Loss Amount.

5.4. Contestation

~~25-29.~~ To be admissible, any contestation concerning the full or partial amount (whether for the Monthly Remuneration or for the penalties and Payback Obligations determined by ELIA), resulting from the monthly statement or respectively from the pre-delivery/delivery activity reports ~~as~~ specified in articles 5.3.1 and 5.3.2, ~~must are to~~ be sent to ELIA by email with acknowledgement of receipt, within ~~twenty thirty~~ (2030) Working Days from the receipt of the said report or statement. Such email contains the grounds for the objection, which must be explained as comprehensibly and in as much detail as ~~is~~ possible.

~~26-30.~~ The Parties ~~shall~~ negotiate in good faith with a view to reaching an agreement on the disputed amount of the monthly statement, of the pre delivery/delivery activity report, within sixty (60) Working Days after receipt of the email as specified in paragraph 29.

31. In the event of partial or total agreement between the Parties on the amount of the Monthly Remuneration, penalties or Payback Obligations resulting respectively from the monthly statement or the pre-delivery/delivery activity reports, the new undisputed amount, ~~which is the subject of the~~ resulting from the agreement reached, is then the subject of an invoice or credit note, in accordance with article 6.



However, and in accordance with the Functioning Rules, sections 7.3.2.1.4.2, 8.6.3 and 11.4.6, in the absence of partial or total agreement between the Parties on the amount of the Monthly Remuneration, penalties and Payback Obligations resulting respectively from the monthly statement or the pre-delivery/delivery activity reports, within the sixty (60) Working Days as referred to in paragraph 30:

- The disputed amount or part of the disputed amount of the penalties and Payback Obligations ~~shall is~~ ~~be~~ the subject of a separate credit note in accordance with article 6;
- The disputed amount or part of the disputed amount of the Monthly Remuneration cannot be invoiced.

~~27-32.~~ At the same time, the two Parties ~~shall~~ continue to seek an amicable solution within the sixty (60) Working Days following the end of the first period as specified in paragraph 31. In case an amicable agreement is reached between the Parties, this agreement will result, where applicable, in a corrective invoice related to the amount that was the subject of the credit note, in accordance with ~~a~~Article 6.

~~33.~~ If an agreement has still not been reached after the sixty (60) Working Days as specified in paragraph 32, the Parties ~~shall~~ start the dispute procedure as described in article 16.

Article 6. INVOICING AND PAYMENT

6.1. Requirements for issuing an invoices or a credit note

~~28-34.~~ Every pro forma or final invoice or credit note, should it be pro forma or final, ~~shall~~ ~~contains~~ at least the following information:

- Full name and address of the Party issuing the invoice or credit note and of the invoiced Party;
- VAT number of the Party issuing the invoice or credit note and of the invoiced or credited Party, as the case may be;
- ~~Amount~~ 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 of each CMU (CMU ID))²;
- Value-added tax according to the rules of the Belgian VAT Code;
- Bank account and bank address (including IBAN and BIC) to be used to make the relevant payment;
- Invoice number;

- ² The amounts are net amounts to be increased by VAT, if necessary.



- Date of issue of the invoice or credit note;
- Indication of the Delivery Period and delivery month concerned;
- Reference (if required by the invoiced/credited Party);
- Payment deadline in accordance with article 6.3 below.

29-35. Each pro forma invoice or credit note issued and provided by the relevant CAPACITY PROVIDER under this Capacity Contract ~~is expected to~~ shall:

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

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

30-36. On the basis of the issuance of the monthly statement or the pre-delivery ~~–/–~~ delivery activity report as published by ELIA, the CAPACITY PROVIDER ~~shall issues~~ shall issue to ELIA, where applicable, by email or via the electronic system, and within twenty (20) Working Days after receipt of this report or statement, or after the agreement (total or partial) ~~found-reached~~ within or at the expiry of the period of sixty (60) Working Days after the possible contestation of this report or statement, the corresponding pro forma invoice or credit note.

31-37. Within ten (10) Working Days of receipt, ELIA ~~shall validates or rejects~~, by e-mail, ~~validate or reject~~ the pro forma invoice or credit note (on the basis of the requirements set forth in article 6.1).

32-38. For each pro forma invoice or credit note validated by ELIA, the CAPACITY PROVIDER ~~shall issues~~ shall issue the final invoice or final credit note to ELIA as soon as possible and within ten (10) Working Days from the date of receipt of the validation e-mail from ELIA (paragraph 37).

33-39. For each pro forma credit note or invoice rejected by ELIA, the CAPACITY PROVIDER is invited to follow again the process described in paragraph 36.

34-40. Upon request of a Party, and without prejudice to the other provisions of Articles 5 and 6, the Parties may ~~organise~~ organize 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.

35-41. For any final credit note or final invoice issued by the CAPACITY PROVIDER, and which does not ~~conform-comply with to~~ the version as validated by ELIA, the latter is entitled to refuse the related document. It is then of CAPACITY PROVIDER's responsibility to correct the credit note or invoice as soon



as possible, the payment period only running from the date of receipt by ELIA of a credit note or invoice complying with the said requirements.

[36.42.](#) In the absence of a pro forma or final invoice or credit note issued by the CAPACITY PROVIDER within the time limits provided for in paragraph 36, respectively paragraph 38 of this article 6.2 :

- ELIA issues a final credit note to replace the missing invoice on the basis of the settlement or agreement on the amount, respectively;
- Elia issues an invoice in replacement of the missing credit note, based on the activity report or the agreement on the amount or, in case of dispute, for the disputed part related to the penalty or [to](#) the Payback Obligation.

[37.43.](#) Credit notes and invoices in replacement are equivalent to an invoice, respectively credit note of the CAPACITY PROVIDER, for the purposes of the Functioning Rules and, where applicable, for the application of the set-off by deduction referred to in paragraph 44 of article 6.3 and the application of the [Financial Securitiesguarantee](#) referred to in the said Functioning Rules.

6.3. Payment modalities

[38.44.](#) Final invoices [shall-are to](#) be paid within thirty (30) calendar days from the last day of the month of the date of receipt by e-mail or the date of entry into the electronic system of the invoice (paragraph 36), by direct transfer to the bank account indicated.

[39.45.](#) In the case of credit notes issued by the CAPACITY PROVIDER:

- During the Pre-delivery Period, payment by the CAPACITY PROVIDER [shall-is-](#) made within thirty (30) calendar days from the last day of the month of the date of receipt by e-mail or the date of entry into the electronic system of the credit note;
- During the Delivery Period and received in month M, ELIA deducts the amount of the credit note from the final invoices issued by the CAPACITY PROVIDER in M+1 for month M or from the most recently issued invoice. ~~Or~~ in the event of no balance (or no future invoice), of which ELIA informs the CAPACITY PROVIDER, payment by the CAPACITY PROVIDER is made within thirty (30) calendar days from the last day of the month of the date of receipt by e-mail or the date of entry into the electronic system of the credit note.

[40.46.](#) Any late payment relating to financial penalties as determined by ELIA during the Pre-delivery Period may result in ELIA calling on the Financial Security provided by the CAPACITY PROVIDER, as described in the Functioning Rules.



41.47. Any late payment shall automatically, and without formal notice, give rise 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.

Article 7. **Article 7. LIABILITY**

~~42. The Parties are liable to each other for the damages resulting from their faults and each undertakes to hold the other harmless against any claim and any action by third parties within the limits set in this article.~~

~~43. Each Party is obliged to limit its damage in connection with this Contract and the Functioning Rules and to act as a reasonable, prudent and diligent person in the performance of its obligations under this Contract and/or the Functioning Rules. With regard to events or circumstances for which one of the Parties is liable, or in relation to which that Party is obliged for whatever reason to take steps or deploy resources, the other Party shall take the appropriate measures which any ordinarily prudent person would take to limit its damage, taking into account the interests of each of the Parties.~~

44.48. ~~Under penalty of forfeiture~~ To avoid the claim to be inadmissible, any request for compensation ~~must is~~ to be sent in writing, by registered mail or by email with acknowledgement of receipt, within a period of six (6) months ~~thirty (30) calendar days~~ from the date on which the loss occurred or the date on which the damage could reasonably have been ascertained.

45.49. The provisions of this article apply to all cases in which the contractual or non-contractual liability of a Party is invoked in the event of ~~damage~~ Direct Damage caused by Gross Negligence ~~a fault~~ committed, during the validity period of this Contract, on the occasion of or in the context of the performance of this Contract or in the context of the provisions of the Functioning Rules that this Contract implements, or their (failure to) execute. Without prejudice to the application of penalties as provided for in the Functioning Rules, which are not subject to the limitations of this article, it is understood that insofar as an unavailability, including when it constitutes Gross Negligence, entails consequences for which the regulated contracts already provide mechanisms for managing said consequences (including, but not limited to, the application of imbalance tariffs in case of imbalance under the BRP contract, or the application of the liability or penalty regime under ancillary services contracts, in case of non-provision of said ancillary services), these mechanisms apply without giving rise to any other compensation for Direct Damages, insofar as these Direct Damages coincide with the application of said mechanisms under the regulated contracts. However, the circumstance that these consequences are caused on the occasion of or in the context of the performance of this Contract or of the provisions of the Functioning Rules that the Contract implements cannot be invoked by ELIA's co-contractor in said regulated contracts, for whom the CAPACITY PROVIDER shall vouch to this effect if necessary, as an interruption of the causal link, nor shall the present Contract entail any limitation to the mechanisms of said regulated contracts.



~~46.50.~~ The Parties are solely and exclusively liable to each other for damages caused by fraud, wilful misconduct or Gross Negligence on the occasion of or in the context of the performance of this Contract under this Contract and/or of the provisions of the Functioning Rules that this Contract implements or their (failure to) execute and attributable to a Party. Consequently, a Party is not liable towards the other for damages resulting from a Simple Faultmistake or a material defect, unless it is proven that said defect is due to fraud, wilful misconduct or Gross Negligence on behalf of the offending Party.

~~47.51.~~ Except in cases of fraud or wilful misconduct, the Parties' liability is limited to Direct Damages and the Parties are therefore deduced by, where applicable, the amount of penalties applied as provided in the Functioning Rules. ~~Except in cases of fraud or wilful misconduct, the Parties are not therefore not~~ liable to each other for Indirect Damages.

~~48.52.~~ The Grid Users or CDS Users whom the CAPACITY PROVIDERCAPACITY PROVIDER calls uponappeals on as a Capacity Provider to form a CMU guarantees ELIA against any action of Users of ELIA Grid, of a Public Distribution Network or a CDS for which it acts as CAPACITY PROVIDER and which do not have direct action against ELIA. For Direct Damage that may have been suffered by Grid Users or CDS Users whom it appeals on as a Capacity Provider to form a CMU, the CAPACITY PROVIDER is subrogated to the rights of said Grid Users or CDS Users, within the limits of liability that apply between the Parties to this Contract.

~~49.53.~~ Further, a Party's liability for Gross Negligence is limited to a maximum amount of EUR {600} twice the Capacity Remuneration multiplied by the corresponding Contracted Capacity of a CMU, as set out in Annex A of the Contract and expressed in MW, subject however to a minimum of EUR {50,000} per CMU, per claim and per calendar year and a maximum of EUR {2,500,000} per claim and per year, whatever the number of CMUs, for each Party and a total maximum of EUR {5,000,000} per claim and per year for ELIA, whatever the number of Capacity Contracts concluded by ELIA. with, when the Party at fault is ELIA, a maximum of EUR 12,500,000 (twelve million five hundred thousand euros) per claim and per calendar year. For the sake of clarity, it is specified that the penalties provided for in the Functioning Rules are not subject to the limits specified in this article. The maximum amounts in this paragraph of EUR 12,500,000.00 (twelve million five hundred thousand) is are indexed each year on the anniversary date of the initial approval of this Contract, on the basis of the consumer price index applied in Belgium in the month preceding the anniversary of the initial approval of the standard capacity contract on the basis of which this Contract was concluded (the "new index"). The adjusted amounts are calculated by applying the following formula: the relevant amount is multiplied by the new index and divided by the starting index. The starting index is the consumer price index applied in Belgium for the month preceding the date of this Contract's initial approbation decision date. -

~~50.54.~~ Except for ELIA's Gross Negligence, fraud or wilful misconduct, a Party cannot be held liable for the incorrect, incomplete or unauthorised use by the other Party of the data made available under the Contract, or for the consequences arising from said use.



~~51. Except for ELIA's gross negligence, fraud or wilful misconduct, ELIA can never be held liable for discussions or disputes between the CAPACITY PROVIDER and one or more users of ELIA Grids, Public Distribution Grids and CDSs with whom the CAPACITY PROVIDER associates to form a CMU that originates from the internal relationship between that CAPACITY PROVIDER and users of ELIA Grids, Public Distribution Grids and CDSs.~~

~~52-55. Notwithstanding any other provision of this article, the CAPACITY PROVIDER shall indemnifies ELIA for any damage that it may have suffered as a result of action brought by a Grid User against ELIA, within the framework of its access contract or under a regional legal regime of a quasi-objective liability, for is directly liable for any damage suffered by said Grid User due to an interruption of its access to the grid owing to a third party due to a lack of capacity caused by a fault committed by the CAPACITY PROVIDER, to the extent of its contribution to the occurrence of said interruption and, where applicable, within the limits of the liability limitations applying in ELIA's favour to the action brought by the Grid User against ELIA and, where applicable, indemnifies ELIA against any such damage for which that third party would have brought an action against ELIA.~~

~~Article 7.~~ **Article 8. FORCE MAJEURE**

~~53-56. Without prejudice to the application of the provisions of the System Defence Plan and Restoration Plan as defined in the applicable legal and/or regulatory provisions, the Parties shall are, in the event of force majeure which wholly or partially prevents them from performing their obligations under this Contract, to be discharged from their respective obligations under this Contract, subject to financial obligations arising before the force majeure event. This suspension of obligations shall only lasts for the duration of the force majeure event.~~

~~54-57. 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 occurring after the conclusion of the Contract which is beyond a Party's reasonable control, which is not attributable to any fault on the part of the Party, which cannot be avoided or overcome in spite of all reasonable due diligence or preventive measures, which cannot be corrected by measures that it would be reasonable in technical, financial or economic terms for the Party to undertake, which has actually occurred and is objectively verifiable, thus temporarily or permanently preventing the Party from fulfilling its obligations under this Contract.~~

~~58. The application of market mechanisms (such as imbalance tariffs, or the application of high tariffs in normal market conditions) cannot be classed as force majeure.~~



55-59. The following situations, among others, shall be considered as force majeure ~~only insofar as provided~~ they meet the conditions of force majeure set out in the paragraph ~~60~~57:

- Natural disasters resulting from earthquakes, floods, storms, cyclones or other exceptional weather events recognised as such by a public authority with expertise in this area, as well as epidemics and pandemics;
- A nuclear or chemical explosion and its consequences;
- Situations of exceptional (or one-of-a-kind) risk during which the sudden unavailability of the electricity or gas distribution or transmission grid or of a Capacity or a CMU is caused by reasons other than ageing, lack of maintenance or the competence 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 continuing technical inability of the grid to exchange electricity because of disturbances 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;
- An inability to operate the electricity or gas distribution or transmission grid, equipment forming a functional part of the grid, or equipment belonging to the CAPACITY PROVIDER due to a labour dispute that gives rise to a unilateral measure by 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; and
- A situation in which a competent authority declares an emergency and imposes exceptional and temporary measures on grid operators and/or Grid users~~Users~~ or CDS Users, such as the measures necessary to maintain or restore the safe and efficient functioning of grids, including load-shedding orders issued in the event of power shortages.

56-60. For the purposes of this Contract and without prejudice to other delays caused by force majeure, the delay on the part of the CAPACITY PROVIDER ~~in the establishment, construction or operation of a CMU, including but not limited to, due to a delay~~ in obtaining permits or authorisations issued in the last instance, which are enforceable and no longer subject to appeal, necessary for the establishment, construction or operation of the CAPACITY PROVIDER's project, does not constitute a case of force majeure. However, insofar as said delay in Project Works is simultaneous with a delay in Infrastructure Works, it shall does not give rise to a penalty.



~~57-61.~~ The Party that invokes a situation of force majeure shall inform the other Party as soon as possible by email or by telephone confirmed without delay by email_ of the circumstances that prevent it from performing its obligations in whole or in part, how long this non-performance might reasonably be expected to last, and the measures it has taken to remedy the situation.

~~58-62.~~ Nevertheless, the Party that invokes a situation of force majeure ~~shall~~ does everything possible to limit the consequences of the non-performance of its obligations towards the other Party and to once again fulfil said obligations.

~~59-63.~~ If ~~the situation of force majeure persists for thirty (30) successive days or more and one of the~~ Parties, as a result of ~~the a~~ force majeure situation, is unable to fulfil its essential obligations under the Contract and this force majeure situation persists for at least one hundred and eighty (180) consecutive days, ~~the other~~ said Party may terminate the Contract ~~with immediate effect~~ by sending a registered letter or an ~~motivated~~ email with acknowledgment of receipt setting out the reasons for the termination.

~~Article 8.~~ Article 9. CONFIDENTIALITY

~~8.1.9.1.~~ Non-disclosure of confidential information

~~60-64.~~ The Parties and their employees shall treat any information that they exchange with one another in the context or course of the Contract in the strictest confidence and not divulge it to third parties unless at least one of the following conditions is met:

- If a Party is called upon to testify in court or in its relations with the competent regulatory, administrative and judicial authorities. To the extent possible, but with the exception of disputes between them, The Parties shall inform each other in advance, and agree on the form and content of the communication of this information;
- If prior written permission has been obtained from the Party from which the confidential information originates;
- With regard to ELIA, in consultation with operators of other grids or within the framework of contracts and/or rules with foreign system operators or regional security coordinators/regional coordination centres, insofar as necessary and when anonymisation is not possible and provided that the recipient of the information undertakes to accord it the same degree of confidentiality as ELIA;
- If the information is easily or normally accessible or available to the public;
- If communication of the information by a Party is essential for the performance of contracts concluded or to be concluded by a Party with suppliers of goods and services within the framework of this Contract or, with regard to ELIA, its transmission system development, maintenance and operation tasks or if communication of the information is necessary for the proper functioning and integration of the market



or in order to guarantee the safety, reliability and efficiency of the transmission system, provided that the recipient of this information undertakes to accord it the same degree of confidentiality as provided for in this Contract. Each Party is liable for the use made of the data by anyone who has received it in this way from said Party;

- If the information is already legally known by a Party and/or its employees and ~~agent~~performing agents at the time of the communication and has not been communicated previously by the communicating party, directly or indirectly, or by a third party, in breach of a confidentiality obligation;
- If the information, after being communicated, has been brought to the attention of the recipient party and/or its staff and ~~agent~~performing agents by a third party, without breaching a confidentiality obligation with regard to the communicating party;
- If communication of the information is provided for by applicable legislation and/or regulation;
- If the information or data communicated is aggregated and anonymous.

~~64-65.~~ This article is without prejudice to the specific provisions relating to the confidentiality obligation applicable to the operator of the Belgian transmission system (at both federal and regional level) as imposed by the applicable legal and regulatory provisions.

~~62-66.~~ A Party ~~shall~~can not, for reasons of confidentiality, refuse to disclose information which is essential and relevant for the performance of the Contract. The other Party to whom this information is communicated guarantees to keep said information confidential.

~~63-67.~~ The CAPACITY PROVIDER declares and guarantees that the confidential information will only be used for the purpose of performing the Contract and not for other purposes.

~~68.~~ Each Party shall take the measures necessary to ensure that this confidentiality undertaking is also strictly observed by its employees, as well as by any person who is not an employee of a Party but for whom that Party is nevertheless responsible towards the other Party and who would have good reason to access the confidential information. In addition, said confidential information shall only be disclosed on a need-to-know basis and reference shall always be made to the confidential nature of the information.

~~8-2-9.2.~~ Breaches of confidentiality obligations

~~69.~~ Any breach of this confidentiality obligation ~~shall is be~~ considered as Gross Negligence on the part of the Party that violates said obligation. Such a breach ~~shall gives~~ rise to compensation for any Direct or Indirect, damage (notwithstanding paragraph ~~5151513~~) that the other Party can demonstrate, subject to the ceilings provided for in paragraph ~~5353535~~.

~~64.~~



8.3.9.3. Ownership

65.70. Each Party retains full ownership of every information, even if it has been communicated to other parties. The communication of confidential information does not entail any transfer of ownership or rights other than those stated in the Contract.

8.4.9.4. Duration

66.71. Without prejudice to the applicable legal and regulatory provisions, the aforementioned confidentiality obligations remain applicable for a period of five (5) years after the end of the Contract.

Article 10. PROCESSING OF PERSONAL DATA (GDPR)

9.1.10.1. Data controllers:

67.72. With respect to the Contract, the personal data shall be processed by ELIA in accordance with the Data Protection Legislation, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("GDPR"). The definitions set out in the Data Protection Legislation are applicable to the Contract.

68.73. With respect to this Contract, the following Parties act as an independent Data Controller:

- ELIA, for processing Personal Data with respect to this Contract;
- The CAPACITY PROVIDER, for the Personal Data it transfers to ELIA, including from Grid Users, for any other use than processing carried out with respect to this Contract;
- Neither Party acts as a Processor for the other Party.

69.74. ELIA and the CAPACITY PROVIDER, as distinctive Data Controllers, shall take their own reasonable measures to ensure the security of Personal Data of which it acts as Data Controller by means of technical security rules and an adequate security policy against loss, leakage destruction, alteration, unauthorized access or use of Personal Data or unauthorized processing thereof by their respective employees and/or (sub)contractors.



9.2.10.2. **Legal basis**

70.75. The processing of Personal Data by ELIA shall be based on the following legal grounds:

- Performance of this Contract;
- Compliance with the applicable regulations, including the CRM Act, which amends the Electricity Act;
- Performance of a task carried out in the public interest or exercise of the official authority vested in ELIA by public authorities.

9.3.10.3. **Purposes of data processing**

71.76. Personal Data shall be processed by ELIA for the following purposes:

- Performance of this Contract;
- Compliance with applicable regulations;
- Compliance with the Functioning Rules.

72.77. Personal Data ~~shall be~~ transmitted by the CAPACITY PROVIDER in order to fulfil its obligations towards ELIA.

9.4.10.4. **Processed Personal Data**

73.78. The following Personal Data shall be processed by ELIA:

- All personal data contained in this Contract (surname, first name, address, etc.);
- Any contact details needed for the performance of this Contract (email address, telephone number, etc.);
- Any other personal data needed for the performance of this Contract (invoicing data, bank details, etc.);
- Any personal data needed for the performance of the CAPACITY PROVIDER's obligations towards ELIA;
- Any other personal data needed for ELIA's performance of its public-interest tasks;
- Any personal data needed by ELIA in order to verify the CAPACITY PROVIDER's compliance with its obligations with respect to the Functioning Rules or the Capacity Contract;
- Any personal data provided by either Party through the CRM IT Interface.



74-79. The following Personal Data shall be provided by the CAPACITY PROVIDER to ELIA:

- Any personal data needed for the performance of the CAPACITY PROVIDER's obligation with respect to this Contract.

9.5-10.5. **Data transfer**

75-80. Personal Data processed with respect to this Contract shall be processed and stored by ELIA within the European Union (EU) and not transferred outside the EU.

10.6. **Data retention period**

76-81. Personal Data ~~shall be~~ retained by ELIA only for as long as is strictly necessary for the performance of this Contract and/or in accordance with the retention periods legally imposed. At the end of the Transaction Period, the Personal Data ~~shall be~~ temporarily archived due to (i) a legal obligation to retain personal data for a fixed period and/or (ii) an administrative purpose justifying their retention based on legal grounds (e.g. for tax purposes). In any event, the Personal Data ~~shall be~~ to be erased no later than twelve (12) years after the Transaction Period.

10.7. **Rights of Data Subjects**

77-82. In accordance with the Data Protection Legislation, Data Subjects (i.e. natural persons whose Personal Data are processed) have several rights, a.o. a right of access, of obtaining a copy, of rectification, of erasure (if the legal conditions are met) and of restriction of processing of their Personal Data (if the legal conditions are met), and the right to portability of their Personal Data (if the legal conditions are met).

78-83. In order to exercise these rights or in case of any question regarding the processing of Personal Data, ELIA shall be contacted as follows: privacy@elia.be

84. Notwithstanding the above, the CAPACITY PROVIDER shall act as the first point of contact for the Data Subjects such as Grid Users, of which it transfers the Personal Data to Elia with respect to this Contract. Therefore, the CAPACITY PROVIDER warrants and guarantees that it shall insert a contact clause in the relevant written communication between the CAPACITY PROVIDER and each Grid User as indicated below under warranties.

79.



80-85. Data Subjects may also lodge a complaint with the Belgian Data Protection Authority at any time:

Data Protection Authority

— Rue de la presse 35, B-1000 Brussels

— +32 (0)2 274 48 00

— contact@apd-gba.be

—10.8. **Personal Data breach**

84-86. In the event of a breach of Personal Data or the threat of such a breach (hacking, data leakage, loss, etc.) ~~with the CAPACITY PROVIDER with respect to the Personal Data it provides to ELIA, the relevant Party the CAPACITY PROVIDER shall notify the other Party of the breach or of threatened breach to ELIA~~ in writing without delay, and no later than ~~twenty-four~~forty-eight (2448) hours after becoming aware of it, ~~such that each Party is able to fulfil its obligations under data protection legislation, in particular Article 33 of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data.-~~

9.9.10.9. **Processing by third parties**

85-87. ELIA ~~is not entitled to~~shall not transfer Personal Data to third parties, except for communications that are required by law, ELIA's legitimate interest, the performance of ELIA's contractual obligations and the performance of ELIA's public-interest tasks, for example: transmission to the relevant public authorities, foreign transmission system operators, gas system operators, Public Distribution System Operators and CDS Operators (CDSOs), insofar as these Personal Data are relevant and necessary for the purposes of said communications and subject, as the case may be, to safety measures (anonymization, pseudonymisation,...)..

86-88. Personal Data may also be transmitted to processors of ELIA (such as IT and accounting service providers, legal advisers, contractual partners, etc.). ELIA ~~shall~~enters into a data processing agreement with its processors for this purpose.

— 88. Depending on the type of Personal Data transferred, a third party privacy policy might become applicable.

90. ELIA is not responsible for the processing of Personal Data carried out by third parties with the exception of processing carried out by ELIA's' data processors, provided that said data processor process Personal Data in compliance with the Data Protection Legislation and ELIA's instructions.

88.



~~89.~~91. More information on the processing of Personal Data may be found :

- For ELIA: at <https://www.elia.be/en/privacy-policy>
- For the CAPACITY PROVIDER: (...)

~~92.~~ In case of conflict between these Policies and this clause, the latter shall prevail.

~~9.10.~~10.10. **Warranty**

~~90.~~93. The CAPACITY PROVIDER hereby:

- Warrants and guarantees that all Personal Data it provides to ELIA with respect to this Contract are accurate and complete;
- Warrants and guarantees that regarding the Personal Data it provides to ELIA it is the legitimate owner and/or Data Controller of these Personal Data for another purpose than with respect to the Capacity Contract and that it is compliant with the Data Protection Legislation, particularly with respect to the Personal Data it transfers to ELIA;
- Warrants and guarantees that it is legally entitled to provide Personal Data from the Data Subjects concerned to ELIA with respect to the Capacity Contract;
- Warrants and guarantees that it will duly inform the Data Subjects that their Personal Data may be transferred to ELIA with respect to the Capacity Contract, and shall do so in its first communication with those Data Subjects with respect to the Capacity Contract, and to that end it warrants and guarantees to insert the following clause in the relevant written communication to the Data Subject concerned:

"Your personal data may be transferred to Elia, with respect to the Capacity Contract referred to in article 7undecies §7 of the Federal Electricity Act of 29 April 1999 on the organization of the Belgian electricity market. More information on Elia's processing of personal data may be found at <https://www.elia.be/en/privacy-policy>.

In order to exercise your rights regarding Personal Data or in case of any question regarding the processing of Personal Data with respect to the Functioning Rules, your point of contact will be [THE CAPACITY PROVIDER] that shall be contacted as follows: [...]"

- Warrants and guarantees that it shall defend, indemnify and hold harmless ELIA on first demand, from or against any losses, damages, liabilities, expenses and/or costs (including legal costs and attorney fees) that directly or indirectly arise from a (threat of) breach by of aforementioned warranty.



Notwithstanding the foregoing, ELIA reserves the right to withdraw any of the Personal Data provided or other input of which it has reason to believe that it infringes any provision of this clause;

- Acknowledges that the loss, damage, liability, expense and/or cost that directly or indirectly arises from a (threat of) breach of any aforementioned warranty for ELIA, shall be at least five thousand (5000) euro without prejudice to ELIA's right to claim higher damages. The CAPACITY PROVIDER acknowledges that this is a reasonable minimum amount for any loss, damage, liability, expense and/or cost that might have been caused.

Article 11. OBLIGATION TO INFORM

91-94. 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 12. REVISION OF THE CONTRACT

92-95. This Contract may only be revised only in the event that a regional, federal, European or other public authority, or a European or regional collaboration structure imposed by European regulations, takes measures or imposes decisions, orders, rules, procedures, opinions, recommendations, legal, regulatory or statutory requirements that are beyond the control of the Parties and which make it necessary to revise the Contract;

93-96. To this end, in the case of conditions of the standard capacity contract on which is based this Contract, over which CREG has power of approval, ELIA ~~shall analyze~~ the changes to be made to the Contract and, after consulting markets parties, submit them to CREG for approval. Once CREG has approved the changes to the standard capacity contract, including the proposed date for their entry into force, and where applicable specified in this approval decision, the scope *ratione materiae* and *temporis* of this new standard capacity contract, ELIA determines whether or not the provisions of the Contract should be replaced by those of the new standard capacity contract and, as the case may be, these provisions of the new standard capacity contract effecting the revision of the Contract take effect according to the terms and conditions indicated in the amended standard capacity contract or in the decision of the CREG.

94-97. The Party which, for reasons stated in paragraph ~~958~~ of this article and subject to providing proof that it is suffering serious and lasting economic damage in the performance of its contractual obligations, wishes to have the Contract revised with respect to individual provisions or elements, inform the other Party through letter or email with acknowledgement of receipt :



- Of individual elements of the Contract it is asking to have revised;
- Of the reasons why it is asking for said revision; and
- Make a specific proposal concerning the revision, including a proposal for a new elements.

~~95-98.~~ As soon as possible and at the latest within twenty (20) Working Days following receipt by the other Party of the request for revision of individual elements or provisions of the Contract, the Parties shall consult each other and make every effort to, as necessary, supplement, amend, revise or replace with appropriate alternatives the provisions or elements of the Contract which are the subject of the request for amendment or revision. in respect, for the rest, of the principles of collaboration set forth in the Contract as originally signed.

~~96-99.~~ If within thirty (30) Working Days following the first meeting concerning revision of individual provisions or elements of the Contract the Parties have been unable to reach an agreement, or, if the provisions of the new standard capacity contract effecting the revision of the Contract cause a serious and permanent prejudice, duly established, in economic terms in the performance of the CAPACITY PROVIDER's contractual obligations, the dispute settlement procedure set out in article 16 shall be applied. C

~~97.~~ It is however specified that the competent court may not, at the request of the first Party to take action, terminate the Contract provided that a new Capacity Contract covering a Capacity identical to the Contracted Capacity initially contracted by the CAPACITY PROVIDER has been signed or at the end of the current Delivery Period, in which case ELIA shall take this into account in the volume of the following Y-1 Auction.

~~98-100.~~ The measures that CREG or ELIA is entitled to take under the Functioning Rules, in particular in terms of reducing the Capacity Category, reducing the Total Contracted Capacity or downwardly revising the Capacity Remuneration cannot constitute a ground for requesting a revision of the Contract.-

~~99-101.~~ ELIA cannot, under any circumstances, accept any changes to the Contract which would entail discrimination against other capacity providers or electricity market players.

~~100-102.~~ If ELIA finds, before the Delivery Period, that the Infrastructure Works identified in the technical agreement signed as provided in when at the Prequalification File ~~was submitted~~ have been or will be delayed, ELIA shall ~~notifiesy~~ notify the CAPACITY PROVIDER of this in accordance with the relevant operational procedure provided for in the Functioning Rules, indicate the impact of the delay and amend the Contract accordingly by postponing the start of the Delivery Period of the Transaction(s) concerned by one (1) year.

~~104.~~ After the start of the Delivery Period of the relevant Transaction(s) has been postponed by one (1) year, or after a subsequent postponement, the CAPACITY PROVIDER is ~~be~~ entitled to terminate the Contract within ninety (90) Working Days from the receipt of ELIA's notification.



~~402.~~ No compensation ~~shall be~~ 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.

~~103.~~ Without prejudice to termination of the Contract in the cases provided for in section 7.3.2.5 of the Functioning Rules and resulting from a delay in the Project Works, Delays delays in the Project Works caused by, for any reason whatsoever, including delays in obtaining permits or executable authorizations issued in the last instance, which are enforceable and no longer subject to appeal, necessary required for the establishment, construction or operation of the CAPACITY PROVIDER's project, shall not give rise to a revision of the Contract.

Article 13. EARLY SUSPENSION AND TERMINATION

9.11.13.1. Early suspension and termination by ELIA

~~104.~~ Without prejudice to the penalty regime as foreseen provided for in the Functioning Rules and to the liability regime, the Contract may be suspended or terminated unilaterally by ELIA without prior judicial intervention, on the one hand, in the cases et and according to the upon modalities terms of suspension and termination provided for in the Functioning Rules and in this Contract and in case of insolvency or bankruptcy of the CAPACITY PROVIDER.

9.12.13.2. Early termination by the CAPACITY PROVIDER

~~103-105.~~ When all the Transactions listed in Appendixes A are completed, and all final invoices and credit notes have been issued, and without prejudice to paragraph 7, the CAPACITY PROVIDER may request early termination of the ~~Capacity~~ Contract. In this case, any future Transaction ~~shall is be~~ subject to the signature of a new Capacity Contract.

Article 14. ASSIGNMENT OF CONTRACT

~~104-106.~~ The Contract may not be assigned by the CAPACITY PROVIDER, either in whole or in part, without prior written permission from ELIA. Said permission ~~can~~ shall not be unreasonably refused or delayed. Said permission shall however be subject to the following conditions:

- Proof is provided that the assignee is a CRM Candidate;
- The assignment relates to all the Transactions associated with a CMU (or to linked CMUs);
- Proof is provided of the fulfilment of all obligations due;



- The transferred CMU(s) is (are) covered by a Financial Security with the assignee (bank guarantee, guarantee by the parent company or cash payment) as described in the Functioning Rules;
- Due to the lack of Financial Security in the Delivery Period, when the CMU(s) has (have) 'existing' status, said permission shall also be conditional upon joint and several liability on the part of the assigning CAPACITY PROVIDER for the obligations and debts not yet due which originated prior to the assignment.

~~405-107.~~ If an investment file has been submitted to CREG, proof that CREG has approved the transfer of said investment file to the assignee is a prerequisite for the assignment of rights and obligations under this article.

~~108.~~ The Contract may not be assigned by ELIA, without CAPACITY PROVIDER's agreement, to a company considered to be a related company within the meaning of Article 1:20 of the Belgian Companies and Associations Code, or to a third party who has been or will be appointed by the competent authority or the regulator as a system operator. However, in both of these cases, ELIA ~~shall~~ makes every effort to inform the CAPACITY PROVIDER, as far as possible, and taking into account the legal restrictions on inside information, of such a planned assignment to the related company or to the new system operator as soon as possible.

Article 15. ~~Article 15.~~ MISCELLANEOUS PROVISIONS

~~406-109.~~ The CAPACITY PROVIDER remains bound by the information and data that it provided as part of the CRM process.

~~407-110.~~ The fact that one of the Parties waives the application of one or more clauses of the Contract, whether permanently or temporarily, ~~shall is not to be consider,~~ under no circumstances, ~~be considered~~ as a waiver of the rights of that Party arising from said clause or clauses.

~~408-111.~~ Without prejudice to the application of the relevant laws and regulations, and the Prequalification File and the results of the Auction, the Contract, including its Annexes, comprises the entire agreement concluded between the Parties.

~~409-112.~~ Any notification required by the Contract shall be sent to the contact details as specified in Annex B and served in accordance with the provisions of Annex B. Any change to the information concerning said Annex shall be communicated to the other Party at the latest seven (7) Working Days prior to the date on which the change will take effect.

~~410-113.~~ The invalidity of one or more provisions of this Contract, insofar as said invalidity does not affect the very subject matter of the Contract, shall not affect the validity, interpretation and/or implementation of the other provisions of the Contract.



~~111.114.~~ 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 16. ~~Article 16.~~ **APPLICABLE LAW - SETTLEMENT OF DISPUTES**

~~112.115.~~ The Contract is governed by and interpreted in accordance with Belgian law.

~~113.116.~~ Subject to the provisions on dispute settlement contained in the Functioning Rules, any dispute regarding the conclusion, validity, interpretation or implementation of the Contract or the implementation of the Functioning Rules in the phase following the signing of the Contract, as well as any other dispute concerning or relating to the Contract ~~shall is be~~ referred to the competent court of the district of Brussels.

~~114.117.~~ Subject to 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 competent court. Unless the dispute has already been the subject of a consultation provided for in the Contract, but has remained without an amicable solution, the Parties ~~shall~~ organise a consultation meeting within ten (10) days of receipt of a registered letter or an email with acknowledgement of receipt in which one of the Parties raises the dispute. If the Parties do not reach an agreement within thirty (30) days of this initial meeting, the first Party to take action may bring the case before the competent court.

ELIA

CAPACITY PROVIDER

Date:



ANNEX A – CONTRACTUAL PARAMETERS AT THE CONTRACT SIGNING DATE

| |
|---------------------------------|
| CAPACITY PROVIDER ID |
| CMU ID |
| Transaction ID |
| Market Type (Primary/Secondary) |
| Contracted Capacity <u>(MW)</u> |
| Transaction Period |
| Pre-delivery Period |
| Transaction Date |
| Transaction Validation Date |
| Calibrated Strike Price |
| Auction Type (Y-4; Y-1) |
| Year of Auction (2021) |
| Derating Factor |
| Capacity Remuneration |



ANNEX B – COMMUNICATION AND CONTACT PERSONS

CAPACITY PROVIDER

The CAPACITY PROVIDER's Contact Persons are those specified in the Prequalification File

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* | |