

# **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, 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'.

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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 systems 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;
- An Act of 22 April 2019, amended by an Act of 15 March 2021, amended the Electricity Act by adding to it a Capacity Remuneration Mechanism (hereinafter 'CRM') in order to address the adequacy issue between electricity supply and demand;
- After the Auction result publication date 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 financing system provided in article 7undecies, §15, inserted in the Electricity Act by the act of 15 March 2021 amending the Electricity Act, provides that the missions attributed to ELIA in the context of the capacity remuneration mechanism are public services obligations, the net costs of which are financed in accordance with the procedures laid down in Article 21quinquies of the Electricity Act. Pursuant to article 7undecies, §15 of the Electricity Act, those financing modalities of such provision are essential in as far as they allow ELIA to have the financial means necessary for the payment of the monthly remuneration and for the performance of the contract ;
- The 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.	Contract	This contract which is in conformity with the standard capacity contract as approved by the CREG pursuant to Article 7undecies §11 of the Electricity Act.
3.	CREG	The commission as defined in article 2, 26° of the Electricity Act.
4.	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
5.	Act of 2 August 2002	The Act of 2 August 2002 on combating late payment in commercial transactions, as amended.
6.	Financial Penalty	The financial penalty provided for in Chapter 8 of the Functioning Rules.
7.	RCC	The regional coordination center established in the sense of article 35 of Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity
8.	Functioning Rules	The rules referred to in article 7undecies, §12 of the Electricity Act.
9.	Monthly Remuneration	The remuneration described in article 7undecies, §11 of the Electricity Act.
10.	Belgian Control Area	The Control Area for which ELIA has been appointed system operator in accordance with the Electricity Act.

**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 to it.
- 2.5. If a deadline provided in the Contract expires on a Saturday, Sunday or another 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 and payment, 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 to 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 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 Grid User(s) or CDS User(s) so 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 in the Functioning Rules towards that CAPACITY PROVIDER. Without prejudice to ELIA's obligations, the CAPACITY SUPPLIER 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 the present Contract.
- 3.3. The CAPACITY PROVIDER waives, towards ELIA and within the limits of the present 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 paragraph 2 alinea 2 of the Royal Decree relating to the admissibility criteria relating to support measures and to the minimum threshold and attached as Annex C, its waiver of the right for functioning aid for the concerned CMU during the concerned Transaction Period(s). The CAPACITY PROVIDER undertakes not to claim a functioning aid for the concerned CMU 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 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 injunction by CREG to ELIA to cancel the validation within ten (10) Working Days after the validation by Elia). The Contract is signed electronically by the Parties. For each validated 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.
- 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) penalty(ies) as foreseen in the Functioning Rules. Said breaches are 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. 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 Capacity 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 forth hereunder.

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 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.

5.1.4. The Monthly Remuneration is also the object of a monthly statement prepared by ELIA based on the formula provided in paragraph 5.1.5. and within the timeframe 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 provided for in article 6.

5.1.5. The Monthly Remuneration for each Transaction 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:

$$\begin{aligned} & \text{Monthly Remuneration (Transaction}_{id}, \text{relevant month } M) \\ &= \sum_{t=1}^w \left( \text{Contracted Capacity (Transaction}_{id}, t) \right. \\ & \quad \left. * \frac{\text{Capacity Remuneration (Transaction}_{id})}{\text{Number of hours in the Delivery Period including the month } M \text{ considered}} \right) \end{aligned}$$

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 and total number of hours for the relevant month of a Transaction Period;
- *Contracted Capacity (Transaction<sub>id</sub>, t)* is the Contracted Capacity in the Transaction of a CMU per hour, available in the Contract and in the CRM IT Interface;
- *Capacity Remuneration (Transaction<sub>id</sub>)* 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 in the Delivery Period including the month M considered* is the number of hours in the Delivery Period including the month in question.



5.1.6. During the Delivery Period, the Monthly Remuneration may be 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 or permanent reduction in Monthly Remuneration as provided for, in accordance with Section 9.6.4 of the Functioning Rules, during the Delivery Period or several following Delivery Periods;
- 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. In accordance with Section 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 boundaries 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 Section 9 of the Functioning Rules, when ELIA identifies for a month of a Transaction mentioned in Annex A.1 a Missing Capacity (MW) for the CMU, ELIA applies the Unavailability Penalties to the CAPACITY PROVIDER, for the relevant month, as set out in paragraph 5.3.2 and article 6.

5.2.2.2. The total amount of the Unavailability Penalties of a CMU, that the CAPACITY PROVIDER may be applied for the CMU, both on a monthly and annual basis, for its Transaction(s) covering one (or more) full Delivery Period(s), is limited in accordance with the Functioning Rules, section 9.6.2.

### 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, in accordance with the Functioning Rules, section 12.3.3.

## 5.3. Monthly statement and activity reports issuance

### 5.3.1. Pre-delivery Period





5.3.1. The electronic 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, depending on the situation :

- If the CMU is an Existing CMU : ELIA communicates this report to the CAPACITY PROVIDER, according to the process described in Section 8.4.4 of the Functioning Rules, and within a maximum period of time of:
  - o Thirty (30) Working Days from the moment of the pre-delivery control ( $t_{control1}$  and/or  $t_{control2}$ ); or
  - o Ten (10) Working Days from the date of the additional pre-delivery control mentioned in § 4111 of the Functioning Rules, in case of contestation of the pre-delivery report, pursuant to the modalities of § 410 of the Functioning Rules.
- If the CMU is an Additional and Virtual CMU : ELIA communicates this report to the CAPACITY PROVIDER, pursuant to the modalities set forth in section 8.4.4 of the Functioning Rules, within twenty (20) Working Days from the moments of the  $t_{control1}$  and/or  $t_{control2}$  test.

### 5.3.2. Delivery Period

5.3.2. 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:

- o At the latest on the 10th of month M+1, a monthly statement detailing for said month M, details of the Monthly Remuneration for each related Transaction, and the details of the ex ante invoice of the Monthly Remuneration which has been the object of a ex ante invoicing based on paragraph 5.1.3 and on paragraph 6.2.7;
- o At the latest on the 15th of month M+2, a delivery activity report detailing, for month M, for a CMU and its Transaction(s), the following items:
  - o The Available Capacity of the CMU;
  - o As the case may be, the determined Missing Capacity;
  - o As the case may be, the determined amount of Unavailability Penalties and the associated monthly (penalty) cap;
  - o 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 statement mentioned in paragraph 5.1.4 and to the contestation pursuant to paragraph 5.4.2, ELIA notifies such non-compliance electronically within 10 Working Days of the invoice's issuance. The invoice's non-compliance is appreciated towards the requirements set forth for the issuance of the invoice as set forth in paragraph 6.1, the number of hours 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 2<sup>nd</sup> bullet communicated by ELIA to the CAPACITY PROVIDER before the ex ante invoicing.

5.4.1.2. In case of rejection due to non-compliance with paragraph 6.1, the ex ante invoice is subject to 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 is compliant. If the corrected invoice is not compliant, paragraph 5.4.1.1 and the present paragraph apply again.

In case of error in the amount of the ex ante invoice resulting from an incorrect application of the formula mentioned in paragraph 5.1.5 or of the non-taking into account of a temporary or final reduction of the Monthly Remuneration mentioned in section 9.6.4 of the Functioning rules, the ex ante invoice is the object of a credit note issued by the CAPACITY PROVIDER and the latter must await the statement set forth in paragraph 5.1.4 to invoice the Monthly Remuneration.

#### 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 total 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 or, the new undisputed amount, resulting from the agreement reached, is then the subject of, depending on whether the total or partial agreement results in an additional debt or receivable at ELIA's level towards the amount having been the object of the ex ante invoice, an invoice respectively a credit note, to be issued by the CAPACITY PROVIDER in accordance with article 6. 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. However, in the absence of partial or total 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 part of the disputed amount of the Monthly Remuneration is the object of a separate invoice or separate credit note, to be issued by the CAPACITY PROVIDER, covering the difference between the ex-ante invoice having been the object of 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 in as far as the amount of the ex ante invoice having been the object of the payment or, as the case may be, of the partial agreement mentioned in paragraph 5.4.2.3. is lower, 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 solution within the sixty (60) Working Days following the end of the first period as specified in paragraph 5.4.2.2. In case 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 at ELIA's level, no invoice or credit note is issued by the CAPACITY PROVIDER. Any agreement must comply with the Functioning Rules.

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 Penalty and Unavailability Penalty

5.4.3.1. To be sustainable, any contestation relating to whole or parts of the amount of the Financial Penalties or the Unavailability Penalties resulting from the activity report set forth in paragraphs 5.3.1 and 5.3.2 respectively, must follow the rules set forth in sections 8.4.4.2 and 9.6.3 respectively of the Functioning Rules.

5.4.3.2. In case of partial or total agreement, within the first period of sixty (60) Working Days set forth in sections 8.4.4.2 and 9.6.3 respectively of the Functioning Rules, between the Parties 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 object of the agreement, is then the object of a credit note, to be issued by the CAPACITY PROVIDER in accordance with article 6.

5.4.3.3. However, and in accordance with sections 8.4.4.2 and 9.6.3 respectively of the Functioning Rules, in the absence of a partial or total agreement between the Parties on the amount of the Financial Penalties or the Unavailability Penalties resulting respectively from the pre-delivery / delivery activity reports, within the first period of sixty (60) Working Days set forth in sections 8.4.4.2 and 9.6.3 respectively of the Functioning Rules, the contested amount or the part of the contested amount of the penalties is the object of a separate credit note in accordance with article 6.

5.4.3.4. In case of amicable agreement reached between the Parties during the second period of sixty (60) Working Days set forth in sections 8.4.4.2 and 9.6.3 respectively of the Functioning Rules,



such agreement will translate, as the case may be, in a corrective invoicing towards the amount which had been the object of the separate credit note, in accordance with article 6. Any agreement must comply with the Functioning Rules.

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 sustainable, any contestation relating to whole or parts of the amount of the Payback Obligations resulting from the activity report set forth in paragraphs 5.3.2, must follow the rules set forth in section 12.4.5 of the Functioning Rules.

5.4.4.2. In case of partial or total agreement, within the first period of sixty (60) Working Days set forth in section 12.4.5 of the Functioning Rules, between the Parties on the amount of the Payback Obligations resulting from the delivery activity reports, the new uncontested amount, being the object of the agreement, is then the object of a credit note, to be issued by the CAPACITY PROVIDER in accordance with §803 of the Functioning Rules and article 6.

5.4.4.3. However, and in accordance with section 12.4.5 of the Functioning Rules, in the absence of a partial or total agreement between the Parties on the amount of the Payback Obligations resulting respectively from the delivery activity reports, within the first period of sixty (60) Working Days set forth in section 12.4.5 of the Functioning Rules, the contested amount or the part of the contested amount of the penalties is the object of a separate credit note in accordance with article 6.

5.4.4.4. In case of amicable agreement reached between the Parties during the second period of sixty (60) Working Days set forth in section 12.4.5 of the Functioning Rules, such agreement will translate, as the case may be, in ELIA issuing a corrective credit note towards the amount which had been the object of the separate invoice, in accordance with article 6. Any agreement must comply with the Functioning Rules.

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.

## Article 6. INVOICING AND PAYMENT

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

6.1.1. Every pro forma or final invoice or credit note, should it be pro forma or final, contains at least the following information:

- Full name and address of the Party issuing the invoice or credit note and, respectively of the invoiced Party or of the credited Party;



- VAT number of the Party issuing the invoice or credit note and, respectively of the invoiced Party or of the credited Party, as the case may be;
- 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));
- 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 or credit note number;
- Date of issue of the invoice or credit note;
- Indication of the Delivery Period and delivery month concerned;
- Reference as the case may be to the statement, the 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 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 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 is made, depending on the case, based on monthly statements or pre-delivery / delivery activity reports set forth in paragraphs 5.3. Subject to the consequences of the contestation process set forth in paragraph 5.4, and of the ex ante invoicing set forth in paragraphs 6.2.2 and 6.2.3, the Monthly Remuneration is, as the case may be, subject to the issuance of a corrective invoice or credit note by the CAPACITY PROVIDER. The Financial Penalty and the Unavailability Penalty are the object of the issuance of a credit note by the CAPACITY PROVIDER and the Payback Obligation is the object of the issuance of an invoice by ELIA. In case of contestation, it is paragraph 5.4 which describes which document can be issued, it being an invoice or a credit note. To the exception of ex ante invoices rules by paragraphs



6.2.2 and 6.2.3, paragraphs 6.2.4 to 6.2.14 rule the modalities for issuance of all the invoices and credit notes.

- 6.2.2. The ex ante invoice for the Monthly Remuneration for a Transaction resulting from the Primary Market must be issued by the CAPACITY PROVIDER towards ELIA at the latest two (2) Working Days before the first day of month M to which such Transaction pertains to.
- 6.2.3. The ex ante invoice of the Monthly Remuneration for a Transaction resulting from the Secondary Market must be issued by the CAPACITY PROVIDER towards ELIA at the latest two (2) Working Days before the first day of the month M to which such Transaction pertains to. In addition, such a Transaction is only eligible for payment within the month M, according to the modalities set forth in paragraph 6.3.1 in as far as the Validation Date of such Transaction occurs at the latest five (5) Working Days before the first day of Month M. Should this not be the case, the invoicing of the Monthly Remuneration for such Transaction is made on the basis of the monthly statement as provided for in the section 5.3.2.
- 6.2.4. To the exception of ex ante invoices from the CAPACITY PROVIDER and the invoices and credit notes issued by ELIA, the issuance of invoices or credit notes is made in two steps: first a pro forma invoice or credit note, which must be approved by ELIA, and then a final invoice or credit note, which is paid.
- 6.2.5. The CAPACITY PROVIDER issues a pro forma invoice or credit note and ELIA issues an invoice or credit note by e-mail 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 activity report, or, in case of contestation by the CAPACITY PROVIDER of such monthly statement or activity report, at the latest five (5) Working Days after the entering into of agreement or the acknowledgement of lack thereof, as set forth in paragraphs 5.4.2, 5.4.3 and 5.4.4.
- 6.2.6. For the issuance of the invoice or credit note following receipt of the statement, the monthly statement only gives rise to a corrective invoice or credit note in case of difference between the amount of the ex ante invoice and the amount resulting from the monthly statement.
- 6.2.7. 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 the requirements set forth in paragraph 6.1.
- 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 e-mail from ELIA (paragraph 6.2.7).
- 6.2.9. For each pro forma credit note or invoice rejected by ELIA, the CAPACITY PROVIDER is invited to follow again the process described in paragraph 6.2.5 of the present Contract.
- 6.2.10. Upon request of a Party, and without prejudice to the other provisions of Articles 5 and 6, 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, and 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 of CAPACITY PROVIDER's responsibility to correct the credit note or invoice as soon as possible, as the case may be through the issuance of an offsetting invoice or credit note and corrective credit note or invoice, the payment period only running from the date of receipt by ELIA of a credit note or invoice complying with the said requirements.

6.2.12. 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 6.2.5, respectively paragraph 6.2.7 :

- ELIA issues a final credit note to replace the missing invoice on the basis of the settlement or of the activity report or, when such settlement or activity report have been contested, on the basis of the agreement on the amount, respectively;
- ELIA issues an invoice in replacement of the missing credit note, based on the activity report or, when such report was contested, based on the agreement on the amount or, when such amount remains contested, for the contested part of the penalty or of the Payback Obligation.

6.2.13. 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 paragraphs 6.3.1 and 6.3.4 and for the application of the Financial Securities referred to in the said Functioning Rules.

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

<i>Period</i>	<i>Documentation underlying the invoice/ credit note from the CAPACITY SUPPLIER</i>	<i>Result</i>	<i>Pro forma and final invoice or credit note (to be issued by the CAPACITY SUPPLIER)(§5.4.2-5.4.3 and 6.2) or by ELIA (§5.4.4 and 6.2)</i>	<i>Corrective invoice or credit note, accompanied, if necessary, by a credit note or invoice offsetting the incorrect amount (§6.2.11)</i>	<i>Fallback system: Invoice or credit note (pro forma and final) in replacement (to be issued by ELIA) (§6.2.12-6.2.13)</i>
<i>Pre-delivery period</i>	<i>Pre-delivery activity report (§5.3.1)</i>	<i>Financial Penalty (due from the CAPACITY SUPPLIER)</i>	<i>Credit note (CAPACITY PROVIDER)</i>	<i>Offset invoice and corrective credit note</i>	<i>Invoice</i>
<i>Pre-delivery period</i>	<i>Validation of the Transaction (§5.1.3-6.2.2-6.2.3)</i>	<i>Monthly Remuneration (due by ELIA)</i>	<i>Ex ante invoice (CAPACITY PROVIDER)</i>	<i>/</i>	<i>/</i>
<i>Delivery period</i>	<i>Settlement (§5.3.2)</i>	<i>Difference towards the Monthly Remuneration (due by</i>	<i>Invoice or credit note (corrective toward the ex ante invoice)</i>	<i>Offset invoice note and corrective credit note</i>	<i>Credit note</i>



		<i>ELIA) invoiced ex ante</i>	<i>(CAPACITY PROVIDER)</i>		
<i>Delivery period</i>	<i>Delivery activity report (§5.3.2)</i>	<i>Unavailability Penalty (due from the CAPACITY SUPPLIER)</i>	<i>Credit note (CAPACITY PROVIDER)</i>	<i>Offset invoice and corrective credit note</i>	<i>Invoice</i>
<i>Delivery period</i>	<i>Delivery activity report (§5.3.2)</i>	<i>Repayment obligation (due from the CAPACITY SUPPLIER)</i>	<i>Invoice (ELIA)</i>	<i>Offset credit note and corrective invoice</i>	

### 6.3. Payment modalities

6.3.1. Without prejudice to paragraph 6.3.3., ELIA proceeds with the payment of conform ex ante invoices (mentioned in paragraphs 5.1.3, 5.4.1, 6.2.2 and 6.2.3) and of conform final invoices (mentioned in paragraph 6.2.8) issued by the CAPACITY PROVIDER 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 6.2.5), 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 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, 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 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 issued by the CAPACITY PROVIDER or of the invoice issued by ELIA.

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

6.3.4. 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 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 §744 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, as long as this illegal or non-compliant state aid is not refunded to the competent authorities, suspend the payment of the capacity remuneration.

ELIA shall only proceed with the suspension of the payment of the capacity remuneration in as far as ELIA is notified by the Directorate-General for Energy that it is obliged to suspend the payment of the capacity remuneration due to a 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 remunerations 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 the payment of the capacity remuneration.

## **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 the Contract, the creditor of such obligation shall notify the defaulting party of said default via the CRM IT Interface as soon as possible and in any case within sixty Working Days. The defaulting Party is required to respond via the CRM IT Interface within fifteen 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. Without prejudice to the application of the Penalties provided for in the Functioning Rules, a CAPACITY PROVIDER or ELIA may, in connection with the CRM, only be liable for the Direct Damage suffered by the creditor of its obligation as a result of gross negligence on its part. No limitation of liability is applicable in the case of fraud or wilful misconduct.
- 7.2.2. Direct Damage is defined as damage that is the direct and immediate result of a fault on the part of a CAPACITY PROVIDER or ELIA, its employees, subcontractors or agents in the performance of its obligations under the Functioning Rules. Under no circumstances, except in cases of fraud or wilful 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 and of ELIA in respect of a CAPACITY PROVIDER 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 amount may not be less than EUR 50,000 per claim per year or exceed EUR 2,500,000 per claim per year. ELIA's liability in respect of the CAPACITY PROVIDER 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 of the CMUs of this CAPACITY PROVIDER, it being understood that this amount may not be 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 15,000,000 per year, regardless of the number of claims. There is no limitation of liability in the event of wilful misconduct.
- 7.2.4. The application of the penalties provided for in the Functioning Rules, when the CAPACITY PROVIDER breaches its obligations doesn't prevent ELIA to exercise its right to claim compensation for any Direct Damage suffered as a result of such breach, provided that ELIA establishes that said Direct Damage is the result of fraud, wilful misconduct or gross negligence on the part of the CAPACITY PROVIDER, on the one hand, and that it affects ELIA's assets, on the other hand. 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 these Functioning Rules or via other regulatory mechanisms provided for by or by virtue of the Electricity Act and covered in accordance with article 12 of said Electricity Act.
- 7.2.5. The CAPACITY PROVIDER is liable in respect of ELIA for gross negligence committed by Grid Users or CDS Users to which the CAPACITY PROVIDER calls upon to form the CMU, or, as the case may be, CMUs related to Linked Capacities, within the liability limits applicable between the Parties. In the event of combined gross negligence on the part of several of these Users and/or the CAPACITY PROVIDER, the CAPACITY PROVIDER's liability will be limited to the maximum amount stipulated in § 7.2.3. ELIA may not take direct action against the aforementioned Users.

### 7.3. Warranty clause



7.3.1. Without prejudice to the application of the penalties 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 wilful misconduct in the performance of their obligations under this Contract.

7.3.2. Save for fraud or wilful 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 the Penalties as provided for in this Contract amount due by the CAPACITY PROVIDER or ELIA for one and the same claim, for reasons of gross negligence, as compensation 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 4 § 1 of the Federal Grid Code and the regulated contracts at regional level. Save for that which is provided in § 7.4.1, these Functioning Rules do not limit in any way the application of the provisions of said contracts, even if the non-performance of an obligation under the Functioning Rules 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 PROVIDERS 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 any 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 a CAPACITY PROVIDER or ELIA if they can prove that it is guilty of gross negligence in respect of the satisfaction of the obligations set out in the Functioning Rules. The liability of a CAPACITY PROVIDER or ELIA in the event of gross negligence may not exceed the maximum amount set out in § 7.2.3. No limitation of liability shall apply in the event of fraud or wilful 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 Party 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 consecutive to 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;
  - an 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 labour 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;
  - the situation in which a competent authority imposes exceptional and temporary measures on CAPACITY PROVIDERS, including Grid User(s), CDS User(s) to which the CAPACITY PROVIDER calls



upon to forms 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 ; and

- 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 creditor of his obligation 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 Working Days of the said discussion. The written or verbal notification must be made in any event within three Working Days of the appearance of the situation of Force Majeure or the time at which it should reasonably have discovered it. It must describe precisely the event that he qualifies as Force Majeure and indicate the measures he intends to take to remedy it as soon as possible. Absent 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 his 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 it from fulfilling his obligations. To the same extent, the creditor of his obligation is not obliged to perform his 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 his obligations under the Functioning Rules and if this situation of Force Majeure persists for at least one hundred and eighty consecutive days, the CAPACITY PROVIDER or ELIA may be definitively released from its obligations under the Functioning Rules by sending a registered letter or an email with acknowledgment of receipt.

## 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 forth in the Electricity Act, its implementing Decrees including the Functioning Rules;

2° without prejudice to 3°, in the event that an authority, or a competent institution (such as for instance Entso-E or the RCCs) 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 must apply to ongoing Contracts.

11.2. The amendment of the Contract in the cases set forth 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 concerned system operator pursuant to the operational procedure set forth 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 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 to ELIA its decision to terminate the Contract.

In case of persisting delay in the Infrastructure Works, the start of the delivery for the Transaction(s) concerned is again postponed by one (1) year. After each postponement, the CAPACITY PROVIDER may notify to ELIA 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, 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. EARLY SUSPENSION AND 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(es) A.1, or the rights and obligations deriving therefrom 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 provisions of this Contract or in this Article.

When no terms are provided:

- on the one hand, in the absence of default of the CAPACITY PROVIDER, the early suspension or termination are notified by ELIA by registered letter and take effect within 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 registered letter by ELIA of the fact that the CAPACITY PROVIDER did not remedy a default, within 30 Working Days after a first notification by e-mail, in which e-mail the possibility is given to the CAPACITY PROVIDER to remedy within this deadline of 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, in as far 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 and transparency principles, and informs the CREG.

12.2. ELIA may suspend or one or more of the specific Transaction(s) concerned listed in Annex(es) A.1 when 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 pre-qualification conditions, with effect within thirty (30) Working Days after the notification of the suspension motivated by e-mail and until it has been found by ELIA that the CMU's Contracted Capacity as mentioned in the Transaction(s) complies with the pre-qualification 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 the present 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 pre-qualification obligations, repeatedly, it may terminate the Transaction(s) concerned with effect within thirty (30) Working Days after the notification of the suspension motivated by e-mail.

12.4. If, due to the cases set forth in paragraphs 11.1, 2° and 3°, the need to amend the Contracts entails for a Party a damage so important and permanent in economical terms for the performance of its contractual obligations that it renders impossible the continuation of the Contract, such Party sends to the other, at the



latest thirty (30) Working Days after receipt of the Contract amendment proposal, a registered letter or e-mail with acknowledgment of receipt demonstrating the existence of the suffered damage and notifying the 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 forth the Investment Thresholds and the Eligibility Criteria of Investment Costs, amongst others in terms of reducing the Capacity Category, reducing the Total Contracted Capacity, downwardly revising the Capacity Remuneration or rejecting 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 e-mail with acknowledgment 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 to the CAPACITY PROVIDER its decision to terminate the Contract by registered letter or e-mail with acknowledgment 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 SUPPLIER.

## Article 13. ASSIGNMENT OF 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 assigned 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 the following conditions being complied with:

- the assignee must be 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;
- 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





assignee (bank guarantee, guarantee by the parent company or cash payment) as described in the Functioning Rules;

- When the assignment concerns an Existing CMU or, as the case may be, the transferred CMUs related to Linked Capacities and occurs within a Delivery Period, the assignor is responsible, jointly with the assignee as the case may be, for the obligations and debts not yet due which originated prior to the assignment.

13.3. The Contract is assigned 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 in this respect; however ELIA makes every effort to inform the CAPACITY PROVIDER, as soon as possible and as far as possible, and taking into account the legal restrictions on inside information, of such a planned assignment to the abovementioned company. Any other assignment of the Contract by ELIA is not allowed.

## Article 14. MISCELLANEOUS PROVISIONS

14.1. The CAPACITY PROVIDER remains bound 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 the that Party to such clauses or to such rights and does not impact the right of said Party to invoke such provisions at a later stage or to exercise its rights.

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 e-mail to the contact details as specified in Annex B and served in accordance with what is provided in Annex B. Any change to the information contained in said Annex will take effect seven (7) Working Days after the sending of the change, without prejudice to the application of §107 of the Functioning Rules.

14.5. 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.

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 Court of enterprises 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 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 Court of enterprises 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 a concertation provided for elsewhere in the Contract, the Parties may follow the consultation procedure provided for in Section 14.2 of the Functioning. If the Parties do not reach an agreement within the deadline provided for in such concertation or consultation procedure, the most diligent Party may bring the case before the Court of enterprises or before the Disputes Committee referred to in the Functioning Rule.

ELIA

CAPACITY PROVIDER

Date:

DRAFT



## ANNEX A.1 – CONTRACTUAL PARAMETERS PER TRANSACTION

CAPACITY PROVIDER ID
CMU ID
Transaction ID
Market Type (Primary/Secondary)
ID Financial security
Contracted Capacity (MW)
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
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 (§ 72 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 FUNCTIONING AID FORM

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