

CAPACITY CONTRACT

CAPACITY REMUNERATION MECHANISM (CRM)



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 organization 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 Act of 29 April 1999 on the organization of the electricity market;

ELIA is also appointed as operator of the regional or local transmission systems in each of Belgium's regions under the electricity decrees and ordonnances in force

ELIA ensures 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 between electricity supply and demand;

In accordance with the Electricity Act, at the end of the Auction or after validation of the Transaction on the Secondary Market, the Capacity Providers sign a Capacity Contract with ELIA;

The article 7undecies, §[7] specifies that the Capacity Contract complies with the CRM Functioning Rules;

The Capacity Contract is published on the ELIA website following its approval by the CREG;



IT IS HEREBY AGREED AS FOLLOWS:**1. DEFINITIONS**

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

1	Act of 2 August 2002	The Act of 2 August 2002 on combating late payment in commercial transactions, as amended.
2	Annex	An annex to this Contract.
3	Belgian Control Area	The Control Area for which ELIA has been appointed transmission system operator in accordance with the Electricity Act.
4	(Capacity) Contract	This Capacity Contract as defined in Article 7undecies, § [7], of the Electricity Act. For the purpose of determining and ensuring the compliancy of the content of such Contract, any reference to the Contract is to be understood as referring also to the standard capacity contract.
5	Connection Contract	As defined in Article 2, §1, 9° of the Federal Grid Code and/or in the regional grid codes for distribution and local or regional electricity transmission. For the purpose of determining and ensuring the compliancy of the content of the Connection Contract, any reference to the Connection Contract is to be understood as also referring to the standard connection contract.
6	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.
7	CREG	The commission as defined in Article 2, 26° of the Electricity Act.
8	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.
9	Direct Damage	Damage caused to the other Party as the direct and immediate result of negligence by a Party, its employees, subcontractors or agents and, in the case of the CAPACITY PROVIDER, by any users of the ELIA Grid, of a Public Distribution Grid or of a Closed Distribution System (CDS) for whom it acts as a Capacity Provider. 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.
10	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.
11	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.
12	Federal Grid Code	The Royal Decree of 22 April 2019, as amended, establishing a technical regulation for the management of and access to the transmission grid.
13	Functioning Rules	The rules referred to in Article 7undecies, §8 of the Electricity Act.
14	Gross Negligence	A fault, other than a simple 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 ELIA contract in no way prejudices its interpretation as Gross Negligence in another context and the consequences that may arise therefrom.
15	Indirect Damage	Damage which, due to negligence by a Party, its employees, subcontractors or agents and, in the case of the CAPACITY PROVIDER, by any users of the ELIA Grid, of a Public Distribution Grid or of a CDS for whom it acts as a Capacity Provider, arises from specific obligations (such as penalty clauses, lump sum fines, take-or-pay clauses, etc.) of the other Party towards third parties, 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.
16	Monthly Remuneration	The remuneration described in article 5, paragraph 20 of this Contract.



17	Public Distribution Grid	The distribution grid as defined in regional regulations.
18	Simple Negligence	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 arising therefrom to be limited.

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 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 take precedence.
5. The concretisation in the Contract of a specific obligation or provision included in the Functioning Rules shall, in no way, be considered as a derogation from the obligations or provisions that 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 prevail.
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 prevail over the provisions of this Contract nor be merged with this Contract.

3. CONCLUSION OF THE CONTRACT

7. The validity period of the Contract equals a Transaction Period, including the related Pre-Delivery Period, the respective durations of which are specified, for each Contracted Capacity, in the corresponding Annex A..This validity period extends to the time needed for the performance of the obligations arising in and for the Transaction Period and its related Pre-delivery Period, in particular the confidentiality and payment obligations, after the validity period/duration of the Contract, in accordance with the relevant provisions of the Contract.
8. In the event that Additional Capacity is selected in the Auction concerned, the CAPACITY PROVIDER signs, or guarantees that the Grid Users, for whom it acts as a Capacity Provider will sign, where applicable and within timeframe as specified in the applicable Technical Regulation, a Connection Contract in accordance with the prior technical agreement included in the Prequalification File. A non-signature of the Connection Contract within the



timeframe specified in the applicable Technical Regulations constitutes a dissolving condition of the Capacity Contract, which implies the application of penalties as specified in the Functioning Rules.

9. If the CAPACITY PROVIDER is not a party to the Connection Contract, it informs the Grid Users, for whom it acts as a Capacity Provider of the impact resulting from this Contract and shall keep them informed of changes to this Contract. The CAPACITY PROVIDER undertakes all reasonably necessary efforts within the framework of its contractual relations with such Grid User(s), so that the intervention of such Grid User(s) does not constitute an obstacle or difficulty to the exercise by ELIA of its rights and obligations, as specified in this Contract towards the CAPACITY PROVIDER. If the CAPACITY PROVIDER becomes liable for a penalty due to the behaviour of its co-contracting parties, and except in case of ELIA's Gross Negligence, it is the CAPACITY PROVIDER's responsibility to seek any recourse against said co-contracting parties without other recourse against ELIA.
10. The CAPACITY PROVIDER waives, towards ELIA and within the framework of this contract, its general, specific or other terms and conditions, regardless of when and how they were transmitted.

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 it has made at least one first 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 of the validation). The Contract is signed electronically by the Parties and may cover several Transactions. Annex A, which is signed electronically, lists each of these Transactions.
12. The Contract covers one (or more) Transaction Period(s) and the respective Pre-delivery Period(s), each relating to a Transaction(s).
13. By entering into this Contract, the CAPACITY PROVIDER undertakes to ELIA to provide the Service, as specified in the Functioning Rules, throughout the concerned Pre-delivery Period(s) and Delivery Period(s).
14. The CAPACITY PROVIDER is entitled to the Capacity Remuneration when it meets its obligations as per modalities as described in article 5. This Capacity Remuneration shall be paid on a monthly basis by ELIA as described in article 6.5.
15. Any breach of the Pre-delivery and/or Availability Obligations shall be sanctioned by one or more penalties as specified in the Functioning Rules. These penalties shall be detailed by ELIA in a pre-delivery activity report for obligations related to the Pre delivery Period and in a delivery activity report for the obligations related to a Delivery Period, as 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.

5. REMUNERATION, PENALTIES AND PAYBACK OBLIGATION

5.1. Remuneration

17. The rules governing the Capacity Remuneration (« pay-as-bid » / « pay-as-cleared ») are specified in the Functioning Rules.
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.
19. The Monthly Remuneration linked to each Transaction shall be specified in a monthly statement and shall be the subject of a single monthly invoice (pro forma and later on final) by the CAPACITY PROVIDER in accordance with the modalities as described in articles 6.
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 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 of 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 the CAPACITY PROVIDER 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 relevant month.

21. Within the Delivery Period, the Monthly Remuneration can be impacted by the following elements, in accordance with the Functioning Rules:

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

5.2. Penalties and Payback Obligation

5.2.1. Financial penalties determined during the Pre-delivery Period

22. In accordance with the Functioning Rules and articles 5.3.1 and 6, as soon as ELIA identifies a Missing Volume (MW) for a Transaction and a corresponding Contracted Capacity, it shall calculate financial penalties and apply them to the CAPACITY PROVIDER.

5.2.2. Unavailability Penalties determined during the Delivery Period

23. In accordance with the Functioning Rules, as soon as ELIA identifies a Missing Capacity (MW) for a CMU and a related Transaction(s), it shall calculate Unavailability Penalties and apply them to the CAPACITY PROVIDER as set out in article 5.3.2. The Unavailability Penalties related to a CMU's Missing Capacities are cumulated by month of the Delivery Period and cumulated by Delivery Period.

24. In accordance with the Functioning Rules, as soon as ELIA identifies an Unavailability Penalty for a CMU of which at least one of its Transactions, has a Transaction Period corresponding to one (or more) full Delivery Period(s):

- The sum of the Unavailability Penalties related to the CMU's Transactions for which the Transaction Period corresponding to one (or more) full Delivery Period(s) shall not exceed, for the same month, 20% of the sum on each those Transactions of the product of the Transaction maximum Contracted Capacity on the related month by its own Capacity Remuneration for the related Delivery Period.
- And the sum of the Unavailability Penalties related to the CMU's Transactions for which the Transaction Period corresponding to one (or more) full Delivery Period(s) shall not exceed, for the same Delivery Period, the sum



on each of those Transactions of the product of the Transaction maximum Contracted Capacity on the related Delivery Period by its own Capacity Remuneration..

5.2.3. Payback Obligation determined during the Delivery Period

25. In accordance with the Functioning Rules, as soon as ELIA calculates a Payback Obligation for a Transaction, said Payback Obligation applies to the CAPACITY PROVIDER as set out in article 5.3.2 **Error! Reference source not found..**

5.2.4. Stop-Loss

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

5.3. Reports issued by ELIA

5.3.1. Pre-delivery Period

27. In the month following the performance of a pre-delivery check as described in the Functioning Rules, ELIA shall send a corresponding pre-delivery activity report to the CAPACITY PROVIDER. This pre-delivery activity report identifies the Missing Volume for each Transaction and CMU as well as the corresponding financial penalties.

5.3.2. Delivery Period

28. For each month M, ELIA shall issue for the attention of the CAPACITY PROVIDER the two (2) following documents, for each CMU and its Transaction(s) as determined in Annex A:
- On the 10th of month M+1, a monthly statement detailing at least for month M the total amount of the Monthly Remuneration as well as the detailed Monthly Remuneration for each 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) ceiling;
 - o The determined amount of the Payback Obligations and the associated Stop-Loss Amount.



5.4. Contestation

29. To be admissible, any contestation concerning the full or partial amount (whether for the Monthly Remuneration or for the penalties determined by ELIA) resulting from a monthly statement, a pre-delivery activity report or a delivery activity report (articles 5.3.1 and 5.3.2) must be sent to ELIA by email with acknowledgement of receipt within twenty (20) days from the reception date of such statement or report. The grounds for the contestation must be explained as comprehensibly and in as much detail as is reasonably possible.
30. The Parties shall negotiate in good faith with a view to reaching an agreement on the disputed amount of the pre-delivery or delivery activity report, or of the monthly statement within sixty (60) Working Days after receipt of the registered letter or email with acknowledgement of receipt.
31. In the event an agreement is reached, the new amount as agreed between Parties must be subject to an invoice or a credit note in compliance with article 6.

However, and in the event if no agreement is reached, within sixty (60) Working Days as specified in article 30:

- For the pre-delivery activity report, the disputed amount is directly paid by the CAPACITY PROVIDER to ELIA within thirty (30) days of the end of the month in which the period of sixty (60) Working Days expires, as specified in the Functioning Rules.

At the same time, the two Parties shall keep seeking an amicable solution within the sixty (60) Working Days following the end of the first period of sixty (60) Working Days. If an amicable solution is reached between Parties, the process as specified in paragraph 31 applies.

32. If an agreement has still not been reached within the periods specified in paragraphs 30 and 31 above, the Parties shall start the dispute procedure as described in article 16.
33. In the event of a partial disputed amount, (from a pre-delivery or delivery activity report or from a monthly statement), the non-contested amount must be subject to a pro forma invoice or a pro forma credit note, in compliance with article 6.



6. INVOICING AND PAYMENT

6.1. General principles

34. Depending on the period, and prior to each issue of an pro forma invoice or credit note (articles 6.3 and 6.4), ELIA publishes corresponding reports (article 5.3) :
- Pre-delivery Period:
 - o A pre-delivery activity report in M+1 about the month M concerned, issued on a case-by-case basis according to the pre-delivery tests implemented.
 - Delivery Period :
 - o A monthly statement (remuneration) on 10th M+1 of the month M concerned, published on a monthly basis.
 - o A delivery activity report on the 15th of month M+2 of month M concerned, published on a monthly basis.
35. The CAPACITY PROVIDER has the right to contest (partially or totally) the amount of each report or statement received, as specified in article 5.4.
36. Contesting the full amount related to a report or a statement prevents the corresponding invoice or credit note from being issued.
37. In case of an undisputed (or partially disputed) report or statement, the CAPACITY PROVIDER is required to issue a "pro forma" invoice or credit note in order to obtain ELIA's written validation (articles 6.3.1 and 6.4.1), prior issuing the "final" invoice or credit note.
38. For each pro forma version validated by ELIA, whether for an invoice or a credit note, it is of CAPACITY PROVIDER's responsibility to timely edit the related final versions, namely(articles 6.3.1 and 6.4.1):
- The "final" monthly invoice for the remuneration of the related Delivery Period, in compliance with the validated pro forma version (paragraph 51),
 - The "final" credit note related to the identified Missing Capacity and the corresponding penalties, and where applicable related to the Payback Obligation, either for the Pre-delivery Period or the Delivery Period, in compliance with the validated pro forma version (paragraph 51).



6.2. Invoice and credit note requirements

39. Every pro forma or final invoice or credit note issued shall contain, at least, the following information:
- Full name and address of the Party issuing the invoice or credit note and of the invoiced or credited 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 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));
 - Bank account and bank address (including IBAN and BIC) to be used to make the relevant payment;
 - Invoice number;
 - 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.
40. Every final invoice or credit note, as issued and provided by the related CAPACITY PROVIDER under this Contract, shall:
- Cover all the Transactions of which the Transaction Period is fully or partially part of the related month;
 - Be compliant with data as provided by the CAPACITY PROVIDER in its Prequalification File;
 - Be compliant with the pro forma monthly statement or pro forma invoice, as provided by the CAPACITY PROVIDER, for the related Pre-delivery Period or Delivery Period;
 - Be timely issued.
41. If any of the above information is missing or non-compliant, it shall render the pro forma invoice or credit note null and void. In this case, the invoiced or credited Party reserves the right to return the pro forma invoice or credit note to the Party that issued it within ten (10) Working Days. Returning the pro forma invoice or credit note in this way is equivalent to disputing it, without any other response being required from the invoiced Party. The Party issuing the invoice or the credit note may then send a new amended pro forma invoice or credit note.



6.3. Procedures and related deadlines during the Pre-delivery Period

6.3.1. Modalities for credit note issuance

42. Based on the pre-delivery activity report issued by ELIA (see article 5.3.1), as considered and not (or partially) contested by the CAPACITY PROVIDER (paragraphs 29 and 33), this later provides to ELIA, when required, by email and within twenty (20) Working Days from the receipt date of the report, the related pro forma credit note.
43. Such document then is subject to validation or non-validation by ELIA, through email and within ten (10) Working Days (as per requirements in article 6.1).
44. For each pro forma credit note as approved by ELIA through email, the CAPACITY PROVIDER shall send to ELIA, as soon as possible but not later than ten (10) Working Days from ELIA's email receipt date (paragraph 43), the final credit note so that the related payment could be proceeded (as per article 6.5). This corresponds to the expiry date of the credit note as issued by the CAPACITY PROVIDER.
45. For each pro forma credit note rejected by ELIA, the CAPACITY PROVIDER shall repeat the process described in articles 6.3.
46. At the request of either Party, and without prejudice to the processes provided for in articles 5 and 6, the Parties may agree to hold reconciliation meetings to help find solutions to any inconsistencies in the content and handling of credit notes.
47. Where applicable, the settlement period for each "final" credit note runs from the corresponding due date (paragraph 44).

6.3.2. In case of non-compliance of the credit note

48. In case the final credit note issued by the CAPACITY PROVIDER is not compliant with related requirements (article 6.2), ELIA is entitled to refuse the corresponding payment. It is therefore up to the party that issued the credit note to correct it as soon as possible, the payment period only running from the date of receipt by ELIA of a credit note that meets the said requirements.

6.4. Procedures and related deadlines during the Delivery Period

6.4.1. Modalities for invoice or credit note issuance

49. Based on the delivery activity report issued by ELIA (see article 2), namely the monthly statement and the delivery activity report, and as considered and not (or partially) contested by the CAPACITY PROVIDER (paragraphs 29 and 33), this later provide to ELIA, when required, by email and within twenty (20) Working Days from the receipt date of the report, the related invoice or credit note (corresponding to the non-contested amount).



50. Such document then is subject to validation or non-validation by ELIA, through email and within ten (10) Working Days (as per requirements in article 6.1).
51. For each approved pro forma invoice or credit note as approved by ELIA through email, the CAPACITY PROVIDER shall send to ELIA, as soon as possible but not later than ten (10) Working Days from ELIA's email receipt date (paragraph 50), the final invoice or credit note so that the related payment could be proceeded (as per article 6.5). This corresponds to the expiry date of the invoice or credit note as issued by the CAPACITY PROVIDER.
52. For each pro forma invoice or credit note rejected by ELIA, the CAPACITY PROVIDER shall repeat the process described in article 6.4.
53. At the request of either Party, and without prejudice to the processes provided for in articles 5 and 6 , the Parties may agree to hold reconciliation meetings to help find solutions to any inconsistencies in the content and handling of invoice or credit note.
54. Where applicable, the settlement period for each "final" invoice or credit note runs from the corresponding due date (paragraph 51).

6.4.2. In case of non-compliance of the credit note

55. In case the final invoice or credit note issued by the CAPACITY PROVIDER is not compliant with the related requirements (article 6.2), ELIA is entitled to refuse the corresponding payment. It is therefore up to the party that issued the invoice or the credit note to correct it as soon as possible, the payment period only running from the date of receipt by ELIA of an invoice or credit note that meets the said requirements.

6.5. Payment modalities

56. Final invoices shall be paid within thirty (30) calendar days from the last day of the month in which the final invoice issue date falls (see paragraph 57). The end of this period constitutes the due date of the invoice.
57. An invoice or credit note shall be deemed to have been received on the third Working Day following the date on which it was sent by email or the date by which the invoice or credit note was entered in the electronic system. The time limit for the payment of the related invoice or credit note, as specified in paragraph 56, only runs from the related receipt date.
58. Payment of the invoice shall be made by the Party issuing the invoice to the benefit of the invoiced Party, by direct transfer to the bank account indicated, within thirty (30) calendar days from the last day of the month of the date of issue of the invoice.



59. In the case of credit notes issued by the CAPACITY PROVIDER:
- during the Pre-delivery Period, payment by the CAPACITY PROVIDER shall be made within thirty (30) calendar days from the last day of the month in which the credit note issue date falls;
 - during the Delivery Period and received in month M, ELIA shall deduct the amount of the credit note from the invoices issued in M+1 or the most recent invoice issued.
60. 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.

Any late payment shall automatically and without formal notice give rise to interest on the total amount of the invoice 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.

7. LIABILITY

61. The Parties are liable to each other for the damage resulting from their fault and each undertakes to hold the other harmless against any claim and any action by third parties as provided for in this article.
62. 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.
63. Under penalty of forfeiture, any request for compensation must be sent in writing, by registered mail or by email with acknowledgement of receipt, within a period of thirty (30) calendar days from the date on which the loss occurred or the date on which the damage could reasonably have been ascertained.
64. 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 caused by a Gross Negligence committed during the period of validity of the Contract, in the course or context of this Contract or the Functioning Rules or the performance (or non-performance) thereof.
65. The amounts of the limitation of liability mentioned to in paragraph 69 of this article shall be indexed annually on the anniversary of the initial approval of this Contract, based on the consumer price index in Belgium for the month



preceding the anniversary of the initial approval of this Contract (the 'new index'). The adapted amounts shall be calculated in accordance with the following formula: the relevant amount multiplied by the new index and divided by the initial index. The initial index is the consumer price index in Belgium for the month preceding the date on which the initial approval of this Contract was decided.

66. The Parties are solely and exclusively liable to each other for damages caused by fraud, wilful misconduct or Gross Negligence under the Contract and/or the Functioning Rules and attributable to a Party. Consequently, a Party is not liable for damages resulting from a Simple Negligence or from a material defect unless it is proven that said defect is due to fraud, wilful misconduct or Gross Negligence on the part of said Party.
67. Except in cases of fraud or wilful misconduct, the Parties' liability is limited to Direct Damages, it being understood that part of these Direct Damages may also be covered or compensated by a penalty regime as provided for in the Functioning Rules. Except in cases of fraud or wilful misconduct, the Parties are not therefore liable to each other for Indirect Damages.
68. Damage incurred by a third party with whom ELIA has concluded a contract in accordance with one of the standard contracts referred to in a Technical Regulation, due to a lack of capacity caused by fraud, wilful misconduct or Gross Negligence by the CAPACITY PROVIDER within the framework of the Contract, constitutes Direct Damage against which the CAPACITY PROVIDER guarantees ELIA.
69. Further, a Party's liability for Gross Negligence is limited to twice the Capacity Remuneration multiplied by the corresponding Contracted Capacity, as set out in Annex A of the Contract, per claim and per calendar year, up to, when the offending Party is ELIA, a maximum of EUR 12,500,000 (twelve million five hundred thousand euros) per claim and per calendar year. For the avoidance of doubt, it is specified that the penalties provided for in the Functioning Rules are not subject to the limits specified in this article.
70. Without prejudice to the application of penalties, the claims of the Parties and of third parties shall be settled in proportion to the damage they have incurred.
71. Except in case of Gross Negligence, under no circumstances may a Party 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.
72. Except in case of Gross Negligence, ELIA can never be held liable for discussions or disputes between the CAPACITY PROVIDER and one or several Grid Users, with whom the CAPACITY PROVIDER cooperates to form a CMU, and which have their origin in the internal relationship between the CAPACITY PROVIDER and these Grid Users.



8. FORCE MAJEURE

73. 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, in the event of force majeure which wholly or partially prevents them from performing their obligations under this Contract, 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 last for the duration of the force majeure event.
74. 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, is not attributable to any fault on the part of the Party, cannot be avoided or overcome in spite of all reasonable due diligence or preventive measures, cannot be corrected by measures that would be reasonable in technical, financial or economic terms for the Party to undertake, has actually occurred and is objectively verifiable, thus temporarily or permanently preventing the Party from fulfilling its obligations under this Contract.
75. The use of market mechanisms (such as imbalance tariffs, or the application of high tariffs in normal market conditions) cannot be classified as force majeure.
76. The following situations, among others, shall be considered as force majeure only insofar as they meet the conditions of force majeure set out in the paragraph 74:
- 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 grid or of 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 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 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 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.

77. For the purposes of this Contract and without prejudice to other delays caused by force majeure, a delay on the part of the CAPACITY PROVIDER in obtaining the necessary permits or authorisations for the establishment, construction or operation of a CMU does not constitute a case of force majeure.
78. The Party that invokes a situation of force majeure shall inform the other Party as soon as possible by email or phone 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.
79. 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 towards the other Party and to once again fulfil said obligations.
80. If the situation of force majeure persists for thirty (30) successive days or more and one of the Parties, as a result of the force majeure situation, is unable to fulfil its essential obligations under the Contract, the other Party may terminate the Contract with immediate effect by sending a registered letter setting out the reasons for the termination, or by sending a motivated email with acknowledgement of receipt.



9. CONFIDENTIALITY

9.1. Non-disclosure of confidential information

81. 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 to give evidence in court or in its relations with the competent regulatory, administrative and judicial authorities. The Parties shall, as far as possible but with the exception of disputes between them, inform each other of the situation 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 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 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.



82. This article is without prejudice to the specific dispositions 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.
83. A Party shall 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.
84. 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.
85. 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.

9.2. Breaches of confidentiality obligations

86. Any breach of this confidentiality obligation shall be considered as Gross Negligence on the part of the Party that violates said obligation. Such a breach shall give rise to compensation for any Direct or Indirect Damage, (notwithstanding paragraph 67) that the other Party can demonstrate, subject to the ceilings provided for in paragraph 69.

9.3. Ownership

87. Each Party retains full ownership of any 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.

9.4. Duration

88. 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.



10. PROCESSING OF PERSONAL DATA (GDPR)

10.1. Data controllers

89. The personal data processed by the Parties within the framework of this Contract shall be processed in accordance with the Data Protection Legislation. The definitions contained in the Data Protection Legislation apply to this Contract.

Under this Contract, each Party acts as a Data Controller and neither Party acts as a Processor for the other Party.

10.2. Legal basis

90. The processing of personal data collected by the Parties in their capacity as Data Controllers (hereinafter 'Processed Personal Data') shall be based on the performance of this Contract and on compliance with the applicable regulations, in particular the Act of 29 April 1999 on the organisation of the electricity market and introducing a capacity remuneration mechanism.

10.3. Purposes of data processing and data security

91. Personal data shall be processed by the Data Controllers for the following purposes:
- performance of this Contract;
 - compliance with applicable regulations.

The Data Controllers undertake, without limitation, to take (or cause to be taken) all reasonable measures to guarantee the protection of Processed Personal Data by means of technical security rules and an adequate security policy against loss, destruction, alteration, unauthorised access to or use of Processed Personal Data or unauthorised processing thereof by their employees.

10.4. Processed Personal Data

92. The following personal data shall be processed by the Data Controllers:
- all the data appearing in this Contract (surname, first name, address...);
 - any contact details needed for the performance of the Contract (email address, telephone number, etc.);



- any other personal data needed for the performance of the Contract (invoicing data, bank details, etc.);
- any personal data transmitted through the CRM IT Interface.

The Parties shall ensure that the personal data they provide are accurate and complete.

10.5. Data transfer

93. Personal data processed under this Contract shall be processed and stored within the European Union (EU) and not transferred outside the EU.

10.6. Data storage period

94. Processed Personal Data shall be stored only for as long as is strictly necessary for the performance of this Contract and/or for the legal storage periods. At the end of the Contract, the processed data shall be temporarily archived due to (i) a legal obligation to store data for a fixed period or (ii) an administrative purpose justifying their storage on legal grounds (e.g. for tax purposes). In any event, the data shall be erased no later than twelve (12) years after the Transaction Period.

10.7. Rights of data subjects

95. In accordance with the Data Protection Legislation, data subjects (i.e. those whose personal data are processed) have 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 data (if the legal conditions are met), and the right to portability of their data (if the legal conditions are met).

The Parties shall do their utmost to facilitate the exercise of these rights, and shall immediately authorise the exercise thereof when contacted as follows:

For the CAPACITY PROVIDER: contact (...)

For ELIA: contact (...)

96. Data subjects can 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

97. In the event of a breach of Processed Personal Data or the threat of such a breach (hacking, data leakage, loss, etc.), the Data Controllers shall notify each other of the breach or threatened breach in writing without delay, and no later than twenty-four (24) hours after becoming aware of it.

10.9. Processing by third parties

98. The Data Controllers shall not transmit Processed Personal Data to third parties, except for communications that are required by law, the legitimate interest of the Parties, the performance of this Contract and, in ELIA's case, the performance of its 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 data are relevant and necessary for the purposes of said communications. The data may also be transmitted to processors of the Parties (such as IT and accounting service providers, legal advisers, contractual partners, etc.). The Parties shall conclude a personal data processing contract with their subcontractors for this purpose.

These data shall be processed by the Data Controllers' in-house teams as well as by their subcontractors and partners responsible for performing obligations under this Contract or the applicable regulations.

The Parties, in their capacity as Data Controllers, are not liable for the processing of personal data carried out by third parties, with the exception of processing carried out by their own subcontractors.

99. To find out more about the processing of Processed Personal Data, the Parties can consult the *Data Protection Policy* available:

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

For ELIA: at <https://www.elia.be/en/privacy-policy>

In the event of any contradiction between these Policies and this clause, the provisions of this clause shall take precedence.



11. OBLIGATION TO INFORM

100. Provided that this does not contravene their legal or contractual confidentiality obligations, the Parties undertake, for the duration of this Contract, to inform the other Party 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.

12. REVISION OF THE CONTRACT

101. This Contract may only be amended in the following circumstances:

- a. In the event that a public authority takes measures beyond the control of the Parties;
- b. If there is a major change to one or more rules, recommendations and/or procedures at regional or federal level in Belgium or within regional or pan-European collaborations, concerning the subject matter of the Contract, in order to adapt the Contract in line with the changes made to the rules, recommendations and procedures at regional or federal level in Belgium or within regional or pan-European collaborations;
- c. If legal or regulatory requirements make it necessary to revise the Contract.

102. To this end, in the case of provisions of this Contract over which CREG has power of approval, ELIA shall analyse the changes to be made to these provisions and, after consulting Grid Users, submit them to CREG for approval. Once CREG has approved the draft changes to the Contract, including the proposed date for their entry into force, the changes shall take effect as stipulated in the amended Contract.

103. The Party which, for reasons stated in paragraph 101 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 amended or revised with respect to individual elements, shall:

1. inform the other Party which individual provisions or elements of the Contract it is asking to have amended or revised;
2. inform the other Party of the reasons why it is asking for said amendment or revision; and
3. make a specific proposal concerning the amendment or revision, including a proposal for a new clause.

As soon as possible and at the latest within twenty (20) Working Days following receipt by the other Party of the request for amendment or 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 elements of the Contract which are the subject of the request for amendment or revision. In so doing, and within the limits of paragraph 103, both Parties wish to uphold and respect the principles of collaboration set forth in the Contract as originally signed.

104. If within thirty (30) Working Days following the first meeting concerning the amendment or revision of individual provisions or elements in all or part of the Contract the Parties have been unable to reach an agreement the dispute settlement procedure set out in article 16 shall be applied.

The competent court may, 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.

105. The revision referred to in this article 12 is without prejudice to 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, and to the application of the second paragraph of this article and of article 13 .

106. The CAPACITY PROVIDER confirms that it is aware of the fact that under no circumstances will ELIA be able to accept changes to the Contract which would entail discrimination against other Capacity Providers or electricity market players.

107. If ELIA finds, before the Delivery Period, that the Infrastructure Works identified in the technical agreement signed when a Prequalification File was submitted have been or will be delayed due to a delay in obtaining executable permits or authorisations necessary for the establishment, construction or operation of infrastructure, said delay being outside the control of the operator of said infrastructure, ELIA shall 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 year.

No compensation shall be payable by ELIA to the CAPACITY PROVIDER following the application of this operational procedure.



13. EARLY SUSPENSION AND TERMINATION BY ELIA

108. Without prejudice to the penalty and liability regime, the Contract may be suspended or terminated unilaterally by ELIA without prior judicial intervention, on the one hand, in the cases of suspension and termination provided for in the Functioning Rules and, on the other hand, in the event that the CAPACITY PROVIDER fails to rectify an act of Gross Negligence, within thirty (30) Working Days after receipt by the defaulting CAPACITY PROVIDER of a registered letter or email with acknowledgement of receipt reporting the Gross Negligence and notifying the CAPACITY PROVIDER that the Contract will be suspended or terminated without further notice if the aforementioned violation or Gross Negligence is not fully rectified by the specified deadline.

The period of thirty (30) Working Days may be extended by the affected Party. The Contract shall be suspended or terminated subject to any legal action available to ELIA with regard to the defaulting CAPACITY PROVIDER, including a claim for damages.

14. TRANSFER OF CONTRACT

109. The rights and obligations stipulated in this Contract may not be transferred by the CAPACITY PROVIDER, either in whole or in part, without prior written permission from ELIA. Said permission 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 transfer relates to all the Transactions associated with a CMU or with linked CMUs (one or more Transaction(s));
- 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) an '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.

110. 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.

111. The Contract must not be assigned by ELIA without the consent of the CAPACITY PROVIDER 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 make 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.

15. MISCELLANEOUS PROVISIONS

112. The CAPACITY PROVIDER remains bound by the information and data that it provided as part of the CRM process.
113. The fact that one of the Parties waives the application of one or more clauses of the Contract, whether permanently or temporarily, shall under no circumstances be considered as a waiver of the rights of that Party arising from said clause or clauses.
114. 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.
115. Any notification required by the Contract shall be addressed to the related contact persons as detailed 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.
116. 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.
117. 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.

16. APPLICABLE LAW - SETTLEMENT OF DISPUTES

118. The Contract is governed by and interpreted in accordance with Belgian law.
119. 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 be referred to the competent court of the district of Brussels.

120. 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. The Parties shall organise a consultation meeting within ten (10) days of receipt of a registered letter or 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
Transaction Period
Transaction Date
Transaction Validation Date
doneCalibrated 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*	

