

# **PROPOSAL OF 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 731.852.231 and represented by its duly authorised agents XXX and XXX,

hereinafter referred to as 'ELIA',

and

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

hereinafter referred to as the 'CAPACITY PROVIDER',

ELIA and the CAPACITY PROVIDER being together referred to as the 'Parties'.



## WHEREAS:

ELIA operates the ELIA grid, over which it has an ownership right or at least a right of use (hereinafter referred to as the 'ELIA Grid');

- ELIA was appointed as transmission system operator in accordance with the Act of 29 April 1999 on the organisation of the electricity market (hereinafter the 'Electricity Act'); This appointment was made under the Ministerial Decree of 13 January 2020 appointing Elia Transmission Belgium SA/NV as system operator in accordance with Article 10 of the Electricity Act :
- ELIA is also appointed as operator of the regional or local transmission systems in each of Belgium's regions under the electricity decrees and ordinance in force;
- ELIA is 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;
- Within the boundaries of the financial means put at the disposal of Elia in the framework of the Electricity Act, ELIA shall pay the remuneration due to the CAPACITY PROVIDER;
- 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 the 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.
4.	CREG	The commission as defined in article 2, 26° of the Electricity Act.
5.	ENTSO-E	The European Network of Transmission System Operators for Electricity, referred to in article 28 of Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity.
11.	Act of 2 August 2002	The Act of 2 August 2002 on combating late payment in commercial transactions, as amended.



12.	Applicable Grid Codes	<ul style="list-style-type: none"> <li>• The Royal Decree of 22 April 2019 establishing a grid code for operating the electricity transmission system and access to it, also referred to hereafter as Federal Technical Regulation;</li> <li>• The grid code of 29 May 2020 for local electricity transmission system, approved by VREG decision (BESL-2020-11) (BM of 16/06/2020) and entered into force on 26 June 2020;</li> <li>• The grid code of 20 May 2019 for electricity distribution approved by VREG decision (BESL-2019-60) (BM of 14/10/2019) and entered into force on 24 October 2019;</li> <li>• The Walloon government order of 26 January 2012 relating to the revision of the grid codes for the management of and access to the local electricity transmission network in the Walloon Region;</li> <li>• The Walloon Government Order of 3 March 2011 approving the grid codes for the management of and access to electricity distribution networks in the Walloon Region;</li> <li>- The Decree of the Government of the Brussels-Capital Region of 13 July 2006 approving the grid codes for the management of the regional electricity transmission network; and The grid codes for the management of and access to the electricity distribution network in the Brussels-Capital Region, approved by Brugel's decision of 5 December 2018 (BM of 05/02/2019) and coming into force on 1 January 2019 (with the exception of Article 267ter, which will come into force on the date set by Brugel),</li> </ul> <p>each as amended.</p>
13.	Functioning Rules	The rules referred to in Article 7 <i>undecies</i> , §12 of the Electricity Act.
14.	Monthly Remuneration	The remuneration described in article 5, paragraph 5.1.5 of this Contract.
17.	Control Area	The area in which the system operator oversees a permanent balance between electricity supply and demand, taking into account active power exchanges between areas.



18.	Belgian Control Area	The Control Area for which ELIA has been appointed system operator in accordance with the Electricity Act.
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## Article 2. INTERPRETATION

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

## Article 3. CONCLUSION OF THE CONTRACT

- 3.1. The validity period of the Contract corresponds to (a) Transaction Period(s) and the associated Pre-delivery Period(s) the respective durations of which are specified, for a Contracted Capacity of a CMU, or for CMUs related to Linked Capacities, or for a Contracted Capacity for a set of CMUs which do not exceed 5MW 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 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 a CMU of the scope of the provisions of the present Contract and, when applicable, of any related amendments to this Contract. The CAPACITY PROVIDER makes all efforts reasonably necessary in the context of its contractual relations with such 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. The CAPACITY SUPPLIER may not rely on behaviour attributable to the said Grid User(s) or CDS User(s), for which it acts as Capacity Supplier to constitute a CMU, which is the cause of the Missing Volume, to avoid the application of the financial penalty resulting from the Missing Volume recorded in the pre-supply activity report, respectively at



the origin of the Missing Capacity, to avoid the application of the Unavailability Penalty resulting from the Missing Capacity recorded in the supply activity report.

- 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 during the concerned Delivery Period(s). Such form indicates all functioning aid measures of which it waives the benefit from. The CAPACITY PROVIDER undertakes not to claim the right to functioning aid for the Delivery Period(s) concerned.

## Article 4. SUBJECT MATTER OF THE CONTRACT

- 4.1. The Contract covers the rights and obligations of ELIA and of the CAPACITY PROVIDER for a CMU, or for CMUs related to Linked Capacities, or for a Contracted Capacity for a set of CMUs which do not exceed 5MW, as described in the Functioning Rules pursuant to Article 7undecies §11 of the Electricity Act, 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 within ten (10) Working Days the validation). The Contract is signed electronically by the Parties and may cover several Transactions. For each validated Transaction, an Annex A.1 is created (after amendment, as the case may be) 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. The Contract covers one (or more) Transaction Period(s) and the respective Pre-delivery Period(s), each relating to one Transaction.
- 4.3. By entering into this Contract for one or more Transactions, the CAPACITY PROVIDER undertakes to provide the Service, as specified in the Functioning Rules, throughout each Transaction Period and, as the case may be, throughout each Pre-Delivery Period associated to it.
- 4.4. As a counterpart to the Service 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.
- 4.5. 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 Article 5.3.



- 4.6. 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. In order to allow the payment of the Monthly Remuneration as from the first Month of the Transaction Period and awaiting the final invoicing based on the statement mentioned in paragraph 5.1.4, the CAPACITY PROVIDER is entitled to a down payment on this Monthly Remuneration which is the object of an ex ante final invoicing which is not based on the statement mentioned in paragraph 5.1.4, but on the following amount: the sum of the number of days in the concerned month, limited to the Transaction period for the Contracted Capacity of the Transaction multiplied by the Capacity Remuneration for the Transaction, divided by the number of days of the delivery period for the month concerned. The ex ante invoice is paid according to the modalities set forth in article 6, except in case of contestation within 10 Working Days of the invoice for reasons of non-compliance, and subject to the statement mentioned in paragraph 5.1. In case of contestation, the ex ante invoice is subject to a credit note and the CAPACITY PROVIDER must await the statement mentioned in paragraph 5.1.4 to invoice the Monthly Remuneration. Considering that the down payment on the Monthly Remuneration for one or several Transactions based on one or several transactions on the Secondary Market, the Delivery Period of which starts in month M, necessitates an invoice sent to ELIA at the latest 2 Working Days before the Month M to which said Transaction(s) relate(s), such Transaction(s) is (are) only eligible for payment within the Month M if such Transaction(s) has (have) been validated at the latest 5 Working Days before Month M. Non-compliance of an invoice is appreciated in respect of the requirements set forth for issuing an invoice mentioned in paragraph 6.1, to the number of days applicable to the Transaction(s) limited to the duration of Month M and to the reductions, if any, of the Monthly Remuneration mentioned in paragraph 5.1.5 as sent by ELIA to the CAPACITY PROVIDER before the ex ante invoicing.
- 5.1.4. The Monthly Remuneration which is linked to each Transaction is specified in a monthly statement prepared by ELIA and is subject to an invoice or corrective credit note (relating to the ex ante invoicing covering the set of Transactions (pro forma and later on final) issued by the CAPACITY PROVIDER as described 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:

*Monthly Remuneration (Transaction<sub>id</sub>, 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<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 in a Transaction Period for the relevant month;
- *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* is the number of hours in the Delivery Period during 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 Capacity Remuneration as provided for during the Delivery Period;
- 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) for a Transaction and a corresponding Contracted Capacity, ELIA applies financial penalties to the CAPACITY PROVIDER as set out in article 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 the Transaction Period linked to a Transaction mentioned in Annex A.1 a Missing Capacity (MW) for the related CMU(s), ELIA applies the Unavailability Penalties to the CAPACITY PROVIDER, for the relevant month, as set out in article 5.3.2 and article 6.

5.2.2.2. The total amount of the Unavailability Penalties of a CMU, that a CAPACITY PROVIDER may be applied for a CMU, both on a monthly and annual basis, for its Transaction(s) on the Primary Market or Transaction(s) on the Secondary Market covering one (or more) full Delivery Period(s), is limited in accordance with the Functioning Rules, section 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 article 5.3.2.

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 Chapter 8 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 (second) pre-delivery test, as chosen by the CAPACITY PROVIDER.



- If the CMU is an Additional and Virtual CMU : ELIA communicates this report to the CAPACITY PROVIDER within twenty (20) Working Days from the moments of the  $t_{control\ 1}$  and/or  $t_{control\ 2}$  test, as specified in the Functioning Rules, sections 8.4.

### 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 a CMU as determined in Annex(es) A.1, the following two (2) documents:

- 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 as the case may be details of the down payment on the Monthly Remuneration which has been the object of a final ex ante invoicing based on paragraph 5.1.3;
- 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:
  - The Available Capacity of the CMU;
  - As the case may be, the determined Missing Capacity;
  - As the case may be, the determined amount of Unavailability Penalties and the associated monthly (penalty) cap;
  - As the case may be, the determined amount of the Payback Obligations and the associated Stop-Loss Amount.

### 5.4. Contestation

5.4.1. To be admissible, any contestation concerning the full or partial amount (whether for the Monthly Remuneration or for the penalties and Payback Obligations determined by ELIA), resulting from the monthly statement or respectively from the pre-delivery/delivery activity reports as specified in articles 5.3.1 and 5.3.2, are to be sent to ELIA by email, with acknowledgement of receipt, within twenty (20) Working Days from the receipt of the said report or statement. Such email contains the grounds for the objection, which must be explained as comprehensibly and in as much detail as possible.

5.4.2. The Parties negotiate in good faith with a view to reaching an agreement on the disputed amount of the monthly statement, of the pre delivery/delivery activity report, within sixty (60) Working Days after receipt of the email as specified in paragraph 5.4.1. The results of a (second) pre delivery test which will be organized as the case may be in accordance with section 8.4.4.2 of the Functioning Rules will be taken into account.



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

However, and in accordance with the Functioning Rules, sections 8.4.4.2, 9.6.3 and 12.4.5, in the absence of partial or total agreement between the Parties on the amount of the Monthly Remuneration, penalties and Payback Obligations resulting respectively from the monthly statement or the pre-delivery/delivery activity reports, within the sixty (60) Working Days as referred to in paragraph 5.4.2:

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

5.4.4. 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 5.4.3. In case an amicable agreement is reached between the Parties, this agreement will result, where applicable, in a corrective invoice related to the amount that was the subject of the credit note, in accordance with article 6. Any agreement must comply with the Functioning Rules.

5.4.5. If an agreement has still not been reached after the sixty (60) Working Days as specified in paragraph 5.4.4, the Parties start the dispute procedure as described in Article 16.

## Article 6. INVOICING AND PAYMENT

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

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 of the invoiced Party, respectively 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 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 to the statement, the activity report, the agreement or contestation or any other reference required in advance by ELIA;
- Payment deadline in accordance with article 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 Article 6.2.

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

6.2.1. On the basis of the monthly statement or the pre-delivery/delivery activity report as issued by ELIA, and without prejudice to paragraph 5.1.3, the CAPACITY PROVIDER issues to ELIA, where applicable, by email or via the CRM IT Interface, and within twenty (20) Working Days after receipt of this report or statement, or, in case this report or statement is contested by the CAPACITY PROVIDER, following the agreement (total or partial) reached within or at the expiry of the period of sixty (60) Working Days set forth in Article 5.4.2, the corresponding pro forma invoice or credit note which shall, for what concerns the Monthly Remuneration, take into account and correct the invoice for the down payment of the Monthly Remuneration. In case of disagreement (total or partial), a separated pro forma invoice or credit note will be sent, by e-mail or via the CRM IT Interface within twenty (20) Working Days following the lapsing of the deadline of sixty (60) Working Days mentioned in paragraph 5.4.2, by the CAPACITY PROVIDER to ELIA. Any invoice or credit note will refer to the agreement (total or partial) or to the contestation.

6.2.2. 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 article 6.1.

6.2.3. 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 6.2.2).

6.2.4. For each pro forma credit note or invoice rejected by ELIA, the CAPACITY PROVIDER is invited to follow again the process described in paragraph 6.2.1.



- 6.2.5. 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.
- 6.2.6. 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 invoice or an offsetting 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.
- 6.2.7. 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 6.2.1, respectively paragraph 6.2.3 :
- 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.
- 6.2.8. 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 6.3.3 and for the application of the Financial Securities referred to in the said Functioning Rules.
- 6.2.9. For information purposes, 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)(§6.2.1 &amp; 6.2.3)</i>	<i>Corrective invoice or credit note, accompanied, if necessary, by a credit note or invoice offsetting the incorrect amount (§6.2.6)</i>	<i>Fallback system: Invoice or credit note (pro forma and final) in replacement (to be issued by ELIA) (§6.2.7-6.2.8)</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</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)</i>	<i>Down payment on the Monthly Remuneration (due by ELIA)</i>	<i>Ex ante invoice</i>	<i>/</i>	<i>/</i>
<i>Delivery period</i>	<i>Settlement (§5.3.2)</i>	<i>Monthly Remuneration (due by ELIA)</i>	<i>Invoice or credit note (corrective toward the ex ante invoice)</i>	<i>Offset credit note and corrective invoice</i>	<i>Credit note</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</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>Credit note</i>	<i>Offset invoice and corrective credit note</i>	<i>Invoice</i>

### 6.3. Payment modalities

6.3.1. Based on the means provided for in article 7undecies§15 of the Electricity Act, ELIA proceeds with the payment of final invoices from 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 6.2.1), by direct transfer of the amount invoiced to the bank account indicated.

6.3.2. In the case of final credit notes issued by the CAPACITY PROVIDER:

- 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 from the 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.
- From a general standpoint, in case of contestation, the separate credit note covering financial Penalties, unavailability Penalties and Payback Obligation and occurring after the first period of 60 Working Days mentioned in paragraph 5.4.2 keeps the due date resulting from the terms of paragraph 6.3.1 even if the Functioning Rules do not explicitly foresee that it already has to be paid to ELIA.



- 6.3.3. 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 described in the Functioning Rules, the due date being the one resulting from paragraph 6.3.1.
- 6.3.4. Without prejudice to paragraph 6.3.3, 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.
- 6.3.5. Should ELIA notice a lack of financial means necessary to fulfil its obligations deriving from article 6 of the Contract, it shall inform the CREG, the Energy Ministry and the CAPACITY PROVIDER. If, after the expiration of a 3 months deadline as from the notice, ELIA still does not has the appropriate financial means available, Elia informs the CREG, the Energy Ministry and the CAPACITY PROVIDER that the payments will be made pro rata to the available amounts. As soon as Elia again has the necessary amounts available, the payments are regularized.

## 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. Subject 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. When provided for in the Functioning Rules, Penalties constitute the only financial sanction upon the CAPACITY PROVIDER in the event that it breaches its obligations. However, ELIA will be entitled to 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 a CMU, 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. 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 sections 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 a CMU 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 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; and
- the situation in which a competent authority imposes exceptional and temporary measures on CAPACITY PROVIDERS, Grid Users, CDS Users 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.

It is understood that the non-compliance, not due to a case of Force Majeure described above, by a public authority of the deadlines including for providing opinions or the granting of permits and authorizations necessary for the Project Works or for the Infrastructure Works, or the actions or recourses of local residents or action committees against these permits or authorizations do not constitute a cause of Force Majeure.

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. 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, will be treated by both ELIA and the CAPACITY PROVIDER as confidential information. Such information shall not be communicated or disclosed to third parties unless:
- communication or disclosure is mandatory in the context of the CRM (e.g. in the context of the communication with the regulator) or required under the transparency obligations under the Functioning Rules, this Contract or by other legal or regulatory obligations; or
  - prior written permission has been obtained from the disclosing Party; or
  - such information at the time of disclosure by the disclosing Party to the receiving Party is within the public domain, or after such disclosure becomes a part of the public domain through no fault of the receiving Party; or
  - a party is called upon to testify in court, before the CRM Disputes Committee or in its relations with the competent regulatory, administrative and judicial authorities; or
  - communication of the information is essential for the performance of contracts concluded or to be concluded with suppliers of goods and services, including within the framework of this Contract or, with regard to ELIA, of its transmission system development, maintenance and operation tasks, 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 grant it the same degree of confidentiality as provided for in this clause; or

- the information is already lawfully known by a Party at the time of the communication and has not been communicated previously by the disclosing Party, directly or indirectly, or by a third party, in breach of a confidentiality obligation; or
- the information, after being communicated, has been brought to the attention of the receiving Party and/or its staff and agents by a third party, without breaching a confidentiality obligation with regard to the disclosing Party.

In addition, ELIA is entitled to communicate or disclose the information, in concertation 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 provided that the recipient of the information undertakes to grant it the same degree of confidentiality as ELIA.

- 9.2. This section is without prejudice to the specific legal and regulatory provisions relating to the confidentiality obligation applicable to ELIA.
- 9.3. ELIA and the CAPACITY PROVIDER shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of confidential information of the other Party. ELIA and the CAPACITY PROVIDER shall take the measures necessary to ensure that this confidentiality undertaking is also strictly observed by their employees, as well as by any person who is not an employee but for whom ELIA or the CAPACITY PROVIDER is nevertheless responsible to the other Party and has received the confidential information on a strict need-to-know basis.
- 9.4. Each Party retains full ownership of every information, even if it has been communicated to other parties. ELIA and the CAPACITY PROVIDER agree to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of confidential information of the disclosing Party which may come to the receiving Party's attention.
- 9.5. The confidentiality obligation shall last for five years after the termination of the Contract.
- 9.6. 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. PROCESSING OF PERSONAL DATA (GDPR)

- 10.1. In the context of the CRM, ELIA and the CAPACITY PROVIDER shall process personal data in accordance with the Data Protection Legislation. The definitions set out in the Data Protection Legislation are applicable to the corresponding terms in the Functioning Rules.



10.2. ELIA and the CAPACITY PROVIDER act as separate data controllers for the personal data that they process in the context of the CRM.

10.3. Information about the processing of the personal data by ELIA in the context of the CRM is set out in its privacy policy available on its website.

10.4. The CAPACITY PROVIDER, hereby:

- warrants and guarantees that all personal data it provides to ELIA in the context of the CRM are accurate, complete and kept up to date, and that it shall inform ELIA without undue delay if it becomes aware that the personal data it has transferred are inaccurate, or have become outdated;
- warrants and guarantees that it lawfully holds and is entitled to transfer these personal data to ELIA;
- warrants and guarantees that it (i) shall duly inform the data subjects concerned in accordance with Data Protection Legislation that their personal data may be transferred to ELIA in the context of the CRM, and that it shall hereby include a reference to ELIA's privacy policy, and (ii) shall provide ELIA, upon request, evidence demonstrating that the data subjects have been duly informed in accordance with this article.

## Article 11. OBLIGATION TO INFORM

11.1. 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 12. REVISION AND AMENDMENT OF THE CONTRACT AND OF THE STANDARD CAPACITY CONTRACT

12.1. This Contract or the provisions of the standard capacity contract on which this Contract is based may be revised, pursuant to the modalities set forth in paragraphs 12.3 and 12.4, in the cases set forth in the Electricity Act, its implementing Decrees or the Functioning Rules and in the event that a regional, federal, or European authority, or a European or regional collaboration structure imposed by European regulations, takes measures or imposes decisions, orders, rules, procedures, opinions, recommendations, legal, regulatory or statutory requirements – or omits to take them while it was under the obligation to do so - that are beyond the control of the Parties and which make it necessary to revise the Contract;

12.2. The provisions of the standard capacity contract on which this Contract is based may be modified on the basis of a proposal from ELIA according to the process described in paragraph 12.3



12.3. In the case of conditions of the standard capacity contract on which is based this Contract, over which CREG has power of approval, pursuant to 7undecies, § 11 of the Electricity Act, ELIA analyses the changes to be made to the Contract and, after consulting markets parties, submit them to CREG for approval. Once CREG has approved the changes to the standard capacity contract, including the proposed date for their entry into force, and where applicable specified in this approval decision, the scope *ratione materiae* and *temporis* of this new standard capacity contract, ELIA determines whether or not the provisions of the Contract should be replaced by those of the new standard capacity contract and, as the case may be, these provisions of the new standard capacity contract effecting the revision of the Contract take effect according to the terms and conditions indicated in the amended standard capacity contract or in the decision of the CREG.

12.4. The Party which, for reasons stated in paragraph 12.1 of this article or as a consequence of amendments to the standard capacity contract on which this Contract is based, and subject to providing proof that it is suffering serious and lasting economic damage in the performance of its contractual obligations, wishes to have the Contract revised with respect to individual provisions or elements, inform the other Party through letter or email with acknowledgement of receipt :

1° Of individual elements of the Contract it is asking to have revised;

2° Of the reasons why it is asking for said revision; and

3° Make a specific proposal concerning the revision, including a proposal for a new element.

As soon as possible and at the latest within twenty (20) Working Days following receipt by the other Party of the request for revision of individual elements or provisions of the Contract, the Parties consult each other and make every effort to, as necessary, supplement, amend, revise or replace with appropriate alternatives the provisions or elements of the Contract which are the subject of the request for revision. ELIA cannot, under any circumstances, accept amendments to the Contract which would cause discrimination towards other capacity providers or electricity market players, nor accept an amendment of the Remuneration. The amended Contract shall be notified to the CREG as part of its task of monitoring compliance with the Electricity Act, the decrees issued in implementation of this Act, the functioning rules and the standard capacity contract.

If within thirty (30) Working Days following the first meeting concerning revision of individual provisions or elements of the Contract the Parties have been unable to reach an agreement, the Contract may be terminated by the most diligent Party in accordance with the procedures set forth in Article 13.

12.5. 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, downwardly revising the Capacity Remuneration or rejecting the intermediate price cap derogation request cannot constitute a ground for requesting a revision of the Contract.

12.6. If ELIA finds, before the Delivery Period, that the Infrastructure Works identified in the technical agreement signed as provided in the Prequalification File have been or will be delayed, ELIA notifies the CAPACITY PROVIDER of this in accordance with the relevant operational procedure provided for in the Functioning



Rules, indicate the impact of the delay and amend the Contract accordingly by postponing the start of the Delivery Period of the Transaction(s) concerned by one (1) year.

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

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.

12.7. For the purposes of this Contract and without prejudice to cases caused by Force Majeure, it is clarified that insofar as the Contract relates to an Additional CMU for which the Permitting Milestone is relevant to the Works linked to the Project concerned and has not yet been reached at the time of the control  $t_{\text{contrôle 1}}$ , and in accordance with section 8.4.3.2 of the Functioning Rules :

- ELIA shall apply at the time of control  $t_{\text{contrôle 1}}$ , of the financial penalty, whose parameter  $\beta$  referred to in Section 8.4.3.1 of the Functioning Rules is equal to 20,000 €/MW, if, following the control  $t_{\text{contrôle 1}}$ , the CAPACITY SUPPLIER has not demonstrated to ELIA that it has made every effort to reach the Permitting Milestone.
- ELIA shall apply at the time of control  $t_{\text{contrôle 1}}$ , of the financial penalty, whose parameter  $\beta$  referred to in Section 8.4.3.1 of the Functioning Rules is equal to 10,000 €/MW, if, following the control  $t_{\text{contrôle 1}}$ , the CAPACITY SUPPLIER has demonstrated to ELIA that it has made every effort to reach the Permitting Milestone. In the case of a second and third application of the financial penalty at the time of control  $t_{\text{contrôle 1}}$ , the parameter  $\beta$  referred to in section 8.4.3.1 of the Functioning Rules and used for the calculation of the financial penalty will not exceed 10,000 €/MW.

In both cases :

- This financial penalty of an Additional CMU may be applied by ELIA a maximum of three consecutive times on the same Total Contracted Capacity of the CMU, provided that the CAPACITY SUPPLIER has not notified its intention to terminate the Contract after each application of the said financial penalty. In this case, the Contract shall be terminated subject to the suspensive condition of full payment of the financial penalty concerned.
- Unless the CAPACITY SUPPLIER gives notice of termination of the Contract, the initial Transaction Period(s) shall be reduced, for the Missing Volume, by the entire duration of the first Delivery Period covered by this (these) Transaction(s) and the Contract shall be amended accordingly, it being understood that in the specific situation where the (remaining) Transaction Period, before the application of the mechanism described in the above paragraphs, is equal to





one year and if the Missing Volume corresponds to the Pre-Delivery Obligation, the Capacity Contract is terminated

## Article 13. EARLY SUSPENSION AND TERMINATION

- 13.1. 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 Functioning Rules and in the other provisions of this Contract or in this Article. However, insofar as the Functioning Rules foresee a suspension or termination of the Contract for reasons that only concern one CMU, such suspension or termination only covers the Transaction linked to this CMU and not other CMUs or other Transactions. 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.
- 13.2. ELIA may suspend or one or more of the specific Transaction(s) concerned listed in Annex(es) A.1 when ELIA finds that the CMU's Contracted Capacity does not comply with the pre-qualification conditions, 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.
- 13.3. In the event that ELIA determines that the Contracted Capacity of the CMU does not comply with the pre-qualification obligations or that the data relating to this CMU or to the Transaction(s) concerned is (are) repeatedly incomplete or inaccurate, it may terminate the Transaction(s) concerned.
- 13.4. ELIA may terminate the Contract unilaterally without prior judicial intervention in the event of insolvency proceedings or bankruptcy of the CAPACITY SUPPLIER.
- 13.5. The suspension or termination of the Contract or of one or more of the specific Transaction(s) concerned listed in Annex(es) A.1 shall not prejudice the application of Article 7.

## Article 14. ASSIGNMENT OF CONTRACT

- 14.1. 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 between Capacity Suppliers, which may be carried out by ELIA, under the terms of Section 10 of the Functioning Rules, as a result of ELIA's acceptance of a



transaction on the Secondary Market between these Capacity Suppliers in their capacity as Seller or Purchaser of an Obligation.

14.2. 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:

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

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

## Article 15. MISCELLANEOUS PROVISIONS

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

15.2. If, at any time during a period, 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 enforce such provisions at a later stage or to exercise its rights.

15.3. 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.

15.4. Any notification required by the Contract shall be sent 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 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.

15.5. 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.

15.6. 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 16. APPLICABLE LAW - SETTLEMENT OF DISPUTES

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

16.2. Subject to 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.

16.3. Subject to 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:



## ANNEX A.1 – CONTRACTUAL PARAMETERS

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 to which the Delivery Point is associated ID
Transaction ID
Period of associated Delivery



## 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*	



## **ANNEX C – WAIVER TO FUNCTIONING AID FORM**

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