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## Framework Agreement for the supply of tertiary control power and tertiary control energy

**Version** 5.0 of 31 July 2018

between

between

**Swissgrid Ltd**

Bleichemattstrasse 31, CH-5001 Aarau

hereinafter «**Swissgrid**»,

and

Contractual partner	
Address	
Postal code/city	
EIC ASP	

hereinafter «**Ancillary Services Provider**» or «**ASP**»,

jointly designated «**Contracting Parties**»,

regarding Ancillary Services  
(hereinafter «**Framework Agreement**»):

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## **Preamble**

Swissgrid is responsible for ensuring the ancillary services, including provision of control energy (cf. Art. 20 (2) b Electricity Supply Act, StromVG, SR 734.7). Accordingly, Swissgrid must make permanent arrangements for the adequate provision of control power.

Pursuant to Art. 20 (2) c StromVG, Swissgrid takes the measures required in the event of a threat to stable grid operations. It regulates the details with the power plant operators, grid operators and other parties involved. To meet these requirements, Swissgrid buys tertiary control power and tertiary control energy, among other things.

In the event of a threat to stable grid operations, international redispatches can also be carried out. Swissgrid buys tertiary control energy for this purpose.

The terms used in this Framework Agreement (including its annexes) are used pursuant to the definitions in StromVG, StromVV and in the current version of the Glossary for the Rules of the Swiss Electricity Market. The currently valid version of the glossary mentioned is published on the homepage of the VSE ([www.strom.ch](http://www.strom.ch)) and can be viewed there by the ASP.

In addition, the following terms apply to this Framework Agreement (including its annexes):

### **Tertiary control power (TCP):**

Tertiary control power is the provision of a power reserve at the generating units of an ASP. This provision permits supply of the corresponding amount of tertiary control energy at any time.

### **Tertiary control energy (TRE):**

Tertiary control energy is the physical supply or physical procurement of energy pursuant to the tendering conditions by the generating units of an ASP.

## **1 Subject matter of the contract and purpose of the Framework Agreement**

This Framework Agreement shall include the general agreements related to the purchase of tertiary control power and tertiary control energy by Swissgrid at the ASP.

The supply agreement is only concluded under the prerequisite that Swissgrid accepts the offer of an ASP as part of tendering process for tertiary control power and/or tertiary control energy. After each award of tender, the ASP receives an order confirmation, whose receipt must be confirmed on the request of Swissgrid.

Before concluding this Framework Agreement, the ASP must prove that it meets the technical and organisational requirements for the supply of tertiary control power and tertiary control energy. Consequently, this Framework Agreement also regulates the modalities of the provision of the corresponding proof by the ASP (hereinafter: «pre-qualification»).

Conclusion of the Framework Agreement shall not establish any claim on the part of the ASP to the conclusion of a supply agreement with Swissgrid.

## **2 Conditions for the conclusion of the Framework Agreement**

### **2.1 Generating unit**

A generating unit is a system that can be defined according to particular criteria, such as a power plant or consumer group for the feed-in and feed-out of active and reactive energy. According to the concept underlying this Framework Agreement, the provision and supply of tertiary control energy must be carried out by a portfolio (bundling of generating units) that consists of at least one generating unit. Generating units can also simply be grouped temporarily in a portfolio. Every generating unit must meet the pre-qualification conditions.

### **2.2 Pre-qualification**

Before concluding this Framework Agreement, the ASP (as applicant) must prove that it meets the technical and organisational requirements for the provision of tertiary control power and/or the supply of tertiary control energy. This proof must be provided by submission of the attestation described in the procedural rules for pre-qualification and issued by Swissgrid.

The ASP shall hereby declare its agreement to Swissgrid independently regulating the technical operating conditions and procedure for pre-qualification and disclosing the corresponding guidelines by publication on the Swissgrid homepage. Swissgrid shall notify the ASP of an amendment of the pre-qualification conditions by a simple written message. If it is unclear whether the ASP meets the pre-qualification conditions, Swissgrid can call on the ASP with a registered letter to provide the proof required.

The costs for verifying the proper validity of the attestation specified in the procedural rules are to be borne by the ASP. Apart from the costs of verification in the narrower sense, any trading losses proven by the ASP and resultant balance energy shall be regarded as costs of verification. In cooperation with Swissgrid, the ASP shall take the measures required to minimise these costs.

Swissgrid shall be entitled to order additional verifications at any time at its own expense. Should an ASP not pass a verification, the ASP must bear the costs.

At any rate, the result of the verification test must be disclosed to the ASP in writing.

### **2.3 Guaranteeing operational management**

Should an ASP entrust a third party (typically, the managing partner) with the operational handling of the service provision, the former must assign to the latter as part of the pre-qualification procedure all rights and duties regarding the operational handling with a form available on the Swissgrid website that has been completely filled out and signed by both parties. However, the ASP shall remain the sole contractual partner vis-a-vis Swissgrid and responsible for all rights and obligations from this Framework Agreement and the supply agreements concluded on the basis of the Framework Agreement.

### **3 Procurement of tertiary control power and tertiary control energy**

Swissgrid procures tertiary control power and tertiary control energy in the form of various products.

Normally, Swissgrid conducts tendering processes for the procurement of tertiary control power. The precise tendering conditions shall be set by Swissgrid independently and disclosed by publication on the Swissgrid website. It shall notify the ASP of an amendment of the tendering conditions by a simple written message. By submitting a tender, the ASP shall declare its consent to the tendering conditions in the version valid at the time of the publication of the call for tenders.

Swissgrid may forward the tenders to a platform conducted jointly with other TSOs for joint procurement of tertiary control energy.

### **4 Inadequate control power**

Both operational emergency procurement (paragraph 4.1) as well as the procedure in the case of inadequate tenders (paragraph 4.2) only apply to tertiary control power and not to tertiary control energy.

#### **4.1 Operational emergency procurement in the event of insufficient control power being unavailable at short notice**

If insufficient control power is available at short notice for operational or other reasons, such as power plant failures or congestion, Swissgrid may procure control power in a manner other than that provided for in the tendering conditions. The following cascade shall apply in this case:

- 1) If enough time is available, Swissgrid shall call on all pre-qualified ASPs by e-mail and/or fax without discrimination to submit corresponding tenders. In this regard, Swissgrid shall state when the allocation decision is taken. Swissgrid shall be obliged to select the most affordable of the tenders that are unproblematic in grid-security terms received up to this time (or combinations of bids).
- 2) If not enough time is available for the procedure under paragraph 1 or not enough control power can be procured, Swissgrid can bilaterally procure the control power in another manner as far as necessary.
- 3) If a situation of inadequate control power cannot be corrected pursuant to paragraph 1 and 2, Swissgrid shall oblige one or more pre-qualified ASPs if necessary to provide control power. The obliged ASPs shall receive full compensation.

#### **4.2 Inadequate tenders**

If not enough control power can be procured by calls for tenders according to the currently valid tendering conditions, Swissgrid shall organise the lacking tertiary control power pursuant to the allocation procedure (Annex 4).

## **5 Availability of control power and control energy**

In general, the ASP must keep the control power available in full and during the entire compensated period. If it has only submitted one tender for tertiary control energy, the corresponding control power must be kept available from the time at which the tender becomes binding pursuant to the tendering conditions. The provision must be demonstrated at any time by the submission of corresponding schedules. The provision obligation shall lapse in each case at the beginning of a quarter-hour interval.

Should Swissgrid activate a tertiary control energy tender, the ASP shall be obliged to supply or consume the complete energy. The decision on the reservation of the power and the supply or consumption of energy may in particular not be based on economic optimisation.

The ASP shall be obliged to inform Swissgrid immediately if it cannot meet its contractual obligations in full.

## **6 Grid congestion**

If it is foreseeable that activation of a tertiary control energy offer would result in grid congestion, Swissgrid can declare this offer which is problematic on grid security grounds to be unavailable. A tertiary control energy offer declared to be unavailable shall be excluded both from activation by Swissgrid as well as from forwarding to platforms operated jointly with other TSOs (cf. paragraph 3).

Swissgrid shall also pay the compensation for provision of the control power to the ASP for as long as the latter is obliged to provide the control power in the event of grid congestion.

If a situation of inadequate control power occurs at short notice due to grid congestion, Swissgrid shall proceed as described under paragraph 4.1.

## **7 Obligation to cooperate and to provide information**

Both parties shall be obliged to inform the other party immediately of the occurrence of new facts as well as of disturbances and measures taken relevant to the implementation of this Framework Agreement and supply agreements based on it.

The ASP must in particular inform Swissgrid immediately of the following points:

- if restrictions exist in the provision of control power as a result of which the provision can no longer be rendered in full, irrespective of whether it is responsible for this or not.
- in the event of changes in facts relevant to the pre-qualification, a change in the ASP or the desired pre-qualification of other generating units.

In addition, in the event of the occurrence of problems or inconsistencies in connection with the contractual services, the ASP shall provide all appropriate support requested by Swissgrid to the best of its abilities.

Upon and pursuant to the request of Swissgrid, each pre-qualified ASP (irrespective of the extent to which it takes part in the tendering processes) must report the following:

- at the latest by the beginning of the tendering process: the planned non-availability of generating units during a tender period;

- immediately: unplanned non-availabilities lasting longer than a day.

## **8 Duty to preserve data**

The ASP shall be obliged to record the data required (online measurements that must be recorded decentrally, schedules, etc.) for the entire tender period and to archive it for the duration of a month beyond the end of the tender period and (for proof of its provision) to surrender it on request to Swissgrid. If Swissgrid fails to request any data within this period, it can be deleted.

## **9 Other obligations of the contractual parties**

The ASP shall be responsible for the distribution of the activations within the portfolio unless another arrangement exists according to paragraph 2.3.

Swissgrid shall carry out a retrospective schedule correction in order to avoid a financial burden on the ASP due to balance energy payments. The ASP must state in which balance group the correction should occur for this purpose. In addition, it must confirm the corrected schedule retrospectively dispatched by Swissgrid with a counter-schedule or prove the change required from its point of view.

The generation of the corrected schedules within the 15-minute schedule interval for tertiary control energy products without ramps (block products) shall occur on the basis of the activation messages. Swissgrid shall determine the corrected schedules that correspond to the average values converted to the particular quarter-hour for the block products outside of the full quarter-hours activated and the activated tertiary control energy products with ramps (ramp products). Swissgrid shall take the corresponding ramps into account in the case of the ramp products.

In the case of the provision and supply of tertiary control energy by the balance group of an ASP with a generating unit, which in balance sheet terms is allocated to a third balance group supplier, the ASP shall commit itself to the exchange of a schedule composed of quarter-hour values of the effectively<sup>1</sup> supplied tertiary control energy from the balance group of the third balance group supplier with Swissgrid. Swissgrid shall carry out a retrospective schedule correction of the effectively supplied tertiary control energy in order to avoid a financial burden on the third balance group supplier due to balance energy payments. Settlement of the energy volumes between Swissgrid and the third balance group supplier as well as between Swissgrid and the ASP shall occur on the basis of the SwissIX stock exchange price valid in the particular quarter of an hour.

The ASP shall undertake to support Swissgrid in planning the provision by punctual submission of complete and correct ancillary service schedules pursuant to the ancillary services interface manual (cf. paragraph 20). The parties shall be obliged to support each other appropriately and as far as is reasonable on the request of the other party in the grid safety calculation and other measures required for system safety and stability.

Moreover, the ASP shall undertake to supply the information specified in the pre-qualification conditions, observe the organisational requirements, especially regarding the availability of the

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<sup>1</sup> As part of the pre-qualification, the ASP must prove that the provision of the effectively supplied tertiary control energy occurs in the correct form.

contact office, meet its obligation to store data and immediately report outages and use the communication channels specified by Swissgrid.

Swissgrid and the ASP shall be obliged to guarantee a measuring accuracy in the online monitoring or recording of the data registered in this context corresponding to the normal technical standards. In the event of any discrepancies between the data collected by Swissgrid and the data measured by the ASP, the Swissgrid values shall apply unless the ASP proves that its data are correct.

## **10 Contract penalties**

Should the ASP fail to meet its obligations pursuant to paragraph 5 for the provision of control power, a contract penalty shall in general be due corresponding to the product of a penalty factor and the remuneration for the control power to be provided by the ASP as well as the volume of unavailable control power. The unavailable control power must be determined in this regard according to the concept of availability of control and shall refer to the total unavailable control power during the tender period.

In the event of an outage of a generating unit that is not the fault of the ASP, no contract penalty shall be due if the availability of control (the time availability weighted with the available control power) amounts to at least 99.9% during the tender period. If the availability of control undershoots this value, only that portion shall be penalised which undershoots this value and the penalty factor shall be three (3). The outage of generating units that is not the fault of the ASP must be demonstrated by the ASP of its own accord with suitable documents (operating logs, etc.).

In all other cases, the penalty factor shall be set to a value of ten (10) and a contract penalty shall be due as soon as the availability of control undershoots the value of 100%.

Any contract penalty to be paid by the ASP to Swissgrid shall be limited in individual cases to twice the total remuneration contractually agreed for the provision of control power for the corresponding month under this Framework Agreement.

Payment of the contract penalty shall not constitute a release from the obligation to observance of the rest of the Framework Agreement. The ASP shall be obliged to restore the lawful condition.

Any claims to damages shall be unaffected by the provision agreed here.

Swissgrid shall inform the ASP affected of the identified infringement of the availability requirements and the resulting contract penalties and grant them a ten-day period for objections.

In cases of force majeure and official orders, the contractual parties shall be exempted from their respective obligations according to the situation (nature and duration of the impediment). In these cases, no contract penalty shall be due on account of the non-availability of the control power to be provided by an ASP.

## **11 Settlement**

The prices of this Framework Agreement shall exclude VAT. This shall be invoiced in addition according to the particular rate.

For block and ramp products, the tertiary control energy shall in general be regarded as supplied or received when activated in order to avoid elaborate measurements and accounting. This means that settlement shall in general occur on the basis of the corrected schedules (cf. paragraph 9 [3]). However, Swissgrid shall be entitled to verify the actual supply or consumption retrospectively by evaluation of the data to be recorded decentralized by the ASP and carry out the settlement as far as possible on the basis of this data.

Settlement of the power provided in a tender period (provision of power and supply or consumption of energy) shall occur in the course of the month following the tender period; this means it shall be drawn up by Swissgrid within the month following the tender period and transmitted electronically as credit note to the ASP to the stated contact office by means of a PDF file.

The invoice amount shall in general be due 30 days after receipt of the invoice by the contractual partner. Any contract penalty shall be due for payment after expiry of the objection period and within 30 days of the definitive written assertion. The receipt of payment (value date) shall be decisive for the punctuality of the payment. Upon expiry of the due date, default proceedings shall automatically enter into force. The default interest shall be 5% p.a. All payments must be transferred without deductions and free of charges.

In the event of errors and mistakes in invoices and payments, correction can be demanded within the statutory period of limitation.

The remuneration due to the ASP for the power provision shall only be paid after verification of the power provision has occurred. This verification must occur in the course of the month following the tender period unless obstacles exist for which Swissgrid is not responsible.

In cases where Swissgrid must be compensated by the ASP (e.g. as part of the payment of damages or a contract penalty), Swissgrid requests direct debit authorisation. In the event of it agreeing to this, the ASP shall issue the directives and authorisations required for this purpose to its commercial bank.

## **12 Contact offices**

The parties must disclose their contact office in writing to each other in connection with the rights and obligations of this Framework Agreement. The precise address of the contact offices shall be recorded in Annex 3 of the Framework Agreement.

This contact office must be available and capable of action 24/7 (incl. Sundays and public holidays).

The Swissgrid contact addresses on the subject of ancillary services (regarding questions about the pre-qualification procedure, call for tenders and allocation of specific services, etc.) can in addition be found on the Swissgrid homepage. All of the required documents can be retrieved there.

All changes regarding the contact office must be communicated in writing immediately to the other party and recorded in Annex 3.

## **13 Liability**

Liability depends on the relevant statutory provisions. Any other liability is excluded unless this is otherwise expressly agreed in writing. In particular, liability for lost profits, indirect damage, consequential damage and force majeure as well as in the case of slight and moderate negligence is excluded. This exclusion applies within the bounds of what is legally permissible, also to claims of extra-contractual liability. Furthermore, Swissgrid shall not be liable for damage that occurs within the scope of proper performance of duties.

## **14 Contract term, rescission and termination**

### **14.1 Contract term**

This Framework Agreement shall enter into force upon complete signature by the parties and be concluded for the duration of the validity of the attestation. If the attestation is renewed, the time of operation of this Agreement shall be correspondingly renewed.

### **14.2 Rescission of the contractual relationships**

Swissgrid shall be entitled to react appropriately if the ASP infringes its contractual obligations. Should the ASP or a generating unit of the ASP – also after warning and setting of a period of grace – no longer meet the pre-qualification criteria, Swissgrid can exclude the ASP or the corresponding generating unit temporarily from calls for tenders until the pre-qualification criteria have demonstrably once again been met. The Agreement can likewise be rescinded if the attestation loses its validity as a result of the failure to pass a test. In this case, Swissgrid shall set an appropriate period of grace for the submission of the proof.

Should the ASP infringe its other contractual obligations in a serious manner and/or repeatedly, Swissgrid can exclude the ASP for a particular period from calls for tenders.

A serious infringement is in particular to be assumed if faults for which the ASP is responsible impair system safety to a considerable extent. This is in particular to be assumed if the disturbance in terms of duration, frequency and/or scope of the unavailable control power or of control energy not supplied/consumed is considerable and the ASP did not immediately inform Swissgrid. The same shall apply irrespective of the severity of the disturbance in cases of intent.

The exclusion and duration of the exclusion must be justified by Swissgrid in writing and communicated to the ASP in a registered letter.

### **14.3 Ordinary termination**

The Framework Agreement can be terminated by either party with a period of notice of termination of three months to the end of the month, but at the earliest to the end of the month occurring one year after conclusion of contract. The termination must be delivered to the other party by means of registered letter.

#### **14.4 Extraordinary termination**

Should a contractual party fail to meet its contractual obligations, especially if pre-qualification conditions can no longer be met or material changes of the same cannot be implemented punctually, or if upon examination it emerges that an ASP no longer meets the requirements, this party must immediately institute the measures required and correct the breach of the contract as soon as possible or carry out the new adjustments. In these cases, the other party shall be entitled – after previous reminder (by e-mail or in writing) and setting an appropriate period of grace for correcting the breach of the contract – to terminate the Framework Agreement after expiry of the grace period subject to observance of a period of thirty days to the end of the month by means of registered letter. If the circumstances or conduct of the defaulting party indicate that a written reminder will not be complied with or that the defaulting party will not be able to meet its obligations, the Framework Agreement may be terminated with immediate effect. Extraordinary termination shall result in loss of the pre-qualification of the ASP. The parties shall not be entitled to extraordinary termination in cases of force majeure.

If bankruptcy proceedings are opened against one party or other insolvency proceedings, especially a moratorium on debt enforcement or deferment of debt are instituted or it declares itself to be insolvent, the other party shall be entitled to dissolve the Framework Agreement with immediate effect.

#### **14.5 Legal consequences of termination, cancellation of the Framework Agreement**

Termination of the Framework Agreement, whether this is ordinary or extraordinary, shall result in cancellation of the Framework Agreement to the end of the corresponding period.

In the event of the cancellation of the Framework Agreement, the Framework Agreement shall be extended by the period during which tenders and supply obligations still exist on the part of the ASP.

### **15 Confidentiality, data protection**

The parties shall mutually pledge to keep all information and documents confidential that they acquire in connection with this Framework Agreement and which are not in the public domain or generally known. The parties shall be responsible for ensuring that these provisions are also observed by all of their employees and auxiliary personnel.

This shall exclude forwarding information to authorities on account of a legal obligation or official order.

The parties shall expressly acknowledge that the obligation of secrecy also applies after cancellation of the contract relationship, irrespective of the grounds and by whom the contract relationship was cancelled.

The provisions of the Swiss Federal Data Protection Act must be observed by the parties when processing data.

Use of data within the context of the tasks of Swissgrid pursuant to the applicable Energy Act, Electricity Supply Act and associated ordinances as well as in the context of orders assigned to it by authorities shall be expressly permitted.

In addition, the ASP shall agree to the exchange of information between Swissgrid and third parties in connection with the fulfilment of this Agreement (e.g. foreign transmission system operators) and anonymised publication of the tender results.

## **16 Assignment of the Framework Agreement**

Both parties shall be obliged to assign the contract relationship with all of its rights and obligations to any legal successor. The other party must be informed of the assignment in advance and in writing.

The parties shall only be released from their obligations under this Framework Agreement once the legal successor declares its accession to the Framework Agreement in writing, in the case of assignment by the ASP, meets the decisive pre-qualification requirements in full and the counterparty agrees to assignment of the Framework Agreement. The parties can refuse approval if the legal successor is not able to meet the obligations from this Framework Agreement.

## **17 Written form**

Amendments to and supplements of this Framework Agreement (including this provision and the annexes) must be in writing.

## **18 Severability**

Nullity or invalidity of individual provisions of this Framework Agreement shall not result in nullity or invalidity of the remaining provisions of this Framework Agreement. In place of the void or invalid provision, the parties shall undertake to agree a new provision that comes closest to the meaning and purpose of the void or invalid provision in a legally effective manner.

This Framework Agreement must be supplemented according to its meaning and purpose should gaps emerge.

## **19 Applicable law and place of jurisdiction**

This Framework Agreement is subject to Swiss substantive law to the exclusion of the Convention on Contracts for the International Sale of Goods (CISG).

The seat of Swissgrid Ltd shall be agreed as exclusive place of jurisdiction for all disputes arising from or in connection with this Framework Agreement.

## **20 Subsidiary documents**

The provisions of Swissgrid in the AS interface manual shall find subsidiary application in the context of the execution of the rights and obligations of the parties under this Framework Agreement. Swissgrid shall be entitled to modify this document and to declare it decisive with a

notification period of six months to the beginning of the month for the application of this Framework Agreement.

Furthermore, the provisions of the Transmission Code and pre-qualification documentation shall find subsidiary application in the context of the application of the rights and obligations of the parties under this Framework Agreement. Swissgrid shall be entitled to declare the provisions of new versions of the Transmission Codes or the pre-qualification documentation decisive with a notification period of six months to the beginning of the month for the application of this Framework Agreement.

## **21 Contract documents**

The following annexes shall be integral contract documents of this Framework Agreement in their currently valid version:

- Annex 1: Technical and procedural rules for pre-qualification of ASPs
- Annex 2: Tendering conditions
- Annex 3: Contact offices
- Annex 4: Allocation procedures in the event of inadequate tender volumes in AS control power procurement

The annexes shall be published in their currently valid version on the Swissgrid homepage ([www.swissgrid.ch](http://www.swissgrid.ch)) and can be viewed there by the ASP.

In the event of contradictions between the Framework Agreement and an annex, the provisions of the corresponding annex shall be decisive. In the event of contradictions within the annexes, the above sequence shall apply.

## **22 Contract copies, cancellations**

This Framework Agreement shall be issued in duplicate. Each party shall receive one copy. All earlier agreements and arrangements that affect this contractual matter shall be cancelled with the entry into force of this Agreement.

**Swissgrid Ltd**

\_\_\_\_\_  
Place

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Contractual partner

\_\_\_\_\_  
Place

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: