

Framework agreement for the delivery of tertiary control power

Between

Swissgrid Ltd.

Werkstrasse 12, CH-5080 Laufenburg, acting through the legitimate bodies of representation
hereinafter referred to as «**Swissgrid**»,

and

Contract Partner	
Address	
Postcode / Town or city	
EIC ASP	

acting through the corporate bodies duly authorised to represent it
hereinafter referred to as «**Ancillary Service Provider**» or «**ASP**»,

collectively referred to as «**Contract Parties**»,

the following framework agreement governing ancillary services was concluded (hereinafter referred to as «**Framework Agreement**»):

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Preamble

Swissgrid is responsible for ensuring ancillary services including the provision of control energy (see Article 20 para. 2 item b of the Electricity Supply Act (StromVG)). Accordingly, Swissgrid has an obligation to provide sufficient control power in the form of primary, secondary and tertiary control power on a permanent basis.

This Framework Agreement governs the rights and obligations between Swissgrid and the ASP in connection with the purchase of the control energy product tertiary control power by Swissgrid from the ASP. The terms used in this Framework Agreement (and its annexes) are used in accordance with the definitions contained in the StromVG, the StromVV and in the current version of the Glossary for the Rules of the Swiss Electricity Market.

The latest version of the aforementioned glossary is published on the VSE website (www.strom.ch) and on the Swissgrid website (www.swissgrid.ch) and can be viewed there by the ASP.

1. Subject matter and purpose of the Framework Agreement

This Framework Agreement contains the general agreements of the Contract Parties regarding the procurement of tertiary control power by Swissgrid from the ASP. The conclusion of the Framework Agreement entitles the ASP to submit bids when Swissgrid is tendering for tertiary control power. If Swissgrid accepts a bid to supply tertiary control power from an ASP at or above the price requested by the ASP, a supply contract is automatically concluded.

For every contract awarded, the ASP will receive an order confirmation stating the volume, the reserve period and the amount of remuneration, which must be acknowledged at Swissgrid's request.

Upon conclusion of this Framework Agreement, the ASP confirms that it satisfies the technical and organisational requirements for the provision of tertiary control power. This Framework Agreement therefore also governs the terms and conditions for furnishing of the relevant proof by the ASP (hereinafter: «Prequalification»).

The conclusion of the Framework Agreement will not confer on the ASP any entitlement to conclude a supply contract with Swissgrid.

2. Prerequisites for the conclusion of the Framework Agreement

2.1. Generating unit

The concept of the generating unit is of central importance in connection with the prequalification criteria and other provisions. A generating unit is a system definable according to certain criteria such as a power plant or a 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 secondary control power must be carried out through a portfolio (bundling of generating units) consisting of at least one generating unit. Generating units may also be temporarily grouped together to form a portfolio.

Each generating unit may be assigned to precisely one power plant operator (PPO). If control power or control energy is to be supplied with a generating unit, it must first be proved that the generating unit meets the technical operating conditions for the supply of the corresponding control energy product in accordance with the prequalification conditions.

2.2. Prequalification

On forming this framework agreement the ASP (as applicant) has to prove that it meets the technical and organisational requirements for the provision of secondary control power. This proof must be provided by submitting the attestation described in the procedural rules for the prequalification and issued by Swissgrid. The costs for inspections in accordance with the normal validity of the attestation defined in the procedural rules are to be borne by ASP. Swissgrid has the right to call for additional inspections at any time at its own expense. In addition to the inspection costs in the narrower sense, any trading losses and resulting balance energy that the ASP proves to have occurred shall also count as costs. The ASP, in cooperation with Swissgrid, will take the necessary measures to minimise these costs. If an ASP does not pass an inspection, the costs shall be borne by the ASP. The ASP must always be given written notice of the results of the inspection.

The ASP is in agreement with Swissgrid independently regulating the prequalification procedure and publishing the corresponding guidelines on its website.

2.3. Changes to prequalification conditions by Swissgrid

Swissgrid will consult the companies concerned before any changes are made to the prequalification conditions. If changes are implemented in the corresponding prequalification documents which lead to material changes in the prequalification conditions, the validity of the attestations will be curtailed in accordance with the procedural rules for prequalification.

If the ASP proves, before the expiry of the deadline under the procedural rules for prequalification, that it satisfies the modified prequalification conditions, the validity of the attestation will once more be extended to the original period. The costs for testing modified prequalification criteria must be borne by Swissgrid, provided that corresponding checks do not coincide with the expiration of the normal validity of the attestation.

2.4. Guaranteeing operational management

If an ASP whose bids have been successful in the tendering process does not carry out the operational provision of power itself but entrusts this to a third party (typically the managing partner for the relevant pool of generating units), the ASP must, as part of the prequalification process, use the relevant form on the Swissgrid website to transfer to this third party all rights and obligations relating to the operational provision of control power. As part of this declaration the ASP must also prove that the third party is in agreement with the exercising of the corresponding rights and obligations and is thereby assuming responsibility for operational management. The ASP remains, however, the sole Contract Partner for Swissgrid and responsible to Swissgrid for all rights and obligations arising from this Framework Agreement.

3. IT connections

Swissgrid can independently formulate the provisions of the Transmission Code relating to the IT connection of generating units (with regard to both online data transmission and decentralised data recording) in more detail. Swissgrid will inform the Contract Partner in writing of such an undertaking. Swissgrid will previously consult the companies concerned and ask for their views. These provisions are binding upon publication on the Swissgrid website. Such regulations equate to prequalification criteria; therefore the transition periods for

compliance with modified specifications in the case of changes to the specifications for IT connections, for example, are the same as those in the case of changes to the prequalification criteria. The ASP expressly agrees that Swissgrid will carry out test requests during operations. These test requests will be compensated in the same way as regular requests.

4. Tendering procedure

The detailed conditions of tender will be determined independently by Swissgrid and published on the Swissgrid website. By submitting a bid, the ASP agrees to the conditions of tender in the version applicable at the time the invitation to tender was published.

The conditions of tender can provide for other criteria to be taken into consideration in the choice of ASP in addition to the offered demand charges. Deviations from the bid price as the sole criterion for awarding the contract must be substantiated by Swissgrid, they may only be adopted in accordance with non-discriminatory criteria and good cause must be given.

5. Insufficient control power

5.1. Operational emergency procurement outside the tendering procedure

If sufficient control power is not available for a short time for operational or other reasons outside the bidding procedure, such as power plant outages or congestion, control power may be procured in a way other than that provided for in the conditions of tender. The following cascade applies.

1. Provided sufficient time is available, Swissgrid will send an e-mail and/or fax to all prequalified ASPs, without discrimination, asking them to submit appropriate bids. Swissgrid will indicate the time when the allocation decision will be made. Swissgrid is obliged to select the lowest-priced bid (or combination of bids) from those submitted by this time that are unproblematic in terms of grid security.
2. If there is insufficient time available for the procedure described in Clause 1 or it is not possible to procure sufficient control power, Swissgrid can procure control power bilaterally by another means where necessary.
3. If a situation in which insufficient control power is available in accordance with Clauses 1 and 2 cannot be remedied, Swissgrid will obligate prequalified ASPs to provide control power. The ASP will be fully compensated for this.

5.2. Insufficient bids

If sufficient control power cannot be procured through tendering procedures in accordance with the conditions of tender of this agreement, Swissgrid will make organisational provisions for the deficit in tertiary control power through a separate allocation procedure (Annex 4).

6. Availability, contractual penalties

The time availability of the entire remunerated control power must be 100%. In particular, the decision concerning provision should not be based on economic optimisation reasons. If generating units fail, a contract penalty is owed which corresponds to the product of a penalty factor and the remuneration for the control power contracted for by the ASP as well as the volume of unavailable control power. The unavailable control power must be determined according to the concept of operating availability and refers to the total unavailable control power during the tender period.

If generating units fail, and the failure is not the fault of the ASP, no contract penalty is payable if the operating availability (the time availability weighted with the available control power) during the tender period is at least 99.9%. If the failure of the generating units is not the fault of the ASP, the ASP must prove this using suitable documents (operating logs, etc.) without being requested to do so.

If operating availability falls below the value of 100% or 99.9% in cases where the failure of generating units is proven not to be the fault of the ASP in accordance with paragraphs 1 and 2 above, the penalty factor will be 3 (three).

In all other cases, the penalty factor will be set to a value of 10 (ten)¹. Any contract penalty payable by the ASP to Swissgrid is limited, in specific cases, to double the amount of all the contractually agreed remuneration for the provision of control power for the month in question.

The ASP is obliged to inform Swissgrid without delay if it is unable to satisfy its contractual obligations in full. If the insufficient availability was caused deliberately or as a result of gross negligence (for example, by failure to take account of average outages typical for generating units), Swissgrid will also be at liberty to exclude the ASP from future invitations to tender, particularly if the outages caused by the ASP impact on system security to a not insignificant degree. The latter must be assumed at least in those cases where the performance failure is of considerable duration and/or frequency and/or (measured in control power) scope and the ASP does not inform Swissgrid immediately. The same applies, irrespective of their severity, to cases of intentional outage. Swissgrid must give grounds for such an exclusion in writing.

Payment of the contractual penalty will not release the party from its obligation to continue to adhere to the Framework Agreement. The ASP will be obliged to restore the situation to the correct legal status. Any compensation claims will not be affected by the regulation agreed here.

¹ The following example serves to illustrate this regulation: An ASP is to be compensated for the provision of 30 MW control power for 720 hours with CHF 432,000. Consequently, 100% operational availability equates to the availability of 30 MW over 720 hours or 21,600 MW hours (whereby these "MW hours" denote a power provision and not an energy volume). If the entire power (30 MW) fails for longer than ¼ hour during the tender period (specifically: 43.2 minutes), the 99.9% limit is not reached, just as if 10 MW fails for 2 ¼ hours (specifically: 129.6 minutes). Let us assume that the following failures occur during the tendering period: 15 MW fails for 40 minutes; 30 MW fails for 1 h; 15 MW fails for 1 h; overall, therefore, there is an outage of $(15 \cdot \frac{2}{3} + 30 \cdot 1 + 15 \cdot 1) = 55$ MW hours. This value exceeds the maximum value of 0.1% (= 21.6 MW hours) so that the ASP would have to pay a contract penalty even if it could demonstrate that it was not at fault for the outages. When it comes to calculating the penalty amount, the remuneration which corresponds to the power not provided by the ASP must be determined. Here, this is 55 MW hours * (CHF 432,000 / 21,600 MW hours) = 55 MW hours * (CHF 20 / MW hour) = CHF 1,100. If the ASP can prove that it did not cause the outages, a contract penalty of CHF 1,100 times the penalty factor of 3 (= CHF 3,300) would be payable; otherwise a contract penalty of CHF 11,000. Provided that more than one bid from the same ASP was accepted during the tender, the remuneration which corresponds to the power not provided by the ASP is calculated according to the average remuneration for all bids from this ASP accepted by Swissgrid in this tender. If in the example quoted above the ASP is compensated for provision of 15 MW control power from generating unit A with CHF 144,000 (CHF 13.33 per MW hour) and a remuneration of CHF 288,000 (CHF 26.67 per MW hour) is applied to the remaining 15 MW provided in generating unit B, the contract penalty to be paid by the ASP (as described in the example, CHF 20 per MW hour) is not determined by which proportion of the downtimes applies to which generating unit.

Swissgrid will inform the relevant ASPs about any identified breaches of the availability requirements and the resulting contractual penalties and will grant them a period of ten days in which to lodge an objection. In the event of force majeure and in cases of official instructions, the Contract Parties are duly released from their obligations according to the situation (nature and duration of impairment). Accordingly, in these cases no penalty will arise from the non-availability of the control power to be provided by an ASP.

7. Grid congestion

Generating units participating in the provision of ancillary services may also be affected by schedule interventions for operational reasons and the use of generating units by Swissgrid. If restrictions as a result of grid congestion mean that generating units intended for the provision of control power have to be deactivated by Swissgrid temporarily, fully or in part, the following procedure is agreed:

- » Swissgrid will request the ASP concerned, within the scope of what is feasible and the time available, to provide the unavailable amount of control power allocated to the ASP from generating units inside or outside the pool concerned which are not affected by schedule interventions or similar restrictions, but can be used for provision of control power in a similar manner.
- » If the ASP cannot do this, it will be released from the obligation to provide for the period in question, and its remuneration will be reduced on a pro rata basis according to operational availability.
- » If the ASP concerned is unable to provide replacement power in good time, this constitutes a situation of insufficient control power which Swissgrid will address in accordance with the procedure outlined in Clause 5.

8. Other obligations of the Contract Parties

The other obligations of the ASPs must be considered for two different groups of ASPs.

- » The award of a contract in the tendering process for tertiary control power implies the obligation to submit a bid on the short-term market for each time window within the tendering period at a price per KWh in the amount of the power remunerated.
- » Regardless of whether or not an ASP is paid for the provision of tertiary control power, an ASP whose offer becomes binding on the short-term market in accordance with the tendering conditions will provide the corresponding power during the relevant time window and deliver or off-take power at Swissgrid's request.

The distribution of the signals within the pool is the responsibility of the ASP unless otherwise agreed in accordance with Clause 2.4. Non-delivery or non-off-take as well as reduced delivery and off-take volumes are not permitted.

Quantities of energy will be remunerated on the basis of the correction schedules dispatched by Swissgrid and described below; further details are laid down in the tendering conditions. The correction schedules correspond to the request messages within the 15-minute schedule. For the quantities of energy requested (delivered or purchased by the ASP) outside the full 15-minute periods, Swissgrid will define correction schedules corresponding to average values converted to the 15-minute period in question. To avoid burdening the ASP with balance energy payments, Swissgrid will issue a subsequent schedule correction. For this purpose the ASP must designate the balance group for which the correction should be made, and subsequently submit a counterpart schedule confirming the corrected schedule sent by Swissgrid. The

schedules dispatched by Swissgrid will be deemed to be correct unless proved otherwise. Tertiary control power is regarded as delivered (or off-taken) as requested; Swissgrid's right to examine the actual delivery or purchase ex post by evaluating the data recorded decentrally by the ASP is not affected by this convention. The ASP undertakes to cooperate in the planning of provision by Swissgrid via timely submission of complete and accurate ancillary services schedules. It will use the forms or formats provided for this purpose and published on the Swissgrid website. The parties undertake to provide each other with any appropriate and reasonable support, at the request of the other party, in calculations to determine grid security and other measures necessary for system security and stability.

If secondary control energy should be provided and supplied by the BG of an ASP with a generating unit that is assigned to a third BGM for accounting purposes, the ASP undertakes to exchange a schedule of 15-minute mean values of the secondary control energy effectively² supplied from the balance group of a third BGM with Swissgrid. In order to avoid burdening the third BGM through balance energy payments, Swissgrid will make a retrospective schedule adjustment to the secondary control energy effectively supplied. The settlement of the energy volumes between Swissgrid and a third BGM as well as between Swissgrid and the ASP will be carried out on the basis of the applicable SwissIX stock exchange price of the 15-minute period in question.

Moreover, the ASP undertakes to deliver the online information specified in the prequalification conditions; to comply with the organisational requirements, in particular with regard to the availability of the contact; to fulfil its obligation to store data and report outages immediately and to use the communication channels defined by Swissgrid.

Swissgrid is entitled to react appropriately to the violation of contractual obligations and, in the event of serious and/or repeated violations, to exclude the ASP from tenders. Swissgrid also reserves the right to termination without notice pursuant to Clause 14.3 of this Agreement.

Swissgrid and the ASP are obliged, with regard to online monitoring or the recording of data captured in this way, to guarantee a level of measurement accuracy consistent with the usual technical standards. In the event of discrepancies between Swissgrid's data and the data measured by the ASP, Swissgrid's values will apply unless the ASP demonstrates that its data is correct.

9. Settlement

The prices quoted in this Framework Agreement exclude VAT, which is charged separately at the applicable rate.

Services rendered in a tender period are billed during the month following the tender period; in other words, the invoice is drafted by Swissgrid within the month following the tender period and sent to the ASP's specified contact electronically as a credit note in a PDF file.

The amount is payable 30 days after receipt of the account by the contract partner. Timeliness of payment is determined by when the payment is received (value date). Once the due date has passed the consequences of default will automatically enter into force. Default interest amounts to 5% per annum. All payments must be made net and without charges.

In the event of mistakes and errors in billing and payments, corrections may be requested within the statutory period of limitation.

² Within the framework of the prequalification the ASP has to prove that the secondary control energy effectively supplied has been properly determined.

Remuneration due to the ASP for the provision of power will only be paid once the service provision has been checked. This check must take place in the month following a tender period, unless there are impediments for which Swissgrid is not responsible.

For cases where Swissgrid is to be compensated by the ASP (e.g. payment of damages or a contractual penalty), Swissgrid requires a direct debit to be set up. If the ASP agrees to the direct debit, it will issue the necessary instructions and authorisations to its clearing bank.

10. Contacts

Each party must provide the other party with written details of its contact for issues relating to rights and obligations under the Framework Agreement. The exact contact address is published in Annex 3 to the Framework Agreement.

Contacts must be available and ready to act 24 hours a day, every day (including Sundays and public holidays).

The Swissgrid contact addresses for matters concerning ancillary services (i.e. questions on the prequalification procedure, the tender and the allocation of specific services, etc.) can also be found on the Swissgrid website. All the relevant documents can be downloaded from there.

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

11. Liability

Liability is based on the relevant legal provisions. All other liability is excluded unless this has been specifically and contractually agreed otherwise. In particular, liability for lost profits, indirect and consequential damages and simple negligence is excluded.

12. Duty to preserve data

The ASP is obliged to record the necessary data (online measurement values, schedules etc. to be recorded decentrally) for the entire tender period, to archive this data for a period of one month beyond the end of the tender period and to issue it to Swissgrid (as proof of performance) on request. If Swissgrid does not request any data within this period, it can be deleted.

13. Obligation to cooperate and provide information

Both parties undertake to immediately inform the other party by e-mail or fax about new circumstances or faults, and the corresponding measures taken, which are of relevance to the conclusion and execution of this Framework Agreement and the associated supply contracts.

In particular, the ASP must inform Swissgrid immediately about the following:

- » If there are restrictions to the control power provision such that it can no longer be maintained in full, irrespective of whether or not the ASP is responsible. This information must also be provided in advance by telephone.

- » In the event of changes to prequalification-relevant factors, in the event of a change of ASP and in the event that the prequalification of other generating units is required.

In addition, if problems or discrepancies arise in connection with the contractual services, the ASP will provide appropriate support to the best of its ability as requested by Swissgrid.

Every prequalified ASP must notify Swissgrid (irrespective of the extent to which it is participating in the tenders) of the scheduled non-availability of generating units during a tender period at the latest at the start of the tender. Unscheduled non-availability lasting longer than one day must be reported immediately, irrespective of whether tertiary control power is provided or not in the current tender period.

14. Duration and termination of the Agreement

14.1. Term

This Framework Agreement will enter into force upon being signed in full by both parties and will be concluded for the duration of the validity of the attestation. If the attestation is renewed, the term of this Agreement will also increase accordingly.

14.2. Termination with notice

This Framework Agreement can be terminated by either party subject to a notice period of three months up to the end of a month, but not before the month end following the completion of one year of the Agreement. Notice of termination must be delivered to the other party by registered mail.

14.3. Termination without notice

If a contracting party fails to meet its contractual obligations, in particular if prequalification conditions are no longer met or material changes in these cannot be implemented by the deadline, or if a check reveals that an ASP no longer fulfils the requirements, this party must immediately take the required steps and rectify the breach of contract as soon as possible, or undertake the necessary new modifications. In such cases the other party is entitled – after issuing a reminder (by e-mail or in writing) and granting a reasonable period of grace in which to rectify the breach of contract – to terminate the Framework Agreement upon expiry of the grace period, subject to thirty days' notice up to the end of a month, via registered mail. If the circumstances or the conduct of the defaulting party result in a written reminder going unheeded or the defaulting party not being in a position to meet its obligations, the Framework Agreement may be dissolved with immediate effect. Termination without notice will lead to the ASP's prequalification ceasing to apply. This right of termination without notice is not available to the parties in cases of force majeure.

If one party is adjudged bankrupt or other insolvency proceedings are initiated against it, in particular a moratorium on debt enforcement or deferment of debt, or it declares itself insolvent, the other party is entitled to dissolve this contract with immediate effect.

14.4. Suspension of contractual relations

If, after reminders have been sent and a period of grace has been granted, the ASP fails to fulfil its contractual obligations after the period of grace has expired, Swissgrid may also temporarily suspend contractual relations with the ASP or exclude the ASP from tenders until such time as the corresponding breach of contract has been rectified. The Agreement can also be suspended if an attestation loses its validity upon the failure of a test. In this case, Swissgrid will set an appropriate deadline for furnishing proof that the prequalification criteria are met again.

14.5. Legal consequences of termination, invalidation of the Framework Agreement

A termination of the Framework Agreement, whether with or without notice, results in the Framework Agreement lapsing at the end of the corresponding period.

If the Framework Agreement lapses, it will be extended for as long as the ASP still has outstanding bids and supply commitments.

15. Confidentiality, data protection

The parties mutually undertake to treat as confidential all information and documents that they obtain in connection with this Framework Agreement which are neither accessible nor generally known to the public. The Parties are responsible for ensuring that all their employees and auxiliary personnel also comply with these provisions.

The forwarding of information to authorities as a result of a legal obligation is excluded.

The parties expressly acknowledge the fact that the obligation to maintain confidentiality also applies after the dissolution of the Contract, irrespective of who dissolved the Contract and for what reasons.

The parties must comply with the provisions of the Swiss Data Protection Act when processing data.

In addition, the ASP agrees to the publication of sanitised tender results.

16. Transfer of the Framework Agreement

Both parties will undertake to transfer the contractual relationship, with all rights and obligations, to a potential legal successor. The other party must be notified of the transfer in advance in writing.

The parties will only be released from their obligations under this Framework Agreement once the legal successor has provided a written declaration of its entry into the Framework Agreement, has met all the relevant prequalification requirements in full in the case of transfer by the ASP, and the counterparty has agreed to the transfer of the Framework Agreement. The parties may withhold their consent if the legal successor is unable to fulfil the obligations under this Framework Agreement.

17. Written form, amendments and additions

Amendments and additions to this Framework Agreement (including this provision and the annexes) must take the written form.

18. Invalidity, correction of omissions

Should individual provisions of this Framework Agreement be or become null and void or invalid, this will not affect the validity of the remaining provisions of this Framework Agreement. The parties will undertake to replace the null and void or invalid provision immediately with a new provision which approximates as closely as legally possible the intention and purpose of the null and void or invalid provision.

Additions must be made to this Framework Agreement in accordance with its intention and purpose if omissions are discovered.

19. Applicable law and place of jurisdiction

19.1. Applicable law

This Framework Agreement is governed by Swiss law.

19.2. Place of jurisdiction

The exclusive place of jurisdiction for all disputes arising from this Framework Agreement is the registered office of Swissgrid Ltd.

20. Subsidiary documents

The rules of Swissgrid in the AS interface manual have subsidiary application for the exercising of the rights and obligations of the parties under this Framework Agreement. Swissgrid is entitled to amend this document and to declare it authoritative for the implementation of this Framework Agreement at the start of a given month, following six months' notice.

The rules of the Transmission Code and the prequalification documents also have subsidiary application for the exercising of the rights and obligations of the parties under this Framework Agreement. Swissgrid is entitled to declare the rules of new editions of the Transmission Code or the prequalification documents authoritative in the implementation of this Framework Agreement at the start of a given month, following six months' notice.

21. Contract elements

The following annexes form an integral part of this Framework Agreement:

Annex 1: Procedural rules for prequalification

Annex 2: Conditions of tender

Annex 3: Contacts

Annex 4: Allocation procedure in case of insufficient bid amount in the AS-control power procurement

The latest versions of Annexes 1, 2, 3 and 4 are published on the Swissgrid website (www.swissgrid.ch), where they can be viewed by the ASP.

In the event of discrepancies between the Framework Agreement and one of the annexes, the provisions of the respective annex will be authoritative.

22. Number of copies

Two copies of this Framework Agreement will be issued. Each party will receive one copy.

23. Contractual language

This Contract is drawn up and signed in the language requested by the ASP (German, French, Italian or English). Versions in French, Italian and English are translations of the German version. In the event of discrepancies between the German version and a translated version, the regulations of the German version take precedence. The definitive German version as well as the translated versions in French, Italian and English are available to view and download on the Swissgrid website (www.swissgrid.ch).

Swissgrid Ltd.

Location

Name:

Date

Name:

Contract Partner

Location

Name:

Date

Name: