

**Framework Agreement governing the supply and purchase of energy for the compensation of active power losses**

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 / City, Town	
EIC ASP	

acting through the legitimate bodies of representation  
hereinafter referred to as «**ASP**»,

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

the following framework agreement governing the Supply and Purchase of Energy for the Compensation of Active Power Losses was concluded (hereinafter referred to as «**Framework Agreement**»):

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## Preamble

Following the entry into force of the Federal Electricity Supply Act (StromVG) and the Electricity Supply Ordinance (StromVV), various contractual relationships between the parties participating in the electricity market need to be redefined.

Amongst other things, Swissgrid is responsible for compensating the physical losses of active power in its transmission system through the procurement of electrical energy. The procurement of «loss energy» must take place in accordance with a non-discriminatory, transparent and market-based procedure. In order to fulfil this responsibility, Swissgrid will at regular intervals put out tenders for the supply of loss energy in the form of structured products.

This Framework Agreement governs the rights and obligations between Swissgrid and the ASP in connection with the procurement of loss energy from the ASP.

The terms used in this Framework Agreement (and its annexes) are applied in accordance with the definitions contained in the Electricity Supply Act (StromVG), the Electricity Ordinance (StromVV) and 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](http://www.strom.ch)) where it can be viewed by the ASP.

## 1 Subject matter and purpose of the Framework Agreement

This Framework Agreement covers the agreements between the Contract Parties regarding the purchase of loss energy by Swissgrid from the ASP. The conclusion of the Framework Agreement entitles the ASP to submit bids in open tenders for yearly and monthly products arranged by Swissgrid for this purpose.

If Swissgrid accepts a bid to supply loss energy from an ASP at the price requested by the ASP, a supply contract is automatically concluded.

Swissgrid shall award the contract to the ASP by means of an order confirmation specifying the capacity and energy volumes, the delivery period and the level of remuneration, which also refers to this Framework Agreement.

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

## 2 Prerequisite for the conclusion of the Framework Agreement

A prerequisite for concluding the Framework Agreement is that the respective ASP must manage a valid balance group in the Swiss control area or belong to a valid balance group in the Swiss control area.

## 3 Tenders

The open tenders are initially for yearly and monthly products.

Tenders for yearly products include continuous supplies and, at the discretion of Swissgrid, peak and off-peak products for the following calendar year (front year). Swissgrid reserves the right, in future, to also invite tenders for hourly annual profiles and to procure, in addition to the front year, a portion of the requirements for the two subsequent years.

Tenders for monthly products include continuous supplies and, at the discretion of Swissgrid, peak and off-peak products for the following month. Swissgrid reserves the right, in future, to also invite tenders for hourly monthly profiles.

Swissgrid also reserves the right, in future, to invite tenders for quarterly products in addition to yearly and monthly products. These tenders can, at the discretion of Swissgrid, include continuous supplies, peak and off-peak products as well as hourly profiles for the following quarter.

The tenders are split into individual tranches, whereby bids are submitted not for specific tranches but for any tranches of a particular tender.

The exact conditions of tender are determined by Swissgrid independently and are published on the Swissgrid website. By submitting a bid the ASP acknowledges its acceptance of the conditions of tender in force at the time that the tender is published.

The conditions of tender include the modalities of the tender, the submission of bids and the acceptance of bids. They may also stipulate that if several bids of the same price are made, other criteria in addition to the price per kWh may be taken into consideration when accepting bids.

#### **4 Completion of the delivery transaction**

If Swissgrid accepts a bid from the ASP, the latter is obliged to supply and distribute loss energy within the scope of the bid (contracted volume).

The supply and distribution of the contracted volume is transacted by the correct submission of the schedule to the balance group of Swissgrid in the Swiss control area. Swissgrid is under obligation to accept the contracted volume provided. The electricity supply is correspondingly configured in the counterpart schedule and accepted by Swissgrid. The schedule submitted by Swissgrid shall be deemed correct unless this can be proved otherwise.

If Swissgrid submits an incorrect schedule it shall be liable to provide financial compensation to the ASP. Any advantages arising for the ASP as a result of an incorrect schedule submission by Swissgrid shall be passed on to Swissgrid.

Schedule business shall also be transacted in accordance with the provisions of the balance group contract.

#### **5 Remuneration**

All prices in this Framework Agreement are stated exclusive of VAT, which is billed separately at the applicable rate.

Swissgrid issues a monthly credit note for the loss energy supplied by the ASP based on the agreed prices. Billing is based on the delivery volumes and delivery prices specified by the Contract Partners in accordance with Clause 3 of this Framework Agreement. Swissgrid sends the credit note electronically as a pdf file to the contact specified in Annex 2.

The parties are entitled to settle any reciprocal outstanding claims (also from other contractual relationships) and to credit or invoice the corresponding net amount to the other contract partner (individual invoices that include VAT are balanced).

The amount becomes payable 30 days after receipt of the respective invoice by the contract partner. Timeliness of payment is determined by when the payment is received (value date). When the due date has passed, default proceedings are initiated automatically. The default interest is 5% p.a. All payments must be made net and without charges.

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

In cases where Swissgrid is to be compensated by the ASP (e.g. payment of damages), Swissgrid requires a direct debit to be set up. If the ASP agrees to this, it shall instruct and authorise its bank to make the necessary payments.

## **6 General obligations of the ASP**

The ASP undertakes to use the forms or formats published by Swissgrid on its website. If a bid is accepted, the ASP undertakes to submit complete and accurate schedules on time.

The ASP also undertakes to abide by the organisational requirements, in particular regarding the availability of contacts, and to use the communication channels prescribed by Swissgrid.

The contacts for both Contract Parties are specified in Annex 2.

## **7 Confidentiality, data protection**

The parties undertake to treat as confidential all information and documents they request in connection with this Framework Agreement and which are neither accessible to the public nor common knowledge. The parties are responsible for ensuring that these provisions are also adhered to by all employees and auxiliary personnel.

This provision does not include the transfer of information to authorities as a result of a legal obligation.

The parties expressly acknowledge that the confidentiality obligation shall continue to apply after the contractual relationship has ended, irrespective of who terminated the contractual relationship and for what reasons.

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

Swissgrid is expressly permitted to use data (in particular information included in the bids of ASPs) when performing its duties in accordance with StromVG/StromVV/EnG/EnV and when carrying out official mandates.

In addition, the ASP agrees to the exchange of information between Swissgrid and third parties as required in connection with the fulfilment of this Framework Agreement and to the anonymous publication of the results of the tender.

## **8 Duty to provide information and cooperate**

Both parties shall 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.

If for whatever reason the ASP is unable to meet its supply obligation in full, it must inform Swissgrid immediately about the cause and extent of its inability, regardless of whether or not the ASP is to blame. This information must also be provided in advance by telephone. The ASP must also inform Swissgrid of the expected date of resumption of its delivery obligation.

In the event of problems or discrepancies occurring in connection with the contractual performance, the ASP will provide Swissgrid with any reasonable support to the best of its ability if requested to do so by Swissgrid.

## **9 Non-contractual delivery**

If the ASP fails to deliver the contracted volume in full or in part, and such non-compliance cannot be proven to be the fault of Swissgrid or was caused by force majeure, such as war or warlike conditions, terrorism, internal unrest or sabotage, Swissgrid must be compensated for the non-delivery by the ASP within 14 calendar days. The amount of compensation is calculated by multiplying:

- a) the difference, if positive, between the price at which Swissgrid purchased the non-supplied volume of energy on the market or from another source, and the agreed contract price
- (b) by the volume of energy not supplied.

The right to extraordinary termination of the Framework Agreement in accordance with Clause 10.3 and further claims for damages remain unaffected by this provision.

## **10 Duration and termination of the agreement**

### **10.1 Term**

This Framework Agreement shall enter into force upon being signed in full by both parties. It shall remain valid for an indefinite period, but at least for one year.

### **10.2 Ordinary termination**

The Framework Agreement may be terminated by either party subject to a notice period of three months to the end of a month, but not before the end of the month one year after the Agreement was concluded. Notice of termination must be delivered to the other party by registered mail.

### **10.3 Extraordinary termination**

If a party fails to meet its contractual obligations, the party in question must immediately take the necessary steps to rectify the breach of contract as soon as possible. In such cases the other party is entitled - after issuing reminders and granting a reasonable period of grace to rectify the breach of contract - to terminate the Framework Agreement upon expiry of the grace period, subject to thirty days notice to the end of a given 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 terminated with immediate effect. This right of extraordinary termination is not available to the parties in cases of force majeure.

If bankruptcy or other insolvency proceedings, in particular the granting of a grace period or bankruptcy postponement, are initiated against the ASP or the ASP declares itself insolvent, Swissgrid shall be entitled to terminate the Framework Agreement with immediate effect.

### **10.4 Suspension**

If, after reminders have been sent and a period of grace has been granted, the ASP is still unable to fulfil its contractual obligations after the period of grace has expired, Swissgrid may also temporarily suspend the contractual relationship with the ASP or exclude the ASP from tenders until such time that the relevant breach of contract has been rectified.

## **10.5 Legal consequences of termination, invalidation of the Framework Agreement**

A termination of the Framework Agreement, whether ordinary or extraordinary, results in the Framework Agreement lapsing at the end of the corresponding period.

In the case of an ordinary termination, the Framework Agreement is extended for as long as the ASP has outstanding bids and supply commitments.

Furthermore, the Framework Agreement shall lapse with immediate effect as soon as the balance group of the ASP ceases to be valid in accordance with Clause 2. In this case, the ASP shall be liable for all damages incurred by Swissgrid as a result of the premature termination of the Framework Agreement.

## **11 Liability**

Liability depends on the relevant statutory provisions. All extended liability is excluded unless this has been specifically and contractually agreed otherwise. In particular, liability for lost profits, indirect and consequential damages and slight negligence is excluded.

## **12 Contacts**

Each party must provide the other party with a contact for issues relating to the rights and obligations of this Framework Agreement in writing. The exact contact address is published in Annex 2 of the Framework Agreement.

This contact must be available and ready to act on workdays (not including Saturdays) from 8:00 to 12:00 and from 14:00 to 17:00.

The Swissgrid contact addresses for matters concerning active power losses (i.e. tenders and the awarding of specific contracts, etc.) can also be found on the Swissgrid website, where all the relevant documents are available.

All changes to contacts must be immediately communicated to the other party in writing and recorded in Annex 2.

## **13 Transfer of the Framework Agreement**

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

The parties shall only be released from the obligations arising from this Framework Agreement once the legal successor has provided a written declaration of its entry into the Framework Agreement, has met all the relevant requirements for concluding the Framework Agreement 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 of this Framework Agreement.

## **14 Written form, amendments and additions**

Amendments and additions to this Framework Agreement (including this provision) are only valid if made in writing.

## **15 Invalidity, correction of emissions**

Should one or several of the provisions of this Framework Agreement be or become null and void or invalid, this shall not affect the validity of the remaining provisions of the Framework Agreement. The parties undertake to replace the null and void or invalid provision without delay with a new provision which approximates as closely as legally possible to the intention and purpose of the null and void or invalid provision.

The intention and purpose of this Framework Agreement must be amended accordingly if loopholes are discovered.

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

### **16.1 Applicable law**

This Framework Agreement shall be governed by Swiss law.

### **16.2 Place of jurisdiction**

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

## **17 Subsidiary documents**

The provisions of the Transmission Code apply subsidiary to the rights and obligations of the parties arising from this Framework Agreement. Swissgrid is entitled to declare the provisions of new editions of the Transmission Code as applicable in the implementation of this Framework Agreement subject to a period of notification of six months to the start of a given month.

The latest version of the Transmission Code is available on the Swissgrid website ([www.swissgrid.ch](http://www.swissgrid.ch)), where it can be viewed by the ASP.

## **18 Contract elements**

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

Annex 1: Conditions of tender

Annex 2: Contacts

The latest version of Annex 1 is published on the Swissgrid website ([www.swissgrid.ch](http://www.swissgrid.ch)), where it can be viewed by the ASP.

In the event of discrepancies between the Framework Agreement and one of its annexes, the provisions of the respective annex shall prevail.

## **19 Official language of the contract**

This Contract is issued 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](http://www.swissgrid.ch)).

## **20 Number of copies**

Two original copies of this Framework Agreement shall be drawn up. Each party shall receive one copy.

**Swissgrid Ltd.**

Place: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

\_\_\_\_\_  
**Contract Partner**

Place: \_\_\_\_\_

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

Date: \_\_\_\_\_

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