

**Contract**  
**for Positive Load Flow Commitments**

between

– hereinafter referred to as “bidder“ –

and

terrane**t**s bw GmbH  
Am Wallgraben 135  
70565 Stuttgart

– hereinafter referred to as “terrane**t**s bw“ –

– jointly referred to as “contract partners“ –

The following is agreed upon:

## **1. Subject matter of the contract**

The Object of this contract are positive load flow commitments (LFCs). LFCs serve as instruments for securing or increasing the supply or designation of freely allocable capacities in the market area of NetConnect Germany GmbH & Co. KG.

The tender comprises positive load flow commitments during the time 01.01.2020, 6 a.m. to 01.01.2021, 6 a.m. on a monthly basis.

The fulfilment of the positive load flow commitments must be ensured by the supplier throughout the whole period.

At the point Wallbach (TENP) Exit and VIP Germany – CH Exit respectively Dynamically Allocable Capacity (DZK) is not suitable for the provision of LFCs.

At Bavarian Points Dynamically Allocable Capacity (DZK) and Restricted Firm Capacity (BZK) is not suitable for the provision of LFCs.

## **2. Contractual obligations**

2.1 In the event of a call pursuant to section 4, the bidder shall undertake to physically deliver/accept the gas quantities at the agreed interconnection points or other points or shall adjust his entry or exit in such a way that the load flow is not more or less than the flow requested.

The necessary entry/exit contracts shall be concluded by the bidder with the respective network or system operators.

2.2 terranets bw is obliged according to fig. 3 of the call for tender as of 15.06.2019 for positive load flow commitments for the time from 01.01.2020 to 01.01.2021 (“call for tender”) to pay the fees agreed upon to the bidder.

2.3 This contract does not constitute any obligation on the part of terranets bw to actually make use of the positive load flow commitments offered by the bidder under this contract.

## **3. Tender / Merit Order List**

3.1 The requirements set out in the call for tender for the conclusion of a contract are an integral part of this agreement.

3.2 According to the rules of the call for tender, terranets bw shall draw up a merit order list which shall govern the order in which requested positive load flow

commitments are called up. terranets bw or a third party authorised by terranets bw shall be entitled to deviate from the order set out in the merit order list at any time in the event that technical reasons regarding the physical flow or comparable corresponding decisions made by terranets bw – Dispatching Unit or by the third party instructed by terranets bw demand this.

#### **4. Request for services**

- 4.1 In case an accepted offer only based on a capacity charge, terranets bw or one of their authorised third parties shall request the needed positive load flow commitments by 24:00 h of the previous day at the latest from the LFC bidder preferably using EDIGAS, alternatively using another format agreed upon or by telephone (day ahead process). In case an accepted offer only based on a capacity charge for Wallbach (TENP) Entry/VIP Germany – CH Entry, terranets bw or one of their authorised third parties shall request the needed positive load flow commitments by 15:00 h of the previous day at the latest from the LFC bidder preferably using EDIGAS, alternatively using another format agreed upon or by telephone (day ahead process). The utilisation of load flow commitments shall take place on the named days respectively from 06:00 a.m. at the earliest.
- 4.2 In case of an accepted offers containing a commodity charge component, terranets bw or one of their authorised third parties shall request the needed positive load flow commitments no later than two hours before delivery of the load flow commitments from the LFC bidder preferably using EDIGAS, alternatively using another format agreed upon or by telephone (within day process).
- 4.3 The bidder shall confirm the request for load flow commitments without delay preferably using EDIGAS or alternatively in another agreed format towards the Dispatching Unit of terranets bw or towards a third party designated by terranets bw. Said confirmation shall include details of the requested load flow commitments. Failure to confirm shall not release the bidder from his contractual obligations.

#### **5. Fees**

- 5.1 terranets bw shall pay to the bidder the fee stipulated in the annex “Bidding Form for Positive Load Flow Commitments for the time period 01.01.2020 to 01.01.2021“ for this contract.
- 5.2 For bids which include a commodity charge, obligation to pay said commodity charge on the part of terranets bw shall not arise until the LFC is called and full service has been correspondingly rendered.

- 5.3 Insofar as bids include a capacity charge, said charge shall be paid monthly by terranets bw on conclusion of the contract for the offered and accepted respective quantities independent of the LFC actually utilised.
- 5.4 For this purpose, the bidder shall issue invoices at the end of the respective month to terranets bw GmbH - Zentraler Rechnungseingang, Am Wallgraben 135, 70565 Stuttgart. The invoice amounts including the respective valid value added tax shall be paid by bank transfer. Payment shall be made to the account stipulated on the invoice by the 15th of the invoice month, however no later than fourteen calendar days after receipt of the invoice. Regarding said deadline, the invoice shall be deemed paid when the amount is credited to the bank account stipulated on the invoice. In the case of payment default, a penalty interest of 9 % p.a. (nine per cent) above the base rate is to be paid.

## **6. Data protection and confidentiality**

- 6.1 The contract partners undertake to treat confidentially the content of this contract and all information received in connection with this contract (hereinafter referred to as “confidential information“) and not disclose such confidential information or make it accessible for third parties without the prior written consent of the contract partner affected. The contract partners undertake to use the confidential information solely for the purpose of performing obligations of this contract.
- 6.2 The contract partners shall be entitled to pass on consumption, billing and contractual data to third parties insofar as and as long as this is necessary for the proper performance of contractual obligations. The contract partners declare their mutual consent to automated data processing by said contract partners or by third parties they have authorised in accordance with data protection laws.
- 6.3 Each contract partner is entitled to disclose without written consent of the other contract partner confidential information obtained from the other contract partner
- a) to an affiliated company insofar as said company assumes the same confidentiality obligation,
  - b) to its representatives, consultants, banks and insurance companies if and insofar as said disclosure is necessary for the proper performance of contractual obligations and that these persons or companies have in turn undertaken prior to the receipt thereof to treat this information as confidential or are under a professional secrecy obligation with respect to such information; or
  - c) to the extent that this confidential information

- is already legitimately known by the contract partner receiving the information at the time it is obtained by the other contract partner,
- is already publically accessible or becomes publically accessible other than through an act or omission of the receiving contract partner; or
- has to be disclosed by a contract partner due to a legal stipulation or a court or official order or a request by the regulatory authority; in this case, the informing contract partner shall inform the other contract partner thereof without undue delay.

6.4 The confidentiality obligations shall remain in force for a period of two years after expiry of this contract.

6.5 § 6a of the German Energy Act (*German: EnWG*) shall remain unaffected.

## **7. Force majeure**

7.1 Insofar as a contract partner is prevented from fulfilling his contractual obligations as a consequence of force majeure pursuant to Section 7.2, said partner shall be released from these obligations. The other contract partner shall be released from its corresponding obligations insofar as and as long as the contract partner is hindered from fulfilling his obligations as a result of force majeure.

7.2 Force majeure is deemed to be any unforeseeable event brought about by external factors that cannot be avoided or avoided in time even with the application of due care and diligence. This includes in particular natural catastrophes, terrorist attacks, power cuts, breakdowns in telecommunication connections, strikes and lock-outs insofar as the lock-outs are legal, or legal stipulations or measures taken by the government or by courts or authorities (independent of their legality).

7.3 The contract partner affected shall inform the other contract partner without undue delay about the force majeure, its reasons and estimated duration. Said partner shall apply all technically feasible and economically reasonable means to once again be able to fulfil his obligations as soon as possible.

## **8. Liability**

8.1 The contract partners shall be liable for damage to life, physical injury or damage to health following the legal regulations unless said damage is caused neither by wilful misconduct nor negligence by said contract partner, its legal representatives or servants or vicarious agents.

- 8.2 The contract partners shall be liable for damage to property or pecuniary damage, which are not included in section 8.1, following the legal regulation unless said damage is caused neither by wilful misconduct nor negligence by said contract partner, its legal representatives or servants or vicarious agents. Liability is limited in these cases, to the typically foreseeable damage, unless the Parties, their legal representatives, servants or vicarious agents have not acted intentionally.
- 8.3 In the case of a breach of cardinal obligations, the contract partners shall be liable for damage to property and pecuniary damage unless said damage is caused neither by wilful misconduct nor negligence by said contract partner, its legal representatives or servants or vicarious agents. Liability is limited to the foreseeable damages typical of such contracts, unless the Parties, their legal representatives, servants or vicarious agents have acted slightly negligent. Cardinal contractual obligations are those which have to be fulfilled in order to properly execute the contract.
- 8.4 In the case of non-cardinal contractual violations, the contract partners shall be liable for damage to property and pecuniary damage unless said damage is caused neither by wilful misconduct nor gross negligence by said contract partner, its legal representatives or agents. In the case of non-cardinal violations, liability for damage to property and pecuniary damage is limited to 250,000 euros, unless the Parties, their legal representatives, servants or vicarious agents have not acted intentionally.

## **9. Contract penalty**

- 9.1 In the event that the bidder does not or only partially fulfil his contractual obligations or does not fulfil them in due time he is obliged to pay a contract penalty, for each day during which at least one violation occurred, in the amount of the double net-monthly fee agreed upon according to fig. 5 for the respective load flow commitment. This is not applicable in case of force majeure in the sense of Article 7 of this contract, in case the bidder is not already in default at the occurrence of force majeure. For bids which include a commodity charge the basis for the calculation of the penalty is a theoretical call of the LFC with 20 % during the contract period.
- 9.2 A claim for damages remains unaffected by the penalty. However, the penalty is credited against the claim for damages.

## **10. Revision clause**

- 10.1 Should unforeseen events occur during the term of this contract which have a substantial financial, technical or legal impact on said contract but were not provided for in said contract or its annexes or were not taken into consideration when said contract was concluded and if it would consequently be unreasonable for a contract partner to fulfil any contractual stipulation, the partner affected by such changed circumstances can demand a corresponding amendment to the contractual obligation to take account of the changed circumstances while considering any commercial, technical and legal effects on the other party.
- 10.2 The contract partner citing the circumstances shall specify and prove the necessary facts.
- 10.3 The right to require an amendment to the contractual stipulations shall apply from the time the contract partner requesting such contractual amendment due to changed circumstances demands such change for the first time unless the requesting contract partner could not have been reasonably expected to require such an amendment at an earlier time.

## **11. Contract term**

- 11.1 This contract shall come into force from the time it is signed by both contract partners; it expires automatically on 01.01.2021, 06:00 a.m. and does not require notice to be given.
- 11.2 The right to terminate the contract prematurely for reasonable causes shall remain unaffected. Reasonable causes are in particular if a contract partner breaches a cardinal obligation in this contract or a contract partner shall file for insolvency on his assets or, concerning the assets of the contract partner, (preliminary) insolvency proceedings have commenced or have been rejected due to insufficient assets.

## **12. Disputes**

In the case of disputes in connection with this contract and its execution, said disputes shall be settled by ordinary courts of law. The laws of the Federal Republic of Germany shall apply to the exclusion of the conflict of laws and the interstate agreements adopted by the Federal Republic of Germany (e.g. United Nations Convention on Contract for the International Sale of Goods [“CISG“]), provided they are non-mandatory by law.

### 13. Severability clause

- 13.1 Invalidity or unenforceability of one or more provisions of this contract or its annexes shall not affect the validity of the contract and annexes in their entirety.
- 13.2 The contract parties shall undertake to appropriately replace the invalid or unenforceable provisions by valid or enforceable provisions that come as close as possible to the economic purpose of the original provisions. This shall also apply in the event of contractual omissions.

### 14. Written form

Amendments or cancellation of this contract shall require written form. This shall also apply to the waiver of the written form provision itself.

### 15. Integral parts of the contract

The contents of the call for tender dated 15.06.2019 for positive load flow commitments for the time period 01.01.2020 to 01.01.2021 as well as the appendix "Bidding Form for Positive Load Flow Commitments" for the time period 01.01.2020 to 01.01.2021 are integral parts of this contract.

In the event of contradictions, the stipulations set out in this contract shall prevail.

The Contract for Positive Load Flow Commitments is available in German and English. **Only the original German version is legally binding.**

Stuttgart, date .....

Place, date .....

terranets bw GmbH

(bidder)