

Agreement on the purchase or reservation of infrastructure capacity between Banedanmark and XX for timetable period K19

Banedanmark's case reference number 2018-XXXX

Agreement on the purchase or reservation of infrastructure capacity

between

Banedanmark

Amerika Plads 15

DK-2100 Copenhagen Ø, Denmark

CBR number: 18 63 22 76

(hereinafter referred to as "Banedanmark")

and

[Name of applicant]]

[Street and number]

[Zip code, city]

CBR number: XX XX XX XX

(hereinafter referred to as the "applicant")

regarding the allocation of railway infrastructure capacity (channels).

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§ 1 Background and legal basis

Pursuant to section 21 et seq. of order no. 1245 of 10 November 2015 regarding the allocation of railway infrastructure capacity (channels), infrastructure administrators and applicants that are non-railway enterprises shall, in connection with the allocation of channels, conclude contracts of an administrative, technical, and financial nature in connection with the allocation of railway capacity.

Based on this, the following agreement has been concluded between Banedanmark and XX (hereinafter referred to as the "applicant").

§ 2 Scope

This agreement covers capacity in the form of a channel or other service that Banedanmark has allocated to the applicant.

The agreement covers the applicant's right to use future channels and other services as described in Banedanmark's network report.

The operating of traffic and other use of the services stated shall be undertaken by the railway enterprise that has concluded an access contract with Banedanmark and that has been appointed by the applicant.

In accordance with the previous section, the applicant can enjoy all rights at the disposal of the services that have been allocated to the applicant.

Other transactions in respect of the provision of services are subject to the access contract with the railway enterprise to the extent that these are not expressly covered by this agreement.

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The applicant agrees that the operating of traffic within the capacity to which this agreement permits access requires that the railway enterprise appointed by the applicant has the requisite expertise etc. to operate traffic. See also section 2.2.

§ 2.1 Banedanmark's responsibilities

Para. 2.1.1 Requirements for financial guarantee

The applicant shall be able to provide a payment guarantee to Banedanmark of DKK 50,000 for permission to apply for capacity (cf. Paragraph 3, Section 10 of the Danish Railways Act). Banedanmark sets the terms of this guarantee in that Banedanmark determines the possibility of requiring an irrevocable first demand guarantee from a recognised bank or financial institution.

Para. 2.1.2 Provision of services

Banedanmark is responsible for allocating the applicant's appointed railway enterprise the channels and other services described in the agreement.

Para. 2.2. Applicant's obligations

The applicant appoints a railway enterprise to operate traffic and for other use of the services allocated to the applicant by Banedanmark.

The railway enterprise that the applicant appoints as a party to this agreement shall comply with all applicable requirements for railway enterprises, in accordance with both the Danish Railways Act and associated regulations issued pursuant to these provisions. In addition, the railway enterprise in question shall comply with Banedanmark's guidelines etc. as appropriate. Please refer to Banedanmark's website, www.bane.dk.

The applicant shall, in writing and with a copy sent to the railway enterprise, notify Banedanmark of the railway enterprise that it has appointed to operate traffic before performing any services. Notification shall be made within 30 days.

Applicants are entitled to appoint more than one railway enterprise. In addition, the applicant shall inform Banedanmark of this in writing, with a copy sent to the railway enterprise. The applicant shall inform Banedanmark of which railway enterprise will operate which traffic.

Para. 2.2.1 Change of supplier

If the applicant wishes to change supplier, the applicant shall notify Banedanmark of this in writing with a copy sent to the railway enterprise. The notification shall state when the existing railway enterprise's mandate expires, and when the agreement with the new railway enterprise takes effect.

The applicant undertakes to inform Banedanmark in writing and at least 30 days before the change of supplier so that there is time to conclude new access contracts and the like.

If the applicant wishes to partially change the railway enterprise, the obligation applies as above. In addition, the applicant shall notify Banedanmark of the exact extent of the change of supplier.

Para. 2.2.2 Capacity utilisation

The applicant shall ensure that the railway enterprise it appoints uses the services that have been assigned to the applicant in accordance with Banedanmark's allocation. On the first day of each month, Banedanmark can estimate the capacity used in relation to the capacity allocated. For the sake of optimal capacity utilisation,

Banedanmark may revoke one or more channels if these have been used to an amount less than 75% of the allocated capacity for at least one month (cf. Section 23 of order no. 1245 of 10 November 2015 regarding the allocation of railway infrastructure capacity (channels)).

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Para. 2.3 Joint obligations

Para. 2.3.1 Co-operation forum

The parties shall establish a forum for co-operation with the purpose of monitoring the implementation of this agreement and associated tasks. This co-operation forum shall consist of representatives from Banedanmark and representatives from the applicant. Both parties shall be represented equally. Both Banedanmark and the applicant may call on the consultative body.

Para. 2.3.2 Quality objectives

Agreements on quality objectives (if relevant) may be concluded,

such as a Penalty Bonus agreement.

§ 3 Agreement documents

This agreement consists of this contract and any accompanying attachments.

Para. 3.1 Banedanmark's network report

In accordance with Section 100 of the Danish Railways Act and EU Directive 2012/34/EU, Banedanmark publishes a network report, which describes the infrastructure managed by Banedanmark.

Banedanmark's network report is published on Banedanmark's website www.bane.dk.

Chapters 1 to 6 describe the conditions that must be met in order to be allowed to run or organise traffic on the network. The network report is part of the contractual documentation and shall be read alongside the access contract.

§ 4 Responsibility and compensation

The railway enterprise is responsible for any damage to railway infrastructure resulting from its traffic or other utilisation of services.

For all expenses incurred by Banedanmark through the utilisation of the services allocated to the applicant, the applicant is jointly and severally liable with the railway enterprise. The applicant is obliged to ensure that the contract concluded between the applicant and the railway enterprise reflects this.

Banedanmark is obliged to first contact the railway enterprise to claim compensation for any damage. Banedanmark is, however, required to inform the applicant of the claim's recovery from the railway enterprise.

Compensation claims raised by Banedanmark with the railway enterprise count in relation to limitations imposed on the applicant. The applicant cannot therefore claim that compensation claims have not been received within the period stipulated for compensation claims.

§ 5 Amendments and additions to the agreement

Amendments or additions to this agreement must be made in writing and signed and acceded to by both parties.

§ 6 Charges

Settlement can be made directly with the applicant for the fees and charges associated with the application.

The payment of taxes and charges is by invoice based on the information and documentation submitted.

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Invoice address

XX

YY

ZZ

§ 7 Disputes

The contract is governed by Danish law. Should any disagreements arise in connection with the contract, the parties shall endeavour to resolve these by way of negotiation.

If no resolution is reached, the parties may jointly designate an independent and expert negotiator to mediate and make non-binding proposals for the resolution of the dispute.

§ 8 Arbitration

Any question regarding the interpretation or fulfilment of the contract which cannot be settled amicably between the parties pursuant to Section 17.1 shall be referred to arbitration.

The party which raised the dispute shall appoint an arbitrator and invite the other party to appoint its arbitrator within 14 days. If this is not done, an arbitrator shall be appointed by the president of the Eastern High Court (Østre Landsret).

The appointed arbitrators shall appoint a chairperson for the arbitration tribunal. If the arbitrators cannot agree on a chairperson, one shall be appointed by the president of the Eastern High Court.

The arbitration tribunal sets the rules for its handling of the case itself in accordance with the usual procedural principles.

The seat of the arbitration tribunal shall be in Copenhagen.

The arbitration tribunal shall reach a decision on the basis of Danish law.

§ 9. Miscellaneous

Two copies of the contract have been signed by the parties, each of which has been given a copy.

The agreement cannot be transferred to a third party without the consent of the other parties.

§ 10. Entry into force and termination

The contract will enter into force on 8 December 2018 and will expire without termination on 7 December 2019. The contract is thus valid during timetable period K19.

For Banedanmark

Applicant

Place and date

Place and date

Signature

Signature