

Cooperation Agreement

between

Banverket,

Banedanmark

and

Jernbaneverket

1. Parties to the Agreement

This agreement (the Agreement) is made on 24.11.2004 between

Banverket (Reg. no. 202100-4003),

Banedanmark (Reg. no. SE 18 63 22 76),

and

Jernbaneverket acting through Bane Energi (Reg. no. NO 982 954 924)

The parties to the Agreement are referred to individually as “a Party” and collectively as “the Parties”.

2. Background

The Parties are responsible infrastructure operators for the railway in Sweden, Denmark and Norway respectively. Through this Agreement the Parties wish to coordinate the procurement and operation of a common energy settlement system.

The aim of the energy settlement system is partly to establish reliable, flexible and accurate energy settlement for traffic operators in the respective countries, and partly to ensure simpler and more accurate energy settlement for cross-border rail transport.

3. Rights and obligations in respect of procurement

3.1 Introduction

The Parties have jointly developed a specification for the procurement of a common Nordic railway energy settlement system (NRESS). Tenders have been invited based on the specification, and the Parties anticipate that a supplier (the Supplier) will be chosen by the end of 2004. In addition to the procurement of NRESS, an agreement will be made for the operation and maintenance of NRESS. The operator under the aforementioned agreement (the Operator) will be contracted for a minimum of 3 years, with the option to extend the agreement for a specified period.

Other systems and agreements of common interest to the Parties for the energy settlement system shall be regulated by this Agreement.

3.2 Party responsible for procurement

In order to simplify the contracting of the Supplier and the Operator, the Parties agree that Jernbaneverket, acting through Bane Energi, will represent the Parties. In cooperation with the other Parties, Jernbaneverket has established a project organisation, which will manage the procurement until delivery is completed. The project organisation shall in the future act in the name of Jernbaneverket, but for the account and risk of all of the Parties.

3.3 Procurement costs - documentation

As a general rule, all procurement costs shall be divided equally between the Parties. Jernbaneverket is responsible for preparing project accounts up until the delivery of NRESS. Project accounts shall include all expenses arising from the procurement and which shall be shared between the Parties. Project accounts, including supporting documents, shall be made available to the Parties on request.

The procurement costs shall be divided equally between the Parties, irrespective of whatever adjustments are necessary to adapt NRESS for use in the different countries.

The Parties' costs arising from adapting their own infrastructure/national traffic operators' rolling stock/ national traffic operators' access to NRESS etc, for example the costs arising from the installation of energy meters in the trains, and the development of the traffic operators' own user interface, shall be borne by the individual Parties. In this connection, the Parties agree that NRESS shall be developed with one interface which shall subsequently be integrated towards all traffic operators. The cost of adapting the user interface towards all traffic operators shall be borne by the Parties jointly.

Accrued procurement costs shall be divided between the Parties and invoiced at least by the end of every quarter.

3.4 Ownership of NRESS

NRESS shall be owned by the Parties jointly and in equal shares.

In addition, data in NRESS shall be owned by the Parties jointly, but such that all Parties have a unilateral right to export the data as required. Such export shall not impair the data stored in NRESS, but shall only imply that all Parties have access to the data, including on an individual basis.

3.5 Basis for the completed calculation

Arrangements shall be made for the Parties to have access to the basic/underlying data which might be needed from the Operator, for example in connection with sharing operational costs, invoicing traffic operators, complaints about invoices from traffic operators etc, either through the Steering Group or through a separate interface with NRESS.

4. Operation and further development of NRESS

4.1 Establishing a Steering Group

The Parties shall jointly establish a steering group (the Steering Group) to operate and further develop NRESS. The Steering Group shall comprise three persons and each Party shall appoint its own representative. The Parties are free at any time to change their representative. Any change of representative shall be notified in writing to the other Parties.

4.2 The duties and working method of the Steering Group

The representatives in the Steering Group shall choose a chairperson, who is responsible for organising the work of the Steering Group. The chairperson shall initially be elected for a period of two years, and the Parties assume that the role of chair shall rotate between the Parties' representatives.

The Steering Group shall act in the name of Jernbaneverket, and will be responsible for following up the contract with the Operator.

The Steering Group has, within the framework of this Agreement, the authority to make decisions in all matters that concern the further development and operation of NRESS.

Before the Steering Group can make any decision, all the representatives must have had the opportunity to participate in the decision-making process, including having the right to vote. In cases that are considered by a representative to be of particular importance, such representative can demand a written reason for the decision. Any disagreement between the representatives in the Steering Group shall be decided by vote. A decision shall be decided by a simple majority. In the event of a tie the chairperson shall have the casting vote.

The Steering Group shall hold an annual meeting to assess the functionality and distribution of the system in the preceding year and to make plans for the following year. In addition to this meeting, it is assumed that there will be continuous follow-up, primarily by way of telephone meetings. The chair of the Steering Group is responsible for ensuring that the Steering Group meets at least once a quarter.

If one of the Parties demands it, rules for the working of the Steering Group shall be drawn up in writing. The rules shall comply with the terms of this clause. Any disagreement between the Parties on the contents of the rules shall be decided by majority vote.

4.3 Operating costs

The Parties agree that accrued operating costs shall be divided proportionately between the Parties according to how many trains each Party has connected to NRESS. The number of trains that the Parties have in operation and that are connected to NRESS shall be specified on the invoice from the Operator. The invoice shall form the basis of the division of operating costs between the Parties.

Accrued operating costs shall be divided between the Parties and invoiced at least by the end of every quarter.

4.4 Further development of NRESS

The Parties shall prepare the ground for increasing the expansion of NRESS in their respective countries so that the billing system becomes as widely used as possible by traffic operators in all countries.

NRESS shall be continuously developed, so that the billing system accommodates, to the necessary degree, both the railway operations in the countries concerned and technical development. Upon instructions from the Steering Group, the Operator shall carry out such further development as the Steering Group may decide. The costs of further development shall be divided equally between the Parties, regardless of whether the development is primarily aimed at the conditions in a particular country.

5. Geographic links

The Parties agree to prepare the ground for other infrastructure owners, both in the Parties' own countries and in other countries to be connected to NRESS. The costs of preparing and adapting NRESS for new infrastructure owners shall be borne by the infrastructure owner itself. The infrastructure owner shall also pay its share of the total costs that the Parties have invested in NRESS. No other compensation shall be claimed from any infrastructure owner.

Infrastructure owners who are also traffic operators shall not be permitted to connect themselves to NRESS pursuant to the terms of the preceding paragraph. However, the Parties agree that infrastructure owners who are also traffic operators may purchase services based on NRESS. Compensation for use of NRESS shall be based on the principles in the preceding paragraph.

6. Assignment and encumbrance of rights in NRESS

None of the Parties may assign or encumber, by way of mortgage, lease or by any other means, their rights in NRESS. The Parties may only dispose of their rights in NRESS through the Steering Group, see clause 4, or by withdrawing from the cooperation, see clause 7.

7. Withdrawing from the cooperation – notice.

7.1 One of the Parties wishes to withdraw from the cooperation.

A Party may at any time elect to withdraw from the cooperation. Notice of withdrawal must be given in writing to the other Parties, with a 12-month notice period. If the withdrawing Party wishes to export data from NRESS in connection with the withdrawal, notification must be given during the notice period.

After the notice period has expired, the withdrawing Party shall have no rights in NRESS. The withdrawing Party's share will be transferred free of charge to the remaining Parties in equal shares.

7.2 The remaining Parties' rights to terminate the cooperation.

If one or more Party elects to withdraw from the cooperation as provided for in clause 7.1 and none of the Parties will continue to use NRESS, the other Parties may terminate use of NRESS, hereunder terminate the agreement with the Operator. All the costs arising from the termination shall be borne by the Parties jointly.

8. Breach of the Agreement

8.1 Complaints

Any Party wishing to invoke another Party's breach of its obligations pursuant to this Agreement must make a complaint in writing without undue delay after the breach is discovered.

The right to complain shall be lost if the complaint does not comply with the preceding paragraph, However, this rule does not apply if the Party in breach, or someone he is liable for, is guilty of gross negligence.

8.2 Damages

If one of the Parties is in negligent breach of its obligations under the Agreement, the other Parties may claim damages for the direct economic loss arising from the breach.

None of the Parties can claim compensation for indirect loss. Indirect loss shall include but not be limited to loss of profit for any reason, loss of production, loss of use and claims from third parties. However, this limitation in liability shall not apply if the Party in breach, or someone he is liable for, is guilty of gross negligence.

8.3 Default of payment

If one of the Parties defaults on a payment arising under the Agreement, the other Parties may claim 10% late-payment interest per annum until payment is made.

8.4 Other remedies for breach of contract.

The available remedies are fully listed in and regulated by clause 8.2 and clause 8.3. Other remedies than damages and late-payment interest shall not be available.

9. Duty of confidentiality

In the course of this Agreement the Parties will be appraised of plans, business relations and other related information, and the Parties shall treat such information as strictly confidential and, as far as possible, exempt all document from public disclosure, unless

- a) written consent to the contrary is given
- b) information is received from a third party who has had lawful authority to give such information, or
- c) the information is public knowledge.

The duty of confidentiality binds the Parties' employees and others appraised of the information mentioned in the preceding paragraph. The Parties undertake to do whatever is necessary to appraise the employees and other persons of the rules in this clause.

The duty of confidentiality shall remain in force after the Agreement has been terminated.

10. Choice of law and venue

The Parties' rights and obligation under this Agreement shall be regulated exclusively by Norwegian law.

Any disputes arising under the Agreement shall be resolved by negotiation. If the negotiations fail the disagreement shall be resolved by arbitration in accordance with the rules on arbitration in the Civil Procedure Act. The arbitration tribunal shall be in Oslo, and the negotiations shall be conducted in Danish, Swedish and/or Norwegian.

This Agreement is produced in three (3) original counterparts, one for each of the Parties.

Date:

Date:

Banverket

Banedanmark

Date:

Jernbaneverket acting through Bane Energi