



# **Information Memorandum**

## **Annex M**



**Standard contract for leasing of frequencies  
in the 3740-3800 MHz frequency band**

**1500 MHz, 2100 MHz, 2300 MHz, 3.5 GHz and  
26 GHz Auction**



**2021**

# Annex M: Standard contract for leasing of frequencies in the 3740-3800 MHz frequency band

## Contract regarding lease of frequencies in the 3740-3800 MHz frequency band for establishing private networks

### 1 Parties

This Contract has been concluded between

[Name of telecommunications company holding a licence for frequencies in the 3740-3800 MHz frequency band]

[Address]

[Postcode]

[CVR No. xxxxxxxx]

(hereinafter referred to as "Lessor")

and

[Name of enterprise etc. intending to lease frequencies in the 3740-3800 MHz frequency band]

[Address]

[Postcode]

[CVR No. xxxxxxxx]

(hereinafter referred to as "Lessee")

(referred to singularly as "the Party" and collectively as "the Parties")

### 2 Background and purpose

The Lessor holds a licence to use frequencies in the 3740-3800 MHz frequency band, issued on the basis of the 1500 MHz, 2100 MHz, 2300 MHz, 3.5 GHz and 26 GHz Auction, and until [dd Mm] 2025 [4 years from issue of the licence] the Lessor shall meet requests for lease of the Frequencies or a subset thereof from enterprises or public institutions etc. for the purpose of allowing the Lessee to establish a Private Network for its Own Use within a specified geographical area, cf. Decision by the Minister for Climate, Energy and Utilities of 22 December 2020, clause 3.3. If the Lessee wishes to lease less than 60 MHz the Lessor can decide the placement of the leased frequencies in the 3740-3800 MHz-frequency band.

On the basis of the Lessee's request the Parties have concluded this Contract for lease of frequencies in [specify frequencies here. It depends on the Lessee's choice how large a frequency portion of the total of 60 MHz is desired to be included] MHz, totalling [XX] MHz for the use of establishing a Private Network for the Lessee's Own Use.

The lease shall be subject to the terms specified in the Contract, and the provisions of the Contract can departed from solely to the extent that this appears explicitly from the Contract.

### 3 Definitions

1. Frequencies: The Frequencies shall mean the frequencies leased under the Contract, cf. clause 2.
2. Private Network: A Private Network shall mean a closed network exclusively used by the Lessee for the Lessee's Own Use in a geographical area over which the Lessee has a right of disposal (e.g. via ordinary ownership, leasing or tenancy).
3. Own Use: Own Use shall mean a Private Network which can only be used as an integral solution in the Lessee's production etc. Thus the Lessee of the Frequencies must not use these for commercial provision of electronic communications networks or services.
4. Round Price for 3.5 GHz: The Round Price is the price that is equal to the round price for 10 MHz in the 3.5 GHz band without coverage obligation or leasing obligation, in the last round in the main spectrum assignment phase. The Round Price is used for determining the annual price for rental and amounts to [*Round Price to be inserted in connection with the issue of the licence*] DKK equivalent to an annual amount of [*amount to be inserted after issue of the Licence*] DKK per MHz.

### 4 The Lessor's obligations

1. The Lessor shall ensure that the Lessee can use the frequencies in question without unacceptable interference from the Lessor's other frequency uses.
2. The Lessor shall ensure that the accumulated power flux density (PFD) from the Lessor's public mobile network at the borderline to the private network, cf. clause 5, no. 1, shall not exceed  $-5 \text{ dBm/m}^2/(5 \text{ MHz})$  at a height of 1.5 metres. Subject to agreement, the Lessor and the Lessee may depart from the requirements above.

### 5 The Lessee's obligations and technical conditions for the Private Network

1. The Lessee may use the Frequencies in the area [*land register/polygon*] in total [*area to be specified when agreement made*]  $\text{km}^2$ . The Lessee may use the Frequencies for a Private Network for its Own Use, cf. clause 3, no. 2. Thus the Frequencies must not be used outside the Lessee's area and must not be used for commercial provision of electronic communications networks or services.

2. The Lessee shall comply with the technical conditions in force from time to time as specified in the Lessor's 3.5 GHz frequency licence, cf. clauses 2-7 in the frequency licence (Annex 1 of the Contract). If the Lessor departs from the technical conditions in clauses 5-7 of the frequency licence, cf. clauses 8-9 of the licence, these will be the conditions to be complied with by the Lessee. The Lessor shall notify the Lessee of this, giving at least one year's notice. Furthermore, the Lessor shall notify the Lessee without undue delay of any changes in the Lessor's licence terms for the Frequencies as notified by the Danish Energy Agency.
3. By a supplement to the Contract, the Parties may agree on synchronisation requirements other than those following from no. 2 provided that this does not cause interference to other users of frequencies in the 3410-3800 MHz frequency band and adjacent frequency bands.
4. The Lessee shall ensure that the accumulated power flux density (PFD) from the Lessee's Private Network at a distance of 500 metres outside the borderline of the Private Network, cf. no. 1, shall not exceed -5 dBm/m<sup>2</sup>/(5 MHz) at a height of 1.5 metres. In case that the Lessee does not document that the PFD-requirement can be met with the intended private network, the Lessor may set conditions on use of specific antenna positions, antenna systems and power levels in order to insure that the PFD-requirement is met. Subject to agreement, the Lessor and the Lessee may depart from the requirements above.
5. In case of interference in connection with the use of the Frequencies the Lessee shall contact the Lessor forthwith, who, if necessary, shall contact the Danish Energy Agency for the purpose of determining the cause of the interference.
6. In case of failure to observe nos. 2 and 3, the Lessor shall request the Lessee without undue delay to take the necessary measures to ensure compliance with the technical conditions.
7. The Lessee shall start using the Frequencies within two years from the date of entering into the Contract.

## 6 Rental

1. The Lessor is entitled to charge an annual rental for the Frequencies which shall not exceed an amount calculated according to the provisions of nos. 2 and 3 below. Calculation of the rental is further illustrated by examples below in nos. 5 and 6.
2. The annual rental shall be fixed by the Lessor on the basis of the annual frequency charge and the Round Price, and such that the annual rental corresponds to a geographically proportional share considering the amount of frequencies included in the Contract. Rental for part of a calendar year shall be fixed proportionally based on the annual rental for the year in question and the relevant period.
3. The maximum annual rental can be calculated by means of the following formula:

*Maximum annual rental =*

$$\left( \frac{\text{Frequency charge per MHz} * \text{Amount of frequencies}}{43,123\text{km}^2} * \text{number of km}^2 \right)$$

$$+ \left( \frac{\text{Annual round price per MHz} * \text{Amount of frequencies}}{43,123 \text{ km}^2} * \text{number of km}^2 \right)$$

Denmark's overall area is 43,123 km<sup>2</sup> which is consequently included in the calculation to determine the geographical share.

*The amount of frequencies* is the number of MHz included in the Contract, cf. clause 2.

*The number of km<sup>2</sup>* is the geographical area included in the present Contract, cf. clause 5, no. 1, including a border zone at a distance of up to 500 m out from the area.

*Frequency charge per MHz* is the fee to be paid by the Lessor to the Danish Energy Agency, and which is fixed annually by the Agency according to the Frequency Act.

*Round price per MHz* is the round price at the last round in the main spectrum assignment phase for 1110 MHz in the 3.5 GHz frequency band without coverage and leasing obligations. The Round Price is calculated as an annual price per MHz, cf. clause 3, no. 4.

4. The annual rental at the time of signing this Contract amounts to DKK [amount]. The annual rental for subsequent years shall be determined by the Lessor when the Danish Energy Agency has fixed the frequency charge for the calendar year in question.
5. This no. 5 contains an example of how to calculate the annual rental.

For the use of the example, the following assumptions will apply:

- The Lessee wants to lease 50 MHz for a circular area of 5 km<sup>2</sup> (i.e. the area has a radii of 1.262 km). To this should be added 500 m out from the area, which will then be 9.75 km<sup>2</sup> (due to a total radii of 1.262 km + 0.5 km = 1.762 km).
- The frequency charge per MHz is fixed at DKK 5,640 (corresponding to the frequency charge set for 2020).
- The annual Round Price per MHz is DKK 250,000.

On the basis of these assumptions, the annual rental can be calculated by means of the formula in clause 6, no. 3:

*Maximum annual rental is equal to*

$$\left( \frac{5,640 \text{ DKK/MHz} * 50 \text{ MHz}}{43,123 \text{ km}^2} * 9.75 \text{ km}^2 \right) + \left( \frac{250,000 \text{ DKK/MHz} * 50 \text{ MHz}}{43,123 \text{ km}^2} * 9.75 \text{ km}^2 \right) = \text{DKK } 3467.97$$

Thus the annual (maximum) rental is DKK 3467.97.

6. This no. 6 gives an example of how to calculate the annual rental if the lease period only constitutes part of the calendar year in question.

The example is based on the example in no. 5. The same assumptions have been made, and the annual rental for a full calendar year is therefore DKK 3467.97.

For the use of this example, it is assumed that the Contract is made with effect from 1 August (i.e. covering a period of 153 days).

The rental for the period in question can be calculated by this formula:

$$\text{Proportional rental} = \frac{153 \text{ days}}{365 \text{ days}} * \text{DKK } 3467.97 = \text{DKK } 1453.70$$

Thus the rental for the relevant portion of the calendar year is DKK 1453.70.

7. The Lessor is entitled to charge an annual administrative fee in an amount not exceeding the fixed share of the frequency charge in force from time to time, which is charges similarly by the Danish Energy Agency when issuing spectrum licences. In 2020 this amount is DKK 600.

## 7 Invoicing and terms of payment

1. The Lessor is entitled to invoice the annual rental for the first calendar year (or the proportional share of the calendar year in question) plus an annual administrative fee for entering into the Contract. For subsequent calendar years the Lessor is entitled to invoice the annual rental when the Danish Energy Agency has fixed the frequency charge and the annual rental has been calculated, cf. clause 6, nos. 2 and 3.
2. Invoicing shall be made with at least 30 days being allowed for payment.

## 8 Termination in case of default by the Lessee

In the event that the Lessee is in breach of its payment obligations under the Contract, the Lessor shall be entitled to terminate the Contract with the Lessee with future effect, provided that the Lessor has given written notice to the Lessee that the Lessee is in breach of its payment obligations in a specified manner, and also that failure to pay within 30 days will result in the Contract with the Lessee being terminated if the Lessee has not fulfilled its payment obligations before expiry of the time limit.

Furthermore, the Lessor may terminate the Contract in case of a material breach on the part of the Lessee, including repeated failure by the Lessee to comply with the stipulated terms and requirements regarding the use of the Frequencies.

In the event of the Lessor's termination of the Contract the Lessor shall refund the proportional payment of the rental paid by the Lessee for the year in question, from the date when the Contract was terminated.

## 9 Liability to pay damages

The Parties are liable for damages according to the general rules of Danish law. The liability to pay damages shall not include operating loss, loss of profits or other indirect losses.

## 10 Amendments

This Contract can only be amended by written agreement between the Lessor and the Lessee, to be drawn up as a supplement to the Contract. The terms of this Contract may solely be departed from to the extent explicitly appearing from the Contract, cf. clause 2.

Until the date specified in clause 2, the Lessor shall meet the Lessee's request to lease additional frequencies up to 60 MHz if the Contract is for fewer frequencies, and furthermore the Lessor shall meet requests for changes regarding the geographical area, cf. clause 1, in case this is possible in relation to other frequency use within the area in question, including other established Private Networks. This applies both to enlarging the size of the geographical area and relocation to another geographical area.

The Lessor may choose to meet requests for such changes after the date mentioned in clause 2.

## 11 Transfer

The Lessee is entitled to transfer its rights and obligations under the Contract to a new Lessee.

The Lessor is entitled and obliged to transfer its rights and obligations under the Contract by a simultaneous transfer of the Lessor's licence.

## 12 Duration

This Contract shall enter into force on *[specify date - the Lessee is entitled to the Lessor allowing use of the Frequencies at the latest three months after request]* and expire without notice at the expiry of the Lessor's licence, unless the Lessee terminates the Contract under the provision in clause 13.

The maximum duration of this Contract shall be until expiry of the Lessor's licence.

## 13 Termination

The Lessee shall at all times be entitled to terminate the Contract in writing, wholly or partly, subject to a notice of four weeks. In case of termination in part, the Lessor shall receive payment calculated for the terminated part of the Frequencies up to the time when the termination takes effect.

## 14 Disputes

The legal relationship under the Contract and the interpretation thereof shall be settled under Danish law.

In case of any dispute between the Parties in connection with this Contract, the Parties shall initiate negotiations for the purpose of settling the dispute.

In case no solution can be reached through negotiation, the dispute shall be settled by the ordinary courts, unless the Parties agree on another solution of the dispute.

## 15 Signatures

This Contract is to be signed in two copies, one of which is to be kept by the Lessor and one is to be kept by the Lessee.

Place:

Date:

For the Lessor:

Place:

Date:

For the Lessee: