

Agreement on reservation of infrastructure capacity between Banedanmark and xxx valid during timetable period TT24  
Banedanmark journal number 2023 -XXXX

## **Agreement on reservation of infrastructure capacity (paths)**

between

Banedanmark

Carsten Niebuhrs Gade 43

1577 København V

CVR 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")

on the infrastructure of Banedanmark

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## **§ 1 LEGAL BASIS AND PURPOSE**

Pursuant to section 10, subsection 1, applicants for capacity which are not railway undertakings or which at the time of the application for capacity do not meet the conditions for operating a railway undertaking, cf. section 9 of the Railway Act, must have an approval from the infrastructure manager to reserve capacity at a given time on track sections (infrastructure) of the infrastructure manager.

Based on this, the present agreement is concluded between Banedanmark and XXXX (hereinafter referred to as "*the applicant* ") on mutual rights and obligations in connection with the applicant's reservation of infrastructure capacity on Banedanmark's infrastructure.

The agreement includes the applicant's right to use allocated paths throughout the timetable period.

## **§ 2 OBLIGATIONS**

### **2.1 Obligations of the applicant**

#### Appointment of railway undertaking

Traffic operations and other use of the paths that Banedanmark allocates to the applicant must be carried out by a railway undertaking appointed by the applicant. At least 30 days before using the allocated paths the applicant shall notify Banedanmark which RU the applicant has chosen to operate traffic in the allocated paths.

The designated railway undertaking must be in possession of all necessary licenses and comply with the requirements applicable to railway undertakings at any given time, both in accordance with the Railway Act and associated orders issued pursuant to these provisions. The railway undertaking must also have entered into a valid access contract with Banedanmark.

The applicant has the right to appoint more than one railway undertaking. In this case, the applicant must notify Banedanmark in writing with a clear statement of which railway undertaking that operates the respective traffic.

The applicant retains all rights to the allocated paths throughout the timetable period and may not transfer these to third parties without the consent of Banedanmark.

#### Change of supplier

If the applicant wishes to change supplier, the applicant shall notify Banedanmark in writing, stating at which time the existing railway undertaking's mandate expires, and from when the agreement with the new railway undertaking shall apply.

The applicant undertakes to inform Banedanmark in writing and no later than 30 days before change of supplier. If the applicant wishes to partially change railway undertaking, the obligation applies as above. In addition, the applicant must state to Banedanmark in writing the exact extent of the change of supplier.

#### Capacity utilization

The applicant shall ensure that the designated railway undertaking utilizes the paths allocated to the applicant during the timetable period.

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The first day of every month, Banedanmark can quantify the utilized capacity compared to the volume of allocated capacity. In order to ensure optimal utilization of the capacity, Banedanmark may revoke one or more paths, if less than 75 % of the allocated capacity is used within at least a month.

Banedanmark's right to revoke paths does not apply if the lack of capacity utilization is due to circumstances outside the influence of the applicant and/or the appointed railway undertaking.

#### Payment guarantee

At the request of Banedanmark, the applicant must be able to provide a payment guarantee of DKK 50,000 for permission to apply for capacity. 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.

## **2.2 Obligations of Banedanmark**

### Allocation of capacity

The applicant is allocated capacity based on the principles of the order on the allocation of railway infrastructure capacity (paths) that applies. Allocation is granted annually on the basis of a specific application and Banedanmark notifies in writing about the capacity allocated. In addition, ad hoc capacity can be allocated. Deadlines for application and allocation of capacity are provided on Banedanmark's website.

Banedanmark is responsible for allocating the applicant's paths to the designated railway undertaking(s), and is in this connection responsible for all planning of the timetable with the designated railway undertaking.

### Notification of temporary capacity restrictions (track possession)

Banedanmark notifies of capacity restrictions in Banedanmark's Network Statement and LA letter.

When a track possession is announced, the entity to which the paths are allocated in the scheduled work period does not have access to the tracks included, even though the paths have been allocated to the applicant associated with the path allocation for the concerned timetable period.

### Charges

Banedanmark levies infrastructure charges for use of the state railway network with the railway undertaking designated by the applicant.

All agreements between the applicant and the designated railway undertaking regarding the distribution of infrastructure charges are irrelevant to Banedanmark.

## **§ 3 RESPONSIBILITIES AND COMPENSATION**

A party is only liable to the other party to the extent that an injury is caused by negligence or willful misconduct by the tortfeasor, or in accordance with the general rules of Danish law for non-participation in the proper fulfilment of the contract. In other respects, the general rules of Danish law apply.

The designated railway undertaking is liable for damage to the railway infrastructure caused in connection with its traffic or other use of services. Neither Banedanmark nor the applicant shall be held liable to the other party under this contract insofar as the liability is due to circumstances beyond the party's control and which the party should

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not have taken into account at the signing of the contract, or should have avoided or overcome.

The party wishing to invoke force majeure shall without undue delay notify the other party in writing of the occurrence and termination of the event.

The parties shall seek to mitigate or prevent the event, damage or delay in accordance with Danish laws on the duty of mitigation.

#### **§ 4 BREACH OF CONTRACT**

The contract can only be terminated in the event of a substantial breach.

If a party wishes to invoke a breach, the aggrieved party must without undue delay inform the other party of the breach. If the party responsible for the breach does not remedy the situation within reasonable time, the aggrieved party may immediately terminate the contract.

In other respects, the general rules of Danish law on default apply.

#### **§ 5 COOPERATION**

The Parties agree to participate, as appropriate, in meetings between the parties to ensure the necessary cooperation.

##### Confidentiality

The parties and their employees are obliged to maintain confidentiality of any knowledge and information which may come into their possession, regarding the other party's commercial and technical relations and expertise, clients, collaboration partners, sub-contractors, etc. This confidentiality between the parties continues after the termination of the contract, whatever the cause.

- Notwithstanding the above-mentioned, a party is entitled to disclose confidential information, if and to the extent: The disclosure is required by legislation or a decision by a court or public authority, including the Ministry of Transport, the Danish Civil Aviation and Railway Authority, and the Danish competition authorities or EU authorities
- The parties deem necessary and appropriate that the party passes the information to its advisers, provided that these advisers are or will be subject to a similar confidentiality obligation
- The information is publicly available or rightfully received by third parties, or
- The information is made anonymous and included in general sector statistics, annual reports or similar. The transfer of information by one party in addition to the situations listed above requires the other party's prior written consent.

#### **§ 6 DISPUTES**

##### **6 .1 Negotiation and mediation**

The contract is subject to Danish law.

If a dispute arises in connection with the contract, the parties must seek this solved through mediation.

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If the dispute is not solved through mediation the parties may jointly appoint an independent expert mediator to make non-binding proposals for a resolution of the dispute.

## **6 .2 Arbitration**

Any question of interpretation of or compliance with the contract, which cannot be arranged amicably between the parties in accordance with section §6.1 of the contract is referred to arbitration.

The party seeking arbitration shall appoint an arbitrator and invite the other party within 14 days to appoint its arbitrator; failing this, the arbitrator will be appointed by the President of the Danish Eastern High Court.

The appointed arbitrators shall jointly appoint a chairman for the arbitration tribunal. If the arbitrators cannot agree on the choice of a chairman, the President of the Danish Eastern High Court will make the appointment.

The arbitration tribunal shall adopt rules for the processing of the case in accordance with the customary procedural principles.

The arbitration tribunal shall be located in Copenhagen.

The arbitration tribunal shall decide on the basis of Danish laws.

## **§ 7 ENTRY INTO FORCE AND TERMINATION**

The contract shall enter into force on 10 December 2023 and will expire without notice on 14 December 2024.

### **For Banedanmark**

Date:

\_\_\_\_\_

Kenneth Juul Andersen

Section Head

### **For the applicant**

Date:

\_\_\_\_\_

Name

Title