

Agreement on reservation of infrastructure capacity between Banedanmark and xxx valid during timetable period K25

## **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, of the Railway Act, 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 be in possession of 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 a 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. Not later than 30 days before using the allocated paths the Applicant shall notify Banedanmark which Railway Undertaking the Applicant has chosen to operate traffic in the allocated paths.

The appointed 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 Executive 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. Also 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 not 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 appointed Railway Undertaking utilizes the paths allocated to the Applicant during the timetable period.

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,

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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, as Banedanmark determines the possibility of requiring an irrevocable first demand guarantee from a recognised bank or financial institution.

#### Traffic information

If the reserved capacity is applied for passenger traffic, the Applicant is responsible for the delivery of traffic information as an ordinary Railway Undertaking. The obligation in this regard appears from appendix 1. The Applicant can conclude an agreement with the appointed Railway Undertaking on the appointed Railway Undertaking being in charge of the obligation.

## **2.2 Obligations of Banedanmark**

#### Allocation of capacity

The Applicant is allocated capacity based on the principles of the valid Executive order on allocation of railway infrastructure capacity (paths), etc. . 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 appointed Railway Undertaking(s), and is in this connection responsible for all planning of the timetable with the appointed Railway Undertaking.

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

Banedanmark notifies about capacity restrictions in Banedanmark's Network Statement, consultations, decisions, 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 in the work, even though the paths have been allocated to the Applicant in connection with the path allocation for the timetable period concerned.

#### Charges

Banedanmark levies infrastructure charges for use of the state railway network from the Railway Undertaking appointed by the applicant.

All agreements between the Applicant and the appointed 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 appointed 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 can under this contract be deemed liable to the other party, to the extent that the case incurring liability is due to force majeure or similar circumstances. This implies extraordinary weather conditions, pandemics, strike/lockout and the like, being beyond the party's control and which the party could not have foreseen or avoided.

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 prevent or reduce 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.

Moreover, Danish laws on remedies for breach of contract 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 the 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, if the information is of considerable financial importance to the party, cf. the valid national Public Service Law.

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 that:

- the information is required according to legislation (e.g. the valid law on freedom of access to environmental information) or according to a decision made 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

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- the parties deem necessary and appropriate that the party passes the information to its advisers, provided a) that the advisers are or will be subject to a similar confidentiality obligation and b) the party only passes information necessary for the sub-contractor being able to perform the task(s) concerned
- the information is publicly available or rightfully received by third parties or
- the information is made anonymous and used for general sector statistics, annual reports or similar.

Any disclosure of information in addition to those listed above requires prior written consent from the non-disclosing party.

## **§ 6 DISPUTES, APPLICABLE LAW AND VENUE**

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

This contract must be understood with reference to Danish laws.

Any dispute between the parties must be resolved amicably. If a reasonable solution cannot be obtained, the case can be brought before the Danish courts.

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

The contract shall enter into force on 10<sup>th</sup> December 2024 and will expire without notice on 13<sup>th</sup> December 205.

### **For Banedanmark**

Date:

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Kenneth Juul Andersen

Section Head

### **For the Applicant**

Date:

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Name

Title

## **APPENDIX 5 – TRAFFIC INFORMATION**

### In general

According to valid Executive order no. 1276 of 20/11/2015 on Banedanmark's duties and powers (with later changes), Banedanmark delivers traffic information to customers at the stations for the long-distance and regional lines. The Applicant is pursuant to this appendix responsible for the delivery of traffic information to the joint customers of Banedanmark and the Applicant.

### 2. Responsibility sharing

Banedanmark is responsible for and in charge of traffic information:

- about the actual situation of operations at all stations for long-distance and regional lines in Denmark on displays and through loudspeakers at the stations, cf. the "Service standard for Traffic information"
- about actual departure times of the trains and track utilisation by Rejseplanen (Journey Planner) as well as special trains, cancelled trains, and actual stopping pattern up to 24 hours ahead
- on digital departure displays at Mit-tog.dk and in the app MitTog, including service for blind and visually impaired passengers

The Applicant is responsible for and in charge of traffic information:

- in trains
- on own displays or on displays of the appointed Railway Undertaking
- printed information posters
- signs and markings of platform sections
- in Rejseplanen (Journey Planner) by plan basis and any text messages
- own apps and websites

### 3. Exchange of data

If the operations comply with one or more of the conditions stated below:

- Involves train numbers in connection with ticket sales
- Variation in the application of rolling stock, i.e. type, number of train sets and the length of these
- Involves combining or splitting of trains, also outside Banedanmark's infrastructure (where destinations vary across train sets/coaches)

In case the Applicant – as far as long trains (total length 100+ m) are concerned – must deliver data to Banedanmark concerning the planned train formation and updates in real time (to be used for coach numbers on displays, destination for the individual coaches of trains to be separated, correct description of placing of the train at the platform in order for the passengers to be able to locate the correct place of the platform as well as for the purpose of performing effective operations).

If the Applicant's operations involve one or more foreign destinations, the Applicant must deliver data for planned and actual stopping pattern and destination outside Denmark in real time as far as long trains (total length 100+ m) are concerned.

#### 3.1 Further exchange of data

Moreover, the Applicant must, to the extent available, deliver data to Banedanmark regarding:

- position of the trains in real time
- timetables for replacement transport (replacement busses)
- data for rolling stock in real time on e.g. locked coaches, services onboard the train, bicycles, and children's guide

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Banedanmark and the Applicant are responsible for own traffic information media at stations being available to the customers in the best possible way. Such responsibility also comprises that said traffic information media are updated and are subject to a sufficient level of maintenance.

#### 4. Expectations for the future agreements on reservation of infrastructure capacity

In the future, traffic information will be even more digitalised. Already today, Banedanmark receives and provides more of the above information based on supplies from Applicants. For the future timetable periods, Banedanmark expects to require further exchange of data, including data for train lengths shorter than 100 m.

##### 4.1 Further expectations

In addition, Banedanmark evaluates the future possibilities of handling information from the Applicants regarding e.g.:

- Real time for replacement busses
- Text messages
- Seats and capacity

#### 5. Faults and customer inquiries

The Applicant and Banedanmark are mutually obliged to report on faults experienced regarding traffic information. Fault reporting must as a minimum contain:

- time and place
- description of fault (expected/actual traffic information)
- the media in which a fault was experienced (display, journey planner, etc.)
- train number
- photo documentation (if available)

Acute faults in Banedanmark's media must be sent to Banedanmark's operations centre (DCDK) by mail [dcdkti@bane.dk](mailto:dcdkti@bane.dk)

Passengers' inquiries on traffic information (questions, faults, defects, and proposals) can be directed to the Applicant's customer centre as well as to Banedanmark Traffic information by mail [trafikinformation@bane.dk](mailto:trafikinformation@bane.dk)

For reply to inquiries from passengers Applicants and appointed Railway Undertakings can obtain assistance and facts on the traffic information from Banedanmark through [trafikinformation@bane.dk](mailto:trafikinformation@bane.dk)

Inquiries regarding punctuality are replied to by the Applicant.

#### 6. Cooperation

The cooperation between Banedanmark and the Applicant takes place on an ongoing basis by way of established structures and contacts. The cooperation is adjusted as required.