

## **Standard Access Contract Banedanmark**

Access Contract

between

Banedanmark

Carsten Niebuhrs Gade 43

DK-1577 Copenhagen VØ

DENMARK

CVR registration number: 18 63 22 76

(Hereinafter referred to as "Banedanmark")

and

[Railway Undertaking]

[Street, number]

[Zip code, City]

CVR registration number: xx xx xx xx

(Hereinafter referred to as "Railway Undertaking")

regarding working relations, mutual rights and obligations etc. in relation to access of  
allocated paths to the Railway Undertaking (hereinafter referred to as "the contract").

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## The structure of the contract

The contract consists of the following:

- I. Standard access contract
- II. Annex to the standard access contract
- III. Amendment to the standard access contract on specific conditions for the Railway Undertaking, if any
- IV. Annex to the amendment on specific conditions for the Railway Undertaking, if any.

## Definitions

*Optional path:* a pre-planned path that can only be guaranteed for use by the Railway Undertaking once a final application has been submitted by the Railway Undertaking within a specified date. The optional path may become void if another application is submitted regarding the same path, which in terms of transport work exceeds the optional path. The Executive order on allocation of railway infrastructure capacity (paths) etc., section 20 contains a formula for calculation of transport works.

When planning capacity restrictions, Banedanmark is not obliged to take into account optional paths, to the extent an already allocated capacity will be disadvantaged when planning work on the infrastructure.

*Infrastructure data:* Data which are necessary in order for the Railway Undertaking to prepare a preferred access timetable to be applied by Banedanmark when performing capacity planning.

*Interval track possession:* Temporary possession of tracks in the time between the passing of two trains. The track possession does not affect the validity of the timetable nor does it substantiate a correction of the timetable. The objective of the interval track possession is to ensure access to the track for a short period of time with minimal planning prior to the track possession.

*Train path:* The infrastructure capacity of the railway network defined in time and geography by a sequence of arrival and departure times for the train between the departure station, the intermediate stations, and necessary for a train being able to run from one point to another for a given period.

*Capacity:* Infrastructure such as paths, stations, service and preparation facilities, stabling tracks etc.

*Capacity restrictions:* Condition of an around the infrastructure which can affect the traffic operations of the Railway Undertaking and/or can reduce the capacity available.

*Timetable:* Composition of paths that Banedanmark produces for a given period.

*LA letter:* An overview of all capacity restrictions with affect on the capacity in relation to the service timetable.

*Rolling stock data:* Data necessary to be included in Banedanmark's timetable data base, with regard to i.a. calculation of running time.

*Production data:* Data necessary in order to calculate work schedules for the stations.

*Regularity statement:* Statement on train movements calculated using methods stated in the valid Executive order on infrastructure charges etc. for the rail network.

*Maintenance running:* Running in tracks and point switches not used for transport during normal operations to ensure that the track circuits remain working and useable.

*Traffic consequences:* An overview of which trains to be operated in which paths, including exact times (minutes) for the paths

## **1 Basis and purpose**

This contract is governed in accordance with the applicable Danish laws and EU law.

This contract stipulates co-operation, mutual rights and obligations, conditions for the use of infrastructure and requirements for insurance under the applicable executive order on the allocation of railway infrastructure capacity (train paths) etc.

## **2 Minimum access package**

Banedanmark provides a minimum access package to the Railway Undertaking as stipulated in EU and Council Directive 2012/34.

Rights and duties associated with the minimum access package are stipulated in 2.1 – 2.8 of the contract.

### 2.1 Capacity allocation

Capacity is allocated to the Railway Undertaking to carry out train operations. The allocation is granted annually on the basis of a specific application from the Railway Undertaking. Banedanmark provides a written confirmation on the awarded capacity allocation. Additional capacity for occasional transport may also be allocated. The allocation principles are set forth in the applicable executive order on allocation of railway infrastructure capacity (paths) etc. Deadlines for application and allocation of capacity are provided on Banedanmark's website.

As part of the capacity allocation process the parties must exchange data. Banedanmark continually makes infrastructure data available for the Railway Undertaking. The Railway Undertaking submits rolling stock data and production data to Banedanmark.

To preserve the right to allocated paths, the Railway Undertaking must utilize these. If the Railway Undertaking partly or totally ceases to utilize allocated paths, the Railway Undertaking is obliged to inform Banedanmark immediately and without any undue delay.

If the Railway Undertaking does not wish to utilize the allocated path, the path must be cancelled. Such cancellation is subject to a charge. The determination of such charge is governed by the valid Executive order on infrastructure charges etc. for the State's rail network.

The first day of every month, Banedanmark quantifies 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 % is used within at least a month of the allocated capacity.

Banedanmark's right to revoke does not apply if the decreased utilization of the capacity is due to circumstances outside the influence of the Railway Undertaking.

In case of congested infrastructure, the Danish Traffic, Building and Housing Agency will, according to the valid Executive order on allocation of railway infrastructure capacity (paths) etc., determine the threshold for when Banedanmark may revoke utilization of one or more paths.

Passenger and freight traffic not carried out as a public service obligation is subject to valid Executive order on allocation of railway infrastructure capacity (paths) etc. stating that the Railway Undertaking reserves the right to 90 % of the paths from previous capacity allocated on all tracks from one allocation period to the next, if an application is submitted. Optional paths may be revoked by Banedanmark on prior agreement between the Railway

Undertaking and Banedanmark. Banedanmark reserves the right to revoke a given path without prior agreement with the Railway Undertaking, if an appropriate application is not submitted for the relevant path at least five days before the actual operation of the path.

In connection with specific sales projects/research studies, an agreed timetable can be determined for up to thirty days.

## 2.2 Timetable

Banedanmark will provide a timetable that will consist partly of a service timetable and partly of on-going notifications. The service timetable is announced annually after the allocation period has expired and may be updated during the allocation period.

The train numbers will appear from the final capacity allocation. The number series for occasional transfers can be obtained from Banedanmark.

The service timetable(s) will be sent to the Railway Undertaking electronically.

## 2.3 Traffic operations

Traffic operations on the main line during irregularities with or without reduced capacity  
Banedanmark has the coordinating role and final decision-making power with regard to resolving traffic irregularities with or without decreased capacity. Traffic operations are established based on "*Principles for operation*" published annually by Banedanmark prior to the beginning of the timetable period.

The drafting of the "*Principles for operation*" is carried out in close collaboration between Banedanmark and the Railway Undertakings and follow the procedure for capacity allocation according to applicable law on allocation of railway infrastructure capacity (paths) etc. The "*Principles for operation*" are subject to continuous revision during the timetable period and the Railway Undertaking is obliged to participate in its preparation and implementation.

The "*Principles for operation*" do not overrule the obligations of Banedanmark to give notice on infrastructure work under section 7 of the contract.

Banedanmark and the Railway Undertaking are bound by the "Principles for operation". However, Banedanmark reserves the right to make other allocations where deemed necessary. The Railway Undertaking will ensure that staff and rolling stock plans support the general allocation plans.

The use of the "*Principles for operation*" may be initiated by Banedanmark or by the Railway Undertaking for Railway Undertaking's own trains.

The "*Principles for operation*" include appendices with recommendations on maintenance running. Banedanmark ensures that all Railway Undertakings participate equally in the maintenance running.

### Traffic operations on the S-line during irregularities

The parties are under obligation to participate in preparing and implementing the restoration agenda (which includes layout of allocation principles and allocation plans) and emergency timetables. The emergency timetables are registered in the applicable service timetable for S-trains.

The parties are bound by the restoration agenda and/or emergency timetables if irregularities occur. However, Banedanmark reserves the right to carry out other allocations where deemed necessary.

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#### Banedanmark's allocation authorities

According to the applicable executive order on allocation of railway infrastructure capacity (paths) etc., Banedanmark can, in connection with traffic disturbances, demand the Railway Undertaking to make drivers and rolling stock available for removal of equipment belonging to other parties or other forms of clearance. The Railway Undertaking will be remunerated by those who are responsible for the obstruction of the traffic.

#### Emergency Services - Banedanmark

Banedanmark may request tool car standby for clearing the infrastructure where Railway Undertaking's rolling stock interferes with the traffic.

The Railway Undertaking will pay such expenses according to section 9 of this contract. Procedure for acquiring the tool car as well as mutual rights and obligations can be found in appendix 6.

#### 2.4 Traffic information

According to the valid Executive order on Banedanmark's tasks and authorities, Banedanmark supplies traffic information to passengers at stations of long-distance lines and regional lines, where the Railway Undertaking has been allocated capacity, according to the executive order.

The delivery of Banedanmark's traffic information is subject to Banedanmark's access to the necessary data on Railway Undertaking's traffic operations.

The traffic information is submitted on Banedanmark's visual and auditory media at stations of long-distance lines and regional lines as well as by Din Station (Your Station) on web and app.

Banedanmark will update Rejseplanen (the journey planner) with information about the actual arrival and departure times of the trains, track usage, stopping patterns, cancellations, and special trains for the long-distance lines.

Moreover, Banedanmark provides a nationwide telephone service to supply information about arrival and departure times where it is possible to read out departure and arrival information for the blind and visually impaired.

The parties shall exchange data and information to follow up on the service provided and the perceived quality of traffic information.

The scope of delivery and content, as well as responsibility sharing related to traffic information task, including mutual guidelines as well as rights and obligations agreed between the parties, are set out in Appendix 5 under the title "*Traffic Information to Passengers*".

This provision only applies where the Railway Undertaking performs passenger transport.

#### 2.5 Information on traffic flow – the regularity package

Banedanmark provides a regularity package every fourth working day of the month. The statements are in compliance with definitions as stated in the valid Executive order on infrastructure charges etc. for rail network. The regularity package consists of:

- Status of performance
- Status on fines/bonuses (fines/bonuses are calculated according to the above-mentioned Executive order).

The conditions for the provision of the regularity package are based on the compliance of the following process:

Operational reports must be submitted as stipulated in the RDS guidelines and RDS instructions. Details regarding collaboration and deadlines for regularity follow-up are described in the RDS manual along with the list of causative codes.

The Railway Undertaking may, through an independent entity, such as an engineering consultancy, which is appointed and approved by both parties, conduct an assessment (auditing) of the procedure employed by Banedanmark in calculating the regularity. This is to ensure that the regularity package is prepared correctly. The Railway Undertaking bears the cost of such assessment.

#### 2.6 Use of power supply equipment

The Railway Undertaking ensures that the pantographs comply with applicable standards at all times in order for the interacting pantograph/traction lines to minimize abrasion and operational disruptions.

Banedanmark ensures that the traction current system complies with the technical specifications for the system while ensuring the necessary maintenance of the system.

A collaboration forum has been established regarding the interaction between pantograph and traction line. If using electrical rolling stock, the Railway Undertaking is obliged to attend the collaboration forum by participation of a qualified person.

#### 2.7 Technical and traffic rules and instructions

Banedanmark's rules and instructions are made available to the Railway Undertaking. The Railway Undertaking must supplement these with the Railway Undertaking's own rules and instructions, until the necessary conditions for the Railways operations are complied with. Banedanmark's rules and instructions will be made available in electronic format on Banedanmark's website.

The parties are obliged to comply with these rules and instructions.

#### 2.8 Data exchange

If the parties deem it necessary to enter into an agreement on data exchange, the mutual rights and obligations are determined in annex 3.

### **3 Track access to service facilities and delivery of services**

#### 3.1 Allocation

Banedanmark allocates capacity to service facilities as defined in the European Parliament and Council Directive 2012/34/EU to the extent that these facilities are located on or adjacent to Banedanmark's infrastructure. The allocation of the capacity follows the provisions of section 2, 2.1.

All kinds of shunting on the infrastructure managed by Banedanmark must be agreed with Banedanmark. This does not apply to shunting activities on intermodal terminals managed by another operator.

#### 3.2 Maintenance, cleaning, and de-icing/snow removal on Banedanmark's stations and areas

Banedanmark has the superior responsibility for cleaning, maintenance, area care, and de-icing/snow removal at Banedanmark's stations and areas. Banedanmark can enter into agreements with third parties on performance of the tasks. Banedanmark has entered into an agreement with DSB who partly performs, partly puts out to tender and inspects the tasks concerned according to an agreement on a number of operational tasks at stations. De-icing and snow removal is carried out according to 'winter measures' issued by Banedanmark. All cleaning, land care and maintenance are carried out in compliance with the valid norms and agreements, including the Working Environment Act.

The Railway Undertaking agrees, to the extent possible, to help limit the amount of waste on platforms and other Banedanmark areas as well as in the track.

The parties shall agree as necessary the form of co-operation on the above mentioned in accordance with Annex 4.

#### **4 Additional services**

At the request of the Railway Undertaking, Banedanmark supplies extra services for the Railway Undertaking as defined in European Parliament and Council Directive 2012/34/EU.

##### 4.1 Traction current

At the request of the Railway Undertaking, Banedanmark supplies energy to operate the electric traction units according to the applicable executive order on Banedanmark's supply of traction current). The Railway Undertaking has the right to purchase power from another supplier through Banedanmark's distribution network, see section 3, 2.2 of the valid Executive order on Banedanmark's supply of traction current.

The main line is equipped with 25 kV 50 Hz and the S-line is supplied with 1650 V DC.

The Railway Undertaking must have an independent traction contract for the operation of electric traction devices.

##### 4.2 Preheating of train sets, trains and locomotives, as well other electricity via external power supply

On agreement with the Railway Undertaking, Banedanmark provides electricity to trains via facilities owned by Banedanmark.

Banedanmark operates with three system voltages for this purpose: 1,500 V and 1,000 V (both single-phase) and 400 V three-phase.

Payment is made according to section 9 of the contract.

##### 4.3 Water for preparation of trains

On agreement, Banedanmark provides water for preparation of trains.

Payment is made according to section 9 of the contract.

##### 4.4 Permit for exceptional transports

If the Railway Undertaking wishes to carry out transport that does not meet the applicable standards, the Railway Undertaking must apply for a permit for exceptional transports. If the transport is feasible, Banedanmark issues a permit. Details relating to exceptional transports and issuing of permits are found in the UT instructions, published by Banedanmark and available on Banedanmark's website.

Payment is made according to section 9 of the contract.

#### **5 Ancillary services**

Mutual rights and obligations related to ancillary services as defined by the European Parliament and Council Directive 2012/34/EU.

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### 5.1 Provision of additional information including data, reports, and analyses

Upon request, Banedanmark can provide data, reports, or evaluations on the Railway Undertaking's traffic.

Payment is made according to section 9 of the contract.

## **6 Safety and permits**

### 6.1. Permit and safety certificate etc.

It is the responsibility of the Railway Undertaking to possess a valid permit to perform train operations and a safety certificate issued by the Danish Civil Aviation and Railway Authority.

Banedanmark warrants that it has the required permission and safety approval as Infrastructure Manager.

### 6.2 Accidents and antecedents to accidents

In case of accidents and antecedents to accidents as defined in the valid Executive order on reporting data for analyses in the railway sector concerning accidents and antecedents to accidents to the Danish Civil Aviation and Railway Authority, the stipulations in Banedanmark's safety regulations shall apply. The Railway Undertaking and Banedanmark are obliged to co-operate and exchange data when examining accidents and antecedents to accidents.

### 6.3 Disclosure of information on goods

Prior to arrival from another infrastructure, dispatch or placing of goods on Banedanmark's infrastructure and/or areas the Railway Undertaking must provide Banedanmark with all necessary information in a format approved by Banedanmark, thus complying with RID 1.4.3.6 and the valid Executive order on risks, Safety Regulations (SR), Safety Instructions (SIN) as well as Operational Rules for S-trains (ORS) and Operational Rules for Long-distance lines (ORF).

The report must include all wagons with or without dangerous goods, including, when applicable, future planned parking of wagons.

This duty of reporting toward Banedanmark does not apply, if the placing of the dangerous goods takes place on intermodal terminal areas administered by another terminal operator by agreement with Banedanmark.

## **7 Capacity restrictions**

Banedanmark will in the coming years construct new infrastructure and necessary upgrades while simultaneously supporting the traffic operations on the existing infrastructure.

It is in the joint interest of the railway sector that the planning of capacity restrictions is made as early as possible. As the national Infrastructure Manager, it is Banedanmark's ambition to expedite all initiatives facilitating timely planning. Taking into account passengers and freight customers, the Railway Undertakings have a similar ambition.

Overall, it is the joint responsibility of the railway sector which can only be complied with, if the planning of the necessary capacity restrictions in connection with infrastructure works are arranged in cooperation. This puts great demands on planning and mutual dialogue across the sector.

### 7.1 Notification periods and procedures

Banedanmark's planning, coordination, and publication of capacity restrictions to be applied in connection with projects and other infrastructure works is performed in compliance with the provisions in the Commission Delegated Decision (EU) 2017/20175 of 4 September 2017 replacing the Annex VII to Directive 2012/34/EU of the European Parliament and of the Council establishing a common European railway area .

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Moreover, the work on capacity restrictions complies with the principles of a robust planning process and an attractive timetable, which takes into account the need for robustness and shortest possible travelling times.

Banedanmark notifies capacity restrictions to the Railway Undertaking in the Network Statement and the LA letter. Current notifications appear from the LA letter issued on a weekly basis. An overview of the notification period appears from appendix 7.

Furthermore, Banedanmark on an ongoing basis invites the Railway Undertaking to participate in project and capacity meetings with regard to a cooperation between the parties. The dates for the meetings are planned in accordance with the concrete periods of the individual projects and programmes. Railway Undertaking is currently informed of the meeting dates which are also published on Banedanmark's website.

Banedanmark settles the capacity based on the possible number of paths within the framework of a given capacity restriction. Thereupon, a timetable is agreed by the parties, taking into account the rules of priority and allocation.

Banedanmark is not obliged to announce capacity restrictions to remedy defects. Defects in this context are defined as situations where incidents originated from technical breakdown, accidents, or vandalism as well as weather or natural conditions cause (or may cause) operational disruptions and/or accidents and antecedents to accidents.

Any notifications or changes to submitted notifications, if any, issued after receipt of a LA letter and settlement of the traffic consequences, must be planned in dialogue between the parties.

Banedanmark will either at directors' board meetings with the Railway Undertaking, or otherwise, inform about the status of the portfolio of the capacity restrictions given notice of in the Network Statement.

It is the responsibility of Banedanmark to give notice of capacity restrictions prompted by a third party (such as municipalities and the Road Directorate).

When a track possession is announced to the Railway Undertaking, the Railway Undertaking does not have access to the tracks included in the scheduled work for the duration of the work, even though the paths have been allocated to the Railway Undertaking in connection with the path allocation for the timetable period concerned.

Banedanmark will generally be accommodating towards potential requests from the Railway Undertaking that leads to implementation of capacity restrictions within the current timetable. The planning will be made in close co-operation between the Railway Undertaking and Banedanmark, taking into account the impact on traffic operations.

Banedanmark is obliged to notify such capacity restrictions requested by the Railway Undertaking to other Railway Undertakings affected by such capacity restrictions. The notification is made according to notification time agreed with these Railway Undertakings. A separate agreement is made for each individual infrastructure work.

The parties can make a mutual agreement on a process for the current correction, which does not form part of the process, regulated in the Access Contract.

## **8 Environment**

### **8.1. Environmental standards**

The parties guarantee that existing environmental legislation is respected, and each party is responsible for pollution or environmental damages that can be related to the undertaking involved.

## 8.2 Oil spillage

In case of just emerged spillage of oil or other chemicals caused by the Railway Undertaking in areas of Banedanmark the Railway Undertaking must immediately inform the nearest control office. Thereupon the nearest control office informs Banedanmark's environmental section from where contact will be directed to the environmental section of the local council concerned.

The railway Undertaking must by a special form for handling spillage of oil and chemicals on Banedanmark's website inform where the spillage took place and about the extent concerned. Upon detection of the spillage the Railway Undertaking must partly stop the spillage, partly initiate clean-up of the oil. It is agreed between the local council concerned, Banedanmark and the Railway Undertaking which investigations and remedial actions will be necessary and feasible. Such investigations and remedial actions must be paid by the Railway Undertaking.

## 8.3 Noise

The parties must attempt to minimize noise. Environmental legislation employs two different definitions of noise caused by railway operations; noise from passing trains (line noise) and noise from other activities (terminal noise). These definitions are defined in guideline no. 1/1997 "Noise and vibrations from railways" and supplement to guideline no. 1/1997 "Noise and vibrations from railways"- Environmental Protection Agency - July 2007.

The environmental legislation does not contain limit values for line noise from existing railways. Running to and from stabling tracks (to and from operations) and reversing tracks is covered by the regulations for line noise.

Noise caused by trains in stabling tracks, including idling trains, can be covered by the rules regarding noise from companies and can be regulated by the local councils.

The parties are obliged to mutually involve each other in any contact with relevant authorities, if such contact may lead to any one of the parties or both parties being subject to an enforcement notice according to the Environmental Protection Act and this provision.

The Railway Undertaking must, to the extent possible and reasonable, be prepared to contribute to Banedanmark being able to comply with the specific instructions issued by the relevant authorities concerning noise reduction related to terminal noise, to the extent the noise is caused by the Railway Undertaking.

# **9 Charges**

## 9.1 Infrastructure charges

In order for the Railway Undertaking to use the railway infrastructure, excluding the S-train lines, the Railway Undertaking is obliged to pay infrastructure charges to Banedanmark, in accordance with the valid Executive order, regarding payment for use of the State railway and regarding environmental subsidies for freight transportation on the rail network, as well as the valid Executive order on infrastructure charges etc. for the rail network.

Banedanmark sends an invoice for infrastructure charges before the 20th of each month.

Prior to issuing the invoice for infrastructure charges, Banedanmark forwards documentation stating the infrastructure charges to be paid by the Railways Undertaking. The documentation is forwarded to the Railway Undertaking monthly and comprises a specification of the individual settlements.

The purpose of forwarding the documentation stating the infrastructure charges to be paid is to make it possible for each Railway Undertaking to review the settlements before the invoice being issued. In case the Railway Undertaking has comments on the

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documentation stating the infrastructure charges to be paid, the Railway Undertaking should inform Banedanmark of such comments within 2 days upon receipt of the documentation stating the infrastructure charges to be paid. This is a prerequisite to enable Banedanmark to take into account the comments forwarded by the Railway Undertaking and to enable Banedanmark to issue the invoice before the 20th of each month.

#### 9.2 Emergency services - Banedanmark

Charges for emergency services appear from appendix 6.

#### 9.3 Additional services

##### Traction current

Electricity for traction current is supplied by Banedanmark according to a separate contract (traction current contract) between the Railway Undertaking and Banedanmark. Details regarding payment for traction current appear from the traction current contract.

The above-mentioned services are carried out according to Executive order on Banedanmark's supply of traction current.

##### Pre-heating of trains, train sets and locomotives and other electricity via mains socket

Charges are by agreement.

##### Water for preparation of trains

Charges are by agreement.

##### Permission for exceptional transports

The charge is DKK 2.500 per issued transport permit.

Invoice will be sent monthly in arrears. Invoicing address must be stated in the application.

#### 9.4 Ancillary services

##### Supply of additional information

The price for data, reports and analyses on traffic operations are to be agreed between Banedanmark and the Railway Undertaking in each individual case.

#### 9.5 Banedanmark's terms of payment

30 days net.

#### 9.6 The Railway Undertaking's invoicing address

[Railway Undertaking]

[Address]

[Postal code]

[Country]

## **10 Insurance**

The Railway Undertaking is required to have legally required liability insurance.

Banedanmark is covered by the State self-insurance scheme.

## **11 Indemnity**

### 11.1 Liability

A party is only liable to the other party to the extent that an injury is caused by negligence or wilful misconduct by the tortfeasor or in case of non-participation in the proper fulfilment of the contract. Moreover, Danish laws apply.

### 11.2 Recourse

If one party is liable for damages to third parties, the party has recourse against the other party to the extent that the party intentionally or by negligence has been liable or jointly liable for the damage. As regards the Railway Undertaking's right of recourse, see section 52 of the Railway Act.

### 11.3 Statement of damages

Danish law applies when calculating compensation for personal injury and property damage. Indirect loss, operating loss, including among others, but not exclusively, loss of use or profit is not recoverable. This also applies when Banedanmark, in accordance with the rules in force, closes parts of the infrastructure in order to maintain the required safety level. Cost of replacement transport is covered by the Railway Undertaking, regardless of the causative factor.

- Loss of income claimable from the tortfeasor:
  - Compensation for personal injury or loss of a provider
  - Property damage, including repair costs, including repairs made by the injured, injurer's own employees or third party's workshop. In case of total loss the compensation is calculated according to the principle provided in section 52 of the Insurance Contract Act
  - Internal additional costs for i.e. overtime, extra staff, equipment etc.
- Lost of income that cannot be recovered from the tortfeasor:
  - Indirect loss, including lost profits
  - Costs for replacement transport
  - Costs for assessment and establishment of the injury
  - Salvage expenses not covered by the State.

## **12 Breach of contract**

The contract can 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.

An agreed penalty does not preclude the parties to claim compensation for any further loss. This does not apply if the function of the penalty is to replace compensation.

Moreover, Danish laws on remedies for breach of contract apply.

## **13 Force majeure**

Neither Banedanmark nor the Railway Undertaking shall under this contract be deemed liable to the other party, to the extent that the liability is caused by circumstances beyond the party's control and which the party, when signing the contract, could not have taken into account, avoided, or overcome.

The party seeking to invoke force majeure shall without undue delay notify the other party of the onset 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.

#### **14 Performance scheme (fine/bonus)**

To the extent prescribed by the valid Executive Order on infrastructure charges, etc. for the rail network, the parties are subject to a mandatory performance scheme. The performance scheme is managed as described in the Executive order.

#### **15 Conditions for transfer**

The Railway Undertaking cannot without written consent by Banedanmark assign any rights and obligations under the contract to a third party.

In cases where an agreement is made with other Railway Undertakings after the capacity allocation deadline has passed, the Railway Undertaking must prove that no trade or transfer of capacity has taken place, for example by providing a copy of an agreement.

The Railway Undertaking is entitled to use subcontractors. A prerequisite is that subcontractors have or can obtain the necessary approvals. The Railway Undertaking is obliged to announce such arrangements to Banedanmark, to the extent possible before capacity allocation is made, and to inform to what extent other Railway Undertakings are used as subcontractors for the Railway Undertaking's traffic operations.

The parties are liable for the work and services carried out by their subcontractors in relation to any claims by the other party, under the same conditions as when undertaking the work themselves.

#### **16 Co-operation**

##### 16.1 Co-operation and duty to disclose

The parties agree, as appropriate, to attend meetings between the parties to ensure the necessary co-operation.

To the extent that Banedanmark, for the sake of the overall co-ordination of the railway network, calls for meetings with the participation of several Railway Undertakings, the Railway Undertaking cannot insist on separate meetings with Banedanmark.

The parties are obliged to notify each other without delay on matters of importance to the rights and obligations referred to in the contract.

##### 16.2 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 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 that:

- the information 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
- 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.

### 16.3 Access

The parties shall encourage mutual access to equipment, facilities, etc. whenever required for the performance of the parties' activities. This access is subject to compliance with applicable regulations.

## **17 Disputes**

### 17.1 Negotiation and mediation

The contract is subject to Danish laws. If a dispute arises in connection with the contract, the parties must seek this solved through mediation.

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.

### 17.2 Arbitration

Any question of interpretation of or compliance with the contract, which cannot be arranged amicably between the parties in accordance with section 17.1 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.

Standard Track Access Contract between Banedanmark and XX applicable  
for the timetable period TT23  
Banedanmark case number 2022-XXX

## **18 Entry into force and termination**

The contract shall enter into force on 11<sup>th</sup> December 2022 and will expire without notice on 9<sup>th</sup> December 2023. The contract is valid for the timetable period TT23.

Two copies of the contract are signed by the parties, each having received a copy.

Banedanmark:  
Date

The Railway Undertaking:  
Date

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Name  
Title

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Name  
Title