**CVL ACCESS DISPUTE RESOLUTION RULES**

***Template Format (with advisory annotations) for a Statement of Defence for determination by Access Dispute Adjudication (“ADA”) in accordance with the provisions of Chapter G of the CVL ADR Rules***

***This template, as required by Rule G16(b) is to be used by the Respondent (defendant) Dispute Party to prepare a Statement of Defence for an ADA Hearing. Within the template, text in Italics is advisory, and should, once taken into account, be deleted from the final document which is submitted.***

*The detailed Management and Determination of each individual dispute heard by an ADA shall be subject to the direction of the Hearing Chair (as appointed by the Secretary as provided in ADR Rules B16 and G8). Rule G16 provides the Hearing Chair with discretion to amend the procedures*

***“The ADA process is flexible and may be adapted by the Hearing Chair to accommodate disputes of differing complexity and size and requiring different levels of evidence. The Hearing Chair shall therefore actively consider whether variations on the standard directions (which are for a straightforward matter) set out in Rule G16 are appropriate”*** [Rule G15]

*This template format corresponding to the requirements set down in Rule G16 (b) is provided in order that any respondent party shall be prompted to ensure that all material relevant to its arguments are available to timescale, always bearing in mind that*

**“*The length of every reference and response shall be in proportion to the nature and complexity of the dispute. Unless otherwise agreed by the Hearing Chair, the maximum length of submissions shall be as follows:***

***a statement of … defence shall be no longer than 20 pages;”.*** [Rule G21 (a)], *and that*

***“An Access Dispute Adjudication (ADA) under these Rules is a determinative dispute resolution process in which, … a Hearing Chair determines the dispute in a timely and efficient manner on the basis of the parties' respective legal rights in accordance with the evidence and argument presented to him.”*** [Rule G1].

***The TEMPLATE***

1. **DETAILS OF PARTIES**
	1. The names and addresses of the parties to the reference are as follows:-
		1. *[Full company name]* (Company number *xxxxxxxxxxx*) whose Registered Office is at *[Full address]* *("[insert short form or abbreviation for Company name e.g. its initials]*") ("the Claimant"); and
		2. *[Full company name]* (Company number *xxxxxxxxxxx*) whose Registered Office is at *[Full address]* ("*[insert short form or abbreviation for Company name e.g. its initials]*") ("the Respondent").
		3. *Include correspondence address, contact details and e-mail address if different.*
	2. *Where the Defendant is aware that any third party may be affected by the ADA finding in any of the ways sought in this reference, it should ensure that this information is conveyed to the Secretary to the ADC at the earliest possible opportunity, and the names of the relevant parties recorded here. The affected Parties should seek the guidance of the Hearing Chair as to any format to be used in respect of their representations.*
2. **THE DEFENDANT’S RIGHT TO CONTEST THIS REFERENCE**
	1. This matter is referred to an Access Dispute Adjudication (“ADA”) for determination in accordance with *xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.*

*The Respondent needs to make explicitly clear what provisions of its contract entitle, or direct, it to defend its disputed actions before an ADA. This means a summary, but with verbatim quotations, of those terms of the contracts that direct the parties how they should reach agreement, or, where this fails, what form of dispute resolution they should take.*

*Where the Respondent is disputing the Claimant’s right to bring the particular dispute this should be identified here.*

1. **CONTENTS OF REFERENCE**

This Statement of Defence includes:-

* + 1. Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Statement of Claim, in the form of a summary schedule cross-referenced to the issues listed by the Claimant, identifying which the Respondent agrees with and which it disagrees with.
		2. A detailed explanation of the Respondent’s arguments in support of its position on those issues where it disagrees with the Claimant’s Statement, including references to documents or contractual provisions not dealt with in the Statement of Claim
		3. Any further related issues not raised by the Claimant, but which the Respondent considers fall to be determined as part of the dispute;
		4. The decisions of principle sought from the ADA in respect of
			1. legal entitlement and
			2. remedies;
		5. Appendices and other supporting material.
1. **SUBJECT MATTER OF DISPUTE**
	* 1. *Provide very brief details of the dispute, in particular clarifying any areas where the Respondent disagrees with the description of the subject matter of the dispute given by the Claimant.*

*Details of any relevant provisions of the Underlying Contract(s) that the dispute relates to, or is associated with, that have not been cited in the Statement of Claim, but which the Respondent considers supports its case.*

* 1. *Ensure that a copies of the relevant extracts from the document) referred to above are attached at Annex ● or that the reference is accompanied by ● indexed lever arch files containing documents referred to in this statement of defence.*

*NOTE: The parties can assume that an ADA will have access to a current edition of the HS1 Network Code. However,*

* *if the dispute derives from actions taken (or not taken) before the date of introduction of the relevant pages of the current Network Code the parties should ensure that the ADA is supplied with the relevant pages of the applicable version*
* *the Respondent should not assume that the ADA members have personal copies or knowledge of the relevant parts (in particular any Schedules) of the specific access agreements.*
	1. *Provide details of any other documents that are relevant to the dispute. The relevant parts must also be copied and annexed to this statement of defence.*
1. **SUMMARY OF DISPUTE**
* *Provide brief details of such relevant background information, not already given by the Claimant, as is necessary to ensure a common level of understanding of all members of the Panel, including details of the contractual framework surrounding the obligations of the parties in relation to the dispute. This is also the opportunity to make the case that the Claimant has sought to introduce as relevant, material which the Respondent considers does not relate to the circumstance in dispute.*
* *If there is, in the contract, a process, with defined stages, that must be completed before the parties can agree they are in dispute (e.g. consultation, responses within a set timescale, decision with reasons), these need to be stated, and evidence given about the extent to which these requirements have been complied with.*
1. **EXPLANATION FROM THE RESPONDENT’S PERSPECTIVE OF EACH ISSUE IN DISPUTE**

*This section has to achieve four objectives, namely*

* *to identify any issues raised by the Claimant where the Respondent agrees, broadly or wholly, with the Claimant;*
* *to identify those issues where the Respondent disagrees with the Claimant’s position, together with the reasons for that disagreement;*
* *to introduce any issues that have not been raised by the Claimant but which the respondent considers are of material relevance to the overall reference, together with the reasons for that view; and*
* *to draw all the foregoing together into a demonstration that the Respondent’s case is the stronger, or should otherwise be preferred to that of the Claimant..*

*The Statement of Defence should therefore distinguish clearly, by reference to the Statement of Claim,*

* 1. ***Issues where the Respondent accepts the Claimant’s case.***
	2. ***Issues where the Respondent qualifies or refutes the Claimant’s case, and the reasons therefore.***
	3. ***Issues not addressed by the Claimant that the Respondent considers should be taken into account as material to the determination, and the reasons supporting these contentions.***
	4. ***Why the arguments raised in 6.1 to 6.3 taken together favour the position of the Respondent***

*The Respondent in any case brought before an ADA should keep in mind that in most cases the ADA needs to be given*

* *a clear and logical exposition of the factors that support the rightness of the Respondent’s actions or position (or failing one “Right” position, the ”wisdom” of the position it adopted).. Where the argument requires reference to any contractual provision, the precise extract should be quoted verbatim;*
* *a clear statement of each point where the Respondent refutes the Claimant’s arguments or conclusions, such that the extent of the differences between the parties can be clearly appreciated;*
* *clarification in respect of each point of difference whether the issue is primarily one of principle, or of quantification in respect of a specific instance or instances;*
* *a clear summary of the Respondent’s individual view of the practical implications of the dispute (e.g. numbers of trains potentially affected, ditto passengers or freight customers, order of magnitude of any financial impact). Given the provisions of Rule G5, requiring the ADA to* ***“be administered in a way which is proportionate to … the objective importance of the dispute to the Dispute Parties”*** *then even in cases of “principle”, the ADA is reasonably entitled to know how the business of a party is affected by any possible outcome of the dispute..*
* *confirmation that the Respondent is in agreement with the Claimant in respect of any aspects of the dispute that the parties do not wish the ADA to address. This could include instances where, for example, the parties have agreed to test a matter of principle, but reserve to themselves the consequent negotiation of any settlement of quantum.*
1. **DECISION SOUGHT FROM THE PANEL**
	1. ***The Respondent should set out the outcome it is seeking from the Panel’s determination, differentiating between***
		1. ***the matters of principle***
		2. ***specific conclusions deriving from those matters of principle.***

*In all its arguments and representations, the Respondent should remember that the ADA is constrained by* ***Rule A5*** *which states*

***“Each and every Forum shall reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis. Each and every Forum shall act in accordance with the law; and all its decisions, including its determinations and decisions on procedure, shall be in accordance with the law.”***

*The respondent will have a clear reason why it has not already settled the dispute, and the result that it wishes the ADA to deliver. There is need therefore for it to set down clearly what it wants the ADA to find in its favour.*

*Logically, when preparing the submission, the decision sought from the ADA should be the first thing finalised, and arguments marshalled to refute the case made by the Claimant. That said, the Respondent should be clear that the decision sought is one that an ADA can give. Pleas such as “that party X exceeded its rights/ did not comply with its obligations under Para y of z”, or “party Q has not acted reasonably in relation to the discretions it is empowered to exercise by the relevant contracts;” are matters of entitlement and do accordingly fall within the ADA’s jurisdiction.*

*By contrast, an ADA will not support any contention that asks it, for example, to give a ruling that a contract is unfair and/or needs to be changed, because any such determination would not derive from either the ADR Rules, or an effective individual Access contract, and would therefore be beyond the ADA’s powers].*

* 1. ***List any specific remedies******sought***. *For example “as a result of the decided principle(s) above, the Respondent is not liable to pay £X to the Claimant”*

*Remedy is what the aggrieved Dispute Party contends it should be granted, if the Panel finds in its favour. This should be considered carefully because Access agreements are frequently prescriptive about such matters, and there are no benefits to be won from advancing arguments for remedies that lie outside the ADA’s powers which are governed by* ***Rule******A6****, which states. .*

***“Each and every Forum shall:***

1. ***where the Access Conditions or Underlying Contract require that a specific remedy be granted, grant that remedy accordingly; or***
2. ***Where a specific remedy is provided for at law, grant that remedy accordingly; or***
3. ***where the choice of remedy is not a matter of entitlement but is a question properly falling within the discretion of the Forum, exercise that discretion in accordance with any requirements and criteria set out in the Access Conditions and Underlying Contract after due consideration of all remedies and orders that could properly be made.”***

*Where a Respondent wishes to argue for an exercise of “discretion” as in (c) above, it must consider whether the ADA has such discretion given the provisions of (a) and (b).*

* 1. *Clarify whether you wish the Panel to decide other issues – such as costs*.
1. **APPENDICES AND ANNEXES**

The Respondent confirms that it has complied with **Rule G16 (b) (vi)**, which requires that

**“*Copies of the following documents shall also be annexed and cross referenced to the reference:***

1. ***the relevant extracts of contractual Documents containing the provision(s) under which the referral to the ADA arises and/or provision(s) associated with the substance of the dispute; and***
2. *[the relevant extracts of]* ***any other Documents referred to in the defence”****.*

Where the dispute relates to previous (i.e. no longer current) versions of documents, all relevant extracts of the applicable documents are included.

All appendices, and annexes are bound into the submission, and consecutively page numbered. To assist the ADA, in each Appendix or Annexe quotations, or references, that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

Any information only made available after the main submission has been submitted to the ADA, will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

1. **SIGNATURE**

|  |
| --- |
| For and on behalf of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed-----------------------------------------------------------Print Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

*This is a control mechanism; it provides the ADA with the reassurance that the dispute has been referred with the knowledge and understanding of the disputing corporate bodies. This is important, as engaging in formal dispute resolution implies a commitment to accepting the outcome of that process.*

*In this context, the Respondent is reminded that in sending representatives to argue its case before the ADA,*

* + 1. ***“it shall … ensure that***
		2. ***the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value);*** [Rule A19]