

**Network Rail Defendant's Response to Grand Central Sole Submission
to a Timetable Panel**

Dispute Reference: TTP493, TTP494 and TTP495

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- (a) **GRAND CENTRAL RAILWAY COMPANY LIMITED**, ("Grand Central"), a company registered in England under number 3979826 having its registered office at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP ("The Claimant") ; and
- (b) **NETWORK RAIL INFRASTRUCTURE LIMITED**, ("Network Rail"), a company registered in England under number 2904587 having its registered office at King's Place, 90 York Way, Kings Cross, N1 9AG ("the Defendant").
- (c) Include correspondence address, contact details and e-mail address if different.

*Grand Central contact details are: Chris Brandon, Grand Central
c/o Alliance Rail Holdings Limited, 88 The Mount York YO24
1AR. Tel [REDACTED]*

*Network Rail contact details are: Andy Lewis, 4th Floor MK
Central Offices, 500 Station House, Elder Gate, Milton Keynes,
MK9 1BB. [REDACTED]*

1.2 Possible effected third parties:

- (a) East Coast Trains
- (b) First Capital Connect
- (c) DB Schenker
- (d) Freightliner Group

- (e) GBRf
- (f) Hull Trains
- (g) Northern Rail

2 THE DEFENDANT'S RIGHT TO CONTEST THIS REFERENCE

- 2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D2.7 and D5 of the Network Code.
- 2.2 Network Rail submits that the jurisdiction of the Panel is limited to determination of Network Rail's actions and adherence to Part D of the Network Code.
- 2.3 Network Rail understands that the ORR has issued decision letters in relation to some of the issues now before the Panel although it has not seen copies.

3 CONTENTS OF REFERENCE

This Response to the Claimant's Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A summary of the issues in dispute in Section 5;
- (c) A detailed explanation of those issues in dispute prepared by the claimant in Section 6
- (d) The decision sought from the Panel, in Section 7
- (e) Appendices and other supporting material

4 SUBJECT MATTER OF DISPUTE

- 4.1 TTP493 - The matter in dispute is Network Rail's decision to reject Grand Central's new access proposal for 1A68 1518 Sunderland to Kings Cross and 1N93 1323 Kings Cross to Sunderland on the 14th April 2012 midway through the Timetable Preparation Period. Grand

Central claim that Network Rail has failed to adhere to the Part D timescales for the preparation of the New Working Timetable.

Network Rail disagrees with the description of the subject matter, Grand Central have misinterpreted the requirement for Network Rail to notify Timetable Participants as early as possible of Access Proposals which cannot be accommodated in the New Working Timetable (D2.4.7). Network Rail disagrees with Grand Central's interpretation of D2.4.3 and D2.4.4, these clauses outlines the order that Network Rail must review new or amended Access Proposals between D-40 and D-26 as the New Working Timetable is developed.

- 4.2 TTP494 - The matter in dispute is Network Rail's failure to issue at D-45 the Prior Working Timetable.

Network Rail understands that Alliance Rail believe that the issue of a Prior Working Timetable would have supported their new Access Proposal for 1D72 1608 Kings Cross to Wakefield Kirkgate.

- 4.3 TTP495 - The matter in dispute is Network Rail's failure to correctly prioritise Access Proposals during the Timetable Preparation Period.

Network Rail disagrees with the description of the subject matter. The Access Proposal for 1N93 1323 Kings Cross to Sunderland was rejected due to 5 other timetable conflicts, and having had rejected 1N93, Network Rail did not have any grounds by which to reject 6N50 1106 Maltby Colliery to Tyne Coal Terminal.

5 SUMMARY OF DISPUTE

- 5.1 At D-40 the Priority Date for December 12 Timetable Grand Central applied for 1 new path in each direction (commonly referred to as the 5th path) between Kings Cross and Sunderland and, as Alliance Rail Holdings, made a new access proposal for 1 new path from Kings Cross to Wakefield Kirkgate via Leeds. New trains requested were:

- 1N93 SX 13.23 Kings Cross to Sunderland (submitted as GC)
- 1N93 SO 13.20 Kings Cross to Sunderland (submitted as GC)
- 1A68 SX 15.18 Sunderland to Kings Cross (submitted as GC)
- 1A68 SO 15.28 Sunderland to Kings Cross (submitted as GC)
- 1A72 SX 07:53 Mirfield to Kings Cross (submitted as Alliance)
- 1A72 SO 08:35 Mirfield to Kings Cross (submitted as Alliance)
- 1D72 SX 16:08 Kings Cross to Wakefield KG (submitted as Alliance)
- 1D72 SO 16:20 Kings Cross to Wakefield KG (submitted as Alliance)

5.2 At D-40 the Priority Date for December 12 Timetable East Coast Trains applied for:

- 1B82 SX 10:08 Kings Cross to Newark
- 1B83 SX 11.54 Newark to Kings Cross
- 1B84 SX 12.08 Kings Cross to Newark
- 1B85 SX 13.54 Newark to Kings Cross
- 1B86 SX 14.08 Kings Cross to Newark
- 1B87 SX 15.52 Newark to Kings Cross
- 1B88 SX 16.08 Kings Cross to Newark
- 1B89 SX 17.54 Newark to Kings Cross

The East Coast Trains Priority Date submission had the caveat that if paths were to be made available that would facilitate the extension of these services to York then that would be their first priority but they

realised that this was unlikely and would settle for a default position of the existing Kings Cross to Newark paths.

- 5.3 Alliance Rail's 1D72, SX Kings Cross to Wakefield Kirkgate aspiration was a direct clash with an aspiration of East Coast Trains who also sought an continuation of the existing 1B88 Kings Cross to Newark Northgate path or if possible, an extension of this path to York. East Coast's rights for its existing Kings Cross to Newark Northgate service end in December 2012. Both Alliance Rail's 1D72 and East Coast's 1B88 both sought to make use of a 1608 intercity passenger path departing from Kings Cross.
- 5.4 The new Access Proposals that Network Rail received for the December 2012 timetable period are pre-empting the abilities of future infrastructure enhancements planned on the East Coast Main Line during CP4. The capacity to reliably deliver a 6th off peak long distance intercity path in each hour without impact overall performance of the route does not currently exist. Network Rail reviewed alternatives for Alliance Rail, looking at options which included a 15.52 SX long distance intercity path departing Kings Cross. A performance assessment of the path determined that the path was not operationally reliable and was a performance risk.
- 5.5 Network Rail has a series of performance and infrastructure capacity enhancement schemes planned for delivery throughout 2013 and 2014. These including Hitchin Flyover, Joint Line Upgrade, Shaftholme Flyover, Peterborough Station Upgrade and Alexandra Palace / Finsbury Park enhancements. The combinations of these schemes in December 2014 will improve the performance of the timetable and unlock the capacity for 8 peak and 6 off peak long distance passenger paths on the ECML.
- 5.6 A recommendation to Network Rail from the May 2011 Lessons Learned ECML timetable report was that work needs to start earlier on new timetable aspirations and should better distribute the planning

workload (the May 11 timetable development suffered by having only a single Network Rail lead planning the new timetable). For the development of the December 2012 New Working Timetable Network Rail took advantage of the new part D steps for the Significant Timetable Change. Between D-55 and D-40 Network Rail nominated a lead planning expert in the team to work closely with Grand Central to develop their initial submissions for the Priority Date Notification Statement (PDNS). This collaborative approach continued after Grand Central submitted its PDNS at D-40.

- 5.7 Network Rail accepts it failed to present a Prior Working timetable at the start of the December 2012 New Working Timetable Preparation period, however is the view of Network Rail that the advanced work with all Timetable Participants goes some way to mitigating against this.
- 5.8 Steps have now been taken to ensure that at the start of future timetable preparation periods the industry is issued with a Prior Working Timetable. On the 7th July 2012 Network Rail provided in accordance D2.3.6 a Prior Working Timetable for the May 2013 subsidiary timetable change date.
- 5.9 With the exception of the publication of the Prior Working Timetable Network Rail maintains that all other Network Code timescales, conditions and priorities have been correctly executed in connection with the December 2012 Timetable Preparation Period.
- 5.10 At all times during the Preparation Period for the New Working Timetable Network Rail has used D4.2.2 and D4.6 the Decision Criteria (in connection with clauses D2.4 and D2.5) to prioritise the conflicting Access Proposals. Practically the approach that Network Rail took was:
- Network Rail prioritised applications submitted for the December 2012 New Working Timetable in accordance with condition D2.4 and certain conditions laid out in D4.2. Applications submitted in accordance with the Priority Date notification at D-40 were given

preference over those submitted after D-40 before D-26. Applications submitted after D-40 would not be accepted in to the New Working Timetable ahead of a submission made at D-40 unless there was reason to believe we would not be able to facilitate a Timetable Participants D-40 aspiration.

- In these instances, Part D4.2.2 was reviewed for clarification as was the case with the acceptance of the GB Railfreight Train Operator Variation for 6N50 which was accepted in to the December 2012 New Working Timetable under clause 4.2.2 (iv) (A). This was after we had reasonable expectation that the Grand Central service, 1N93, which did have higher priority and fell in to 4.2.2(iii), could not be facilitated.
- In instances where a pathing solution was not possible for clashing services with the same rights Network Rail used clause D4.6 The Decision Criteria to make an informed decision on which service we would include within the December 2012 New Working Timetable.
- With regards to the content of an access proposal, clause D2.5, Network Rail took a collaborative approach with operators in terms of progressing these proposals with existing paths not requiring any changes either being rolled over or submitted via an electronic download submitted by operators. New aspirations or amended aspirations that required any further information that was not evident within their Priority Date Notifications were discussed with operators initially rather than being rejected.

5.11 In accordance with D2.4.7 on the 14th April 2012, Network Rail advised Grand Central that the paths for 1A68 and 1N93 could not be made to work and that these were now rejected. At this point in time in the New Timetable Preparation Period Network Rail had to move its focus to remaining timetable validation of the New Working Timetable for December 2012. Network Rail had spent a significant amount of time looking for flexing solutions for the paths of 1A68 and 1N93.

5.12 Network Rail considered the applicable priority for the access proposals for 1A68 and 1N93 as 4.2.2 (iii) within Network Code Part D

6 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

Dispute TTP493

6.1 Issues where the Defendant Accepts the Claimant's Case

6.1.1 Grand Central's bid for an additional return service to Sunderland was rejected during the timetable process due to significant issues with the proposed path which could not be overcome.

6.1.2 The 15.18 Sunderland to London SX service, 1A68 was intended to take up the slot of an existing Bradford to London service, 1A67, at Doncaster. 1A67 was to be retimed at Bradford as a result from a 15.37 departure to a 15.22 departure. 1A68 was successfully pathed however it was not possible to retime 1A67. Grand Central did not wish to lose the path for 1A67 so therefore 1A68 was rejected. The pathing issues we encountered during validation of 1A67 were :

- A conflict with 2P79GZ 16:19 Scunthorpe to Lincoln at Doncaster. 1A67 would arrive 2 minutes after 2P79, 3 ½ minute margin required.
- 1A67 ran right through 4L28HA (FSX) 12:35 Wakefield Europort . 4L28 has Level 1 rights and was flexed in May 11. To flex 4L28 behind 1A67 would not be TPR compliant without involving other services also.
- Ran right through 6L59HG (FO) 16:31 Doncaster Down Decoy to Peterborough GBRF between Retford and Newark Northgate. Class 6 paths are very hard to come by and so very hard to flex without another knock on impact to other services.

- Conflict identified with 1Q19 & 1Q42 NMT services which in isolation could be flexed.
- Major conflict in the Peterborough area with 1E18LB (SX) 14.00 Edinburgh to London Kings Cross which 1A67 catches and/or if flexed following 1P76FR (SX) 17.55 Peterborough to London Kings Cross.
- Conflict with 2Y87 (SX) 18:16 Welwyn Garden City to London Kings Cross at Alexandra Palace.

6.2 Issues where the Defendant qualifies or refutes the Claimant's Case

6.2.1 Network Rail accepts that this bid was rejected early in the timetable process although, for the avoidance of doubt does not accept Grand Central's interpretation of the email from Andy Lewis. Grand Central, were informed of this decision to reject their service via email on 14th April 2012, thus fulfilling Network Rail's obligation under Part D, 2.4.6 and 2.4.7 of the Network Code to notify a Timetable Participant as soon as possible, once aware of an Access Proposal which cannot be accommodated within the New Working Timetable.

6.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination

6.3.1 The decision to postpone further work at the paths for 1A68 SX 1518 Sunderland to Kings Cross was taken due to the requirement to complete remaining timetabling works in connection with preparation of the New Working Timetable which in accordance with D4.2.2 had a higher priority than 1A68 SX 1518 Sunderland to Kings Cross. These were:

- SX and SO validation required to deliver the aspirations of other operators. The yearly timetable in operation for December 2012 in turn meant a higher volume of requirements to process and

Network Rail were conscious that we needed to ensure the 12 week validation period had to be used as effectively as possible to ensure a robust timetable for the benefit of all affected operators and a disproportionate amount of time being spent on one operator may have put this aspiration at risk.

- Planning of established weekend Engineering Access Statement section 4 restrictions of use.
- Validation required included new or amended services submitted by both passenger and Freight operators , including a Significant Biomass traffic remit submitted by GB Railfreight to increase the flow of Biomass traffic from Port of Tyne of Tyne to Drax via the Durham Coast /ECML , and a significant suite of platforming plans that operators had expressed an interest to have delivered with the December 2012 New Working Timetable including Leeds Station and Kings Cross Stations which had to incorporate HLOS driven amended set workings from First Capital Connect that .required a factoring of extended 12 car workings in to the platforming plans.
- Selby Swing Bridge Period block which incorporates Saturday and Sunday in Period G also had to be delivered , due to an SX element of work, within the New Working Timetable for December 2012.

6.3.2 This position is entirely consistent with Part D2.4.4 of the Network Code. If an alternative Access Proposals, other than the existing Priority Date Notification Access Proposals, had been received Network Rail would gone back to working on the Grand Central PDNS Access Proposal before working on any Access Proposal made post D-26.

6.3.3 Once the New Working Timetable was offered on 8th June 2012, Network Rail commenced further work with Alliance Rail and identified and offered Grand Central the 5th path services as:

- 1A66 1447 SX Hartlepool to Kings Cross (this service operates from Hartlepool because of Grand Central's rolling stock requirements and not because the pathing issues between Hartlepool and Sunderland)
- 1N93 1253 SX Kings Cross to Sunderland.

6.4 Why the arguments raised in 6.1 to 6.3 taken together favour the position of the Defendant

6.4.1 Network Rail believed that further work on the Grand Central Access Proposal during the Preparation Period would have negatively affected the delivery of the New Working Timetable, as communicated to Alliance Rail in Andy Lewis email of the 14/04/12. This position is entirely consistent with Part D2.4.4 of the Network Code. If an alternative bid, other than the existing Priority Date Notification bid, had been received Network Rail would have given consideration to this bid accordingly.

6.4.2 Grand Central's do not have any contractual rights for the new access proposal for 1A68 1518 Sunderland to Kings Cross and 1N93 1323 Kings Cross to Sunderland, these new access proposals from Grand Central conflicted with a number of other services with rights within the New Working Timetable. Having investigated opportunities for flex, Network Rail was unable to find a suitable timetabling alternative.

Dispute TTP494

6.1 Issues where the Defendant Accepts the Claimant's Case

6.1.1 Network Rail accepts that improvements need to be made to comply with Part D.2.1.6 and D.2.3.6, in connection with the New Working Timetable. Both Alliance Rail and East Coast submitted competing bids for the 1608 path from Kings Cross. At the time of bidding, neither party held contractual rights for these services. Later in the timetabling process, after careful consideration of the Decision Criteria, Network

Rail chose to offer a path to East Coast's aspiration in its timetable offer on 8 June.

6.2 Issues where the Defendant qualifies or refutes the Claimant's Case

- 6.2.1 Grand Central's PDNS for the December 2012 does not include an aspiration to use the 16:08 path from Kings Cross. The conflicting Access Proposals for the 1608 path from Kings Cross were in the Alliance Rail and East Coast PDNS.
- 6.2.2 Network Rail does not accept that it has not applied the Network Code correctly when considering competing Access Proposals from Alliance Rail and East Coast Trains. Had a Prior Working Timetable been published Network Rail does not agree with the assumption made by Grand Central that this would have excluded the 1B88 SX 1608 Kings Cross to Newark Northgate.
- 6.2.3 Part D 2.1.6 of the Network Code does not impose an obligation on Network Rail to delete train slots for which there is no current access right. The terms of this clause states that Network Rail "may delete any Train Slots in respect of which it believes, acting reasonably and after consultation with the relevant Timetable Participant...that the relevant Timetable Participant, or its successor, will not have the necessary access rights..." In any event, at the time that the Prior Working Timetable was submitted to Alliance Rail, Network Rail had a reasonable belief that rights to operate a 1608 path from Kings Cross (at least as far as Newark Northgate) would exist.
- 6.2.4 Contrary to the assertions by Alliance Rail, the bid from East Coast and Alliance Rail had the same prioritisation under D4.2.2, namely D4.2.2(iii), consequently the Decision Criteria had to be applied.
- 6.2.5 Network Rail does not accept that it did not apply the Network Code correctly in relation to East Coast's PDNS or that the PDNS was invalid. Both Alliance Rail and East Coast had greater aspirations for

the December 2012 timetable than were subsequently able to be accommodated and following a request from ORR, Network Rail carried out work to ascertain the likelihood that these could be met. Network Rail communicated the outcome of this assessment on 7 February 2012 making it clear that they could not be achieved (*Annex A - Competing Applications for new access rights on the ECML*).

6.2.6 Network Rail accepts the issue made by Grand Central in their addendum to TTP494 regarding some Timetable Planning Rules discrepancies within the schedule. Network Rail is actively seeking to eliminate all such discrepancies contained within schedules at the earliest available future timetable. However, it must be noted that during the two years this service has been in operation no performance risk has been highlighted and no adverse performance impact has been noted by Network Rail or other ECML users.

6.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination

6.3.1 Network Rail has implemented a new procedure to issue the Prior Working Timetable as part of the standard timetable process.

6.3.2 Grand Central is not disputing Network Rail's application of the Decision Criteria to decide between competing bids for the same timetabling slot. On the basis that Network Rail was correct in determining that these bids had equal priority there can be no further criticism of Network Rail in this regard.

6.4 Why the arguments raised in 6.1 to 6,3 taken together favour the position of the Defendant

6.4.1 The decision to include the 16:08 1B88 (SX) London Kings Cross to Newark ahead of the 16:08 1D72 (SX) London to Wakefield Kirkgate (SX) was taken after an evaluation of the Decision Criteria. This decision being supported by 'the considerations' (a), (b), (c), (d), and

(e) which in Network Rail's opinion are all weighted in favour of East Coast Trains.

6.4.2 This decision was communicated to all parties on the 30th April 2012 and was intended to inform operators of the decision Network Rail had made regarding which services we would include within the New Working Timetable for December 2012 (*Annex B - letter communicate decision to allocate East Coast the 1608 departure from Kings Cross*). It was not a decision made to in any way prejudice the outcome of any supplemental rights applications.

6.4.3 As set out above, ORR has indicated that it intends to agree the rights for East Coast for this service. This was detailed in an email from David Robertson to Richard McLean on August 17th 2012 (*Annex C - email from David Robertson to Richard McLean on August 17th 2012*).

Dispute TTP495

6.1 Issues where the Defendant Accepts the Claimant's Case

6.1.1 Grand Central's bid for an additional 1N93 13.23 Sunderland to Kings Cross Kings Cross service, was rejected.

6.1.2 Network Rail accepts that there was a clash with 6N50 which is operated by GB Railfreight and that this does not appear in the PWT. However, this was not the reason for rejection of the bid.

6.3 Issues where the Defendant qualifies or refutes the Claimant's Case

6.2.1 6N50 was not the reason for the rejection of 1N93. This service was the last of five clashes highlighted and the previous four were highlighted within the correspondence forwarded on April 14th:

6.2.2 Grand Central's Access proposal for 1N93 13.23 Sunderland to Kings Cross was rejected due to conflicts with:

- 1N85 13:08 Kings Cross Kings Cross to York from Grantham northwards – timing non compliant with this service.
- No path through Doncaster, conflicts with 6H88 11:50 Daw Mill to Drax between Doncaster and Shaftholme.
- Further conflict with 6H33 12:45 Humber Terminal to Drax at Hambleton South.
- Insufficient headway ahead of 1S45 at Northallerton. Any retiming would impact on following 1N19.

6.2.3 Network Rail had already spent a substantial amount of time working on Grand Central's New Access Proposals during the Significant Change Period and post Priority Date Notification Statement. This included the provision of dedicated Network Rail planner to work closely with Grand Central investigating potential pathing solutions. Despite this we were still at a stage where we could not alter these paths so they worked within the preparation period of the New Working Timetable.

Network Rail continued to work with Grand Central post the offer of the New Working Timetable, and alternative paths for 1A68 and 1N93 were eventually offered to Grand Central and the ORR has indicated it is minded to approve rights for these new trains.

6.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination

6.3.1 At no point has 6N50 incorrectly been given a higher priority than it should have during the New Working Timetable Preparation. As the Grand Central 1N93 path was not possible for multiple reasons it did not have priority in accordance with Part D 4.2.2. When we had reasonable doubt that we would be able to facilitate a path for this service it became clear that the GB Railfreight path 6N50 could be included in the timetable under Network Code 4.2.2 (d) (iv) (A).

6.4 Why the arguments raised in 6.1 to 6.3 taken together favour the position of the Defendant

- 6.4.1 Grand Central did not have any contractual rights for its new access proposal for 1N93 13.18 Sunderland to Kings Cross (SX). This access proposal from Grand Central conflicted with a number of other services with rights within the New Working Timetable. Having investigated opportunities for flex, Network Rail was unable to find a suitable timetabling alternative.
- 6.4.2 It must be noted that despite a substantial amount of collaborative work between Network Rail and Grand Central throughout the significant change period and the first 7 weeks of the Priority Date notification period we were still in a position where paths could not be found.
- 6.4.3 The position we were in after this work on, April 14th, led us to make the decision that any further investigation of flexing options would lead to a situation where the timetable would need to be 'unpicked' again and the delivery of the full New Working Timetable could be compromised.

7 DECISION SOUGHT FROM THE PANEL

- 7.1. The Defendant is seeking the following from the Panel's determinations:

7.1.1. Matters of principle:

TTP493 - Network Rail has complied with Part D of the Network Code

TTP494 – Network Rail has correctly prioritised the competing bids from East Coast and Alliance Rail

7.1.2. Specific conclusions deriving from those matters of principle:

TTP493 – Network Rail was correct to decide to reject the Access Proposal for 1A68 1518 Sunderland to Kings Cross during the New Working Timetable Preparation Period.

Grand Central to be directed to accept their 5th path as 1A66 1447 SX Hartlepool to Kings Cross as offer by Network Rail.

TTP494 – Network Rail is unable to offer Alliance Rail the 1608 departure from Kings Cross (not a Grand Central request). Network Rail has been instructed by the ORR to enter into a supplemental agreement with East Coast Trains for the 1608 path departing from Kings Cross.

TTP495 – Network Rail correct to decide to reject the Access Proposal for 1N93 1323 Kings Cross to Sunderland during the New Working Timetable Preparation Period.

Grand Central to be directed to accept their 5th path as 1N93 1253 SX Kings Cross to Sunderland as offer by Network Rail.

8 APPENDICES AND ANNEXES

Network Rail confirms that it has complied with **Rule H21** of the Access Dispute Resolution Rules, which requires that

- (a) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the Timetabling Panel arises and/or provisions associated provision(s) associated with the substance of the dispute; and
- (b) *[the relevant extracts of] any other Documents referred to in the reference*". [Rule H21(b) (I)]

Annex "A" Competing Applications for new access rights on the ECML

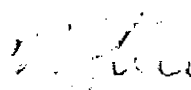
Annex "B" letter communicate decision to allocate East Coast the 1608 departure from Kings Cross

Annex "C" email from David Robertson to Richard McLean on August 17th 2012

9 SIGNATURES

The Defendant
For and on behalf of

Signed



Print Name



Position

