*Template Format (with advisory annotations) for a Defendant’s Response to a Sole Reference*

*to a Timetabling Panel in accordance with the provisions of Chapter H of the ADR Rules*

*effective from 1 August 2010*

*(and as subsequently amended)*

*This template, as required by ADR Rule H21(b), is to be used by the Defendant Dispute Party to prepare a response submission for a Timetabling Panel Hearing. Within the template, text in italics is advisory and should, once taken into account, be deleted from the final document.*

***Preamble***

*The detailed Management and Determination of each individual dispute heard by a Timetabling Panel shall be subjected to the direction of the Hearing Chair. ADR Rule H20 provides that.*

*“Upon appointment the Hearing Chair may give directions as to any or all aspects of the procedures to be followed. The Hearing Chair shall have the power at any time to make or amend the procedure to be followed by the parties in the TTP. The directions shall be in accordance with the Principles and this Chapter H and with any mandatory time requirements.”*

*Given that many Timetabling Disputes are subject to the time constraints of the timetabling process, template formats are provided in order that the Parties shall be prompted to ensure that all material relevant to their respective arguments are available in a timely manner:*

* *to the other Dispute Party/Parties;*
* *to the Timetabling Panel in good time for the hearing; and*
* *to be published on the ADC website;*

*always bearing in mind that*

*“(a) an oral hearing lasting no more than one day shall be conducted” [Rule H21(d)], and 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:*

*(b) a sole reference or response shall be no longer than 10 pages”. [ADR Rule H23].*

*The most important thing to bear in mind is to explain the background, facts and remedy being sought as clearly and concisely as possible, including only those appendices which actively support what is being submitted (e.g. there is no need to submit the entire Engineering Access Statement document; the relevant excerpt will do).*

***THE TEMPLATE***

**1 DETAILS OF PARTIES**

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

1. *[Insert Full Company name]* Limited, whose registered Office is at *[insert full address]* (“[*insert short form or abbreviation for Company name]*”) (“the Claimant”); and
2. *[Full Company name - usually Network Rail Infrastructure Limited]* whose Registered Office is at *[insert full address]* (*[insert short form or abbreviation for Company name, e.g. NR]*” (“the Defendant”).
3. *Include correspondence address, contact details and e-mail address if different.*

1.2 *Where the Defendant is aware that any third party may be affected by the Chair finding in any of the ways sought in this sole 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 (via the Secretary) as to any format to be used in respect of their representations.*

**2 CONTENTS OF THIS DOCUMENT**

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

1. Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
2. A detailed explanation of the Defendant’s arguments in support of its position on those issues where it disagrees with the Claimant’s Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant’s Sole Reference.
3. Any further related issues not raised by the Claimant but which the Defendant considers fail to be determined as part of the dispute;
4. The decisions of principle sought from the Chair in respect of

(i) legal entitlement, and

(ii) remedies;

1. Appendices and other supporting material.

**3 SUBJECT MATTER OF DISPUTE**

1. *Where the Defendant is disputing the Claimant’s right to bring the particular dispute, this should be identified here.*
2. *Confirm, clarify or qualify any areas where the Defendant disagrees with the description of the subject matter of the dispute given by the Claimant*
3. *Provide details of any Condition in Part D of the Network Code, or the relevant provision of the Track Access Contract that the dispute relates to, or is associated with that have not been cited in the Sole Reference, but which the Defant considers supports its case.*
4. *Provide any relevant background information not already given by the Claimant such 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 where the Claimant has sought to introduce as relevant material which the Defendant considers does not relate to the circumstance in dispute.*
5. *Unless already provided by the claimant, ensure that a copy of the relevant extract(s) from the document(s) referred to above is/are provided as Appendices.*

*NOTE: It can be assumed that Timetabling Panel Members will have access to a current edition of the 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 Defendant should ensure that the Panel is supplied with the relevant pages of the applicable version.*
* *The Defendant should not assume that Panel Members have personal copies or knowledge of the relevant parts (in particular any Schedules) of the specific access agreements whether or not governed by Model Clauses. The Committee Secretariat is available to give advice.*

 *(f) Provide details of any other documents that the Defendant considers are relevant to the dispute. The relevant parts must also be copied and annexed to this response document*

*NOTE:* ***Please do not supply the Panel with documentation which has already been provided by the Claimant.*** *It is, however, appropriate that the Defendant confirms whether documentation which has been supplied by the Claimant is recognised as relevant to the dispute.*

**4 EXPLANATION FROM THE DEFENDANT’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 Defendant agrees, broadly or wholly, with the Claimant;*
* *To identify those issues where the Defendant disagrees with the Claimant’s position; together with giving the reasons for that disagreement;*
* *To introduce any issues that have not been raised by the Claimant but which the Defendant 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 Defendant’s case is the stronger, or should otherwise be preferred to that of the Claimant.*

**4.1 Issues where the Defendant accepts the Claimant’s Case.**

**4.2 Issues where the Defendant qualifies or refutes the Claimant’s Case.**

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

**4.4 Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant**

*The Defendant brought before a Timetabling Panel should in any case keep in mind that in most cases the Panel needs to be given*

* *A clear and logical exposition of the factors that support the rightness of the Defendant’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 Defendant 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 Defendant’s individual view of practical implications of the dispute (e.g. numbers of trains potentially affected, ditto passengers or freight customers, order of magnitude of any financial impact) where this differs from the Claimant’s; even in cases of “principle”, the Panel is reasonably entitled to know how much business is affected by any possible outcome of the dispute, as factor*
* *Guidance as to any aspects of the dispute that could be contentious, but which the Defendant considers it would be inappropriate for the Panel to address. This could include instances where, for example, the Parties have agreed to test a matter of principle, after which they will themselves negotiate a settlement of quantum.*

**5 DECISION SOUGHT FROM THE CHAIR**

5.1 *The Defendant should set out the outcome it is seeking from the Chair’s*

 *determination, differentiating between:*

 (a) *the matters of principle*

 (b) *specific conclusions deriving from those matters of principle.*

*In all its arguments and representations, the Defendant should remember that the Chair is constrained by* ***ADR 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 Defendant will have a clear reason why it has not already settled the dispute, and the result that it wishes the Chair to deliver. There is a need therefore for it to set down clearly what it wants the Chair to find in its favour. Logically, when preparing the response submission, the decision sought from the Chair should be the first thing finalised, and arguments then marshalled to support the case for that outcome. That said, the Defendant should be clear that the decision sought is one that a Chair can give.*

5.2 ***The Claimant will have set out any specific remedies sought.*** *Remedy is what the aggrieved Party contends it should be granted if the Chair finds in its favour. 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 Chair’s powers which are governed by the* ***ADR Rule A6,*** *which states: “Each and every Forum shall:*

*a) where the Access Conditions or Underlying Contract require that a specific remedy be granted, grant that remedy accordingly; or*

*b) Where a specific remedy is provided for at law, grant that remedy accordingly;or*

*c) 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 Defendant wishes to argue for an exercise of “discretion” as in (c) above, it must consider whether the Chair has such discretion given the provisions of (a) and (b). The Defendant should also clarify whether it believes that “exceptional circumstances” (see Network Code D5.3.1(c)) apply.*

5.3 *Clarify whether you wish the Hearing Chair to decide other issues- such as ordering costs.*

**6 APPENDICES**

The Defendant confirms that it has complied with Access Dispute Resolution Rule H21 *[which requires that “Copies of the following documents… shall also be annexed and cross references to the response if not dealt with in the reference:*

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

*NOTE: It is undesirable for complete documents to be provided to the Panel- relevant extracts which support the Defendant's position are sufficient.*

*Where the dispute relates to previous (i.e. no longer current) versions of the Access Conditions / Network Code, you should include extracts only of these documents.*

All appendices and annexes are bound into the submission and consecutively page numbered. To assist the Panel, 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 Panel will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

**7 SIGNATURE**

For and on behalf of

*[insert full company name*]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name

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Position

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

*In this context, the Claimant is reminded that in sending representatives to argue its case before the Panel, “ it shall… ensure that … the competencies, skills and knowledge of any chosen representative are appropriate to the issue involved in the dispute (content, subject and value); [ADR Rule A19]*

*Now provide the Appendices (****“The Appendices”)*** *using a page break. A covering list of Appendices will be helpful. Bear in mind that the Panel and Chair will need to read everything submitted; only include material that will genuinely be helpful to the Panel, for example, do not append entire Network Code Chapters or entire policy documents - the relevant extracts will suffice.*