**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 HS1 ADR Rules**

***This template, as required by 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 subject to the direction of the Hearing Chair (as appointed by the Secretary as provided in Rules H11 and H12). Rules H20 and H21 provide that,*

*“20* ***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.***

***21 Unless the Hearing Chair directs otherwise (and subject to each party's right to apply for alternative or revised directions at all stages), the following timetable and procedure shall apply:***

* + 1. ***if the parties agree to submit a joint reference they shall,……..”***
    2. ***if the parties do not agree to submit a joint reference in accordance with (a) above:….***

***(i). each claimant shall ………. produce and serve upon all Involved Parties a sole reference which [SEE FULL TEXT]….***

***(ii). each defendant shall within seven days of service on it of such sole reference produce and serve upon all Involved Parties a response which [SEE FULL TEXT] ….”***

*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 Access Disputes Committee’s website;*

*always bearing in mind that*

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

**“23. *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:***

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

**The TEMPLATE**

1. **DETAILS OF PARTIES**
   1. The names and addresses of the parties to the reference are as follows:-

(a) [Full Company name] (Company number *xxxxxxxx*) whose Registered Office is at [Full address] ("[insert short form or abbreviation for Company name i.e. its initials]") ("the Claimant"); and

(b) HS1 Limited (Company number 3539665) whose Registered Office is at 5th Floor, Kings Place, 90 York Way, London, England, N1 9AG (“HS1”) ("the Defendant").

(c) Include correspondence address, contact details and e-mail address if different.

* 1. *Where the Defendant is aware that any third party may be affected by the Panel 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 as to any format to be used in respect of their representations.*

1. **THE DEFENDANT’S RIGHT TO CONTEST THIS REFERENCE**
   1. This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition*s* [*xxxx*] of the HS1 Network Code*.*

*The Defendant needs to make explicitly clear what provisions of its contract entitle, or direct, it to defend its disputed actions before a Timetabling Panel. 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 Defendant is disputing the Claimant’s right to bring the particular dispute this should be identified here.*

1. **CONTENTS OF REFERENCE**

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 disputed 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 Reference, including references to Documents or contractual provisions not dealt with in the Sole Reference*.
    3. *Any further related issues not raised by the Claimant, but which the Defendant considers fall to be determined as part of the dispute;*
    4. *The decisions of principle sought from the Panel 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 Defendant disagrees with the description of the subject matter of the dispute given by the Claimant .*

*Details of the Condition in the Network Code, or the relevant provisions 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 Defendant considers supports its case.*

* 1. *Ensure that a copy of the relevant extract(s) from the document(s) referred to above is/are attached at Annex ● or that the reference is accompanied by ● indexed lever arch file(s) containing documents referred to in this Reference.*

*NOTE: The parties can assume that Timetabling Panel Members 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 Panel is supplied with the relevant pages of the applicable version*
* *the parties should not assume that Panel 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 the Defendant considers are relevant to the dispute. The relevant parts must also be copied and annexed to this Reference*

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 any case that the Claimant has sought to introduce as relevant, material which the Defendant 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 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 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.*
  1. **Issues where the Defendant Accepts the Claimant’s Case**
  2. **Issues where the Defendant qualifies or refutes the Claimant’s Case**
  3. **Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination**
  4. **Why the arguments raised in 6.1 to 6,3 taken together favour the position of the Defendant**

*The Defendant in any case brought before a Timetabling Dispute should 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 a factor potentially influencing its determination.*
* *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.*

1. **DECISION SOUGHT FROM THE PANEL**
   1. ***The Defendant 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 their arguments and representations, the Parties should remember that the Panel 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 Defendant will have a clear reason why it has not already settled the dispute, and the result that it wishes the Panel to deliver. There is need therefore for it to set down clearly what it wants the Panel to find in its favour.*

*Logically, when preparing the submission, the decision sought from the Panel should be the first thing finalised, and arguments marshalled to support the case for that outcome. That said, the Defendant should be clear that the decision sought is one that a Panel 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 Panel’s jurisdiction.*

*By contrast, a Panel 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 Access Dispute Resolution Rules, or an effective individual Access contract, and would therefore be beyond the Panel’s powers.*

* 1. **List any specific remedies** **sought**. *For example “as a result of the decided principle(s) above, the Defendant is 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 Panel’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 Defendant wishes to argue for an exercise of “discretion” as in (c) above, it must consider whether the Panel 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 Defendant confirms that it has complied with **Rule H21** of the HS1 Access Dispute Resolution Rules, 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 Timetabling Panel arises and/or provisions associated provision(s) associated with the substance of the dispute; and***
2. *[the relevant extracts of]* ***any other Documents referred to in the reference”****.* [**Rule H21(b) (I)**]

Extracts are included where the dispute relates to previous (i.e. no longer current) versions of these documents.

All appendices, and annexes are bound into the submission, and consecutively page numbered. To assist the Panel, in each Appendix or Annexe

* the heading states which Dispute Party has requested that the particular appendix be placed before the Panel; and
* 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 Panel Members, will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

1. **SIGNATURES**

|  | The Defendant |
| --- | --- |
|  | For and on behalf of HS1 Limited  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed  -----------------------------------------------------------  Print Name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Position  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

*This is a control mechanism; it provides the Panel with the re-assurance 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 Defendant 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 issues involved in the dispute (content, subject and value);*** [Rule A19]