*Template Format (with advisory annotations) for a*

 *Joint Reference Submission 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(a), is to be used by the Dispute Parties to prepare a Joint Submission for a Timetabling Panel (TTP) 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. ADR Rules H20 and H21 provide that,*

*“ 20 Upon appointment, the Hearing Chair may give directions as to any or all aspects of the procedure 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 of 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:*

*(a) if the parties agree to submit a joint reference they shall, within 14 days of notification of the appointment of the Hearing Chair, submit a joint reference in accordance with the template format for a joint reference (found on the ADC website) as may be adapted by the Hearing Chair in respect of a particular dispute.”*

*The expectation is that a single joint reference document will set out all the arguments of both Parties. As 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 is immediately available*

* *to the Timetabling Panel in good time for the hearing, and*
* *to be published on the ADC website;*

*always bearing in mind that “ an oral hearing lasting no more than one day shall be conducted” [ADR 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:*

1. *A joint reference shall be no longer than 20 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:-

 (a)*［Full Company name - xxxxxx Limited］*(Company Number xxxx) whose Registered Office is at *[Insert Full address]* (“*[insert short form or abbreviation for Company name]*) (“the Claimant”); and

(b) *[Insert Full company name Limited ]* whose Registered Office is at [*Insert Full address]*

(“*[Insert short form or abbreviation for Company name]*” (“the Defendant”)).

(c) *Include correspondence address, contact details and email address if different*.

1.2 *Where either Dispute Party is aware that any third party may be affected by the Chair finding in any of the ways sought in Section 7 of this template, they should ensure that this information is conveyed to the Secretary of the ADC at the earliest possible opportunity, and the names of the relevant parties are recorded here. There is no expectation that such parties shall participate in the submission of the principal Joint Submission; the affected Parties can seek the guidance of the Hearing Chair (via the Secretary) as to any format to be used in respect of any representations they may wish to make.*

**2 THE CLAIMANT’S RIGHT TO BRING THIS REFERENCE**

2.1 This matter is referred to a Timetabling Panel for determination in accordance with Condition *[xxxx ]* of the *[Network Code]*.

*Parties need to make explicitly clear what provisions of their contract entitle, or direct them to bring their dispute before a Timetabling Panel.*

**3 CONTENTS OF REFERENCE**

 The Parties have together produced this joint reference and it includes:-

 (a) The subject matter of the dispute in section 4;

 (b) In Section 5, detailed explanation of the issues in dispute prepared by the Claimant with a paragraph by paragraph response from the Defendant;

 (c) Any further issues raised by the Defendant in Section 6;

 (d) In Section 7, the decisions sought from the Chair in respect of

(i) legal entitlement, and

(ii) remedies;

 (e) Appendices and other supporting material.

**4 SUBJECT MATTER OF DISPUTE**

 4.1 *Initially provide a very brief indication of the subject matter of the dispute. E.g:*

 *“This is a dispute regarding the allocation of capacity during a restriction of use.”*

 4.2 *Then provide details of the 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. For example:- This dispute arises over the interpretation of Condition • of the Network Code/ section •/ Schedule • of the Track Access Contract*

 4.3 *Then set out such relevant background information as is necessary to ensure a common level of understanding of all members of the Panel, including any further details of the contractual framework surrounding the obligations of the Parties in relation to the dispute.*

 *If, in the contract, there is a relevant process with defined stages (e.g. consultation, responses within a set timescale, decision with reason), these need to be stated and evidence given about the extent to which these requirements have been complied with.*

 4.4 *Apart from the Network Code (see below), 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 a TTP 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 Parties should ensure that the Panel is supplied with the relevant pages of the applicable version.*
* *The parties should not assume that the Panel members have personal copies or knowledge of the relevant parts (in particular any Schedules) of the specific access agreements in dispute whether or not governed by Model Clauses. The Committee Secretariat is available to give advice.*

 4.5 *Provide details of any other documents that are relevant to the dispute. The relevant parts must also be copied and annexed to this Defence.*

**5 EXPLANATION OF EACH ISSUE IN DISPUTE WITH RESPONSE**

5.1 *Issue 1*

 *(a) Arguments of Claimant.*

 *(b) Response by Defendant*

5.2 *Issue 2*

 *(a) Arguments by Claimant*

 *(b) Response by Defendant*

5.3 *etc, etc.*

*This format has been found to assist Parties and Panel members to focus clearly on the matters that require determination, and the parties will be expected to have had sufficient dialogue with each other to ensure that the submission meets these requirements.*

*However, if the parties agree that their dispute would be more clearly presented if, for example, all the Claimant’s arguments are presented first (in one continuous narrative), followed by the Defendant’s case (again in a single narrative) they may adapt the template accordingly.*

*In all other circumstances, including where the parties cannot agree how the template should be adapted, the submission should follow the default format in this Template for a Joint Reference.*

*Whichever framework is adopted for the presentation of arguments, Parties should keep in mind that the Panel needs to be given*

* *a clear and logical exposition of the factors that support the Parties’ respective positions. Where the argument requires reference to any contractual provision, the precise extract should be quoted verbatim;*
* *a clear statement of each point where the Parties are in dispute, noted in such a way that the extent of the differences between the parties can be clearly appreciated;*
* *confirmation in each instance whether the point of difference is primarily one of principle, or whether the Parties are agreed on the point of principle an differ only in respect of the applicability to a specific instance, or on a matter of quantification;*
* *a clear summary of the practical implications of the differences between the two positions (e.g. numbers of trains potentially affected, ditto passengers or freight customers, order of magnitude of any financial impact). Even in cases of principle, the Panel is reasonably entitled to know how the business of a Party 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 Parties do not wish 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.*

**6 ANY FURTHER ISSUES RAISED**

6.1 *The Defendant may list any further claim or counter-issue that it wishes to have resolved as necessary corollary of the dispute being heard*

6.2 *Response by Claimant to any of the issues raised by the Defendant in 6.1.*

**7** **DECISION SOUGHT FROM THE CHAIR**

7.1 *Each Dispute Party should set out the outcome it is seeking from the determination, differentiating between*

 7.1.1  *the matters of principle*

 7.1.2 *specific conclusions deriving from those matters of principle*

*In all their arguments and representations, the Parties 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.”*

*Each Dispute Party 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 each Dispute Party to set down clearly what it wants the Chair to find in its favour.*

*Logically, when preparing the submission, the decision sought from the Chair should be the first thing finalised, and each Dispute Party marshals its arguments to support that case. That said, Parties should be satisfied that the decision sought is one that a Chair can give.*

* *Pleas such as “that Party X exceeded its rights’ did not comply with its obligations under Para Y or 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 Chair’s jurisdiction.*
* *By contrast, a Chair 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 Chair’s powers.*

7.2 *List any specific remedies. 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 if 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 Chair’s powers which are governed by* ***ADR Rule A6,*** *which states: “Each and very Forum shall:*

*a) Where the Access Conditions or Underlying Contract require that a specific remedy be granted, grant the 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 Dispute Party 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).*

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

**8 APPENDICES**

The Parties confirm that they have complied with Access Dispute Resolution Rule H21

*[which requires that, “Copies of the following documents… shall also be annexed and cross referenced to the reference:*

*(A) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the Timetabling Panel arises and/or provision(s) associated with the substance of the dispute; and*

*(B) [the relevant extracts of any other Documents referred to in the reference”.]*.

*Note: It is undesirable for complete documents to be provided to the Panel - relevant extracts which demonstrate the Parties’ respective positions are sufficient.*

*Extracts of Access Conditions/ the Network Code are included where the dispute relates to previous (i.e. no longer current) versions of these documents.*

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

* 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 the Panel will be consecutively numbered so as to follow on at the conclusion of the previous submission.

**9** **SIGNATURES**

| The Claimant | The Defendant |
| --- | --- |
| For and on behalf of *[Insert Company Name]* Ltd\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position | For and on behalf of *[Insert Company Name]* Ltd\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Print Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position |

*This is the control mechanism; it provides the Panel with assurance that the dispute has been referred, with the knowledge and understanding of the relevant 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 issues 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.*