

**Statement of Defence for determination by Access Dispute  
Adjudication (“ADA”) in accordance with the provisions of  
Chapter G of the ADR Rules effective from 23 September  
2015**

**1 DETAILS OF PARTIES**

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

- (a) GB Railfreight Limited (Company number 3707899) whose Registered Office is at 3rd Floor, 55 Old Broad Street, London, EC2M 1RX (“the First Claimant”);
- (b) DB Cargo Rail (UK) Limited (Company number 2938988) whose Registered Office is at Lakeside Business Park, Carolina Way, Doncaster DN4 5PN (“the Second Claimant”); and
- (c) Network Rail Infrastructure Limited (Company number 2904587) whose Registered Office is at 2nd floor, One Eversholt Street, London NW1 2DN (“the Defendant”).
- (d) The contact details for the parties are as set out in the Statements of Claim as served by the First and Second Claimants.

1.2 The Defendant notes that the First and Second Claimants have made this reference. Freightliner Ltd, Freightliner Heavy Haul Ltd, East Midlands Trains Ltd, XC Trains Ltd and Arriva Rail North Limited have also declared themselves to be interested in it.

**2 THE DEFENDANT’S RIGHT TO CONTEST THIS REFERENCE**

2.1 This matter is referred to an Access Dispute Adjudication (“ADA”) for determination in accordance with Part G of the Access Dispute Resolution Rules which are incorporated into the Track Access Contracts between the Defendant and each of the First and Second Claimants. The Defendant has entered into a Procedure Agreement dated 21 April 2016 (sent 17 May 2016) with the First Claimant, and notes that the Second Claimant notified its wish to become involved as a Claimant in ADA 30 by notice on 23 May 2016.

**3 CONTENTS OF REFERENCE**

This Statement of Defence includes:-

- (a) The subject matter of the dispute;
- (b) An explanation of the Defendant's arguments in support of its position;
- (c) The decisions of principle sought from the ADA in respect of
  - (i) legal entitlement, and
  - (ii) remedies;
- (d) Appendices and other supporting material.

#### **4 SUBJECT MATTER OF DISPUTE**

4.1 The subject matter of this dispute is the proposed reinstatement of the Clay Cross Down Loop, which was considered in the determination of ADA 17 issued on 3 January 2014. Paragraphs 7.4 and 7.5 of that determination are set out in paragraph 4.1 of the Second Claimant's Statement of Claim.

#### **5 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE**

5.1 The Defendant has had a number of communications with the First and Second Claimants with regard to the reinstatement of the Clay Cross Loop, some of which are referred to in Section 5 of each of the respective Statements of Claim.

5.2 The Defendant is now finalising arrangements for the reinstatement of the Clay Cross Loop as soon as this is possible. The timetable for the reinstatement is as set out below, and will be completed by mid December 2018. The reinstatement raises a number of issues and complexities, which are summarised below.

5.3 The timeframe for reinstatement is as follows:

- (a) Authority process, 6 months
- (b) Grip 3 refresh/MRSP/Pway AIP/Civils AIP, 6 months
- (c) Grip 4/5design, 12 months
- (d) Construction/EIS, 6 months

- 5.4 As to Access Requirements, 4 x 30 hour disruptive possessions will be requirement to carry out the connections to the Midland Mainline and all the associated signalling and power works. Access will be required during midweek nights to re-build the Loop and carry out any civils work.
- 5.5 The line speeds will also have an implication on the reinstatement of the Loop. If the Defendant is to install the Loop in the exact same position, the original 15mph entry speed and 25mph exit speed could potentially be maintained. The issue produced by this is then to maintain the current line speed on the Midland Mainline. Here, there is the potential the speed will have to decrease by 10 to 40mph. The Defendant will not know the exact figure until the design is produced. This will obviously have an impact on current performance but also on any future journey time improvement projects such as Derby Journey Time Improvement.
- 5.6 The alternative is that a substantial enhancement of both the Up & Down Midland Main Line would be required in order to re-align the track and maintain the current line speed.
- 5.7 It is clear from the above that there are a number of issues to be dealt with in relation to the reinstatement of the Loop. However, the Defendant is committed to resolving these issues, and will work to reinstate the Loop as soon as is possible, although (due to the issues summarised above), a date of March 2017 is not presently possible, but a date of mid December 2018 is feasible.
- 5.8 It is noted that ADA 17 rested solely on Condition G.2.1.1(a(iv), which concerned the Claimants' reasonable expectations as to future use of the Loop (see paragraph 6.25 of ADA17), and that Condition G.2.1.1 (a) (iii) (material deterioration in performance of the Claimants' trains) was not established.
- 5.9 The Defendant is committed to future reinstatement of the Loop, as soon as can practically and safely be arranged, given the issues set out above and the implications for the rest of the Network near to the Loop. This should not impact on the present performance of the Claimants' trains.

## **6 DECISION SOUGHT FROM THE ADJUDICATION**

6.1 Given the Defendant's indication that it will reinstate the Clay Cross Loop, NRIL requests that the Adjudication make no determination in respect of ADA30, given that NRIL is to do that which the First and Second Claimants have asked, namely reinstatement of the Clay Cross Loop as soon as can practically and safely be arranged.

6.2 No order for costs should be made.

## 7 APPENDICES AND ANNEXES

The Defendant confirms that it has complied with Access Dispute Resolution Rule G16(b)(vi).

## 8 SIGNATURE

For and on behalf of Network Rail  
Infrastructure Ltd



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Signed

**Nick Coles**  
Print Name

**Customer Relationship Executive**  
Position