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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 whose Registered Office is at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP. ("Grand Central") ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").

2 THE CLAIMANT'S' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition 3.5.3 and 5.1 of Part D of the Network Code.

3 CONTENTS OF REFERENCE

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 This is a dispute regarding Network Rail's decision to take a "late notice" possession (Restriction of Use) in planning week 29 (17th / 18th October 2020) with less than 12 weeks notice on the East Coast Main Line (ECML) as part of the acceleration of the Kings Cross upgrade project. The decision results in an unacceptable and material level of disruption for Grand Central and its passengers, being unable to operate any services into London.

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- 4.2 This dispute arises over the failure of Network Rail to apply the Decision Criteria as detailed in Part D Clause 4.6.2 of the Network Code, in deciding to take the late notice Restriction of Use following our objection to the late notice access request.
- 4.3 Kings Cross upgrade was originally planned to commence 24th December 2020 continuing through to 29th March 2021 with some related closures of Kings Cross station on 29th February/1st March 2020, 20th/21st June 2020, 5th/6th September 2020, 21st/22nd November 2020 and 28th/29th November 2020, this was to deliver the Network Change NC/G1/2017/LNE/051.
- 4.4 Whilst not the subject of this dispute it is worth bringing to the panels attention that Grand Central accepted the original Network Change recognising the requirement for the scheme to go ahead but expecting that it would be entitled to compensation for loss of revenue for the significant impact anticipated on Grand Central services.
- 4.5 Grand Central has continued to work in good faith with Network Rail with regards to access requests for a number of possessions and remains in conversation with Network Rail regarding its entitlement to compensation for the enabling works already undertaken.
- 4.6 A letter from Network Rail was sent to operators on 27th March 2020 confirming that due to the ongoing uncertainties as a result of Covid-19 the Kings Cross upgrade would be deferred. (Appendix A). At this stage it was felt that the industry could support the enabling works already planned in the weeks identified above but the letter gave no clear indication of the timescales for the future blocks which were due to begin in December 2020.
- 4.7 Grand Central is an Open Access operator and as such operates on a purely commercial basis receiving no financial support from government in operating its train services. On that basis, and as a result of the catastrophic impact of the current pandemic on rail passenger demand, Grand Central placed its business into hibernation on 4th April 2020, operating no passenger services whilst the country was subject to a nationwide lockdown.
- 4.8 A new access plan for the Kings Cross project was proposed to operators in early June which would see the major works of the King's Cross project deferred by 12 months

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with less disruptive but longer restrictions of use to address concerns over passenger capacity. At this point the plan was to alter some of the enabling works in 2020 and move significant proportion of the work into 2021 with completion of the scheme expected in 2022. (Appendix B).

4.9 During this time Grand Central was developing its Mid Term Financial Plan, with a specific focus on business recovery. The impact of the King's Cross remodelling project has and is likely to continue to have long a sustained impact on Grand Central's business. The impact of the project was included in our plan in line with these timescales.

4.10 On 23rd July 2020 a revised option was presented to the Access Oversight Board (AOB) to accelerate the Kings Cross project as part of the "Build Back Better" approach the industry was looking at. Grand Central was unable to attend the AOB meeting, and the revised plan was endorsed on the provision of a number of actions taking place. The minutes included in Appendix C state:

"DH summarised that collectively as a group happy to endorse Option 1 for Feb 2021 start, conditional on requirements being met.

One of the largest issues we have to reconcile & work on is the passenger handling/social distancing piece.

PM raised need to action having base passenger handling plans in place"

4.11 Grand Central has not had any further sight of how or if the additional requirements have been addressed and has seen no further work on passenger handling and social distancing.

4.12 Regardless, on 24th July 2020 Network Rail issued a request (Appendix D) for an All Line Block Restriction of Use at London Kings Cross on the 17th and 18th October to accommodate the accelerated Kings Cross project discussed at the AOB in order to undertake a signalling commissioning rehearsal.

4.13 For normal Network Rail variations with at least 12 weeks notice, condition D3.4.7 of the Network Code, requires Network Rail to provide each Timetable Participant with its

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proposals for Restrictions of Use in respect of the corresponding Timetable Week by TW-30.

- 4.14 In addition to this condition D3.4.8 requires Network Rail to consult with each Timetable Participant affected by the RoU after TW-30 but before TW-26.
- 4.15 Condition D3.5 of the Network Code allows Network Rail to propose variations with less than 12 weeks' notice and prescribe alternative timescales as are reasonably practicable in the circumstances. Grand Central would not expect Network Rail to be making late notice access requests for major projects and of such a significant nature.
- 4.16 The access request would prevent any long-distance operators running services into Kings Cross on the weekend in question. In Grand Central's specific circumstances this is likely to lead to no timetabled services being operated across the weekend with additional services cancelled on the Friday and Monday to ensure the Rolling Stock ends and starts in the correct locations.
- 4.17 Grand Central has been subject to a number of enabling works previously for the project and has explored a number of solutions for operating to alternative destinations and making alternative arrangements. These alternative options require significant investment in Driver and Conductor route learning with a requirement to release staff in order to undertake these duties and additional overtime payments. We have not identified a suitable alternative to date.
- 4.18 Based on the timings of the late notice request for week 29 and in the context of on-going COVID19 risk mitigations restricting Driver Training activities, Grand Central has not been in a position to revisit and take forward any of these alternative arrangements.
- 4.19 On 29th July 2020 Grand Central issued its response declining the request, (Appendix E) on the basis that the late notice and last-minute changes to the KGX remodelling programme timescales are likely to have a significant and material impact on Grand Central from both a revenue and reputational perspective at a time when great effort is being put into re-growing passenger numbers in line with the national industry plan. It is important to note that this disproportionately and uniquely affects Grand Central as an open access operator as against franchised TOCs who are not currently bearing revenue risk as a result of their emergency measures agreements with the Secretary of

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State. We are not aware that Network Rail has considered the unique position of Grand Central and the fact that rebuilding its business during the Covid-19 pandemic is being done a solely commercial basis.

- 4.20 On 13th August, 3 weeks after the late notice request to support access for the revised plan, Network Rail issued a Network Change variation for the King's Cross remodelling network change detailing the revised timescales as discussed at the Access Oversight board on 23rd July 2020. Grand Central has objected to the network change under condition G2.1.1(a) (iii) of the network code and is awaiting a formal response to this objection prior to making a decision as to whether it disputes the establishment and implementation of the Network Change which appears to be progressing without formally concluding the Network Change process. As it currently stands Network Rail has not established the Network Change variation and our objections remain outstanding.
- 4.21 On 14th August 2020 Network Rail issued their decision (Appendix F) to take the possession despite the objections of Grand Central. Grand Central received no response to its rejection and Network Rail has provided no indication that the decision criteria has been applied in deciding to take the possession.
- 4.22 Network Rail has requested that amended Timetable bids be submitted by 16th September 2020 with an anticipated offer date of 23rd September 2020 and a publication date of 30th September 2020. Significantly outside of the normal Informed Traveller Timescales.
- 4.23 On 18th August 2020 Grand Central notified Network Rail and the Access Disputes Committee of its intention to dispute the decision by submitting a Notice of Dispute (Appendix G).

5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE

- 5.1 Under condition D3.4.8 Network Rail is required to consult with Timetable Participants on the proposed RoU. Whilst we recognise that condition D3.5 allows Network Rail to

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alter these timescales, we do not believe Grand Central was consulted sufficiently for such a significant disruption.

The Access Oversight Board (AOB) endorsed the revised King's Cross remodelling project timelines including the access requirements, this was done without Grand Central in attendance.

- 5.2 The endorsement of the revised plan at the AOB was subject to a number of additional requirements being met. As far as Grand Central can tell these additional requirements and actions have not been undertaken, specifically in relation to passenger handling, nor has Network Rail provided Grand Central with any detailed information to demonstrate these requirements have been met.
- 5.3 Network Rail provided no response to Grand Central's objection to the late notice access request for Week 29, simply issuing its decision to take the possession on 14th August. We can find no evidence that Network Rail has given any consideration to our objections, Grand Central's unique position as an open access operator operating during the Covid 19 pandemic or has applied the decision criteria in its decision to take access in Week 29.
- 5.4 Grand Central believes Network Rail must provide justification of any decisions made with regards to late notice possessions, and these decisions should be made in accordance with the decision criteria as stipulated in the Network Code D3.4.8(b).
- 5.5 Grand Central does not believe that Network Rail have taken this decision in accordance with the Decision Criteria. We have addressed the relevant points from the Decision Criteria below.
- 5.6 Part D 4.6.2 (a). We agree there is a benefit to the Kings Cross project, but we believe that Network Rail's desire to progress the revised plan so rapidly has led it to not considering all opportunities to make more efficient use of the access required, for example, there could have been an opportunity to incorporate this into existing works at London Kings Cross such as Weeks 33 or 35 (partial closures planned) or Week 34 (complete closure planned) had this Restriction of Use been proposed in sufficient timescales. We therefore believe Network Rail, as a result of the plans to aggressively accelerate the implementation of the King's Cross remodelling project has made little

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or no consideration of maintaining the capability of the Network as much as possible, specifically on weekends, during the remainder of 2020. As stated above, we also believe Network Rail has given no consideration to the level of impact this has on Grand Central as an open access operator.

- 5.7 With regards to Part D 4.6.2 (b), (d) and (e), we believe Network Rail has not adequately considered the impact on passengers of a late notice possession of such a significant nature. The proposal removes all Long Distances services to and from Kings Cross, therefore pushing all the demand onto other routes or alternative transport. This is particularly important given the current social distancing guidelines whereby capacity on services across the Network is reduced to c. 40%. This also comes at a time when the rail industry is making concerted efforts to rebuild passenger confidence and to grow passenger numbers post the impact of COVID19.
- 5.8 With regards to Network Code Part D 4.6.2 (f), Grand Central believes that Network Rail has given no consideration to the commercial interests of Grand Central. Network Rail are aware that Grand Central operates on a purely commercial basis and has been without revenue for an extended period as a result of the current pandemic. A high-level impact assessment shows that immediate loss of revenue is likely to exceed £125,000 in the current climate with further medium-term impacts slowing the regrowth of passenger numbers post COVID19. Grand Central has recently started operating services again and is currently rebuilding demand (within the current guidance) and customer confidence. To propose a late notice request when passengers have already begun purchasing tickets for travel over the weekend in question undermines this confidence.
- 5.9 With regards to Part D 4.6.2 (j), Grand Central Railway are unable to operate services to/from London Kings Cross and there are limited alternative service options where it is possible for us to terminate services whilst being able to use our available resource efficiently. This late notice Restriction of Use increases the number of days of full station closure at King's Cross to 10 until the end of 2020, with additional partial closures, where Grand Central will be unable to make full use of its assets.
- 5.10 Grand Central does not believe that Network Rail have given due regard to our customers and our business in requesting such a significant Restriction of Use at such

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short timescales, specifically as the late notice request further impacts on already disrupted Informed Traveller timescales.

- 5.11 Based on the current proposed bid and offer timescales, It is unlikely that a revised timetable will be published and therefore made available to the public earlier than 4 weeks before travel (currently estimated for 30th September 2020). This is a significant reduction in the Informed Traveller Timescales and Grand Central deems that this is not acceptable for such a major disruption especially when a full plan for passenger handling has yet to be developed and put in place as referenced in the AOB minutes included in Appendix C.

6 DECISION SOUGHT FROM THE PANEL

- 6.1 The Claimant is requesting that the Panel determine:
- (a) That Network Rail has not applied the decision criteria in line with D3.4.4(b) when making the decision to take the late notice possession. Specifically, that it has given no regards to D4.6.2(f) in considering the unique situation and commercial impact on Grand Central.
 - (b) That the late notice possession is withdrawn, and an alternative plan developed to undertake the required works once the Network Change variation has been fully established or, in the alternative, if the possession is not to be withdrawn, Grand Central is awarded damages (which is to include the recovery of lost revenue).

7 APPENDICES

Appendix A – ECML Message regarding KGX remodelling delay

Appendix B – AOB Paper KGX remodelling Options May 2020

Appendix C – AOB Minutes 23rd July 2020

Appendix D – Late Notice Access Request Week 29

Appendix E – Grand Central Rejection of Access Request

Appendix F – Network Rail Decision Email for Week 29 possession

Appendix G – Notice of Dispute

8 SIGNATURE

For and on behalf of Grand Central Railway Company Limited

A handwritten signature in black ink, appearing to read "Chris Brandon". The signature is written in a cursive, flowing style.

Signed

Chris Brandon

Head of Business Development & Programmes