

**Application by North Somerset Council for an order granting development consent for the Portishead branch line - MetroWest phase 1**

**Planning Inspectorate reference TR040011**

**Interested party reference PORT-S57657**

**Note on behalf of First Corporate Shipping Limited trading as The Bristol Port Company (BPC) in relation to the Works Agreement dated 22 November 2000 between Railtrack plc and BPC**

**dated 15 March 2021**

1. This note is provided in response to action point 24 arising from Issue Specific Hearing 5 on 4 March 2021.
2. Attached to this note is a redacted copy of the Works Agreement dated 22 November 2000 between Railtrack PLC and First Corporate Shipping Limited relating to the works carried out to update and recommission part of the Portishead to Bristol branch line.
3. Those parts of the agreement which have been redacted comprise information as to the amounts of various sums of money payable and as to sources of funding for some of those sums.

Dated 22 November 2000

**RAILTRACK PLC**

- and -

**FIRST CORPORATE SHIPPING LIMITED**

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**WORKS AGREEMENT**

relating to  
**recommissioning of part of the branch line  
from Portishead to Bristol**

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**Beachcroft  
Wansbroughs**

SOLICITORS

10-22 Victoria Street Bristol BS99 7UD  
Tel: 0117 918 2000 Fax: 0117 918 2100  
DX: 7846 BRISTOL

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21 November 2000

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## **Appendices**

1. **Draft Connection Agreement**
2. **Plan of the Relevant Part of the Branch Line**
3. **Schedule of Construction Costs**
4. **Works connected with the Interface**

## AGREEMENT

DATE: 22 November

2000

### PARTIES:

- (1) "Railtrack" : **RAILTRACK PLC** (company number 2904587) whose registered office is at Railtrack House, Euston Square, London NW1 2EE.
- (2) "the Port" : **FIRST CORPORATE SHIPPING LIMITED** (company number 2542406) whose registered office is at Alder Castle, 10 Noble Street, London EC2V 7JX.

### BACKGROUND

- A. The Port wishes to transport goods by rail to and from Royal Portbury Dock.
- B. To enable the Port to do so it intends to construct sidings at Royal Portbury Dock connecting with the branch line running between Portishead and Bristol. This branch line is owned by Railtrack.
- C. The Port wishes Railtrack to carry out updating and recomissioning works to the branch line and then to maintain it.

### OPERATIVE PROVISIONS

#### 1. Definitions and Interpretation

- 1.1 In this Agreement the expressions listed in column 1 below shall have the respective meanings set opposite them in column 2 below unless the context requires otherwise

COLUMN 1	COLUMN 2
"Connection Agreement"	the Agreement referred to at Clause 16 a draft of which is at Appendix 1;
"Consideration for the Railtrack Works"	Redacted
"Construction Costs"	all of the following costs: <ul style="list-style-type: none"><li>i. sums due for payment by Railtrack to its Sub-Contractor; and</li><li>ii. sums due to Railtrack for its design work as set out at Appendix 3a; and</li><li>iii. sums due to Railtrack for its project management work as set out at appendix 3b; and</li></ul>

- iv. the cost of free issue materials issued by Railtrack to its Sub-Contractor as set out at appendix 3c

<b>“Development”</b>	the Relevant Part of the Portishead Branch Line as developed by the execution of the Railtrack Works;
<b>“Interface”</b>	The points of contact both physical and technical between the Railtrack Works and the Port’s Works;
<b>“Interim Certificate”</b>	a Certificate for interim payment issued under clause 60(2) of the Sub-Contract Agreement;
<b>“Port’s Representative”</b>	the person appointed by the Port in accordance with Clause 4;
<b>“Port’s Variations”</b>	variations to Railtrack Works under the terms of Clause 3.3;
<b>“Port’s Works”</b>	works to be undertaken by the Port through its own contractors to construct sidings at Royal Portbury Dock to connect with the Relevant Part of the Branch Line;
<b>“Railtrack Representative”</b>	the person appointed by Railtrack in accordance with Clause 4;
<b>“Railtrack Works”</b>	works to upgrade and recommission the Relevant Part of the Branch Line, incorporating a no signaller token signalling system, in all respects fit to enable the passage over the Relevant Part of the Branch Line and onto the Railtrack Network of forty freight trains per day (twenty inwards and twenty outwards) of a maximum axle load of 25.5 tonnes, a maximum length of 750 metres and a maximum running gauge allowing for a 9ft 6in box on a standard deck height wagon;
<b>“Relevant Part of the Branch Line”</b>	that part of the branch line running between Portishead and Bristol to which the Railtrack Works are to be undertaken, a plan of which is at appendix 2;
<b>“Required Substantial Completion Date”</b>	30 November 2001, or, in the event of delays occurring that are beyond the reasonable control of Railtrack, and provided

Railtrack uses its reasonable endeavours to avoid and mitigate delay such later date that is reasonable in the circumstances, such later date to be agreed by the Port's Representative, such agreement not to be unreasonably withheld;

**"Sub-Contract Agreement"** the sub-contract to be entered into by Railtrack with the Sub-Contractor for the execution of the Railtrack Works;

**"Sub-Contractor"** the sub-contractor under the Sub-Contract Agreement;

**"Substantial Completion"** substantial completion of the Railtrack Works as evidenced by the statement of Substantial Completion issued by the Railtrack Representative with the consent of the Port's Representative, such consent not to be unreasonably withheld;

**"Works Commencement Date"** 8 January 2001

1.2 Unless the context requires otherwise, references to a schedule, clause or paragraph or Appendix are references respectively to a schedule clause or paragraph or Appendix to this Agreement.

1.3 Any headings in this Agreement are included for convenience only and shall not affect its interpretation.

## **2. Railtrack Works**

2.1 Railtrack will carry out, or cause to be carried out, the Railtrack Works;

2.2 The Railtrack Works will reach Substantial Completion by the Required Substantial Completion Date.

## **3. Meetings and Variations**

3.1 Railtrack shall procure that site progress meetings of the Railtrack Works are held at not less than four weekly intervals and are attended by the Railtrack Representative and the Port's Representative. Proper minutes will be kept and forwarded to the Port's Representative together with copies of any variation orders or certificates issued by Railtrack since the previous site progress meeting. Except in case of emergency Railtrack will give to the Port not less than three working days notice of such meetings.

3.2 The Port shall procure that site progress meetings of the Port's Works are held at not

less than four weekly intervals and are attended by the Railtrack Representative, the Port's Representative and the contractor carrying out the Port's Works. Proper minutes will be kept and forwarded to the Railtrack Representative together with copies of any variation orders or certificates issued by the Port since the previous site progress meeting which have an effect on the Interface. Except in the case of emergency the Port will give not less than three working days notice of such meetings.

- 3.3 The Port shall not be entitled to vary the Railtrack Works unless proposals for variations are approved by Railtrack on terms agreed to by Railtrack.

#### **4. Port's Representative and Railtrack Representative**

Within 14 days of entering into this Agreement the Port will inform Railtrack of the identity of the Port's Representative (and of a Deputy to fulfil the Port's Representative's functions in their absence) and provide details of their work address and telephone number and Railtrack will provide like information to the Port in relation to the Railtrack Representative and Deputy.

#### **5. Works at the Interface**

- 5.1 On receiving a written request from the Railtrack Representative to enter onto land owned or occupied by the Port for the purpose of executing the Railtrack Works as required by the agreed Interface Programme or ongoing maintenance works the Port will grant a licence to do so within seven (7) days of submission of the request provided that Railtrack will procure that any such land entered onto is restored to its former condition within a reasonable period of completion of the Railtrack Works, or ongoing maintenance work, subject only to any alterations necessitated by the Railtrack Works.
- 5.2 On receiving a written request from the Port's Representative to enter onto land owned or occupied by Railtrack for the purpose of executing the Port's Works as required by the agreed Interface Programme Railtrack will grant a licence to do so within seven (7) days of submission of the request, provided that the Port will procure that any such land entered onto is restored to its former condition within a reasonable period of completion of the Port's Works subject only to any alterations necessitated by the Port's Works.
- 5.3 It shall be the responsibility of the Port to ensure that the Port's Works are compatible with the Railtrack Works at the Interface as shown on the drawing at Appendix 4.
- 5.4 The Port's Representative and the Railtrack Representative shall meet by 19 January 2001 and agree any necessary technical issues relating to the Interface and agree a



programme in connection with the Interface (the "Interface Programme"). Railtrack and the Port shall ensure that they comply with any such agreed technical issues and with the agreed programme. For the avoidance of doubt both parties shall be obliged to comply with the agreements reached at this meeting subject to any variations subsequently agreed, such agreement not to be unreasonably withheld or delayed. 6 July 2001 is the date by which the Port shall complete works necessary to facilitate the supply of a token system, telephone and all cabling within the ducting to enable the installation of the token control system of the branch line at the agreed location adjacent to the motorway bridge.

## **6. Substantial Completion**

- 6.1 Railtrack will give at least five (5) working days' notice to the Port's Representative of the pending issue of the statement of Substantial Completion. The Port's Representative shall inspect, or cause to be inspected, the Railtrack Works and if satisfied that they comply with the terms of this Agreement shall within five days of receipt of the notice consent to the issue of a statement of Substantial Completion, such consent not to be unreasonably withheld or delayed.
- 6.2 If Substantial Completion does not occur by the Required Substantial Completion Date Railtrack shall pay, or allow, to the Port the sum of Redacted for each day which shall elapse between the required Substantial Completion Date and Substantial Completion. Save as referred to in Clause 6.4 Railtrack's aggregate liability to the Port in relation to delay shall not in any circumstances exceed a maximum of Redacted
- 6.3 The sum of Redacted per day represents the Port's genuine pre-estimate of the damages likely to be suffered if the Railtrack Works are not completed by the Required Substantial Completion Date. Save as referred to in clause 6.4 for the avoidance of doubt no damages, other than those referred to at Clause 6.2, shall be payable in the event of delay to Substantial Completion.
- 6.4 If the delay to the Required Substantial Completion Date continues beyond 42 days and the Port can demonstrate that Railtrack is not using reasonable endeavours to proceed with the Railtrack Works and to mitigate delay the Port shall be entitled to seek redress in relation to the consequences of delay caused by Railtrack beyond 42 days without the restrictions referred to in clauses 6.2 and 6.3.

## **7. Ongoing Maintenance**

- 7.1 Following the Date of Substantial Completion Railtrack will maintain the Relevant Part of the Branch Line in accordance with Railway Industry Group Standards and

standards required in the Railtrack Works.

7.2 In consideration for doing so the Port will pay to Railtrack a maintenance payment of Redacted

This maintenance payment would be modified to reflect a new connection agreement should the Relevant Part of the Branch Line become Railtrack Network.

7.3 The maintenance payment will be payable by the Port quarterly and within ten (10) days of submission by Railtrack of a VAT invoice with the first invoice to be submitted on the date of the first commercial train operation or on 1 March 2002 whichever occurs first.

7.4 Within thirty (30) days of receipt of the fourth quarterly payment for the year and annually thereafter Railtrack will pay to the Port a rebate on the maintenance payments. This rebate will be the equivalent of the wear and tear element of the freight access charges paid by the freight operator in the previous twelve months for freight train movements. The rebate would cease in the event that the relevant part of the branch line becomes Railtrack Network.

7.5 The maintenance payment is calculated by reference to an estimated daily use of twenty (20) trains of forty (40) movements. If there is a significant alteration in the number of such train movements which makes it reasonable for Railtrack to receive a higher maintenance payment the parties shall seek to agree a higher payment. If the parties are unable to do so Railtrack may refer the matter to be dealt with in accordance with the dispute resolution procedure set out at Clause 21.

7.6 Should the Relevant Part of the Branch Line be used either by passenger services operating on a regular timetable or freight services (other than to and from the Port's Royal Portbury Dock facilities) the Relevant Part of the Branch Line shall be considered Railtrack Network and the charge for maintenance will be modified to reflect any new connection agreement.

## **8. Payments in respect of the Railtrack Works**

8.1 In consideration of Railtrack agreeing with the Port to execute for the benefit of the Port the Railtrack Works the Port shall make payments to Railtrack as follows:

8.1.1 Every four weeks following the Works Commencement Date Railtrack shall submit to the Port's Representative a statement showing the Construction Costs incurred since the date of the previous statement (save in respect of the first statement)

8.1.2 subject to each statement being agreed by the Ports Representative (such agreement not to be unreasonably withheld or delayed) and accompanied by a VAT invoice for Construction Costs due the Port shall pay to Railtrack the amount due within 10 working days of receipt;

8.1.3 Within 28 days of the Date of Substantial Completion the Port shall pay to Railtrack the difference between sums already paid pursuant to previously issued statements and the Consideration for the Railtrack Works. For the avoidance of doubt no retention shall be deducted from the sum so paid.

8.1.4 Redacted

8.2 The Port's liability for the cost of the Railtrack Works shall be to pay the Consideration for the Railtrack Works and any additional sums payable for Construction Costs shall be paid by Railtrack save that any such additional sums arising from the Port's Variations or arising from the Port's failure to comply with the Interface Programme referred to at clause 5.4 shall be payable by the Port in addition to the Consideration for the Railtrack Works. Credit will be given by Railtrack to the Port for additional costs arising to the Port as a result of Railtrack failing to comply with the Interface Programme referred to at clause 5.4.

**9. Interest on Late Payment**

If any payment due to be made hereunder shall not be made on the due date such payment shall (without prejudice to any other rights of the parties) be payable with interest at the rate of 3% per annum above the base rate from time to time of the Bank of England as well after as before judgement calculated from the due date to the date of actual payment.

**10. Value Added Tax**

Any payment to be made by either party to the other pursuant to the terms of this Agreement shall be made together with any value added tax lawfully payable thereon provided that no liability for such tax shall arise until the paying party has received a valid value added tax invoice in respect of the payment then due.

**11. Insurance**

From the date hereof until the Date of Substantial Completion Railtrack shall insure or procure

insurance of the Development.

## **12. Indemnity**

12.1 The Port will fully and effectively indemnify Railtrack in respect of any liability claim action proceeding demand cost charge or expense ("the Losses") which may be made against or incurred by Railtrack arising out of the execution of the Port's Works save to the extent that:-

12.1.1 the Losses arise as a result of a breach of the terms of this Agreement by Railtrack or any negligence or wilful misconduct on the part of Railtrack, its agents, contractors or any other person for whom it is responsible; or

12.1.2 any other person (apart from Insurers) indemnifies Railtrack in respect of the losses.

12.2 Railtrack will fully and effectively indemnify the Port in respect of any liability claim action proceeding demand cost charge or expense ("the Losses") which may be made against or incurred by the Port arising out of the execution of the Railtrack Works save to the extent that:-

12.2.1 the Losses arise as a result of a breach of the terms of this Agreement by the Port or any negligence or wilful misconduct on the part of the Port, its agents, contractors or any other person for whom it is responsible; or

12.2.2 any other person (apart from Insurers) indemnifies the Port in respect of the losses.

12.3 For the avoidance of doubt the provisions of clauses 12.1 and 12.2 shall apply only to Losses arising out of claims made by third parties or any proper expense incurred by the indemnified party in remedying any damage caused by the execution of the Port's Works or the Railtrack Works (as applicable) to the extent that such remedial action would normally have been undertaken by a reasonable person in the position of the indemnified party.

## **13. Suspension**

13.1 If the Port fails to make a payment or payments properly due to Railtrack as provided by the Agreement and that failure continues for 21 days after the due date or dates for payment Railtrack may give written notice to the Port requiring payment within a further 7 days and if no payment is received within that period may suspend execution of the Railtrack Works.

13.2 In the event of suspension of the Railtrack Works under the terms of clause 13.1 the Port will indemnify Railtrack for any liability Railtrack incurs to the Sub-Contractor under the terms of the Sub-Contract Agreement.

**14. Determination**

14.1 If the Port fails to make a payment or payments properly due to Railtrack as provided by the Agreement and that failure continues for 21 days after the due date or dates for payment Railtrack may give written notice to the Port requiring payment within a further 7 days and if no payment is received within that period Railtrack may give a notice of determination upon which the provisions of clause 14.3 shall apply.

14.2 If at any time either party ("the Insolvent Party"):

14.2.1 shall enter into liquidation whether compulsory by order of a Court or voluntarily by the passing of a shareholders resolution (except by way of solvent reconstruction or amalgamation); or

14.2.2 shall suffer repossession by a mortgagee or chargee the appointment of a receiver of its interest in this Agreement or otherwise of the whole or substantially the whole of its property or a person who would be such a receiver but for the appointment of some other person as the receiver of part of its property; or

14.2.3 makes or agrees to any compromise arrangement or moratorium with its creditors as a whole or with any class of its creditors whether the same be sanctioned by the Court under the provisions of Section 425 of the Companies Act 1985 (as amended) or Part I of the Insolvency Act 1986 or otherwise or whether it be contractual or informal without any legal sanction or enforceability and whether or not the same envisages or provides for a nominee (or other person by whatever name called) to manage or control its business or undertakings; or

14.2.4 shall become unable or deemed unable to pay its debts within the meaning of Section 123 (1) of the Insolvency Act 1986; or

14.2.5 shall suffer the making of an Administration Order under the provisions of Part I of the Insolvency Act 1986; or

then immediately upon the happening of the event in question the other party may serve notice on the Insolvent Party whereupon the provisions of clause 14.3 shall apply.

14.3 Where this clause 14.3 applies this Agreement shall thereupon determine and the obligations on the part of all parties under this Agreement shall thereupon cease and

be of no effect but without prejudice to any right of action or remedy of either party against the other in respect of any antecedent breach of any obligations of the other contained in this Agreement.

**15. Track Access**

The development of passenger services on the branch line shall be encouraged on the basis that they could supply additional revenue. The ability to expand freight train operations must not be unreasonably compromised by the development of passenger services. The twenty trains (40 movements) per day to use the Branch Line between Bristol Port Co at Portbury and Bristol Temple Meads will be protected, subject to Regulatory approval and an agreed Track Access Agreement.

**16. Connection Agreement**

As soon as reasonably practicable after the date of this Agreement, Railtrack shall submit to the Regulator appointed pursuant to Section 1 of the Railways Act 1993 for his approval the terms of the Connection Agreement (a draft of which is at Appendix 1) and the Port shall submit to the Regulator a letter in support of that application. The parties shall co-operate in every respect so as to obtain the approval of the Regulator of the Connection Agreement, and neither party shall unreasonably withhold or delay its agreement to any modifications to the Connection Agreement which the Regulator shall propose. Upon approval of the Connection Agreement by the Regulator, the parties shall enter into it.

**17. Non-assignability**

This Agreement is personal to Railtrack and the Port and neither party shall at any time without the prior written consent of the other assign charge or part with their respective interest in this Agreement.

**18. Ownership of Railtrack Works and Port's Works**

For the avoidance of doubt save as expressly set out herein nothing in this Agreement shall

18.1 confer on the Port any rights over the Railtrack Works or over any land or other property belonging to Railtrack; or

18.2 confer on Railtrack any rights over the Port's Works or over any land or other property belonging to the Port.

**19. Confidentiality**

19.1 All information obtained by either party in the course or conduct of this Agreement shall be held confidential and shall not be divulged to any third party save to the extent necessary to effect the execution of the Agreement and then only on the basis that the recipient to such information shall be bound by similar confidentiality

13.2 In the event of suspension of the Railtrack Works under the terms of clause 13.1 the Port will indemnify Railtrack for any liability Railtrack incurs to the Sub-Contractor under the terms of the Sub-Contract Agreement.

**14. Determination**

14.1 If the Port fails to make a payment or payments properly due to Railtrack as provided by the Agreement and that failure continues for 21 days after the due date or dates for payment Railtrack may give written notice to the Port requiring payment within a further 7 days and if no payment is received within that period Railtrack may give a notice of determination upon which the provisions of clause 14.3 shall apply.

14.2 If at any time either party ("the Insolvent Party"):

14.2.1 shall enter into liquidation whether compulsory by order of a Court or voluntarily by the passing of a shareholders resolution (except by way of solvent reconstruction or amalgamation); or

14.2.2 shall suffer repossession by a mortgagee or chargee the appointment of a receiver of its interest in this Agreement or otherwise of the whole or substantially the whole of its property or a person who would be such a receiver but for the appointment of some other person as the receiver of part of its property; or

14.2.3 makes or agrees to any compromise arrangement or moratorium with its creditors as a whole or with any class of its creditors whether the same be sanctioned by the Court under the provisions of Section 425 of the Companies Act 1985 (as amended) or Part I of the Insolvency Act 1986 or otherwise or whether it be contractual or informal without any legal sanction or enforceability and whether or not the same envisages or provides for a nominee (or other person by whatever name called) to manage or control its business or undertakings; or

14.2.4 shall become unable or deemed unable to pay its debts within the meaning of Section 123 (1) of the Insolvency Act 1986; or

14.2.5 shall suffer the making of an Administration Order under the provisions of Part I of the Insolvency Act 1986; or

then immediately upon the happening of the event in question the other party may serve notice on the Insolvent Party whereupon the provisions of clause 14.3 shall apply.

14.3 Where this clause 14.3 applies this Agreement shall thereupon determine and the obligations on the part of all parties under this Agreement shall thereupon cease and



obligations.

19.2 This clause shall remain binding on both parties notwithstanding the completion or termination or determination of this Agreement for any reason.

## **20. Publicity**

Neither Railtrack nor the Port shall without the prior written consent of the other (such consent not to be unreasonably withheld or delayed) advertise or publicly announce this Agreement or details of the Railtrack Works. The parties shall as soon as practicable after the date of this Agreement agree a publicity plan which they shall implement jointly.

## **21. Disputes**

21.1 Either party to this agreement can refer a dispute or difference to adjudication in accordance with the Housing Grants Construction and Regeneration Act 1996 and any adjudication shall be undertaken in accordance with the Railtrack Plc Adjudication Rules (March 1998 Edition v.1) ("the Railtrack Adjudication Rules"). The edition of the Railtrack Adjudication Rules may be revised from time to time and is subject to the following provisions.

21.2 The Adjudicator is to be appointed by agreement and failing which on application to the President of the Institution of Civil Engineers.

21.3 Apart from the rules and procedures set out in this Agreement the Adjudicator shall not be bound by any other rules or procedures whatsoever (including without limitation to the rules or procedures relating to evidence for conduct of hearings or the conduct of litigation or arbitration).

21.4 If the Adjudicator does not give notice of his decision within the period required by the Housing Grants Construction and Regeneration Act 1996 either party may commence legal proceedings in respect of the dispute referred to the adjudicator (as well as or instead of commencing a fresh adjudication procedure in accordance with Clause 20 (2) of the Railtrack Adjudication Rules).

21.5 Subject to the above any dispute or difference which arises between the parties shall be referred to the High Court of England and Wales for resolution as business of the Technology and Construction Court.

## **22. Notices**

Any Notice required to be given under this Agreement shall be sufficiently given if in writing it is delivered personally or if sent by first class recorded delivery pre-paid post or if sent by fax and marked for the attention of the Company Secretary and sent to the registered office of the party concerned.



**23. Exclusion of Contracts (Rights of Third Parties) Act 1999**

No person shall be entitled to enforce any provisions of this Agreement who would not have been so entitled but for the enactment of the Contracts (Rights of Third Parties) Act 1999.

**24. Entire Agreement**

This Agreement contains the entire agreement between the parties concerning the provision of the Railtrack Works, subsequent maintenance and matters identified under clause 15. For the avoidance of doubt, this Agreement is not a Track Access Agreement.

**25. Severability**

If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions and the remainder of the affected provision.

**26. Governing Law**

This Agreement shall be governed by and construed in accordance with English law.

**IN WITNESS** whereof this Agreement has been executed as a deed on the date first stated above as follows:

The Common Seal of **RAILTRACK PLC** )  
was hereunto affixed in the presence of: )

RAILTRACK PLC  
14478



Signed as a Deed for and on behalf of **FIRST CORPORATE SHIPPING LIMITED** acting by:

( )  
( )  
( )  
( )

Director



Director/Secretary



**RAILTRACK PLC**  
- and -  
**FIRST CORPORATE SHIPPING LIMITED**

**WORKS AGREEMENT**

**APPENDIX 1**

[TEMPLATE]

[England & Wales]

**CONNECTION AGREEMENT**

between

**RAILTRACK PLC**

and

**FIRST CORPORATE SHIPPING LTD**

2000

Railtrack PLC

Railtrack House

Euston Square

London

NWI 2EE

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THIS CONNECTION AGREEMENT is made the                      day of  
2000

BETWEEN:-

- (1) Railtrack PLC whose registered office is at Railtrack House, Euston Square, London, NW1 2EE (who and whose successors in the ownership of the Railtrack Network are referred to as "Railtrack"), and
- (2) First Corporate Shipping Ltd whose registered office is at Alder Castle 10 Noble Street London EC2V 7JX owner or controller of the Premises and the Adjacent Facility is referred to as "the Adjacent Facility Owner")

WHEREAS

- A. Railtrack owns the Railtrack Network and the Adjacent Facility Owner is the owner or controller of the Premises and the Adjacent Facility, relevant parts of which are shown on the Plan.
- B. In order to regulate the infrastructure and associated issues arising from the interface between the Railtrack Network and the Adjacent Facility the following terms and conditions have been agreed between Railtrack and the Adjacent Facility Owner.
- C. This Agreement relates to the physical connection of the Adjacent Facility to the Railtrack Network and the operational interface between the Adjacent Facility Owner and Railtrack.

IT IS HEREBY AGREED as follows:

**1. DEFINITIONS and INTERPRETATION**

**1.1 DEFINITIONS**

In this Agreement, the following words and expressions shall have the meanings ascribed to them as follows :-

"Access Contract" has the meaning given to it in section 17(6) of the Railways Act 1993.

"the Adjacent Facility" means Network situated on the Premises of which the Adjacent Facility Owner is the Facility Owner.

"this Agreement" means the agreement following together with any Schedule or Schedules attached and the Plan.

"Commencement Date" means the date of signature of this Agreement

"Connection Point"

means the point or points at which the Adjacent Facility connects to the Railtrack Network. The points at which the railway lines of the Railtrack Network and the Adjacent Facility connect are shown marked C.P. on the Plan.

"Emergency "

means (a) a railway incident or accident which occurs at or obstructs the Connection Point or any part of the Railtrack Connecting Network, or (b) the obstruction or restriction of any part of the Railtrack Connecting Network.

"Facility Owner"

has the meaning given to it in section 17(6) of the Railways Act 1993.

"Insolvency Event"

means in relation to either of the parties where:

(a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part I I of the Insolvency Act 1986.

(b) it stops or suspends payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph;

i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£50,000" or such higher figure as the parties may agree in writing from time to time;

(ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the



Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;

(c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;

(d) any step is taken to enforce security over or a distress, execution or other similar process is levied or served out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

(e) any step is taken by any person with a view to its winding up or any person presents a winding up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed);

f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above;

unless, in any case, a railway administration order (or application therefor) has been made or such

order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question pursuant to section 60 of the Railways Act 1993 and for so long as any such order (or application) remains in force or pending, or unless, in the cases of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"Network" has the meaning given to it in section 83(1) of the Railways Act 1993.

"Operational Control" means the safe management and direction of Rolling Stock

" Plan" means the plan (and any revision thereof pursuant to clause 4) annexed to this Agreement

" Premises" means the land in the ownership or control of the Adjacent Facility Owner shown edged red on the Plan but excluding the Railtrack Connecting Network

"Railtrack Connecting Network" means Network owned by Railtrack (the railway lines of which are shown coloured orange on the Plan), which is used solely for the support guidance and operation of Rolling Stock to and from the Adjacent Facility including but not limited to those items of Network identified in Schedule I to this Agreement and for the avoidance of doubt may include Railtrack Network located on the Premises

"the Railtrack Network"

means Network of which Railtrack is the Facility Owner including but not limited to the Railtrack Connecting Network

"Railway Group Standards"

means all Railway Group Standards authorised by the Railway Group Standards Code prepared by Railtrack under the terms of its network licence

"Rolling Stock"

has the meaning given to it in section 83(1) of the Railways Act 1993.

## 1.2 INTERPRETATION

(a) words imparting the masculine include the feminine and words imparting the neuter include the masculine and feminine.

(b) words imparting the singular include the plural and vice versa.

(c) any reference to an Act of Parliament includes any modification, extension or re-enactment of that Act.

(d) the clause and paragraph headings shall be ignored.

## 2. OBLIGATIONS OF THE ADJACENT FACILITY OWNER

The Adjacent Facility Owner shall:-

- 2.1 not sever the connection of the Railtrack Network to the Adjacent Facility nor otherwise take any action which impedes access for Rolling Stock from the Railtrack Network to the Adjacent Facility and vice versa at the Connection Point other than as required in an Emergency without the prior written consent of Railtrack (which consent shall not be unreasonably withheld);
- 2.2 ensure that any part of the Adjacent Facility which is directly connected to the Railtrack Network is compatible with the Railtrack Network and complies with Railway Group Standards ;
- 2.3 be responsible for the Operational Control of all Rolling Stock movements on the Adjacent Facility and ensure that (a) the operation of the Adjacent Facility causes no interference to the Railtrack Network and (b) all persons authorised by the Adjacent Facility Owner to be at or on the Premises do not cause disruption to or interfere with the Railtrack Network;

2.4 be responsible for the acceptance onto the Adjacent Facility of Rolling Stock agreed to be taken there;

2.5 pay a maintenance payment of Redacted

2.6 within seven days of the Commencement Date, provide to Railtrack copies of the Adjacent Facility Owner's safety requirements in relation to the Premises and the Adjacent Facility and any changes immediately such changes are issued.

### 3. OBLIGATIONS OF RAILTRACK

Railtrack shall:-

3.1 not sever (except in accordance with Clause 8) the connection of the Railtrack Network to the Adjacent Facility nor otherwise take any action which impedes access for Rolling Stock from the Adjacent Facility to the Railtrack Network and vice versa at the Connection Point other than as required by an Emergency without the prior consent of the Adjacent Facility Owner (which consent shall not be unreasonably withheld);

- 3.2 inspect test maintain repair and renew the Railtrack Connecting Network in accordance with Railway Group Standards;
- 3.3 be responsible for the Operational Control of all Rolling Stock on the Railtrack Connecting Network; and
- 3.4 ensure that all persons authorised by Railtrack to be on the Railtrack Connecting Network on or in the vicinity of the Premises observe the safety requirements in relation to the Premises notified to Railtrack by the Adjacent Facility Owner in terms of clause 2.6 of this Agreement and that no disruption to the operation of the Premises occurs.

#### **4. JOINT OBLIGATIONS**

- 4.1. Railtrack and the Adjacent Facility Owner shall review as necessary and in accordance with Railway Group Standards, arrangements for the safe transfer of Operational Control of Rolling Stock from one party to the other.
- 4.2. Railtrack and the Adjacent Facility Owner shall review the validity of the Plan and Schedule I and make such amendments to either or both



of them as are appropriate in the event that Railtrack Network identified on the Plan or in Schedule I as Railtrack Connecting Network is not used solely for the support guidance and operation of Rolling Stock to and from the Adjacent Facility (in which case the Plan will be adjusted accordingly) or if a part of the Railtrack Network, not previously identified as being used solely for the support guidance and operation of Rolling Stock to and from the Adjacent Facility fulfills that condition at the time of the review, the Plan and or Schedule I will be adjusted accordingly.

**5. RAILTRACK CONNECTING NETWORK ON THE PREMISES**

Railtrack shall have the right to have and shall maintain modify and renew any part of the Railtrack Connecting Network as it is necessary to have on the Premises for the movement of Rolling Stock to and from the Adjacent Facility.

**6. RIGHT OF ENTRY**

6.1 Railtrack shall have the right to enter upon the Premises at all reasonable times upon giving notice and at any time in an Emergency for the following purposes :

- (a) to inspect test maintain repair and renew the connection of the Railtrack Network to the Adjacent Facility;

(b) to inspect test maintain repair and renew any part of the Railtrack Connecting Network on or in the vicinity of the Premises; and

(c) to carry out remedial procedures in the event of an Emergency.

6.2 Railtrack shall observe the safety requirements notified to Railtrack in terms of clause 2.6 of this Agreement whilst on the Premises for the purposes described in this Clause 6.

6.3 The arrangements for access by Railtrack in the event of an Emergency shall be agreed by the Siding Operator and Railtrack as an input to Railtrack's responsibility for the preparation of emergency plans for Railtrack controlled infrastructure.

## **7. NO RIGHT OF ENTRY**

Nothing in this Agreement entitles the Adjacent Facility Owner for itself or on behalf of any other person to any right of access to the Railtrack Network save as expressly set out in this Agreement.

## 8. TERM AND TERMINATION

### 8.1 Term

This Agreement shall come into effect on the Commencement Date and shall continue in force until terminated pursuant to this clause 8.

### 8.2 Termination

Without prejudice to its other rights and to clause 8.3, Railtrack or the Adjacent Facility Owner may terminate this Agreement by written notice served in accordance with clause 10 of this Agreement, if ;

- a) an Insolvency Event occurs in relation to the other party;
- b) the other party defaults in the due performance or observance of any material obligation under this Agreement and (in case of a remediable breach) fails to remedy the breach within a reasonable time specified by the other party, or
- c) for a period of six months immediately prior to the date of the notice no train has passed over the \_Connection Point other than as a consequence of an emergency on the Railtrack Network or Adjacent Facility.

8.3. Any notice of termination served pursuant to clause 8.2(c) shall not take effect at any time in respect of which the Adjacent Facility Owner shall have applied to the Rail Regulator under section 17 of the Railways Act 1993 for directions to be given to Railtrack to enter into an Access Contract which provides for the continuation of the Adjacent Facility to the Railtrack Network and for so long as that application shall not have been refused.

8.4 Upon the termination of this Agreement;

a) Railtrack may disconnect the Railtrack Network from the Adjacent Facility and remove the Railtrack Connecting Network and make good the Railtrack Network, but in any event Railtrack shall, if requested by the Adjacent Facility Owner, remove any part of the Railtrack Connecting Network located on the Premises; and

b) except where this Agreement is terminated by the Adjacent Facility Owner in accordance with clause 8.2(a) or 8.2(b), the costs of such action in either case shall be paid by the Adjacent Facility Owner to Railtrack.

**9. VALUE ADDED TAX**

- 9.1 Where any taxable supply for Value Added Tax purposes is made under or in connection with this Agreement by one party to the other, the payer shall upon production of a valid tax invoice in addition to any payment required for that supply pay such Value Added Tax as is chargeable in respect of it.
- 9.2 Where under this Agreement one party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, then the first party shall also reimburse any Value Added Tax paid by the other which forms part of its payment made or cost incurred to the extent such Value Added Tax is not available for credit for the other or for any person with which the indemnified party is treated as a member of a group for Value Added Tax purposes under Section 24-26 of the Value Added Tax Act 1994.
- 9.3 Where under this Agreement any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of Customs & Excise practice to issue a valid Value Added Tax credit note, such rebate or repayment shall be paid together with an amount representing the Value Added Tax paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate Value Added Tax credit note to the other party.

## 10. NOTICES

- 10.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post, or by facsimile, to the party on whom the notice is to be served at the relevant address for service as set out in Schedule 2 or to such other address in the United Kingdom as that party may specify by notice to the other party to this Agreement.
- 10.2 Any such notice or other communication shall be or shall be deemed to have been received by the party to whom it is addressed as follows:-
- (a) if sent by hand or recorded delivery when so delivered or in the case of prepaid first class post, 2 days after posting; and
  - (b) if sent by facsimile, upon sending (where such transmission occurs before 17.00 hours on the day of transmission) and (in any other case) on the day following the day of transmission provided that the sender obtains and if required to do so by the person to whom the notice is alleged to have been sent produces, confirmation of uninterrupted transmission by a transmission report generated by the facsimile machine in question, or other sufficient evidence of transmission.

## **11. LIMITATION OF LIABILITY**

Neither party to this Agreement shall be liable to the other in connection with the exercise of its rights or the performance of its obligations under this Agreement for any indirect or consequential loss, including but not limited to loss of revenue or profit.

## **12. WHOLE AGREEMENT AND VARIATION**

12.1 This Agreement contains the entire agreement between Railtrack and the Adjacent Facility Owner in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements. This Clause 12 shall not have the effect of excluding any term implied by law.

12.2 No amendment of this Agreement (other than as expressly otherwise contemplated by this Agreement) shall be effective unless in writing and signed by duly authorised representatives of Railtrack and the Adjacent Facility Owner.

## **13. GOVERNING LAW AND SUBMISSION TO JURISDICTION**

13.1 This Agreement shall be governed by and construed in accordance with English law.

13.2 Railtrack and the Adjacent Facility Owner irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement.

AS WITNESS the hands of the duly authorised representatives of Railtrack and the  
Adjacent Facility Owner

SIGNED BY

For and on behalf of Railtrack PLC

SIGNED BY

For and on behalf of First Corporate Shipping Ltd



SCHEDULE I

LIST OF ITEMS INCLUDED IN THE RAILTRACK CONNECTING NETWORK

[ Track - including ballast and supporting structures ]

[ Electrification Equipment - for traction supply ]

[ Signalling equipment - including signal boxes, ground frames, signals, track circuits  
etc ]

[ Signalmans wages, Operating staff wages - where signalbox (or man) is used solely to  
control the passage of trains to and from the sidings

SCHEDULE 2

ADDRESSES FOR SERVICE OF NOTICES IN ACCORDANCE WITH CLAUSE 10.1

**Railtrack**

The Solicitor & Secretary,

Railtrack PLC

Railtrack House

Euston Square

London NW1 2EE

**Adjacent Facility Owner**

First Corporate Shipping Ltd

Alder Castle

10 Noble Street

London EC2V 7JX

**RAILTRACK PLC**  
- and -  
**FIRST CORPORATE SHIPPING LIMITED**

**WORKS AGREEMENT**  
**APPENDIX 2**

(1954 station at 129.65)  
PORTISHEAD 129.43

129.11 (Qy) -129

BR -128  
(Portbury) 127.76½  
RT 127.77

GWR (Bristol & Portishead Pier) [POD] [GW548] -127

MS <- 126.59 To Portbury Docks

(Pill) 126.12

Pill Viaduct (92 yds) 126.03 -126

Pill Tunnel (665 yds) 125.79 -126

(Ham Green Halt) 125.63 -125

125.33

Viaduct 124.07-10  
Pill Sandstone Thr (88 yds) 124.01 -124

123.77

-123

Clifton Bridge No.2 Tunnel 122.63 -123

(232 yards) 122.53

Clifton Bridge No.1 Tunnel 122.26 -122

(59 yards) 122.23

(Clifton Suspension Br. over) 122

ASHTON GATE 121.30 1.20

Ashton Junction 1.26

[GW 548] [POD] Ashton Junction -121

LINE OUT OF USE

6A to Taunton

UP MAIN 120.28  
DOWN MAIN 120.03

Connecting point

B.P.C Railtrack } Boundary

UP PORTIS'D  
DOWN PORTIS'D

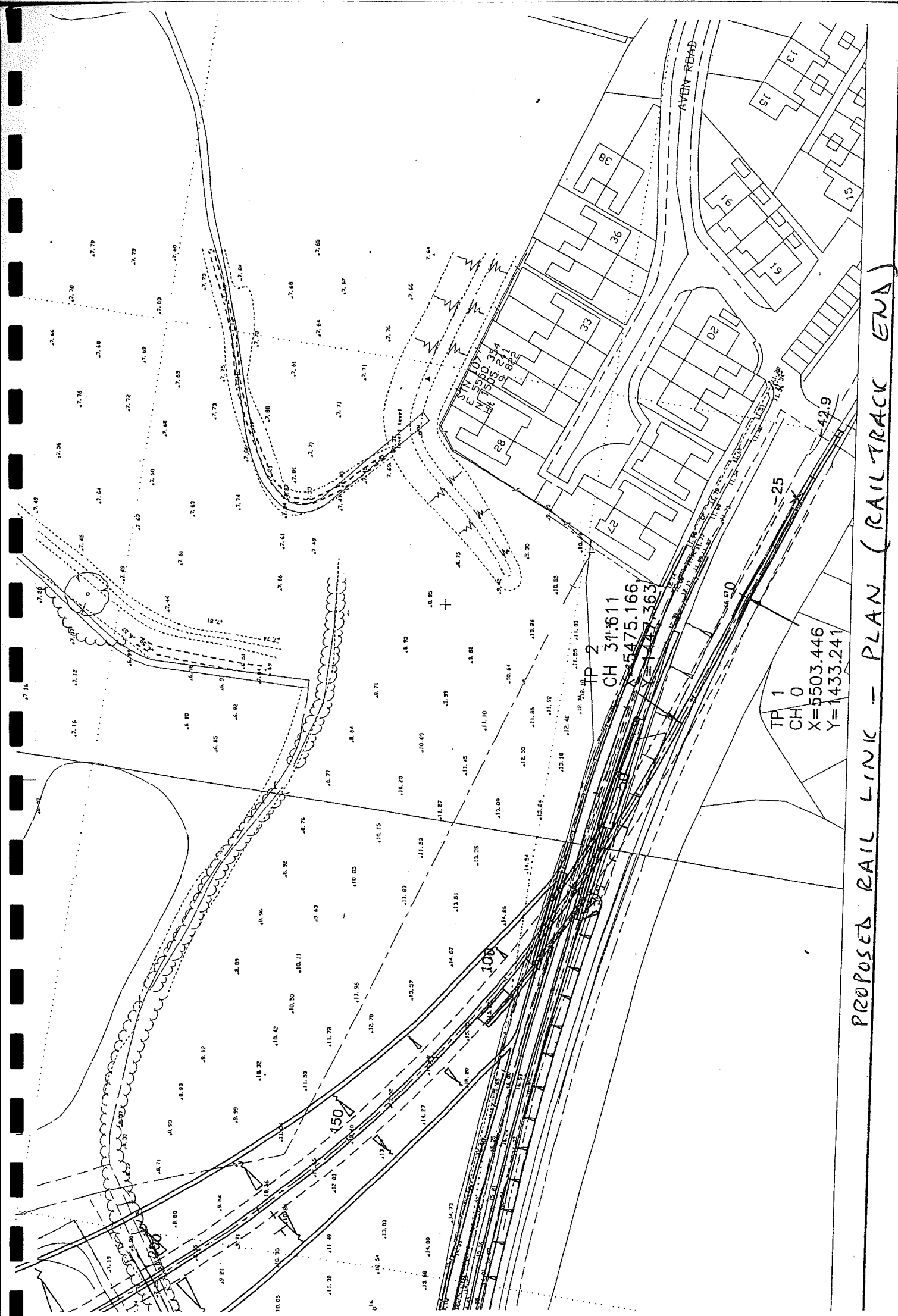
**RAILTRACK PLC**  
- and -  
**FIRST CORPORATE SHIPPING LIMITED**

**WORKS AGREEMENT**  
**APPENDIX 3**

Redacted

**RAILTRACK PLC**  
- and -  
**FIRST CORPORATE SHIPPING LIMITED**

**WORKS AGREEMENT**  
**APPENDIX 4**



TP 2  
 CH 31:611  
 X=5475.166  
 Y=1477.363

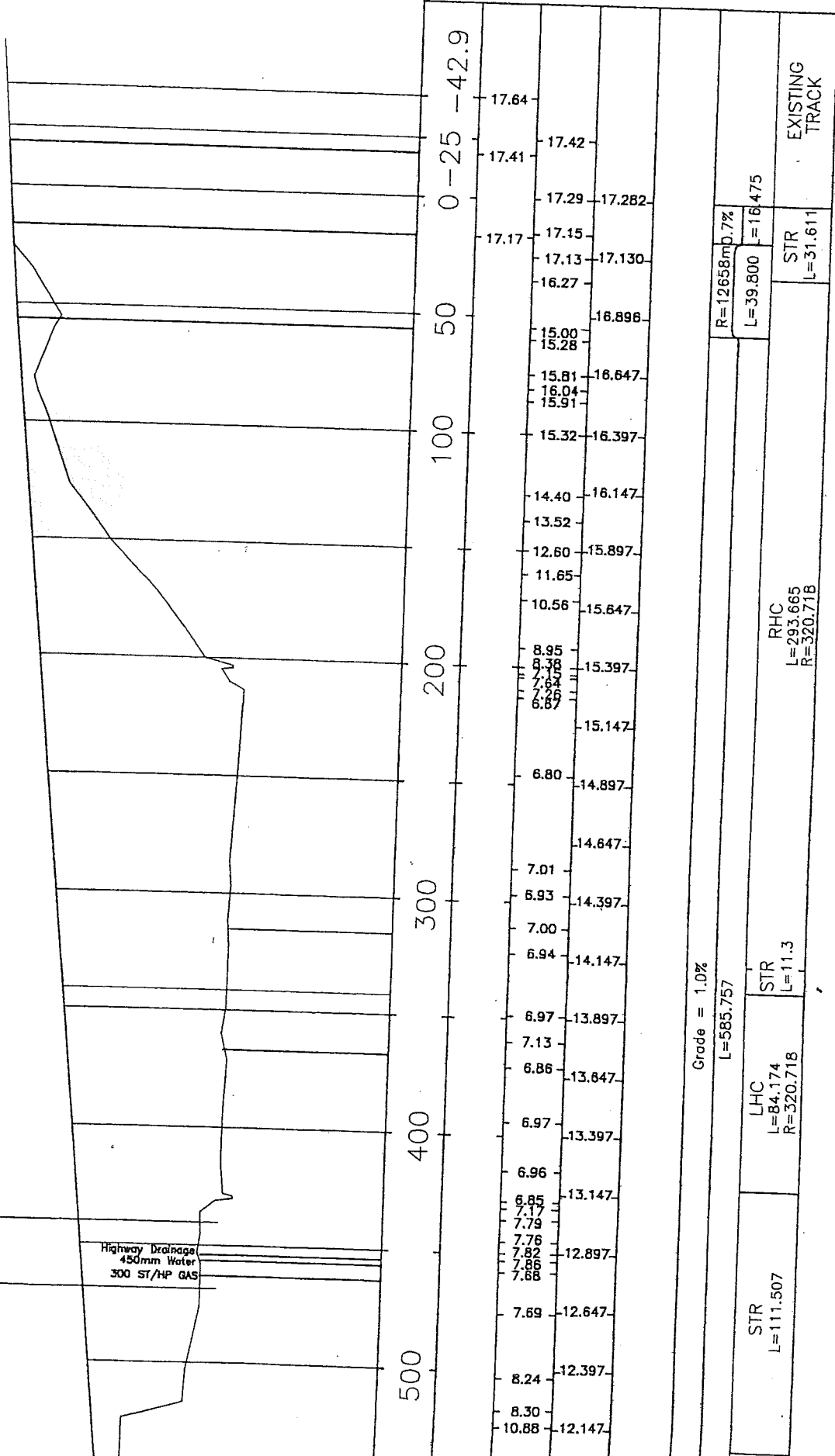
TP 1  
 CH 0  
 X=5503.446  
 Y=1433.241

PROPOSED RAIL LINK - PLAN (RAILTRACK ENA)



Existing Portishead Railway

BPC DRAINAGE  
 EYEG-RAIL LEVEL  
 (RAILTRACK)  
 EYEG- GROUND  
 LEVEL  
 PROPOSED  
 RAIL LEVEL



Grade = 1.0%

L=585.757

R=12658m 0.7%

L=39.800 L=16.475

STR  
L=111.507

LHC  
L=84.174  
R=320.718

STR  
L=11.3

RHC  
L=293.665  
R=320.718

STR  
L=31.611

EXISTING  
TRACK