

DATED 1st March 1996

BRITISH RAILWAYS BOARD

- and -

RAILTRACK PLC

(Stream-line procedure)

DEMARICATION
AGREEMENT

under

RAILTRACK TRANSFER SCHEME

Location: East Croydon

Route: Brighton Mainline BML

Plan No (under Scheme): LS-BML-32-1 /A

Land Charge(s) registered number(s):

Date: 1st March 1996

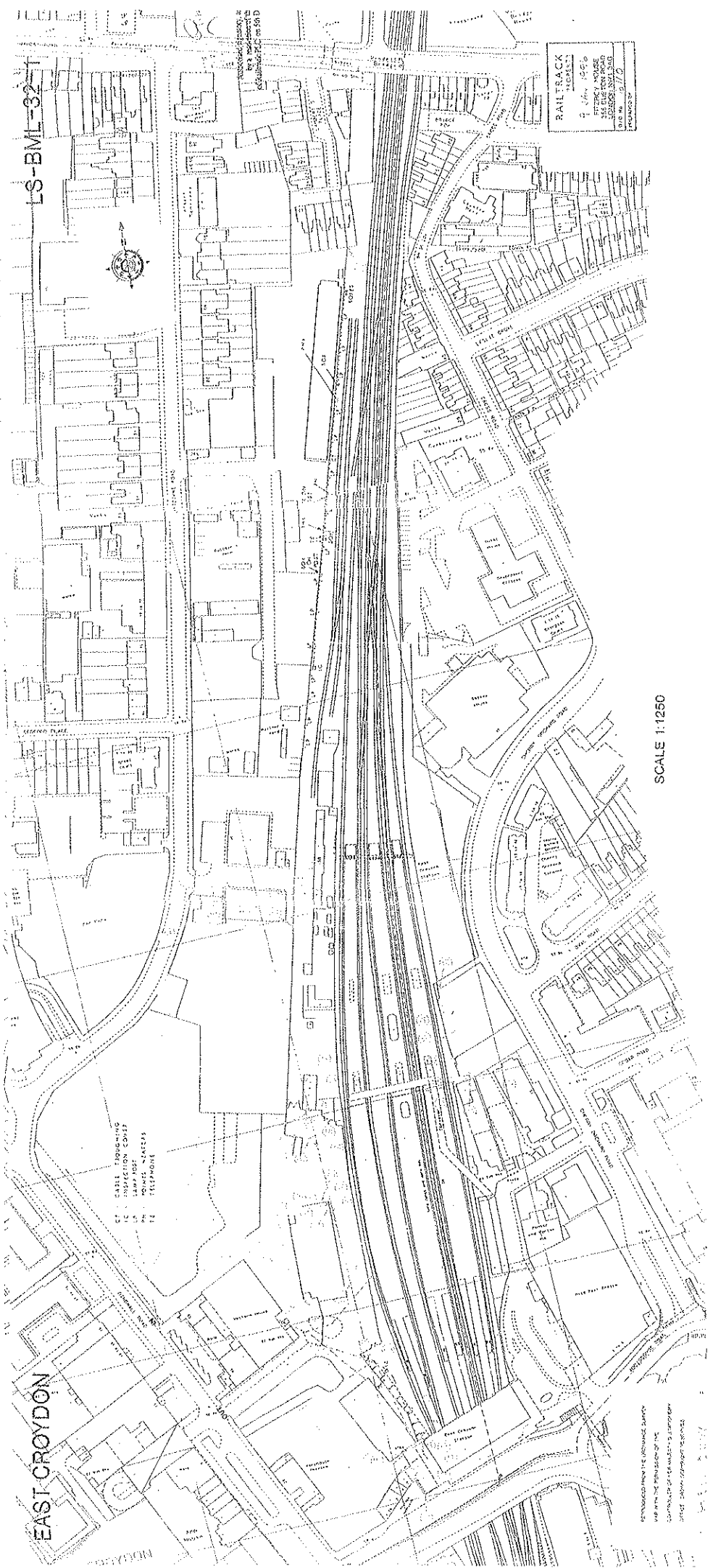
THIS DEMARCATION AGREEMENT is made between

- (1) BRITISH RAILWAYS BOARD whose principal office is at Euston House 24 Eversholt Street London NW1 1DZ ("the Board") and
- (2) RAILTRACK PLC (company registration no. 2904587) whose registered office is at 40 Bernard Street London WC1N 1BY ("Railtrack")

1. Definitions

In this Agreement:

- 1.1 "the Act" means the Railways Act 1993
- 1.2 "the Transfer Scheme" means the Railtrack Transfer Scheme made by the Board under Section 85 of the Act
- 1.3 "the Transfer Date" means the 1st day of April 1994 (when the Transfer Scheme came into force in accordance with the Act)
- 1.4 "the Plan" means the attached plan no 6110 and it bears colouring mentioned in clause 4 below
- 1.5 "the Board's Land" is the land shown edged by solid and/or broken orange line on the Plan and includes the boundaries thereof apart from those referred to in Clause 1.6 below
- 1.6 "Railtrack's Land" is the land shown edged by solid and/or broken green line on the Plan where it adjoins the Board's Land and includes the boundaries between the points marked A-B-C-D-E-F-G-H-I-X-J-K-L-M-N-O-P-Q-R-S-Y-T-U-V-W and A1-B1-C1-D1-E1-F1-G1-Z-H1 and I1-J1-K1-L1-M1-N1-O1-P1 on the Plan
- 1.7 "grantor" and "grantee" shall include the successors of the Board and Railtrack in respect of the relevant land as to which the Board and Railtrack are treated as acting in the capacity of grantor and grantee
- 1.8 "the Perpetuity Period" shall mean the period of 80 years from the 1st day of April 1994 which shall be the perpetuity period for the purposes of this Agreement
- 1.9 In clause 9.3 below "the Required Specification" means 1.8 metre high weld mesh fencing on concrete posts to applicable British Standards and the relevant boundaries to be fenced are those referred to in Clause 1.6 above save that in relation to the boundaries between points I-J and S-T the Required Specification means Railtrack Type A fencing specification (which currently includes 2.465 long concrete posts set 0.76 metres into the ground with 1.4 metres chain link



LS-BML-32



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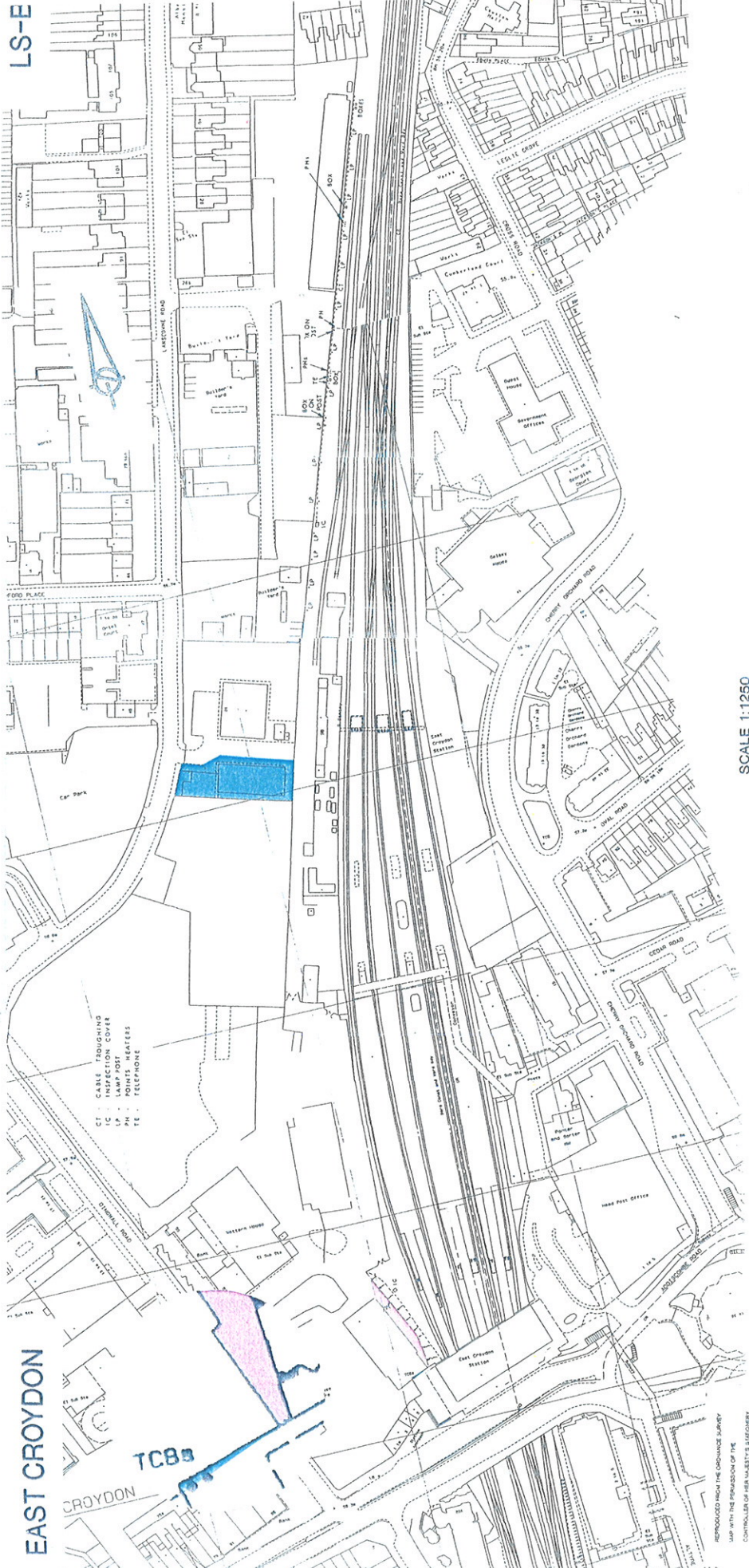
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APPROVED FOR THE ARCHITECT
 AND THE PLANNING
 COMMISSIONER'S OFFICE
 1971

LS-E



EAST CROYDON

CROYDON

TCB

SCALE 1:1250

REPRODUCED FROM THE CROYDON SURVEY
 MAP WITH THE PERMISSION OF THE
 CONTROLLER OF HER MAJESTY'S STATIONARY
 OFFICE. DRAWING COPYRIGHT RESERVED.

mesh topped with three strands of barbed wire) with double gates provided at points X and Y

1.10 "Service Media" shall include (but not be limited to) telecommunication apparatus within the meaning of paragraph 1 of the Telecommunications Code (Schedule 2 to the Telecommunications Act 1984)

1.11 References to the Board and Railtrack include their successors as from the Transfer Date unless the contrary is provided

2. Purpose

The purpose of this Agreement is to identify or define property, rights and liabilities transferred to Railtrack or retained by the Board in relation to the Board's Land and Railtrack's Land in accordance with the requirements of paragraph 2 of Schedule 8 to the Act or Section 91 (l)(c) of the Act (as applicable)

3. Ownership

On the Transfer Date by virtue of the Transfer Scheme Railtrack's Land vested in Railtrack and the Board's Land remained vested in the Board

4. Specific rights

Where the Plan shows any of the following colour markings (or it is stated below that unmarked rights are included) then the relevant provisions below apply:-

4.1 Rights of Way for Railtrack
brown colour on the Board's Land:-

the Board now grants to Railtrack a right of way (in common with the Board and all others now or later entitled to rights) over the land so coloured for the benefit of Railtrack's Land and each part of it such right being pedestrian only (if coloured brown hatched brown) or with or without vehicles (if coloured brown unhatched)

4.2 Rights of Way for the Board

brown hatching or cross-hatching on Railtrack's Land:-

there is reserved to the Board a right of way (in common with Railtrack and all others now or later entitled to rights) over the land so hatched for the benefit of the Board's Land and each part of it such right being pedestrian only (if uncoloured hatched brown) or with or without vehicles (if uncoloured cross-hatched brown)

4.3 Service Media easement(s) for Railtrack

blue line on the Board's Land (broken blue line represents an underground route) and/or unmarked but now used for the benefit of Railtrack's Land:-

the Board now grants to Railtrack the right to have, maintain, repair, cleanse, use, renew, alter and remove the Service Media identified by that line or so now used for the transmission of the services for which they are intended for the benefit of Railtrack's Land and each part of it but so that where the Service Media are used for telecommunications, these rights including the rights of entry for the purposes of inspection, maintenance, repair and renewal may be exercised by Railtrack, BR Telecommunications Limited or their assigns or others permitted by them

4.4 Service media easement(s) for the Board

red line on Railtrack's Land (broken red line represents an underground route) and/or unmarked but identified or capable of being identified subject to clause 5.6 below:-

there is reserved to the Board the right to have, maintain, repair, cleanse, use, renew, alter and remove the service media identified by that line for the transmission of the services for which they are intended for the benefit of the Board's Land and each part of it

5. Provisions applicable to clause 4 rights/reservations

where clause 4 or any part of it applies then the following provisions shall (where relevant) have effect:

Easements - Repair/maintenance

5.1 Where the subject matter of any easement in favour of the Board over Railtrack's Land or vice versa requires repairing, maintaining or replacing from time to time then:

- Sole use by grantee

5.1.1 if it is used solely by the grantee then the grantee of any easement over the Board's Land or Railtrack's Land (as appropriate) may repair and maintain it (but, subject to 5.1.1.3 below, is not obliged to do so) and

5.1.1.1 the grantee shall be entitled to and is by this Agreement granted all necessary rights of entry onto the land of the grantor for the purpose of inspecting, maintaining, repairing and replacing the subject matter of such easement subject to the grantee complying with the provisions of clause 5.5 below and

5.1.1.2 if the grantee fails to repair or maintain the subject matter of such easement

within a reasonable time following written notice by the grantor to the grantee of its failure to do so and the failure to repair or maintain causes or may reasonably be expected to cause loss, damage or material inconvenience to the grantor then the grantor shall be entitled so to repair or maintain and recover from the grantee the cost reasonably incurred in this provided that the grantor shall first consult with the grantee as to the anticipated cost of such works, shall have due regard to any response by the grantee and shall not without further consultation substantially increase such costs

- 5.1.1.3 the remedy of the grantor under 5.1.1.2 above does not exclude any remedy which it may have (at common law or otherwise) for loss, damage or inconvenience which it may sustain through the grantee's failure to repair and maintain

- Joint use by grantor/grantee

- 5.1.2 if it is used jointly by the grantor and the grantee then either the grantor or the grantee may repair and maintain it (but neither is obliged to do so) and
- 5.1.2.1 the grantee shall for this purpose be entitled to rights of entry under clause 5.5 below
- 5.1.2.2 the person repairing or maintaining shall (except to the extent this may in emergency be impracticable) first consult with the other party as to the estimated cost of such works and the anticipated proportion to be borne by that other party and shall have due regard to any response by the other party and shall not without further consultation substantially increase such costs
- 5.1.2.3 the person incurring costs of repair or maintenance may recover from the other a fair proportion according to user of the costs reasonably incurred
- 5.1.2.4 neither the Board nor Railtrack nor railway company successors only shall be obliged to meet costs which result in a standard of repair or maintenance in excess of that required for their own requirements as railway operators

Diversion of Easements - general

- 5.2 The grantor may at any time within the Perpetuity Period divert the route of the subject matter of any easement in such manner as the grantor may reasonably require provided that:
- 5.2.1 the grantor shall first make available and complete/commission (as appropriate) to the reasonable satisfaction of the grantee an alternative easement of the same nature for the alternative route (upon similar terms mutatis mutandis to those which applied to the diverted easement)
- 5.2.2 such alternative easement and its route shall be reasonably comparable to that proposed to be diverted
- 5.2.3 the grantor shall show title to grant the alternative easement to the reasonable

satisfaction of the grantee

- 5.2.4 the grantor shall bear all costs reasonably and properly incurred by reason of such diversion and any related documentation

Diversion of Easements - additional requirements

- 5.3 If at the relevant time the use by the grantee or persons authorised by it of a right of way to which this clause 5 applies is for railway related purposes or includes these the following additional provisions apply for the benefit of the grantee:

- 5.3.1 the alternative route shall be first approved by the grantee (such approval not to be unreasonably withheld or delayed)

- 5.3.2 the grantor shall carry out at its own sole expense any works reasonably required by the grantee arising by reason of the diversion or provision of an alternative route to the reasonable satisfaction of the grantee (which may include (but without loss of generality) relocation of vehicle parking, new hard standings, relocation of fencing/new fencing, changing existing security systems or installing new security systems)

Utilities - costs and metering

- 5.4 Where the subject matter of any such easement used jointly by the grantor and grantee is a pipe or cable supplying water, gas or electricity then:

- 5.4.1 each party shall be responsible for payment of the cost of supplies to their respective properties

- 5.4.2 the grantee shall (where practicable and unless otherwise agreed) install metering devices in such positions as may be agreed to be appropriate for measuring the extent of use of such services by the grantee

- 5.4.3 in the absence of any metering device or in the event of its failure the grantor and the grantee shall agree appropriate methods of determining what may fairly be regarded as their respective costs and shall pay accordingly

- 5.4.4 where the pipe or cable is jointly used in passing through both the Board's Land and Railtrack's Land (so that both parties are grantor and grantee in respect of different sections) the obligation to install metering devices shall be joint

Rights of Entry

- 5.5 The exercise of all rights of entry granted in this clause 5 may be undertaken with or without workmen and materials but shall be subject to the grantee giving to the grantor 48 hours prior written notice of intention to exercise the rights (except in the case of emergency when such notice as is possible will be given)

and

- 5.5.1 entry shall be over such route over the grantor's land as the grantor may (if it wishes) reasonably require and
- 5.5.2 the grantee shall carry out such work at such time and in such manner as is reasonable in all the circumstances, causing as little damage to the grantor's land as is reasonably possible, using reasonable endeavours to cause as little inconvenience and disturbance as reasonably practicable and making good any damage so done to the grantor's land as soon as reasonably practicable
- 5.5.3 if the grantor's land is used for railway purposes then:
- 5.5.3.1 the notice to be given by the grantee to the grantor shall be the longer of 48 hours and such as is required by railway industry safety standards from time to time in force (except in case of emergency when less notice but as long a notice as is possible will be given so long as that is consistent with railway industry safety standards) and
- 5.5.3.2 the grantee shall use all reasonable endeavours to pre-plan any such entry so as to enable any necessary railway possessions or electricity isolations to be programmed with minimum inconvenience to railway operation and shall:
- (i) pay to the grantor any costs or losses arising including (but not limited to) those incurred in consequence of the grantor being unable to deliver in timely manner any train paths for which it may then have contracted
- (ii) adhere to all safety requirements for the railway including (but not limited to) adherence to railway industry safety standards and safety validation of contractors employed

Identification of Unmarked Service Media

- 5.6 The reservation contained in clause 4.4 above in respect of service media not shown on the Plan shall absolutely cease and determine at the expiration of a period of 10 years from the Transfer Date (or on any sale or transfer by the Board of the Board's Land or the relevant part of it if earlier) unless prior to then the Board and Railtrack shall annex to their respective parts of this Agreement agreed plans showing the location and nature of the Service Media serving or in situ and capable of serving the Board's Land for which (if proper enquiry had been made prior to the date of this Agreement) it would have been reasonable and proper for the Board to require to be shown on the Plan so as to be the subject of the reservation ("the Defined Service Media"). The reservation contained in clause 4.4 will then as from the expiration of that period (or the date of annexation of agreed plans if earlier) apply only to Service Media marked on the Plan and the agreed plans. To enable such unmarked Service Media to be identified, the following provisions shall apply:

- 5.6.1 Railtrack shall within 56 days (to include site inspection if any) of written request being received from the Board, forward to the Board a plan showing all Service Media serving the Board's Land and located on, over or under Railtrack's Land known to Railtrack or which with reasonable enquiry are capable of being identified from Railtrack's records or records available to it (but so that this shall not oblige Railtrack to carry out any site inspection).
- 5.6.2 If Railtrack shall fail to respond to such written request or if it shall reasonably and properly appear to the Board that any response given is incomplete, then Railtrack shall afford access to its records or records available to it so as to permit the Board to pursue reasonable investigation of them.
- 5.6.3 The Board and Railtrack agree to sign in duplicate plans showing all the Defined Service Media so identified and to annex one copy to their part of this Agreement.
- 5.6.4 Railtrack may (if so required in connection with any existing or proposed grant or disposal in relation to Railtrack's Land) implement the procedures for annexation of agreed plans as follows:
 - 5.6.4.1 Railtrack may notify the Board that it wishes (for the reasons stated above) to confirm the effect of this clause 5.6
 - 5.6.4.2 With that notification, Railtrack shall forward to the Board a plan showing the Defined Service Media. In the event that there are no such Service Media, none will be shown on the plan and this fact will be stated.
 - 5.6.4.3 The plan shall be agreed on the basis of the same principles appearing under 5.6 above and the Board and Railtrack agree to sign in duplicate plans showing the Defined Service Media (or, where applicable, statements as to the absence of Defined Service Media) and to annex one copy to their part of this Agreement.

6. Mines and minerals

Railtrack's Land includes any mines or minerals under the Board's Land and which at the Transfer Date were owned by the Board and to the extent necessary to give effect to this Agreement operates as a transfer of such mines and minerals

7. Easements excluded

Railtrack's Land is not subject to any easement or right of light, air or support or other easement or right whatsoever in favour of the Board's Land except:

- 7.1 to the extent (if at all) resulting from clause 4 of this Agreement or stated in any Schedule to this Agreement

7.2 for a right of support to the extent currently enjoyed by the Board's Land in respect of Railtrack's Land (but so that this does not imply any ancillary right of entry upon Railtrack's Land)

8. Easements included

The following easements subsist for the benefit of Railtrack's Land and each part of it and the Board grant and confirm these (as necessary) to Railtrack :-

8.1 the right at any time to erect or suffer to be erected any buildings or other erections and to alter any building or other erection now standing or afterwards to be erected on any part of Railtrack's Land in such a manner as to obstruct or interfere with the passage of light or air to any building which is or may be erected upon the Board's Land and any access of light and air over Railtrack's Land shall be treated as enjoyed by the licence or consent of Railtrack and not as of right

8.2 the right of support from the Board's Land for Railtrack's Land and works

8.3 the right with or without workmen and equipment at all reasonable times (after giving reasonable prior written notice where practicable) to enter upon the Board's Land (but not into any buildings there) for the purpose of inspecting, maintaining, repairing, renewing, altering or removing any fences, walls, railway banks, abutment or retaining walls, bridges and other works on Railtrack's Land subject to clause 8.4 below

8.4 the above right of entry is subject to Railtrack minimising inconvenience and as soon as reasonably practicable making good all damage occasioned to the Board's Land in its exercise

8.5 the right with or without workmen and equipment to enter on the Board's Land for the purpose of ascertaining performance of the Board's obligations under clauses 9.3 and 9.4 below and (if necessary in the opinion of Railtrack) carrying out those obligations

9. Covenants by Board

THE Board covenant with Railtrack for the benefit and protection of such part of Railtrack's Land as is capable of being benefited or protected and with intent to bind so far as legally may be the Board and the Board's successors in title, owners for the time being of the Board's Land or any part of it in whosoever hands it may come but not so as to bind the British Railways Board personally after they shall have parted with all interest in the land to which this covenant relates so long as the Board shall first procure a direct covenant from the buyer with Railtrack in the terms of this clause 9 to the reasonable satisfaction of Railtrack (paying or providing payment of Railtrack's reasonable related costs) :-

- 9.1 that there shall not at any time on any part of the Board's Land within 10 metres of the boundary between the Board's Land and Railtrack's Land be carried out any works including (but not limited to) the making of excavations, the alteration of ground levels, the implementation of external lighting or landscaping schemes and the erection of or external addition to any buildings or structures without
- 9.1.1 there having previously been submitted detailed plans and sections of the works in triplicate to Railtrack; and
- 9.1.2 Railtrack's approval having been obtained (such approval not to be unreasonably withheld or delayed); and
- 9.1.3 compliance with such reasonable conditions as to foundations or otherwise as Railtrack shall deem it necessary to impose for the protection of the safety and operation of the railway and of Railtrack's rights under this Agreement; and
- 9.1.4 (if reasonably required by Railtrack for the purposes mentioned above) agreement on and completion of a Works Agreement and/or methods statement, incorporating such reasonable requirements as Railtrack shall properly require.
- 9.2 that there shall not without the provisions of 9.1.1 to 9.1.4 (inclusive) above being complied with in relation to such works, be :-
- 9.2.1 constructed any building or structure which exceeds either 20 metres or 4 storeys in height on any part of the Board's Land within 25 metres of the boundary between the Board's Land and Railtrack's Land or
- 9.2.2 made any deep unsupported excavations within 30 metres of the boundary between the Board's Land and Railtrack's Land.
- 9.3 forthwith (subject to compliance with Railtrack's proper safety requirements) to Railtrack's reasonable satisfaction to erect on the Board's Land and afterwards maintain (and if necessary renew) fences of the Required Specification along such part of the boundary between the Board's Land and Railtrack's Land as lacks a fence or wall or which Railtrack consider to be inadequately fenced and to pay on demand Railtrack's reasonable costs for look-out protection, railway possessions and electrical isolations reasonably and properly required in connection with the erection or renewal of such fencing.
- 9.4 to Railtrack's satisfaction to maintain (and if necessary renew) the existing fences along the boundary between the Board's Land and Railtrack's Land to the extent that 9.3 above does not apply.
- 9.5 (save where inconsistent with any express grants contained in this Agreement) not to discharge drainage:-
- 9.5.1 into or onto Railtrack's Land nor

- 9.5.2 (unless fully contained in a proper drainage system) into or onto the Board's Land towards Railtrack's Land.
- 9.6 to pay to Railtrack the costs incurred reasonably by Railtrack in carrying out the Board's obligations under clause 8.5 above.
- 9.7. not to surcharge cutting slopes on Railtrack's Land nor destabilise such cutting slopes.
- 9.8 that there shall not be carried out any works on the Board's Land
- 9.8.1 which cannot be carried out or subsequently maintained from the Board's Land without entry onto or over Railtrack's Land; or
- 9.8.2 which entail the construction of any soakaway or the lowering of the water table within 20 metres of the boundary between the Board's Land and Railtrack's Land unless first approved by Railtrack (such approval not to be unreasonably withheld or delayed); or
- 9.8.3 which affect (by mechanical excavation or equivalent) Service Media in the Board's Land for which rights subsist for the benefit of Railtrack's Land without prior compliance with the provisions of clauses 9.1.3 and 9.1.4 above unless the Board cannot reasonably be expected to know of the existence and/or location of such Service Media. It shall not be reasonable to expect knowledge of Service Media which Railtrack have on receiving a written request from the Board failed to disclose prior to the carrying out of the relevant works (provided that Railtrack shall have been afforded a reasonable period for enquiry or search) if with reasonable enquiry or searches of records available to Railtrack disclosure could have been made or if (the Board having carried out reasonable further investigations) it has proved impracticable to determine the existence and/or approximate location of such Service Media. The Board will notify Railtrack in writing of Service Media disclosed by the further investigations.
- 9.9 that there shall not be constructed any road or parking area on the Board's Land adjoining Railtrack's Land without there being erected to Railtrack's reasonable satisfaction suitable kerbing or crash barriers of a design reasonably specified by Railtrack and in a position reasonably approved by Railtrack (such approval not to be unreasonably withheld or delayed) so as to prevent vehicles accidentally moving onto Railtrack's railway.
- 9.10 that (save with the express prior agreement of Railtrack) no cranes or piling rigs shall be positioned or used upon the Board's Land
- 9.10.1 so that it is possible for the crane's jib or skip to sail over Railtrack's Land or for such crane or rig to fall within 2 metres of Railtrack's Land or for the crane's load to swing over Railtrack's Land or
- 9.10.2 without prior notification to Railtrack.

- 9.11 that (unless carried out in accordance with a lighting scheme approved by Railtrack, such approval not to be unreasonably withheld or delayed) there shall not be placed on the Board's Land any light which could be likely to be confused with any signal on Railtrack's railway or which may interfere with or affect the sighting of signalling on or the operation of its railway.
- 9.12 to remove, relocate or screen such light so that no confusion or interference shall occur forthwith upon being notified by Railtrack that in Railtrack's proper opinion such confusion or interference has arisen or is likely to arise.
- 9.13 to the extent that it is lawful for Railtrack so to require:
- 9.13.1 (unless carried out in accordance with a landscaping scheme approved by Railtrack, such approval not to be unreasonably withheld or delayed) not to plant on the Board's Land any trees or shrubs such that if grown to their mature height they could fall within 2 metres of Railtrack's Land
- 9.13.2 to manage all new and existing trees and shrubs on the Board's Land so that it is not possible for their branches to overhang the boundary with Railtrack's Land or for them to provide a means of scaling the boundary fence between the Board's Land and Railtrack's Land and so as to minimise leaf fall and root penetration onto the railway.
- 9.14 no external works of repair and maintenance nor external repainting above ground level shall be carried out to the railway elevation of any buildings or structures on the Board's Land located in close proximity to the railway nor renewal of railway boundary fencing shall be carried out without (in each case) reasonable prior and sufficient notification to Railtrack nor without compliance with such reasonable conditions as Railtrack may properly require for the safety and/or protection of railway operation and structures on the railway land and of workmen on the Board's Land.
- 9.15 that materials are not to be stored or stacked on the Board's Land in such a manner that on collapse they might encroach on Railtrack's Land or lean against the fencing between the Board's Land and Railtrack's Land and cause a danger to the safe operation of the railway.

10. Position pending disposal by Board

Railtrack agrees not to enforce the covenants under clauses 9.3, 9.4, 9.6 and 9.13.2 unless after the Transfer Date the Board shall use or occupy the Board's Land or part of it or permit anyone else to do so (other than under a licence, tenancy or lease existing at the Transfer Date or any renewal of it) or dispose of the Board's Land or part of it or any interest in it but pending the coming into operation of such covenants :-

- 10.1 the Board shall be under an obligation to Railtrack (where Railtrack's Land is used for railway purposes, and its safety might be prejudiced by trespass due to

the absence or disrepair of any existing boundary wall or fence, and any part of the boundary between the Board's Land and Railtrack's Land is unfenced) to maintain fencing around other parts of the Board's Land so as to avoid such trespass and

10.2 in the event of failure to perform such obligations within a reasonable period following notice in writing from Railtrack of any breach then Railtrack may proceed to enforce the covenants under clauses 9.3, 9.4, 9.6 and 9.13.2 above but

10.2.1 where there is an occupational licence tenancy or lease existing at the Transfer Date in respect of the Board's Land or the relevant part of it then the costs of compliance with clauses 10.1 and 10.2 shall be the Board's insofar as these involve maintenance (or if necessary renewal) of existing fences or management of vegetation to the extent that the occupational licence tenancy or lease imposes such costs on the licensee or tenant

10.2.2 in all other cases the costs arising out of compliance with clauses 10.1 and 10.2 above shall be shared equally by the Board and Railtrack who shall consult together regarding the works and as to the level of costs to be incurred prior to commencing any works and the party liable to contribute to the other's costs shall pay all sums due on demand

10.3 Where there is a disposal of part of the Board's Land which does not adjoin Railtrack's Land but which is fenced off to Railtrack's reasonable satisfaction and maintained so fenced off then

10.3.1 this shall not bring into operation clause 9.3 or 9.4 and

10.3.2. Railtrack shall not be liable to contribute costs under clause 10.2.2 above in relation to that or any other fencing around the relevant part of the Board's Land.

10.4 Railtrack's agreement not to enforce certain covenants as set out above shall continue to have effect in relation to any part of the Board's Land not so used or occupied or disposed of to the intent that the bringing into use or occupation or disposal of part only shall not take effect so as to make the Board liable to Railtrack under the suspended covenants in respect of the whole of the Board's Land.

11. Apportionment

Where any part of Railtrack's Land and the Board's Land is held by Railtrack and the Board subject to or with the benefit of any rent, rent charge or other payments affecting the estate and interest of both Railtrack and the Board then that rent, rent charge or other payment shall be divided or apportioned between Railtrack and the Board and so that one part is payable in respect of, or charged on, the estate or interest of Railtrack and the other is payable in respect of, or

charged on, the estate or interest of the Board and:

11.1 if any such apportionment is stated in the Schedule below, then that will apply accordingly

11.2 if not stated in the Schedule then that apportionment shall be such as is fair and appropriate and as may be agreed in writing between Railtrack and the Board (such agreement not to be unreasonably withheld or delayed).

12. Performance of obligations

Relevant Obligations shall be suspended to the extent that and for so long only as performance by the party owing the Relevant Obligations is demonstrated by that party to have been rendered impossible by the existence of a Binding Occupation and

12.1 Relevant Obligations are those comprised in any covenant by Railtrack or the Board under this Agreement

12.2 A Binding Occupation is an occupational licence, tenancy or lease existing at the date of this Agreement in respect of the Board's Land or Railtrack's Land (as the case may be) or the relevant part of it in favour of a third party unconnected with the party owing the Relevant Obligations and includes (in the case of a tenancy or lease) a statutory renewal on similar terms.

12.3 The party owing the Relevant Obligations shall inform the other as soon as any Binding Occupation shall have ceased to have effect.

13. Notices

13.1. - to Board

Any notice which under this Agreement is to be given to the Board shall be sufficiently served if (and only if) delivered by hand or sent by registered letter or recorded delivery addressed to the Managing Director of British Rail Property Board at 1 Eversholt Street London NW1 2DD or such other person at such address as the Board shall notify to Railtrack for this purpose

13.2 - to Railtrack

Any notice which under this Agreement is to be given to Railtrack shall be sufficiently served if (and only if) delivered by hand or sent by registered post or recorded delivery addressed to the Director Property, Railtrack PLC at Fitzroy House 355 Euston Road London NW1 3AG or such other person at such address as Railtrack shall notify to the Board for this purpose

14. Stamp Duty

This Agreement is an instrument on which (subject to certification by the Secretary of State) stamp duty is not chargeable as referred to in paragraph 2(3) of Schedule 9 of the Railways Act 1993

15. Schedule

Where there is any schedule to this Agreement the additional provisions of such schedule(s) are incorporated in this Agreement

EXECUTED and delivered by the Board and Railtrack as a deed as first dated above

RAILTRACK PLC SEAL REGISTER No: 6419

THE COMMON SEAL of)
RAILTRACK PLC)
was affixed in the)
presence of:)



Authorised signatory, as approved
by a resolution of the board
of Railtrack PLC on 5th December 1994

SCHEDULE

Additional Provisions

- A.1 Railtrack covenants with the Board for the benefit and protection of such part of the Board's Land as is capable of being benefited or protected and with intent to bind so far as legally may be Railtrack and Railtrack's successors in title, owners for the time being of the Transferred Mines and Minerals or any part of them in whosoever hands they may come, not to work or cause, permit or suffer to be worked the Transferred Mines and Minerals
- A.2 Railtrack's covenant above shall not bind Railtrack PLC personally after it shall have parted with all interest in the Transferred Mines and Minerals so long as Railtrack shall first produce a direct covenant from the transferee with the Board in the terms of paragraph A. 1 above to the reasonable satisfaction of the Board (paying or procuring payment of the Board's reasonable related costs)
- A.3 "Transferred Mines and Minerals" are those transferred under clause 6 above.
- B. The right of way conferred by Clause 4.1 above over the part of the Board's Land immediately adjoining the boundary marked D1-E1-F1-G1 on the Plan shall be for the benefit of:-
- (a) the land (and the buildings thereon) immediately adjoining that right of way shown coloured blue on Plan No 6110/A and
 - (b) Railtrack's nearby signal box subject to Railtrack at the Board's request surrendering its rights over the land referred to in clause 3(4) of the Agreement dated 10th May 1977 between the Board (1) National Carriers Limited (2) and National Freight Corporation (3)
 - (c) such other part or parts of Railtrack's Land as the Board shall from time to time nominate
- C.1 Railtrack hereby grants to the Board licence for three years from the date hereof (subject as hereinafter mentioned) to maintain in situ and continue to use that part of its building ("the Building") shown coloured blue on the inset on Plan No 6110/A on the following terms:-
- (a) no rent or licence fee to be payable
 - (b) the Board to pay any outgoings
 - (c) the Board to keep the same in no worse condition than as at

present so as to avoid any damage to Railtrack's Land or operation

- C.2 Subject to the provisions of Clause 9 above Railtrack also grants to the Board the right at any time within 80 years after the date hereof but only in connection with the demolition of the Building (including the said part on Railtrack's Land) to use the banked area adjoining its eastern boundary for erecting of hoardings, scaffolding, storage of materials and any other reasonable purpose in connection with the demolition
- D.1 On 12th May 1992 the London Borough of Croydon resolved (pursuant to application under 91/0304/P) to grant planning permission for the construction on part of the Board's Land ("the development area") of 58,065 M2 of offices subject to completion of a Section 106 agreement
- D.2 A condition on the permission (which the Council may want safeguarded in the Section 106 Agreement) is that a public pedestrian access way connect East Croydon Station with the Dingwall Road roundabout adjoining the development
- D.3 If, therefore, at any time during the next eighty years the Board are minded to implement the said development or any other redevelopment of the development area where a similar condition is stipulated, then the Board may by notice in writing to Railtrack require Railtrack to grant them an access point at the edge of the station raft at a point to be agreed, no wider than 4 metres, on the basis that:-
- (a) The said grant does not confer any right of way, easement or licence over Railtrack's raft structure
 - (b) The said grant does not imply any representation by Railtrack that it is possible in engineering terms to connect into the raft
 - (c) If a further planning permission (which the Board implement) does not require the said connection then the right conferred on the Board by this clause shall immediately cease
 - (d) The Board and Railtrack now agree that the said grant is not in any way to affect the latter's right to use its raft structure for such purposes as it shall think fit
 - (e) Railtrack may stop up the access point for one day (or more if required) of each year to prevent any rights of access being granted to users of the access point over the raft structure subject to the day or days in question being ones when use of the access point is relatively small
- D.4 The parties hereto agree:-

- (a) that Railtrack may at any time on reasonable notice to the Board temporarily close the access point when this is essential to enable works to be carried out to its raft and
 - (b) that Railtrack on similar notice on one or more occasions may stipulate that the access point shall for the future be at a different point of its raft and
 - (c) that clauses 5 and 9 of this Agreement shall where the context admits apply to the said grant

- D.5 If the Board and Railtrack cannot agree on the siting of the access point or the precise terms of the grant then the same shall be determined by a chartered surveyor appointed on the application of either party by the President of the Royal Institution of Chartered Surveyors

- D.6 If the Board wish to sell the development area with the benefit of planning permission for its redevelopment then Railtrack will, upon written request by the Board, and once the terms of the easement deed have been agreed, join in a Section 106 Agreement committing themselves to grant the easement subject to the terms of the deed

- D.7 The Board shall pay all professional costs reasonably incurred by Railtrack pursuant to the provisions of this clause

- E. Clauses 9.3 and 9.4 of this Agreement shall be treated as deleted and the following substituted :-
 - 9.3 forthwith (subject to compliance with Railtrack's proper safety requirements) to Railtrack's reasonable satisfaction to erect fences of the Required Specification along such part of the boundary between the Board's Land and Railtrack's Land as lacks a fence or wall or which Railtrack consider to be inadequately fenced and to pay on demand Railtrack's reasonable costs for look-out protection, railway possessions and electrical isolations reasonably and properly required in connection with the erection of such fencing

 - 9.4 the Board will not be liable for the maintenance or renewal of any fences, walls or structures on and constituting the boundary between the Board's Land and Railtrack's Land

F. There shall be included in this Agreement the following clause 10.5

10.5 The Board's obligation to erect, maintain or renew fencing along a Relevant Boundary shall further be suspended as provided in clause 10.5.3 below and:

10.5.1 a Relevant Boundary for this purpose shall be such part of the boundary between the Board's Land and Railtrack's Land as is intended to be the subject of an Overriding Lease

10.5.2 an Overriding Lease is a lease intended to be granted by Railtrack to the Board in respect of part of Railtrack's Land immediately adjoining part of the Board's Land for the purposes of accommodating either an existing tenancy or a building on both lands

10.5.3 such suspension shall continue until either

10.5.3.1 it is agreed that an Overriding Lease shall not be granted after all

or

10.5.3.2 the Overriding Lease otherwise provides

G. The definitions in clauses 1.5 and 1.6 are amended by the addition at the end of "... and incorporate the boundary refinement(s) set out in the Schedule to this Agreement".

G.1 Clause 3 is amended by the addition at the beginning of this clause of "Subject to the boundary refinements set out in the Schedule to this Agreement".

G.2 For the purpose of refining the boundaries between Railtrack's Land and the Board's Land pursuant to the Agreement for Leases, Site Demarcations, Connection Agreements and BRT Easements dated 1 April 1994 made between the Board (1) and Railtrack (2) in accordance with the Transfer Scheme the Board convey to Railtrack all their estate and interest in the land shown coloured blue on plan number 6110A annexed and Railtrack convey to the Board all their estate and interest in the land coloured pink on the said plan

· the value of the land transferred by the Board/Railtrack under these arrangements for boundary refinement(s) is agreed at £ nil for value added tax purposes and

· such tax shall (if applicable) be incurred by the supplying party and paid by the other