

**CONFORMED COPY**

**DATED 28<sup>TH</sup> JUNE 2002**

**ALTRAM L.R.T. LIMITED**

**ANSALDO TRASPORTI – SISTEMI FERROVIARI S.p.A**

**LAING INFRASTRUCTURE HOLDINGS LIMITED**

**WEST MIDLANDS TRAVEL LIMITED**

2868386

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**FUNDING AGREEMENT**

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**MIDDLETON POTTS  
Solicitors  
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London EC1A 7LD**

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Ref: R/2372-35/cjc

**THIS LOAN AGREEMENT** is made the **28th** day of **June** 2002

**BETWEEN:**

- (1) **ALTRAM L.R.T. LIMITED** a company incorporated in England (Registered Number 2868384) whose registered office is at 3 Cloth Street, Barbican, London, EC1A 7NP as borrower ("the Borrower");
- (2) **ANSALDO TRASPORTI – SISTEMI FERROVIARI S.p.A** a company incorporated in Italy whose registered office is Via Argine 425, Naples 80147, Italy ("Ansaldo");
- (3) **LAING INFRASTRUCTURE HOLDINGS LIMITED** a company incorporated in England (Registered Number 2759535) whose registered office is at 133 Page Street, London, NW7 2ER ("Laing"), formerly called J.L. Infrastructure Holdings Limited and John Laing Investments Limited; and
- (4) **WEST MIDLANDS TRAVEL LIMITED** a company incorporated in England (Registered Number 2652253) whose registered office is at 1 Sovereign Court, 8 Graham Street, Birmingham, B1 3JR ("WMT");

**WHEREAS:**

- (A) The Borrower entered into a Concession Deed dated 2nd August 1995 (as amended by a Deed of Amendment dated 25th March 1997 and as further amended by a supplemental Deed dated 28th June 1999) (as so amended and to include all of the Schedules thereto "the Concession Deed") with the West Midlands Passenger Transport Executive of 16 Summer Lane, Birmingham B19 3SD ("Centro") for the design, construction, partial financing, operation and maintenance of a light rail rapid transit line between Birmingham and Wolverhampton known as and herein referred to as "Midland Metro Line 1";
- (B) Finmeccanica S.p.A. (as universal successor in title to Ansaldo Trasporti S.p.A. ("AT")), Laing and WMT are collectively the holders of the whole of the Ordinary Share Capital of the Borrower, holding "A", "B", and "C" Ordinary Shares of £1.00 each in the capital of the Borrower respectively as set out in the First Schedule hereto;
- (C) By a Guarantee dated 2<sup>nd</sup> August 1995 ("the Guarantee") John Laing Plc ("Laing Plc") and AT jointly and severally undertook to provide or procure the provision of finance to the Borrower as provided for in Schedule 4 to the Concession Deed to a maximum amount of £16,500,000;
- (D) Pursuant to a Midland Metro Line 1 Deed of Cross Indemnity dated 9<sup>th</sup> October 1996 made between AT, Laing Plc and WMT, Laing Plc, AT and WMT agreed that, subject to the terms of that Deed of Cross Indemnity they would each provide to the Borrower one third in aggregate of any sums advanced or guaranteed or provided pursuant to the obligations undertaken by Laing Plc and AT under the Guarantee referred to in Recital (C) above at such times and in form as may be agreed pursuant to a Shareholders' Agreement dated 9<sup>th</sup> October 1996 made between AT, Laing Plc, the

Borrower, Laing (under its former name of John Laing Investments Limited) and WMT ("the Shareholders' Agreement");

- (E) Pursuant to Clause 10.1 of the Shareholders' Agreement Laing, AT and WMT (as shareholders in the Borrower) undertook to provide loans to the Borrower proportionate to their respective shareholdings in the Borrower on the unanimous recommendations of the Board of Directors of the Borrower as therein referred to;
- (F) Pursuant to a Form of Agreement dated 2nd August 1995 and made between the Borrower and John Laing Construction Limited ("JLC") and AT as members of a Construction Consortium (together referred to as "the Contractor") and the Conditions of Contract and the Schedules to the Conditions of Contract annexed thereto as amended by a Supplemental Deed dated 28th June 1999 ("the Construction Sub-Contract") the Borrower engaged the Contractor to design and construct Midland Metro Line 1 and to supply all of the electromotive units, rolling stock, machinery apparatus and other things required therefor as described in the Concession Deed but subject to the provisions of the Construction Sub-Contract;
- (G) Pursuant to a Form of Agreement dated 9th October 1996 and made between the Borrower and WMT and the Conditions of Contract and the Schedules to the Conditions of Contract annexed thereto (as amended by a Supplemental Deed dated 28th June 1999) ("the Operation and Maintenance Agreement") the Borrower engaged WMT to act as operator and to operate and maintain Midland Metro Line 1 in accordance with, but subject to, the provisions of the Operation and Maintenance Agreement;
- (H) Pursuant to the requirements of Schedule 4 to the Concession Deed, AT, Ansaldo, Laing and WMT have advanced by way of shareholder loans to the Borrower certain sums on certain dates as more particularly described in Part 1 of the Second Schedule hereto for the purpose inter alia of assisting the Borrower to fulfil its obligations under the Concession Agreement, the Construction Sub-Contract and the Operation and Maintenance Contract.
- (I) By a Hive-Down Agreement dated 31st March 2001 and made between AT and Ansaldo inter alia all moneys to which AT was entitled as party to the Construction Sub-Contract and all of AT's interest in the right to repayment of the sums referred to in Part 1 of the Second Schedule hereto were assigned to Ansaldo. By an Assignment dated 21 March 2002 and made between JLC and Laing all outstanding moneys to which JLC was entitled as party to the Construction Sub-Contract were assigned to Laing;
- (J) There is outstanding from the Borrower under the Construction Sub-Contract a sum exceeding £1,300,000 of which not less than £650,000 is, as between Ansaldo (by virtue of the Hive-Down Agreement referred to in Recital (I) hereto) and Laing as Assignee of JLC as referred to in Recital (I) hereto, due to Ansaldo (which said amount of £650,000 is hereinafter referred to as "the Ansaldo Debt") and of which not less than £650,000 is, as between Ansaldo and Laing as Assignee of JLC as referred to in Recital (I) hereto, due to Laing (which said amount of £650,000 is hereinafter referred to as the "Laing Debt");

- (K) There is outstanding from the Borrower to WMT pursuant to the Operation and Maintenance Agreement a sum in an amount not less than £650,000 (which said amount of £650,000 is hereinafter referred to as "the WMT Debt");
- (L) The Borrower, Ansaldo and WMT have agreed that the Ansaldo Debt and the WMT Debt shall be paid to Ansaldo and WMT and that amounts equal to the Ansaldo Debt and the WMT Debt shall be loaned to the Borrower by Ansaldo and WMT respectively as Lenders upon the terms of this Agreement; and
- (M) The Borrower and Laing have agreed that the Laing Debt shall henceforth be a Loan made by Laing to the Borrower as a Lender upon the terms of this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

**1. Interpretation**

1.1 In this Agreement, including in the recitals hereto, unless the context otherwise requires the words and expression defined in the parties and in the recitals hereto shall have the meanings there ascribed to them and the following words and expressions shall have the meanings ascribed to them below:

**"Concession Deed Guarantee"** means the Deed of Guarantee executed by AT and Laing Plc in favour of Centro dated 2nd August 1995;

**"Equity Funding"** means the total amount of £4,000,000 credited as paid up on the A, B and C Ordinary Shares in the capital of the Borrower held by Ansaldo, Laing and WMT as referred to in the First Schedule hereto.

**"Further Advances"** means the further advances to be made by Ansaldo and WMT referred to in Part 2 of the Second Schedule hereto and the advance deemed to be made by Laing by conversion of the Laing Debt in accordance with Clause 2.3 as referred to in Part 2 of the Second Schedule hereto;

**"Lenders"** means Ansaldo, Laing and WMT and "Lender" shall mean any one of them;

**"Loans"** means the total amount of the shareholders loans referred to in Parts 1 and 2 of the Second Schedule hereto owed by the Borrower to Ansaldo, Laing and WMT as the case may be either as original lender (in respect of the Loans referred to in Part 1 of the Second Schedule and the Further Advances referred to in Part 2 of the Second Schedule), or as assignee of the original lender or, in the case of Laing, by virtue of Clause 2.3 hereof in each case which have been provided to the Borrower in accordance with and for the purposes specified in Schedule 4 to the Concession Deed;

**"Relevant Proportion"** in relation to each Lender means the proportion which such Lender's participation in the Loan bears to the total amount of the Loan from time to time.

- 1.2 Clause headings are inserted for convenience of reference only and shall not affect the interpretation of this Loan Shareholders' Loan Agreement.

## **2. The Loans and Further Advances**

- 2.1 The Lenders have previously made to the Borrower those Loans specified in Part 1 of the Second Schedule hereto and it is hereby agreed that such Loans shall be deemed at all times to have been made, and shall continue to be made and remain outstanding, on and subject to the terms and conditions of this Agreement.
- 2.2 Ansaldo and WMT agree that they shall make to the Borrower the Further Advances specified in Part 2 of the Second Schedule hereto and that such Further Advances shall be made on and subject to the terms and conditions of this Agreement. The proceeds of such Further Advances shall be applied forthwith by the Borrower in fulfilling its obligations under the Concession Deed, the Construction Sub-Contract and the Operation and Maintenance Agreement.
- 2.3 The Borrower and Laing do hereby agree that the Laing Debt shall henceforth be deemed in all respects to be a Further Advance from Laing to the Borrower made on and subject to the terms and conditions of this Agreement. The proceeds of such Further Advance shall be applied forthwith by the Borrower in fulfilling its obligations under the Concession Deed, the Construction Sub-Contract and the Operation and Maintenance Agreement.
- 2.4 The obligations of the Lenders under this Agreement are several. Failure of a Lender to carry out those obligations does not relieve any other Lender of its obligations hereunder. No Lender is responsible for the obligations of any other Lender hereunder. The rights of a Lender hereunder are divided rights. Subject to Clause 9 hereof and the provisions of this Agreement generally, a Lender may separately enforce those rights.
- 2.5.1 If more than one currency or currency unit is at the same time recognised by the Bank of England as the lawful currency of the United Kingdom then:
- (a) any reference in this Agreement to, and any obligations arising hereunder in pounds sterling shall be translated into, or paid in, the currency or currency unit for the United Kingdom designated by the Bank of England; and
  - (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the Bank of England for the conversion of the currency or currency unit into the other at the relevant conversion date.
- 2.5.2 If a change in the currency of the United Kingdom occurs, this Agreement will be amended to the extent required by law and to the extent the Borrower and the Lenders agree to be necessary to reflect the change in currency and to put the Lenders in the same position that they would have been in if no change in currency had occurred.

- [3. Number not used.]

#### **4. The Further Advances**

- 4.1 In relation to the Further Advances to be made by each of Ansaldo and WMT and in relation to the deemed Further Advance to be made to the Borrower by Laing as referred to in clause 2.3 above, the Borrower will ensure that such Further Advances will be recorded in its books of account .

#### **5. Repayment and Prepayment**

- 5.1 In accordance with the requirements of schedule 4 to the Concession Deed, as amended by, inter alia, clause 2.3 of an agreement dated 25 November 1998 made between (1) the Borrower (2) Nikko Bank (UK) PLC, (3) Centro, (4) Laing Plc (5) AT and (6) WMT (the "Centro Security Agreement"), the Loans shall be repaid by eighteen half yearly instalments, the first such instalment being due on 15<sup>th</sup> June 2008 and subsequent instalments being payable six monthly thereafter PROVIDED THAT no such repayment shall be made unless thereafter the Borrower shall have cash reserves:

- (i) of £500,000 for force majeure and legislative risk; and
- (ii) a retained standby cash facility of 50p for every £1 of funding in excess of £13.5 million provided or procured pursuant to Clause 2.1.2.1 of a Guarantee dated 2<sup>nd</sup> August 1995 given in favour of Centro by Laing Plc and AT; and
- (iii) for major equipment overhaul equal to the full expenditure reasonably contemplated for that purpose, the amount of which expenditure shall be reviewed from time to time pursuant to Schedule 4 of the Concession Deed

and PROVIDED FURTHER that no such repayment shall be made if such repayment would be in breach of the provisions of the Concession Deed (including without limitation paragraph 10.1 of Appendix 2 to Schedule 4) (other than the provision in Schedule 4 which would otherwise have restricted the repayment of dividends while senior debt facilities remain outstanding.

The amount of any repayment instalment not payable by virtue of the above proviso shall be spread equally between the subsequent repayment instalments.

#### **6. Interest**

- 6.1 The Loans shall be free of interest until 31 December 2004, and shall bear interest thereafter in respect of successive six-month interest periods at the rate per annum of 1.75% plus libor (as defined in the Concession Deed) as calculated on the first day of each such interest period. Such interest shall accrue on the amount thereof outstanding from time to time calculated from day to day for the actual number of days elapsed on the basis of a 365-day year.
- 6.2 Until full repayment of the Loans, interest on the Loans shall be payable on 15 June and 15 December in each year (an "Interest Payment Date") PROVIDED THAT no such payment shall be made unless thereafter the Borrower shall have cash reserves:

- (i) of £500,000 for force majeure and legislative risk; and
- (ii) a retained standby cash facility of 50p for every £1 of funding in excess of £13.5 million provided or procured pursuant to Clause 2.1.2.1 of a Guarantee dated 2<sup>nd</sup> August 1995 given in favour of Centro by Laing Plc and AT; and
- (iii) for major equipment overhaul equal to the full expenditure reasonably contemplated for that purpose, the amount of which expenditure shall be reviewed from time to time pursuant to Schedule 4 of the Concession Deed.

The amount of any interest payment not payable by virtue of the above proviso shall (subject to the above proviso) be paid on the Interest Payment Date next following the Interest Payment Date when the interest in question was not paid, in addition to the interest payable on that next following Interest Payment Date.

## **7. Payments**

- 7.1 All payments to be made by the Borrower under this Agreement shall be made in full, without any set off or counterclaim whatsoever and, subject as provided in Clause 7.2, free and clear of any deduction or withholding on the due date in immediately available, freely convertible and freely transferable funds to such account with such bank as each Lender shall have previously specified for the purpose.
- 7.2 If at any time any applicable law, regulation or regulatory requirement or any governmental authority, monetary agency or central bank requires the Borrower to make any deductions or withholding in respect of any tax of whatever nature from any payment due under this Agreement, the amount due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lenders each receive a net amount equal to the full amount which they would have received had no such deduction or withholding been required to be made and the Borrower shall indemnify each of the Lenders against any losses or costs incurred by them by reason of any failure of the Borrower to make any such deduction or withholding. The Borrower shall promptly deliver to the Lenders receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deductions or withholding as aforesaid.
- 7.3 If the Borrower pays any increased amount under Clause 7.2 and any Lender effectively obtains a refund of tax or credit against tax by reason of that payment, and if that Lender is able, in its sole opinion which shall not be capable of being challenged, to identify that refund or credit as being attributable to that payment having regard to its other activities, then such Lender shall reimburse to the Borrower such amount as it shall determine (any such determination to be conclusive) to be the proportion of that refund or credit as will leave the Lender after that reimbursement in no better or worse position than it would have been in if that payment had not been required. No Lender shall be obliged to arrange its tax affairs in any particular manner or to disclose any information regarding its tax affairs or computations to the Borrower or any other Lender.

- 7.4 Whenever the Borrower makes a payment of interest or repayment of principal under this Agreement, it shall pay to each Lender its Relevant Proportion thereof.
- 7.5 Each Lender agrees for the benefit of the others that it will not be entitled to set off any amounts owed by it to the Borrower (whether or not then due and in whatever currency) in or towards satisfaction of any sum then due and payable from the Borrower under this Agreement.
- 7.6 If at any time any Lender receives a payment (including set off) or distribution in cash or kind of, or on account of, the Loan contrary to Clause 7.4 then such Lender will hold the same in trust for itself and the other Lenders in its and their respective Relevant Proportions and shall pay and distribute it or, in the case of a set-off, pay the equivalent upon demand to the Lenders in their Relevant Proportions.

## **8. Default**

- 8.1 There shall be an event of default under this Agreement if:
- (a) the Borrower does not pay on the due date any amount payable by it hereunder at the place and in the currency in which it is expressed to be payable unless the failure to pay is due solely to technical or administrative reasons and the relevant amount is duly paid in full within three working days after the due date.
  - (b) any mortgage, charge (whether fixed or floating), pledge lien, hypothecation, assignment, security interest, title retention or other encumbrance, security agreement or arrangement of any kind (other than liens arising by operation of law) to secure any indebtedness of the Borrower is enforced;
  - (c) an encumbrancer takes possession or a receiver or an administrative receiver or manager or sequestrator is appointed on the whole of the undertaking, assets, rights or revenues of the Borrower or a distress or other process is levied or enforced upon all of the assets, rights or revenues of the Borrower;
  - (d) any order is made by any competent court for the appointment of an administrator in relation to the Borrower; or
  - (e) any order is made by any competent court or any resolution is passed by the Borrower for its winding up or dissolution or for the appointment of a liquidator of the Borrower.
  - (f) Centro gives notice to determine the Concession Deed pursuant to Clause 37 thereof or otherwise.
- 8.2 The Lenders may upon and at any time after the happening of an event of default under clause 8.1 and so long as the same is continuing by notice to the Borrower declare that either:



- (a) the Loan has become immediately due and payable, whereupon the Borrower shall forthwith repay the same together with all interest accrued and all other sums payable under this Agreement; or
- (b) the Loan has become due and payable on demand, whereupon the Loan and all interest and other sums payable under this Shareholders' Loan Agreement shall at all times after such declaration be due and payable forthwith on demand.

## **9. No Independent Action**

No Lender shall, except with the prior consent of each other Lender:

- (a) demand or sue for any monies owing to it hereunder; or
- (b) take any step (including petition, application, notice of meeting or proposal to creditors) for the winding-up or administration of or any insolvency proceeding in relation to, the Borrower, or for a voluntary arrangement or scheme of arrangement in relation to the Borrower.

## **10. Security**

The Loans shall be unsecured.

## **11. The Construction Sub-Contract and the Operation and Maintenance Agreement**

All sums due from the Borrower to the Contractor (and assigned as referred to in recital (I) above) and WMT under the Construction Sub-Contract and the Operation and Maintenance Agreement respectively other than the Ansaldo Debt, the Laing Debt and the WMT Debt, shall remain outstanding and payable in accordance with the terms of the Construction Sub-Contract and the Operation and Maintenance Agreement, as the case may be.

## **12. Law and Jurisdiction**

- 12.1 This Agreement shall be governed by and construed in accordance with the laws of England.
- 12.2 The parties to this Agreement hereby irrevocably submit to the exclusive jurisdiction of the English Courts as regards any matter or claim arising out of or in connection with this Agreement.

## **13. Notices**

All notices or other communications under or in connection with the this Agreement shall be given in writing, by post, hand delivery, or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if by post or hand delivery when delivered by post or hand delivery;

(b) if by facsimile, when received.

However, a notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

Notices sent by post or hand delivery shall be sent to the recipient party at the address above given or at such other address as such party may have notified to all of the other parties for such purpose. Notices sent by facsimile shall be sent to the following numbers or such other numbers as may have been notified to all of the other parties for such purpose:

the Borrower:	0207 600 0108 (Attn. D.M.Rabagliati)
Ansaldo:	++ [39 081 242 2693]
Laing:	0208 906 5577
WMT:	0121 233 1217

#### **14. Whole Agreement**

- 14.1 In this clause 14 **“Pre-contractual Statement”** means any of the following (whether in draft or final form), namely: any understanding, assurance, commitment, promise, forecast, undertaking, representation, warranty, condition, agreement or arrangement of any nature whatsoever, whether or not in writing, whether primary or collateral, whether expressed or implied by law or by custom, and whether given or made by or on behalf of any party to this Agreement at any time prior to the date hereof.
- 14.2 This Agreement supersedes and extinguishes any Pre-contractual Statement and constitutes the whole and only agreement between the parties relating to the Loans made for or referred to in this Agreement.
- 14.3 All parties hereto acknowledge that in entering into this Agreement they are not relying upon any Pre-contractual Statement. The parties agree that, without prejudice to any liability for fraudulent misrepresentation, no party shall have any liability (whether in tort or in contract) or any right or remedy (whether in tort or in contract) for any negligent misrepresentation in or in connection with or arising out of any Pre-contractual Statement except to the extent that such Pre-contractual Statement is expressly repeated in or by this Agreement.
- 14.4 No variation of this Agreement shall be effective unless made in writing and signed by each of the parties.

#### **15. Counterparts**

- 15.1 This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement and any party may enter into this Agreement by executing a counterpart

**IN WITNESS** whereof this Agreement has been entered into by each of the parties hereto the day and year first above written.

**THE FIRST SCHEDULE**

**THE EQUITY HOLDINGS**

<b><u>Date</u></b>	<b><u>Holder</u></b>	<b><u>Amount (£)</u></b>
Equity	Finmeccanica S.p.A (as universal successor in title to AT) ("A" Ordinary Shares)	1,333,334
Equity	Laing ("B" Ordinary Shares)	1,333,333
Equity	WMT ("C" Ordinary Shares)	1,333,333
	<b>Total</b>	<b>4,000,000</b>

**THE SECOND SCHEDULE**

**THE LOANS**

**PART 1. THE EXISTING LOANS**

<b><u>Date</u></b>	<b><u>Lender</u></b>	<b><u>Amount (£)</u></b>
25.02.2000	AT	3,166,666.66
25.02.2000	Laing	3,166,666.67
25.02.2000	WMT	3,166,666.67
04.12.2000	AT	250,000
29.11.2000	Laing	250,000
05.12.2000	WMT	250,000
31.03.2001	AT	100,000
31.03.2001	Laing	100,000
31.03.2001	WMT	100,000

**PART 2. THE FURTHER ADVANCES**

Date hereof	Laing	650,000
Date hereof	Ansaldo	650,000
Date hereof	WMT	650,000
	<b>Total</b>	<b>12,500,000</b>
	<b>Grand Total</b>	<b>16,500,000</b>

SIGNED by  
for and on behalf of  
ALTRAM (LRT) LIMITED

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└┐  
BRIAN JACKSON

SIGNED by  
for and on behalf of  
ANSALDO TRASPORTI-SISTEMI  
FERROVIARISpA

|  
—  
└┐  
SANTE ROBERTI

SIGNED by  
for and on behalf of  
LAING INFRASTRUCTURE  
HOLDINGS  
LIMITED

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—  
└┐  
DEREK POTTS

SIGNED by  
for and on behalf of  
WEST MIDLANDS TRAVEL  
LIMITED

|  
—  
└┐  
PETER COATES

**ALTRAM L.R.T. LIMITED**

**ANSALDO TRASPORTI SpA**

**LAING INFRASTRUCTURE  
HOLDINGS LIMITED**

**WEST MIDLANDS TRAVEL LIMITED**

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**FUNDING AGREEMENT**

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