

THIS DEED OF MORTGAGE is made the day of April 1995

BETWEEN:

GEC ALSTHOM NL SERVICE PROVISION LIMITED (the *Mortgagor*); and

LONDON UNDERGROUND LIMITED (the *Mortgagee*).

THIS MORTGAGE WITNESSES as follows:

INTERPRETATION

1.1 In this Mortgage:

Car shall bear the meaning given to that term in the Usage Contract;

Charged Property means all the property mortgaged or assigned to the Mortgagee in Clause 3.1;

Default Notice means the notice referred to in Clause 5.1;

Event of Default means the event referred to in Clause 5.1;

Lien means any mortgage, lien, right of detention, pledge, attachment, charge, conditional sale or other title retention agreement, or other security interest or encumbrance of any kind, howsoever created or arising;

Losses means any losses, costs, charges, expenses, interest borne, fees, payments, demands, liabilities, claims, penalties, fines, damages, adverse judgments, orders or other sanctions;

LUL Liens means Liens over all or any part of the Charged Property created by or attributable to the Mortgagee other than where any such Lien arises through the breach by the Mortgagor of its obligations under the Usage Contract;

Manufacturer means GEC ALSTHOM Metro-Cammell Limited;

Permitted Liens means:

- (i) Liens created by this Mortgage and any other Lien which the Mortgagor is expressly permitted by the terms of the Usage Contract to create or allow to subsist or which is otherwise granted in favour of the Mortgagee;
- (ii) the Usage Contract and Liens created by the two security assignments of even date herewith created by the Mortgagor, one in favour of the Mortgagee and the other in favour of R. B. Leasing (March) Limited and Concord Leasing March (A) Limited;
- (iii) LUL Liens;

- (iv) the interests of any person in any equipment from time to time fitted to any Train (other than any equipment that constitutes Trainborne Equipment);
- (v) Liens for Taxes either not yet assessed or, if assessed, not yet due and payable or being contested in good faith by appropriate proceedings; and
- (vi) repairer's, depot keeper's or other similar Liens arising in the ordinary course of business of the Mortgagor by operation of law in respect of obligations which are either not overdue or are being contested in good faith by appropriate proceedings;

provided that (in the case of both (v) and (vi)) such proceedings or the continued existence of such Liens do not give rise to the reasonable likelihood of the sale, forfeiture or other loss of the Trains;

Sale Agreement means the sale and purchase agreement relating to the Trains of even date herewith between the Manufacturer and the Mortgagor;

Sale Agreement Rights means the Mortgagor's rights under Clause 2 of the Sale Agreement;

Secured Obligation means the obligation of the Mortgagor under Clause 34.1.1(b) of the Usage Contract;

Taxes shall bear the meaning given to that term in the Usage Contract;

Trainborne Equipment means all equipment fitted to the Trains and owned by the Mortgagor;

Trains means the three (3) six (6) Car trains acquired or, as the context may require, to be acquired by the Mortgagor from the Manufacturer pursuant to Clause 2.1 of the Sale Agreement, together with the Trainborne Equipment, and all substitutions, renewals and replacements from time to time made in or to such Trains or installed in or on such Trains, provided that title to such substitutions, renewals and replacements shall have become vested in the Mortgagor, and **Train** shall mean any one of such three (3) six (6) Car trains; and

Usage Contract means the Usage Contract dated of even date herewith made between the Mortgagor and the Mortgagee.

1.2 References to the Mortgagor and the Mortgagee include references to the persons deriving title under or through them respectively.

1.3 Clause headings in this Mortgage shall not affect its interpretation. References in this Mortgage to Clauses and the Schedule are to clauses of or the schedule to this Mortgage and a reference to a sub-clause is, unless otherwise indicated, a reference to a sub-clause of the Clause in which the reference appears.

1.4 References in this Mortgage to any statutory provision shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such modification or re-enactment.

1.5 All references in this Mortgage to any agreement or document, including the Usage Contract and this Mortgage, shall be deemed also to refer to such agreement or document as from time to time amended, varied, supplemented, novated or replaced (in accordance, where necessary, with the Usage Contract or this Mortgage).

1.6 All references in this Mortgage to a *person* shall be construed as a reference to any person, firm, company, corporation, government, state or other political subdivision or agency of a state, or any association, joint venture or partnership (whether or not having a separate legal personality) of two or more of the foregoing.

COVENANT TO PERFORM

2. The Mortgagor hereby acknowledges to the Mortgagee the liability of the Mortgagor to perform the Secured Obligation and covenants with the Mortgagee that it shall perform the Secured Obligation when the same shall be due for performance in accordance with clause 34.1.1(b) of the Usage Contract.

MORTGAGE

3.1 As a continuing security for the performance of the Secured Obligation, the Mortgagor (i) mortgages to the Mortgagee the Trains hereafter acquired by the Mortgagor, and (ii) assigns absolutely by way of security to the Mortgagee the Sale Agreement Rights.

3.2 The Mortgagor may remove from the Trains or replace any Trainborne Equipment subject to and in accordance with the provisions of the Usage Contract and, upon title to any substitution, renewal and replacement of any Trainborne Equipment being vested in the Mortgagor, (a) such substitution, renewal or replacement shall thereupon become subject to this Mortgage and (b) the Trainborne Equipment which shall have been substituted, renewed or replaced shall cease to be subject to this Mortgage.

REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 While the Secured Obligation remains outstanding and/or undischarged and is contingently or actually required to be performed pursuant to Clause 34.1.1(b) of the Usage Contract, the Mortgagor warrants and represents and covenants to the Mortgagee that:

- (i) it will not cancel, charge (other than pursuant to this Mortgage), surrender, waive, materially vary or assign any of its rights and interests in the Sale Agreement Rights, without the prior written approval of the Mortgagee or as expressly provided for herein;

- (ii) it shall comply in all respects with the provisions of the Sale Agreement applicable to the Sale Agreement Rights;
- (iii) it shall notify the Mortgagee in writing upon the acquisition by it of title to a Train;
- (iv) the Mortgagor will not knowingly take any steps which, will or could result in the Charged Property becoming subject to any Lien other than Permitted Liens;
- (v) the Mortgagor shall not sell, transfer or dispose of, or part with possession or control of, or attempt to sell, transfer or dispose of, the Charged Property except as contemplated by the Usage Contract;
- (vi) at the request of the Mortgagee, the Mortgagor shall keep prominently affixed to each Car comprising the Trains a metal fire proof plate denoting that such Car is subject to a first legal mortgage in favour of the Mortgagee, and the Mortgagor shall not remove, obscure or deface the same.

4.2 The Mortgagee covenants that it will not create or permit to subsist any LUL Liens (other than *permitted security interests* during the period contemplated by and as defined in Clause 34.1.3 of the Usage Contract) and will discharge all such LUL Liens promptly after the same arise.

DEFAULT AND REMEDIES

5.1 An Event of Default shall have occurred if the Mortgagee shall have served a notice in writing (the *Default Notice*) on the Mortgagor pursuant to Clause 28.1.1 of the Usage Contract in relation to the Trains.

5.2 Without prejudice to any of its other rights whether under the Usage Contract or by law generally, at any time upon or after the service of a Default Notice, the Mortgagee shall be entitled:

- (i) to apply to any court of competent authority for an order for foreclosure absolute so as to vest all the Mortgagor's right, title and interest in the Trains in the Mortgagee for the purpose specified in Clause 34.1.1(b) of the Usage Contract;
- (ii) to take possession of the Trains and for such purpose and to enter upon any premises where the Trains may be located;
- (iii) to repair and keep in repair the Trains;
- (iv) to bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever, civil or criminal, in relation to the Charged Property;

- (v) to lease and generally use and deal with the Trains in each case in the manner contemplated by the Usage Contract;
- (vi) to exercise all of the Sale Agreement Rights in such manner as it considers appropriate; and
- (vii) to settle, arrange, compromise or submit to arbitration any claims, questions or disputes whatsoever which may arise in connection with the foregoing and execute releases or other discharges in relation thereto.

5.3 The Mortgagor agrees on the date hereof to serve a notice on the Manufacturer in the form of the Schedule and promptly thereafter to obtain an acknowledgement of that notice.

THIRD PARTIES

6. No persons dealing with the Mortgagee shall be concerned to enquire whether an Event of Default has occurred or a Default Notice has been issued or whether the power which the Mortgagee is purporting to exercise has become exercisable or otherwise as to the propriety or regularity of any dealing by the Mortgagee with the Charged Property.

POWER OF ATTORNEY

7. The Mortgagor hereby irrevocably for value and by way of security to secure the Lien constituted by this Mortgage and the performance of the Secured Obligation appoints the Mortgagee and any person nominated for such purpose by the Mortgagee in writing under hand by an officer of the Mortgagee, severally as attorney and agent of the Mortgagor for the Mortgagor and in its name and on its behalf and as its act and deed to execute, seal and deliver (using the company seal of the Mortgagor where appropriate) and otherwise perfect and do any charge, mortgage, assignment, deed, assurance, agreement, conveyance, instrument, act or thing which the Mortgagor has failed to execute and do under the covenants, undertakings and provisions contained herein in relation to the Charged Property or which may be required or deemed proper in the exercise of any rights or powers hereunder or otherwise for any of the purposes of the security created hereby, and the Mortgagor hereby covenants with the Mortgagee to ratify and confirm all acts or things made done or executed or purportedly made done or executed by such attorney and agent as aforesaid provided that the Mortgagee will not exercise its rights hereunder prior to the service of a Default Notice.

WAIVER AND INVALIDITY

8.1 No failure on the part of the Mortgagee to exercise and no delay in its part in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude the further exercise of such one or any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

8.2 Any waiver and any consent by the Mortgagee under this Mortgage must be in writing and may be given subject to any conditions thought fit by the Mortgagee. Any waiver or consent shall be effective only in the instance and for the purposes for which it is given.

8.3 If at any time any one or more of the provisions of this Mortgage becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions hereof under the laws of such jurisdiction and the validity, legality and enforceability of such provision under the law of any other jurisdiction shall not in any way be affected or impaired thereby.

RELEASE

9. Upon the earlier to occur of:

- (a) performance to the satisfaction of the Mortgagee of the Secured Obligation; and
- (b) any of the circumstances referred to in Clause 34.1.2 of the Usage Contract arising,

the Mortgagee will discharge this Mortgage at the cost of the Mortgagor.

CONTINUING AND INDEPENDENT SECURITY

10.1 This Mortgage and the security hereby created shall be a continuing security and in particular (but without limitation) shall not be, nor be considered as, satisfied by any partial performance of the Secured Obligation until the Secured Obligation has been performed in full.

10.2 This Mortgage and the security hereby created shall be in addition to and not in substitution for or derogation from any other security (whether given by the Mortgagor or otherwise) now or from time to time hereafter held by the Mortgagee in respect of the Secured Obligation.

10.3 The Mortgagee need not before exercising any of the rights, powers or remedies conferred upon it by this Mortgage or by law (i) take action or obtain judgment against the Mortgagor, or any other person in any court, (ii) make or file any claim or proof in a winding-up or liquidation of the Mortgagor or of any other person or (iii) enforce or seek to enforce the performance of the Secured Obligation provided that the Mortgagee will not seek to exercise any of its rights, powers or remedies unless it first shall have made a written demand under each of the Guarantees (as that expression is defined in the Usage Contract).

10.4 The Mortgagee may in its discretion (i) grant time or other indulgence or make any other arrangement in respect of the Secured Obligation or of any other security therefor or of any other company or companies, person or persons not parties hereto or (ii) vary any provision of the Usage Contract in accordance with its terms without prejudice to this security, and the security created by this Mortgage shall not be in any

way discharged or impaired by reason of any other circumstance which might (but for this provision) constitute a legal or equitable discharge of such security.

10.5 The security created by this Mortgage shall continue in full force and effect and shall not be discharge, impaired or otherwise affected by:

- (i) any time or indulgence granted by the Mortgagee or any failure or delay by the Mortgagee in exercising any right, remedy, power or privilege hereunder or under the Usage Contract or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder;
- (ii) any failure by the Mortgagee to take or enforce any other security or guarantee taken or agreed to be taken for the Secured Obligation or under or pursuant to the Usage Contract or otherwise;
- (iii) any amendment, modification, variation, or supplement of the Secured Obligation;
- (iv) any release or exchange of any security or guarantee now or hereafter held by the Mortgagee for the Secured Obligation; or
- (v) any other act, omission, fact, matter, circumstance, event or thing (including, without limitation, the invalidity, unenforceability or illegality of any of the obligations of the Mortgagor under the Usage Contract, or the bankruptcy, liquidation, winding-up, insolvency, dissolution, administration, re-organisation or amalgamation of, or other analogous event of or with respect to, the Mortgagor or any other person) which, but for this provision, might operate to impair, discharge or adversely affect the rights of the Mortgagee hereunder or to impair, discharge or adversely affect the security hereby created.

10.6 Any settlement or discharge between the Mortgagee and the Mortgagor and/or any other person shall be conditional upon no security or payment to the Mortgagee by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, liquidation, winding-up, insolvency, dissolution, administration, re-organisation, amalgamation or other analogous event or proceedings for the time being in force.

FURTHER ASSURANCES

11. The Mortgagor covenants that it will at its own cost and expense and at the request of the Mortgagee, promptly sign, seal, execute, deliver, acknowledge, file, register and perfect all such assurances, documents, instruments, agreements, certificates and consents and do any and all such acts and things as may be reasonably necessary in order to perfect the Liens intended to be created by this Mortgage or to establish, maintain, protect or preserve such Liens or the rights of the Mortgagee under this Mortgage or to enable the Mortgagee to obtain the full benefits of such Liens and this Mortgage and to exercise and enforce its rights and remedies under this Mortgage in respect of the Charged Property.

ASSIGNMENT

12. The Mortgagee shall be required to transfer its rights hereunder at the same time and to the same person as it transfers its rights in accordance with the Usage Contract. Except as provided above, neither the Mortgagee nor the Mortgagor shall be entitled to transfer their rights and obligations hereunder without the prior written consent of the other party.

NOTICES

13. The provisions of Clause 46 of the Usage Contract shall be deemed to be incorporated mutatis mutandis herein.

INDEMNITIES

14.1 The Mortgagee and every attorney, manager, agent or other person appointed by the Mortgagee hereunder shall be entitled to be indemnified by the Contractor in respect of all Losses incurred by it or them in the execution or purported execution of any powers, rights, remedies, authorities or discretions vested in it or them hereby or pursuant hereto.

14.2 If, at any time, the Mortgagor fails to do any act which it is obliged to do hereunder, the Mortgagee may (but shall not be bound to) do such act or procure its doing. The Mortgagor will pay to the Mortgagee on demand an amount equal to the Losses incurred by the Mortgagee in doing any act pursuant to this Clause together with interest thereon calculated from the date of payment by the Mortgagee until the date of payment by the Mortgagor at the rate applicable to overdue sums under the Usage Contract.

COUNTERPARTS

15. This Mortgage may be executed in any number of counterparts and by any party hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

GOVERNING LAW AND JURISDICTION

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

16.2 The Mortgagor irrevocably agrees for the benefit of the Mortgagee that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Mortgage and, for such purposes, irrevocably submits to the jurisdiction of such courts.

IN WITNESS whereof the parties hereto have caused this Mortgage to be executed as a Deed and it is intended to be and is hereby delivered the day and year first above written.

EXECUTED as a **DEED** under)
THE COMMON SEAL of)
GEC ALSTHOM NL SERVICE)
PROVISION LIMITED)
in the presence of:)

EXECUTED as a **DEED** under)
THE COMMON SEAL)
LONDON UNDERGROUND)
LIMITED in the presence of:)

SCHEDULE

Notice of Assignment

To: GEC ALSTHOM Metro-Cammell Limited

[_____] April 1995

We refer to the mortgage (the *Mortgage*) of even date herewith between ourselves and London Underground Limited (the *Mortgagee*) a copy of which you have received. Terms defined in the Mortgage shall bear the same respective meanings when used herein.

Please confirm receipt of notice of the Mortgage in the form attached to the copy of this notice to the Mortgagee.

Yours faithfully

.....
**GEC ALSTHOM NL SERVICE
PROVISIONS LIMITED**

[On copy]

To: London Underground Limited

We acknowledge receipt of the notice of the Mortgage and confirm that for good and valuable consideration receipt of which we acknowledge, following receipt from you of a copy of the Default Notice, we shall perform the Sale Agreement Rights in your favour.

Yours faithfully

.....
GEC ALSTHOM Metro-Cammell Limited

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SCHEDULE 16

Mortgage

Dated April 1995

TRAIN MORTGAGE

between

**GEC ALSTHOM NL SERVICE PROVISION LIMITED
as mortgagor**

and

**LONDON UNDERGROUND LIMITED
as mortgagee**

**TRAIN MORTGAGE
relating to three trains supplied under
a sale agreement dated April 1995**
