

**Between**

(1) **ALDERMORE BANK PLC**, a company incorporated under the laws of England (Registered Number 00947662) and whose registered office is at Apex Plaza, Forbury Road, Reading RG1 1AX (**Funder**); and

(2)

a company incorporated under the Companies Act, Registered Number:

whose registered office is at

(**Seller**).

**Whereas**

(A) The Seller may purchase goods from time to time.

(B) The Seller and the Funder have agreed that the Funder will buy the Goods so that the Funder can let the Goods to the Lessee under the Lease Agreement.

**It is agreed**

**1 Definitions**

1.1 In this Agreement unless the context otherwise requires the following words and phrases shall have the following meanings:

**Business Day** means a day not being a Saturday or a Sunday when banks are open for ordinary business in the City of London

**Encumbrance** means any right, title or interest of any person and shall, without limiting the generality of the foregoing, include any right of ownership, retention of title, right of possession or detention, security, mortgage, charge, lien, pledge, encumbrance, lease or other bailment, statutory right in rem, hypothec, attachment, levy, claim, proceeding, right of compensation or set-off (other than any right of compensation or set-off arising in favour of a banker by operation of law which has not been exercised) or any other security interest whatsoever, howsoever and wheresoever created or arising

**Goods** means the goods specified in part 1 of the schedule together with the operating instructions, handbooks, specifications and books pertaining thereto and, where the context allows, any reference to "Goods" in this Agreement shall also be taken to be a reference to all and any item, part, accessory, addition and replacement of such Goods

**Lease Agreement** means the lease agreement of even date between the Lessee and the Funder

**Lessee** means the lessee specified in part 2 of the schedule

**Purchase Price** has the meaning given to it in clause 2 below.

**Schedule** means the schedule of 2 parts annexed hereto and forming part of this Agreement

**VAT** means value added tax payable pursuant to Value Added Tax Act 1994 or any replacement or amending legislation of a similar nature and/or any

replacement tax in respect thereof and/or any other taxes payable in respect of supply or sale of goods from time to time in the relevant jurisdiction

1.2 In this Agreement, unless otherwise specified or the context otherwise requires:

- (a) words used in the singular shall also be taken as references to the plural and vice versa;
- (b) words and phrases defined in the Lease Agreement shall have the same meanings when used in this Agreement unless the context requires otherwise;
- (c) a reference to a clause by number is to the appropriate numbered clause of this Agreement;
- (d) the headings to clauses are for convenience only and do not affect the interpretation of this Agreement;
- (e) words and phrases which have a particular meaning under the law which governs this Agreement shall in any other jurisdiction have the nearest equivalent meaning; and
- (f) any reference to any statute, statutory instrument or other legislation shall be a reference to the same as from time to time amended, varied, re-enacted or substituted.

## **2 Sale of Goods to the Funder**

2.1 The price of the Goods shall be £ (excluding any set-off and including any VAT) **(Purchase Price)**.

2.2 The Seller shall be deemed to warrant on the date of this Agreement and on the date the Funder signs the Lease Agreement in respect of the Goods that:

- (a) the Goods are in existence and are in good repair and condition and that no addition or alteration has been made to them since their delivery other than the attachment of accessories which can be removed without damaging or impairing the Goods;
- (b) the Goods have been delivered to the Seller's premises in the UK or such other premises in the UK as the Seller has requested;
- (c) the price of the Goods has been paid in full to the supplier and title to the Goods is vested in the Seller;
- (d) the Seller has not, and so far as the Seller is aware, having made detailed enquiries, the supplier has not, charged or encumbered the Goods in any way and title to the Goods will pass to the Funder by virtue of the sale to the Funder free and clear from any Encumbrance, liens and claims of whatsoever nature of any supplier, the Seller or any other person;
- (e) the Seller has accepted the Goods in accordance with the terms of the relevant supply contract, the Goods satisfy the specification required by the Seller in respect of those Goods and the Seller has found them to be fit for any purpose for which they may be required; and
- (f) the Seller shall be solely responsible for and hold the Funder fully indemnified against any loss damage or injury (including death) to persons or

property occurring in connection with the possession by the Seller of any of the Goods or as a result of the use by the Seller thereof.

### **3 Title and Risk**

3.1 Subject to clause 5, on the date on which the Funder signs the Lease Agreement, the Funder shall pay the Seller the Purchase Price for the Goods (including any VAT) as shown in the invoice from the Seller to the Funder, less the first instalment required to be paid under the Lease Agreement if unpaid (**Net Price**).

3.2 Upon the Funder making payment of the Net Price to the Seller:

- (a) the Seller shall pass full unencumbered title in the Goods to the Funder;
- (b) the Seller shall deliver the Goods to the Funder; and
- (c) the Funder shall deliver the Goods to the Lessee under the Lease Agreement and the Lessee shall accept the Goods all as provided for in the Lease Agreement.

3.3 Risk in the Goods shall at all times remain with the Seller until such time as risk in the Goods passes to the Lessee under the Lease Agreement and at no time shall risk in the Goods vest in the Funder.

### **4 Conditions Precedent**

4.1 The obligation of the Funder to pay the Net Price to the Seller in accordance with clause 5 shall be conditional upon:

- (a) the Seller having issued to the Funder a valid VAT invoice in respect of the sale of the Goods;
- (b) the Seller having produced to the Funder the original invoice rendered to the Seller by the supplier of the Goods to the Seller or (if acceptable to the Funder) a copy thereof, together with such evidence as is acceptable to the Funder that such invoice has been fully paid and such other evidence, if any, as the Funder reasonably demands to enable it to confirm to its satisfaction that the Seller is the true owner of the Goods;
- (c) the Lessee having paid the first rental or first instalment and any other sums which are due on or before the date of the Lease Agreement;
- (d) the Lessee having exhibited evidence satisfactory to the Funder that the requirements of the Lease Agreement in relation to the insurance of the Goods have been complied with; and
- (e) the Lessee having executed and entered into the:
  - (i) Lease Agreement on or about the date of this Agreement ; and
  - (ii) any other documents or agreements as may be required by the Funder.

4.2 The sale of the Goods and payment of the Net Price is also conditional on:

- (a) no event having occurred or arising from completion of the sale and purchase of the Goods which would entitle the Funder to terminate the Lease Agreement and/or the

letting/hiring of the Goods thereunder; and

- (b) none of the warranties set out in clause 6 below being or becoming false, inaccurate or misleading in any respect at any time; and
- (c) none of the Goods having become an actual, constructive or agreed total loss.

4.3 The Funder shall advise the Seller in writing when the conditions precedent in this clause 4 have been satisfied.

## **5 Payment**

Subject to the warranties in clause 6 being and remaining true and provided the Funder is satisfied that the conditions precedent set out in clause 4 have been satisfied (which conditions precedent the Funder may waive, if it chooses to do so, at its own option by giving the Seller notice in writing to that effect at any time) the Funder shall pay the Net Price to the Seller and, if so required by the Seller, shall make payment of the same direct to such bank account of the Seller in the United Kingdom as the Seller shall notify to the Funder in writing.

## **6 Warranties**

6.1 The Seller warrants to the Funder both at the date of this Agreement and as at the date when the Funder pays the Net Price to the Seller in accordance with clause 5 that:

- (a) on payment of the Net Price good title to the Goods free from all Encumbrances will pass to the Funder;
- (b) the price of the Goods does not exceed the aggregate purchase price paid for the Goods by the Seller or the market value thereof;
- (c) the Seller has full corporate power, authority and legal right and has taken all action and obtained all consents necessary to authorise its entry into and performance under this Agreement and the execution, delivery and performance of this Agreement will not violate in any respect any provision of:
  - (i) any law;
  - (ii) the Memorandum and Articles of Association (or other constitution) of the Seller; or
  - (iii) any security, mortgage, charge, agreement, undertaking or instrument to which the Seller is a party or which is binding upon it or any of its assets, nor result in the creation or imposition of, or oblige the Seller to create, any Encumbrance of any of its assets or undertaking; and
  - (iv) in addition to all warranties implied in favour of the Funder under any statute relating to the sale of Goods and at common law, each item comprised within the Goods:
    - (A) corresponds with its description in part 1 of the schedule, is in good condition and working order and is fit for its purpose or the particular purpose for which the Lessee requires it;
    - (B) has been delivered to the Seller and is in the sole possession and

ownership of the Seller; and

- (C) has not been attached to any land or building so as to become a fixture.

## **7 Guarantees relating to the Goods**

- 7.1 The Seller hereby assigns to the Funder, with effect from the date on which the Seller receives the Net Price, the benefit of all guarantees, undertakings, conditions and warranties which may have been given to the Seller by the manufacturers or suppliers of the Goods or any other persons in relation to the Goods (**Benefits**). The Funder may intimate this assignation at any time to the grantor or grantors of any such Benefits.
- 7.2 Until such intimation is given and also in respect of any of the Benefits which are not assignable, the Seller hereby constitutes itself trustee to hold such Benefits in trust for the Funder and the Seller agrees that, at the Funder's request, the Seller shall at its own expense at any time enforce the Benefits for the benefit of the Funder.
- 7.3 The Seller appoints the Funder as its Attorney (in the Funder's own interest) to sue for and enforce the Benefits and whether in the Funder's own or in the Seller's name and to grant any assignation of the Benefits to the Funder (in corroboration of clause 7.1) or to any other person.

## **8 Termination**

- 8.1 At any time before complying with its obligations under clause 5, the Funder may terminate this Agreement (without prejudice to any right of action which the Funder may have against the Seller) by giving notice to the Seller if:
- (a) the Goods or any of the Goods shall have been lost, stolen, damaged or destroyed;
  - (b) there shall be a breach of any of the warranties set out in clause 6;
  - (c) the Seller shall be in breach of any other obligation incumbent on it under this Agreement;
  - (d) any event has occurred which, had the Lease Agreement been in force between the parties, would have entitled the Funder (as Lessor) to terminate that Lease Agreement or the hiring thereunder or which would have led to such Lease Agreement or the hiring thereunder terminating; or
  - (e) the Seller shall be in breach of any other obligation incumbent on it under any other agreement between the Funder and the Seller.

- 8.2 If the Funder terminates this Agreement pursuant to clause 8.1 the obligations of the Funder under this Agreement shall cease and it shall have no liability hereunder.

## **9 Miscellaneous**

- 9.1 Where the Seller comprises a partnership of two or more persons, their liability shall be joint and several and any reference to the Seller includes a reference to any one or more of them and any notice served on any one of them shall be good notice to them all.
- 9.2 No relaxation or indulgence which the Funder may extend to the Seller shall affect the Funder's rights under this Agreement nor shall any waiver by the Funder

of any breach of this Agreement operate as a waiver of any subsequent or continuing breach.

- 9.3 No matter what may be provided for anywhere else in this Agreement, the Funder may at any time hold in any suspense account, pay, apply or set-off any amounts owing by the Funder to the Seller towards settling the amounts payable by the Seller to the Funder on any account whatsoever. Where any amounts payable by the Seller, including any which are only prospectively or contingently due, cannot immediately be found out, the Funder may make a reasonable estimate, which will bind the Seller unless it is manifestly wrong. The Funder may do this no matter for what principal or principals if any, it has been acting as agent in entering into this Agreement.
- 9.4 The Seller shall not assign or in any other way dispose of or deal with any of its rights under this Agreement without the Funder's prior written consent.
- 9.5 The Funder shall be entitled to assign, transfer, sell or otherwise dispose of all or any part of its interest in the Goods or this Agreement, whether outright or by way of security, and the whole or any part of its obligations under this Agreement to any person without the consent of the Seller.
- 9.6 This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same document and either party may enter into this Agreement by executing a counterpart.

## **10 Notices**

Any notice, demand or other communication given or made under or in connection with the matters contemplated by this agreement shall be in writing and shall be sent by prepaid first class post to the address of the relevant party set out above or such other address that party may notify to the other for the purposes of this clause 10 and if so sent shall be deemed to have been received (and reference herein to receipt by any party shall include deemed receipt) by the addressee two (2) Business Days after posting if sent by prepaid first class post or on delivery if delivered by hand.

## **11 ELECTRONIC SIGNATURE**

This Agreement may be signed by the parties' by way of electronic signature, as defined in section 7(2) of the Electronic Communications Act 2000.

## **12 Governing Law**

- 12.1 This Agreement (and all non-contractual obligations arising out of or in connection with it) shall be governed by, and shall be construed in accordance with, English law.
- 12.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (**Dispute**).
- 12.3 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 12.4 This clause 12 is for the benefit of the Funder. As a result, the Funder shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the

extent allowed by law, the Funder may take concurrent proceedings in any number of jurisdictions.

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**Signed** by the parties or their duly authorised representatives on the date of this Agreement.

**Funder**

Executed by )  
**Aldermore Bank Plc** ) .....  
)

**Seller**

Executed for and on behalf of )  
) .....  
)

## **The Schedule**

### **Part 1 - The Goods**

The Goods: The Equipment (as defined in the Lease Agreement) and all other plant, machinery, goods, chattels or equipment specified in the Lease Agreement (including all, parts, spare parts, instruments, appurtenances, accessories and other equipment of any kind installed on, or in, such goods or chattels).

### **Part 2 - Details of the Lessee**