

MASTER AGREEMENT

KBC LEASE (UK) LIMITED

-and-

DORSET FIRE AUTHORITY

DATED: 8 November 2000

Ref: Dorset Fire_Kredietfinance Master

Phoenix return conditions

November 2000

THIS MASTER AGREEMENT is made the 8 November 2000

BETWEEN:

- 1 **KBC LEASE (UK) LIMITED** of 14-15 Quarry Street, Guildford, Surrey. GU1 3UY (together with its successors in title and assigns "the Lessor"), and;
- 2 **DORSET FIRE AUTHORITY** of Fire Brigade Headquarters, Colliton Park, Dorchester, Dorset, DT1 1FB ("the Lessee")

1 **Definitions**

- 1.1 In this Lease the following expressions shall bear the following meanings:

"Base Rate"

Finance House Base Rate from time to time in force or, in the event that such rate cannot be determined for any reason, such other rate as may be agreed between the Lessor and the Lessee.

"Connected Person"

A person who is the Lessee or any person who in the opinion of the Lessor is connected with the Lessee as defined in Section 839 of the Income and Corporation Taxes Act 1988.

"Cost"

The cost of the Goods as shown in the Appendix to a Schedule.

"the Goods"

All or any item of the goods listed in the Appendix to a Schedule and shall include all replacements and renewals, all component parts and all additions and accessories which comprise an integral part of the goods in question.

"Interest Rate"

The interest rate calculated as specified in Clause 15.

"this Lease"

This agreement and all or any of the Schedules which are in effect at any applicable time.

"the Letting"

The letting of any of the Goods under this Lease or under a Schedule.

"Location"

The location specified in Clause 5 of a Schedule.

"Rent"

The periodic amounts set out in Clause 3 of a Schedule.

"Rental Term"

The period referred to in Clause 2 of a Schedule.

"Sale Proceeds"

In relation to any item of the Goods, the proceeds of sale of that item after deduction of all reasonable expenses of storage, transport, insurance, repair or sale incurred by the Lessor exclusive of any Value Added Tax.

"Schedule"

The Schedule or Schedules to this agreement, being an agreement or agreements made between the Lessor and the Lessee for the Letting of Goods specified in such Schedule or Schedules and which incorporate the terms of this agreement.

"Tax Written Down Value"

The cost of the Goods in question reduced by the amount of all first year allowances and capital allowances obtained and retained in respect of the Goods during the Rental Term.

"Termination Event"

Any event as referred to in Clauses 12.1 and 12.2

"Termination Payment"

In relation to the termination of the Letting or Total Loss of any Goods, a sum equal to the aggregate of all outstanding instalments of Rent attributable to such Goods which have not accrued due and payable up to the date of termination of the Letting or Total Loss of those Goods discounted in each case from the date on which but for the termination of the Letting each instalment would have become due to the date of termination at 3% per annum to reflect early receipt.

"Total Loss"

- (i) the physical destruction of or irreparable damage to the relevant Goods; or
- (ii) the theft of the relevant Goods; or
- (iii) any other actual, constructive or agreed economic loss of the relevant Goods.

"Vehicle"

Any Goods comprising any vehicle, trailer or wheeled conveyance for the carriage or movement of goods or people and whether self powered or not.

"Working Day"

Any day not being a Saturday, Sunday or public holiday in England on which banks in the City of London are open for all or substantially all of their usual business.

Expressions defined in a Schedule shall bear the same meanings herein and expressions defined herein shall bear the same meanings in a Schedule.

- 1.2 In this Lease the singular includes the plural and vice versa.
- 1.3 The clause headings are for ease of reference only and do not affect the construction of this Lease.

2 The Lease

- 2.1 The Lessor shall lease to the Lessee and the Lessee shall take on lease the Goods at the applicable Rent and for the applicable Rental Term.
- 2.2 Whenever the Lessor and the Lessee enter into a Schedule for the lease of any Goods, the terms of this agreement shall be incorporated into and govern that Schedule (save insofar as the same may be varied, excluded or contradicted by the terms of the Schedule). Save as otherwise provided in this agreement, each Schedule shall with the terms of this agreement be a separate agreement for the Letting of the Goods therein described and (without limitation) sums payable pursuant to or in respect of any Schedule shall be calculated, assessed and paid independently of and without regard to any other Schedule.
- 2.3 The Lessee's rights to use the Goods is conditional upon the due performance by the Lessee of its obligations hereunder and under every Schedule, subject to which, the Lessee shall be entitled peaceably to hold and use the Goods without interference from the Lessor or any person claiming title through the Lessor.
- 2.4 On the date of execution of any Schedule the Lessee shall deliver to the Lessor a certificate in or substantially in the form attached as Draft A.
- 2.5 The Lessee shall inspect the Goods on delivery and unless within 48 hours of delivery the Lessee shall give written notice to the Lessor specifying any defect in or other proper objection to the Goods it shall be conclusively presumed that the Goods are in good condition and repair except for latent defects not apparent on reasonable inspection.

3 Rent

- 3.1 The Lessee shall pay to the Lessor in respect of the lease of the Goods the Rent and other payments specified in the Schedule relating thereto.
- 3.2 Rent shall be due and payable at the times and for the periods specified in the Schedule.
- 3.3 The Lessee shall not be entitled to withhold payment of Rent or to any remission of Rent in respect of any period during which the Goods are unusable or unserviceable and the Lessor shall not be liable to provide the Lessee with any replacement goods during any such period.
- 3.4 All payments due under this Lease shall be made in sterling free and clear of any set-off or counterclaim and without any deduction or withholding whatsoever unless the same is required by law or any competent authority in which event the Lessee undertakes to pay to the Lessor such additional sums as may be necessary in order that the net amounts received by the Lessor after all deductions and withholdings shall not be less than such payments would have been in the absence of any requirement to make any deduction or withholding.
- 3.5 All sums payable hereunder shall if applicable be subject to the addition of Value Added Tax at the applicable rate.
- 3.6 Time shall be of the essence for every payment due hereunder. All payments by the Lessee hereunder will be made to the credit of the Lessor's account as specified in the applicable Schedule (or such other account as the Lessor shall from time to time specify) for value in cleared funds on the due date. If a payment hereunder is due on a day which is not a Working Day it shall be due and paid on the preceding Working Day.
- 3.7 If a payment by the Lessee to the Lessor is less than was due to the Lessor the Lessor may appropriate it in such manner as the Lessor thinks fit. Where there is a Letting of Goods under more than one Schedule then (in the absence of any express indication to the contrary by the Lessee) the Lessor may appropriate any payment made by the Lessee to the Lessor in or towards satisfaction of the amounts due under the Letting of Goods under any Schedule and generally in such manner as the Lessor thinks fit.

4 Taxes

- 4.1 The Rent has been calculated on the assumption that:
- (i) writing down allowances will be obtained and retained at a rate of 25% per annum in respect of the Cost of each item of the Goods on a reducing balance basis (subject in the case of Vehicles which are motor cars of the type referred to in Section 34 Capital Allowances Act 1990 whose original purchase cost exceeds £12,000 to an annual maximum of £3,000); and

- (ii) corporation tax rates will apply as follows:
for the fiscal year to 31.3.91 34 %
and thereafter 33 %; and

- (iii) each item of the Goods (other than Vehicles which are motor cars of the type referred to above and which have an original purchase cost of more than £12,000) will be sold for not less than its Tax Written Down Value at the time of the expiry or termination of the Letting of such Goods.

- 4.2 If any of the assumptions specified in Clauses 4.1(i) or 4.1(ii) above shall from time to time not be valid or if at any time during or in respect of the Rental Term there is any change in the nature, basis or method of the taxation of corporations or of the granting of capital allowances applicable to the Goods or in relation to the purpose for which the Goods are used, then the Lessor shall make such an adjustment as is described in Clauses 4.3 or 4.4 of this agreement.
- 4.3 If at any time during or in respect of the Rental Term any such event as is described in Clause 4.2 should occur and the Lessor notifies the Lessee that such event will have the effect of causing a reduction in the Lessor's net after tax rate of return from this Lease then as soon as possible after 31 March next following that change or after expiry of the Rental Term if sooner the Lessor shall (subject to Clauses 4.9 and 4.10 of this agreement) demand and the Lessee shall forthwith pay an additional rental to compensate the Lessor for the reduction in the Lessor's net after tax rate of return from this Lease arising in respect of the whole of the Rental Term such that the Lessor shall have the same net after tax rate of return after such change as it enjoyed before the change as though the rates of allowances and rates of corporation tax and the nature, basis and method of the taxation of corporations or the granting of capital allowances applicable to the Goods or in relation to the purpose for which the Goods are used had remained unchanged.
- 4.4 If at any time during or in respect of the Rental Term any such event as is described in Clause 4.2 of this agreement should occur and will have the effect of causing an increase in the Lessor's net after tax rate of return from this Lease then as soon as possible after 31 March next following that change or after expiry of the Rental Term if sooner the Lessor shall (subject to Clauses 4.9 and 4.10 of this agreement) pay to the Lessee a rebate of rentals to compensate the Lessee for the increased benefit obtained by the Lessor in respect of the whole of the Rental Term.
- 4.5 Notice of any such adjustment as is described in Clauses 4.3 or 4.4 of this agreement shall be given by the Lessor in writing to the Lessee and shall in the absence of manifest error be conclusive and binding upon the Lessee save that in the event that manifest error is alleged the parties shall refer the matter at the cost of the Lessee to the auditors for the time being of the Lessor whose decision shall be binding on both parties.

4.6 It is hereby declared for the avoidance of doubt that if during any one and the same period ended on 31 March or on expiry of the Rental Term the provisions of both Clauses 4.3 and 4.4 have come into operation, the additional rental payable under Clause 4.3 shall be offset against the rebate payable under Clause 4.4 and the balance shall be paid as aforesaid by one party to the other by way of an additional rental or rebate of rentals as the case may be.

4.7 If the assumption specified in Clause 4.1(iii) above does not prove to be correct a sum calculated in the manner set out below ("the Tax Adjustment Sum") will become payable. The Tax Adjustment Sum shall be the amount determined as at the date of termination of the Letting in accordance with the following formula:-

$$\frac{A \times B}{500 - (5 \times B)}$$

where:

A = the Tax Written Down Value of the Goods in question as at the end of the immediately preceding accounting period of the Lessor less the amount of any Sale Proceeds which have been realised provided that if A would otherwise be negative it shall be taken to be zero; and

B = the weighted average rate of corporation tax applicable to the accounting period of the Lessor in which the sale occurs (or if such rate is not known the rate which would be such average rate if the rate of corporation tax most recently fixed was applicable to all relevant accounting periods for which no such rate has been fixed).

4.8 Any calculation of the Lessor's net after tax rate of return for the purposes of this Clause 4 shall take into account all reasonable expenses (of whatever nature) incurred or to be incurred by the Lessor in calculating, administering, collecting or making (as appropriate) any additional rental or rebate of rental payable pursuant to the provisions of this Clause 4.

4.9 The Lessor may at its sole discretion postpone the calculation of and/or payment or repayment of any additional rental or rebate of rental payable pursuant to the provisions of this Clause 4 until a date chosen by the Lessor on or before the expiry of six months after the Letting of all of the Goods under this Lease has been terminated or expired. Any calculation of such additional rental or rebate of rental by the Lessor shall take into account any postponement of the date for payment of such sum(s) pursuant to the provisions of this clause.

4.10 If the Lessor so determines (in its sole discretion) no rebate of rental or no additional rental (as applicable) shall be due pursuant to this Clause 4 if the aggregate amount of such rebate of rental or additional rental would in the Lessor's reasonable estimation, be less than 1% of the Cost of the Goods in the Appendix to a Schedule.

4.11 Without prejudice to the Lessor's right to pass title in the Goods to a third party for the purpose of calculating the Lessor's net after tax rate of return from this Lease:

(i) no account shall be taken of the effect on such rate of return of a sale by the Lessor to a third person of all or any of the Goods during the Letting of such Goods;

(ii) even if the Lessor or any person for whom the Lessor was acting as agent ("the Principal") in entering into this Schedule is not the owner of the Goods it shall be assumed that the Lessor or (if applicable) the Principal claimed and retained all capital allowances to which they would have been entitled in respect of the Goods had the Lessor or (if applicable) the Principal been the owner of them.

4.12 The Lessor has further assumed that any payments made by the Lessor to the Lessee pursuant to this Lease will be allowed as a revenue expense in computing for tax purposes the chargeable profits of the Lessor. In the event that this assumption proves incorrect the Lessee shall pay to the Lessor by way of indemnity such amounts as the Lessor shall conclusively certify in writing to the Lessee to be the amount which will leave the Lessor with the same net after tax rate of return from this Lease as the Lessor would have obtained if such assumption had been correct.

4.13 The Lessee shall (from time to time on request) furnish to the Lessor (and to any other person who may be empowered by law to require the same) such information, records or other documents as may be required of the Lessee which the Lessee has or can reasonably obtain about the Letting or the use to which any of the Goods has been put.

4.14 The Lessee is not entitled to claim or if entitled will not claim capital allowances on the Goods irrespective of the accounting treatment adopted by the Lessee.

5 Location Use and Maintenance of Goods

5.1 The Goods shall be kept in the sole possession of the Lessee at the Location or (in the case of Vehicles) based at the Location and except for Vehicles shall not be removed without the prior written consent of the Lessor. Vehicles may be removed from the United Kingdom for a period not in excess of 28 days.

5.2 The Lessee shall use the Goods in a proper manner and in accordance with any operating instructions issued by the manufacturer or supplier of the Goods and not make or allow to be made any changes to the Goods or use or allow them to be used in any manner which would invalidate any manufacturer's warranty.

- 5.3 The Lessee shall not use or permit any use of the Goods for any purpose for which they are not expressly designed or reasonably suitable or in any manner contrary to any statute or regulation or (in the case of Vehicles) for rallying or any other form of motor sport or for the carriage of persons or property for hire or reward.
- 5.4 The Lessee shall at all times keep or procure the Goods are kept in good repair and condition and in working order and shall, at its own expense, replace all worn and damaged parts thereof. For this purpose, the Lessee shall carry out or procure the carrying out of routine maintenance in accordance with the manufacturers stipulated programme (if there is one) and by its recommended service agents.
- 5.5 The Lessee shall at its own expense make any alterations or modifications to the Goods required to be made under any statutory enactment and if requested give written notification thereof to the Lessor. The Lessee shall pay all licence duties, fees, taxes and impositions in respect of the Goods and the Letting and keep the Goods free from all liens. If any such liability shall be discharged by the Lessor, the Lessee shall repay the Lessor on demand with interest calculated at the Interest Rate from the time of the same having been discharged until such repayment.
- 5.6 The Lessee shall indemnify the Lessor in respect of any claims made against the Lessor and all damages, costs and expenses suffered or incurred by the Lessor in respect of any damage caused to any land or building by the affixing to or removal there from (whether such affixing shall be effected by the Lessee or otherwise) of the Goods.
- 5.7 The Lessee agrees to indemnify and hold harmless the Lessor in respect of any claims made against the Lessor and against all damages, costs and expenses suffered or incurred by the Lessor in each case as a result of any claim made by a third party arising out of the state, condition or use of the Goods or in any way arising out of the Letting.

6 Ownership Plates and Inspection

- 6.1 The Lessee shall if the Lessor so requests, (at the Lessee's expense) attach to all or (at the Lessor's option) any of the Goods in a reasonably prominent position which does not interfere with the use of the Goods a plate showing the Lessor's name and address and stating that the Goods in question are leased from the Lessor and ensure that such plates are not covered up, removed obliterated or defaced.
- 6.2 The Lessor or its agents or representatives shall at all reasonable times have access to the Goods and the Lessee shall make available all necessary facilities to the Lessor for this purpose and grant or procure the granting of access to any premises in which the Goods may be located from time to time.

7 Prohibition against dealing with the Goods

- 7.1 The Lessee shall keep or procure that the Goods are kept free from distress, execution, diligence or other legal process and unless permitted to do so in writing by the Lessor not sell, sub-let, assign or transfer the Goods to any third party or otherwise dispose of any of them or attempt to do so.
- 7.2 The Lessee shall ensure that none of the Goods is or becomes affixed to any land or building.

8 Alteration to the Goods

The Lessee shall not make any material addition, alteration or modification to the Goods so as to reduce their value or attach any accessories thereto which cannot be removed without damaging or impairing the Goods. Any accessories so attached whether in breach of this provision or otherwise shall automatically, and without prejudice to any entitlement of the Lessor to damages, become the property of the Lessor.

9 Warranties and Notification

- 9.1 It is expressly agreed by the Lessee that no condition or warranty of any kind has been given on behalf of the Lessor in respect of the Goods, that all conditions warranties or other terms, express or implied, as to the fitness for any purpose or suitability of the Goods or otherwise are hereby expressly excluded (to the extent permitted by law) and that the Goods are not leased by the Lessor subject to the same.
- 9.2 The Lessee shall be entitled (so far as the Lessor is able to transfer the same) to the benefit of all conditions, warranties or other terms, express or implied, relating to the Goods given by the manufacturer or supplier of the Goods.
- 9.3 The Lessee warrants and represents to the Lessor on the date of this agreement and on the date of each Schedule (in reliance on which the Lessor agrees to each Letting) that:
- (i) the Lessee has corporate power to enter into and perform this agreement and every Schedule and has taken all necessary corporate and other action required by its standing orders or constitution to authorise the execution and performance of this agreement and each Schedule;
 - (ii) this agreement and each of the Schedules has been duly executed on behalf of the Lessee by a person or persons duly authorised to execute such agreements;

- (iii) all the obligations of the Lessee under this agreement and every Schedule are legally valid and binding obligations of the Lessee fully enforceable in accordance with their respective terms;
- (iv) the Lessee will not by executing or performing this agreement or any Schedule breach any agreement, any order of a court or any provision of its constitution or standing orders or exceed any limitation on the powers of its members;
- (v) all consents, licences, approvals, exemptions and favourable opinions necessary in order to enable the Lessee to execute and perform this agreement and every Schedule and to take any action contemplated by this agreement or any Schedule have been obtained and are in full force and effect.

9.4 The Lessee shall notify the Lessor within 5 Working Days in writing and agrees to give to the Lessor such further information relating to the matter in question in such form and detail as the Lessor may reasonably require if at any time it appears from any written communication from an external auditor that (for any reason whatsoever), such external auditor is not satisfied:-

- (i) that this Lease, or the agreement for letting of any Goods pursuant to any Schedule, is an operating lease as defined in Regulation 20 of the Local Authorities (Capital Finance) Regulations 1997 (Statutory Instrument 1997 No 319) (as amended); or
- (ii) that it was or is within the powers of the Lessee to enter into this agreement and/or the Schedules or any of them or to perform all or any of the terms in this agreement and/or the Schedules or any of them; or
- (iii) that this agreement or the Schedules or any of them have been properly and validly executed by the Lessee so as to bind the Lessee.

10 Insurance and Total Loss

10.1 The Lessee shall insure the Goods against such risks and generally on such terms as is the practice of the Lessee from time to time with regard to similar goods and shall keep any Vehicles insured to at least the minimum standard required by law with an insurance company of good repute and the Lessee shall be responsible for loss or damage to the Goods so far as such loss or damage is not covered by effective insurance.

10.2 Any insurance monies other than those relating to third party liability shall be applied in making good any damage to the Goods except in the case of Total Loss when the provisions of Clause 10.3 shall apply. If the Lessee is in default of any obligation under this Lease, such insurance monies may, at the option of the Lessor be applied first in or towards payment of amounts then owing by the Lessee to the Lessor.

10.3 If during the Letting, or in respect of any of the Goods which are in the possession or control of the Lessee after the expiry or termination of the Letting, any of the Goods become the subject of a Total Loss the Lessee shall:

- (i) promptly notify the Lessor of that fact; and
- (ii) pay to the Lessor within 28 days a sum equal to the Termination Payment together with a sum equal to the estimated value (as determined by the Lessor) which such Goods would have had at the end of the Rental Term but for the Total Loss assuming that the Lessee complied with all of its obligations under this Lease in respect of such Goods

whereupon the Letting of such Goods shall terminate (but without prejudice to the Lessor's rights against the Lessee) and the Rent payable in respect of any Goods the Letting of which continues hereunder shall be reduced by such proportion as the Cost of the Goods the subject of the Total Loss bears to the total cost of all Goods to which the Rent relates.

10.4 Until the Termination Payment referred to in Clause 10.3(ii) has been received by the Lessor the obligations of the Lessee under this Lease shall continue in all respects and in particular the Lessee shall continue to pay Rent in respect of the applicable Goods.

10.5 If the Lessee shall fail to pay any premiums required to be paid under Clause 10.1 the Lessor may pay the same and the Lessee shall reimburse the Lessor forthwith upon receipt of the Lessor's written demand.

11 Property in the Goods

The Goods shall at all times remain the sole and exclusive property of the Lessor and the Lessee shall not do or permit to be done anything which could prejudice or jeopardise the rights of the Lessor in respect of the Goods.

12 Termination for Default

12.1 It is a condition of this Lease that none of the following events shall occur:

- 12.1.1 the Lessee's failure to pay any Rent or any other sum due hereunder or under a Schedule within three days of its due date;
- 12.1.2 the Lessee not observing or performing any term of this Lease or any of its obligations under this Lease other than referred to in Clause 12.1.1 and (if the breach is capable of being remedied) the breach in question continues unremedied for fourteen days after written notice of it has been given to the Lessee;

- 12.1.3 the failure of the Lessee to do or the Lessee allowing to be done any act or thing which in the Lessor's opinion may materially jeopardise any of its rights in relation to any Goods; and
- 12.1.4 any statement, representation or warranty on which the Lessor has relied or which induced the Lessor to enter into this Lease or which is made in this Lease or any certificate, statement or notice delivered or made pursuant to or in anticipation of this Lease, being or becoming, in any respect which the Lessor thinks material, incorrect

and if any such event shall occur the Lessor shall be entitled to treat the same as a repudiation by the Lessee of its obligations hereunder and the remaining provisions of this Clause 12 (other than Clause 12.2) shall apply.

12.2 If any of the following events shall occur:

- 12.2.1 any process of execution, diligence or distress being levied on or sued out against the Goods or any property of the Lessee and not being discharged within seven days;
- 12.2.2 a receiver or other encumbrancer is appointed in respect of all or any of the Lessee's revenues or assets;
- 12.2.3 any change in any applicable law or regulation or in the interpretation thereof shall make it unlawful for the Lessor or the Lessee to maintain or give effect to their respective obligations hereunder;
- 12.2.4 any obligation of the Lessee under any material hire purchase or credit or conditional sale or lease agreement or any loan, debt, or other financial obligation of the Lessee not being paid at maturity or when due or if the same shall become due prior to its specified maturity by reason of default, or if the Lessee shall fail to meet its obligations under any guarantee or indemnity when properly called upon to do so;
- 12.2.5 the Lessee contravening any authorisation or approval obtained by it in connection with this Lease or such an authorisation or approval being withdrawn for any reason; and
- 12.2.6 any such event as is mentioned in Clause 9.4 unless within such period as the Lessor may allow (not being less than 5 Working Days after the Lessor gives notice to the Lessee referring to this Clause 12.2.6) the Lessor shall be satisfied in its absolute discretion that notwithstanding such event this Lease and each Schedule is and will remain valid, lawful, within the powers of the Lessee, and binding on the Lessee

such event shall, if and to the extent that it constitutes a breach by the Lessee of any of its obligations hereunder, be deemed to be such a breach as is referred to in Clause 12.1.2 which is not capable of being remedied and, if it does not, the following provisions of this Clause 12 shall apply.

12.3 If a Termination Event occurs then whether or not the Lessee has notified the Lessor of the same and even if the Lessor accepts any Rent or other sums thereafter the Lessor may by notice in writing to the Lessee forthwith and for all purposes terminate the Letting of all or any of the Goods and all or any agency appointments contained in this Lease.

12.4 If the Letting of any of the Goods is terminated pursuant to Clause 12.3 (in this clause "the Relevant Goods") then the Lessee:

12.4.1 will no longer be in possession of the Relevant Goods with the Lessor's consent and the Lessor may (either itself or acting by its agent) immediately repossess them;

12.4.2 shall give the Lessor all reasonable assistance to locate and repossess the Relevant Goods including without limitation the provision of such evidence as the Lessor may reasonably require to enable the Lessor to identify the Relevant Goods;

12.4.3 shall on demand pay to the Lessor all its costs and expenses of and incidental to such termination and the location recovery or attempted recovery of the Relevant Goods and the collection of sums due hereunder;

12.4.4 shall pay all Rent and other sums whatsoever which are then due to the Lessor hereunder but unpaid, with interest at the Interest Rate; and

12.4.5 shall as agreed compensation for the Lessor's full financial loss, forthwith on the Lessor notifying the amount thereof to the Lessee pay to the Lessor a sum equal to the Termination Payment

and the Rent payable in respect of any Goods the Letting of which is not terminated pursuant to Clause 12.3 shall be reduced by such proportion as the Cost of the Relevant Goods bears to the total Cost of all Goods to which the Rent relates.

12.5 The Lessee acknowledges that as a consequence of the nature of the arrangements between it and the Lessor it will not be appropriate for the Lessor in the event that the Letting of any of the Goods is terminated pursuant to Clause 12.3 to apply the Sale Proceeds or value of the Relevant Goods in or towards satisfaction of the Lessee's obligations under this Lease.

12.6 No demand or payment under Clause 12.4.5 shall prejudice any rights or obligations of either party to the other in relation to matters other than non-payment of Rent.

13 Expiry

- 13.1 The Letting of the Goods will expire, unless terminated earlier, on the last day of the applicable Rental Term.
- 13.2 On expiry of the Letting of any of the Goods the Lessee shall at the option of the Lessor:-
- (i) forthwith return the Goods to the Lessor at the Lessee's own risk and cost to such address in the United Kingdom as the Lessor shall require together with any maintenance or service records and any registration documents; or
 - (ii) store the Goods in a suitable place and in reasonably protective conditions at the Location for a period not exceeding 180 days at the expense of the Lessee and ensure that during any such period or periods the Goods are not used, modified or in any way interfered with and at the end of such period or periods the Lessee shall return the Goods to the Lessor on the terms set out in Clause 13.2 (i) above; or
 - (iii) act as the Lessors agent to sell the Goods on the terms set out in Clause 14.
- 13.3 For the avoidance of doubt the Lessor need not exercise the same option under Clause 13.2 in respect of all of the Goods comprised in the same Schedule.
- 13.4 On expiry or termination of the Letting of any of the Goods the Lessee shall ensure that the Goods are in good working order and condition (fair wear and tear only excepted) consistent with the performance of the Lessee's obligations hereunder.
- 13.5 On expiry or termination of the Letting of any Vehicles the Lessee shall in addition to and without prejudice to its other obligations under this Lease (including without limitation the obligations set out in Clause 13.4) ensure that they are free of accident damage, in a roadworthy condition, fully maintained and serviced, comply with all laws and regulations for use on the road in the United Kingdom for the purpose for which they were designed and in particular:
- (i) have a Department of Transport Test Certificate VTG5 or equivalent valid for not less than six months commencing on the date of the return or sale;
 - (ii) have current certification required for legal operation;
 - (iii) have tyres of radial quality with at least the minimum legal depth of tread plus 2 mm;

- (iv) are complete to the original specification as at the commencement of the Rental Term, with no modifications other than those required or authorised pursuant to this agreement;
- (v) have no body or cab damage (fair wear and tear excepted), and have uniform paintwork of good quality with no livery or similar markings;
- (vi) have no mechanical damage (fair wear and tear excepted), and no parts requiring immediate replacement;
- (vii) any tail-lift, refrigeration equipment, crane or other ancillary equipment is complete and in full working order;
- (viii) in the case of an insulated vehicle, have no damage to the body insulation which impairs the efficiency of temperature control; and
- (ix) in the case of a tanker, the tank(s) are clean, purged and gas-free.

13.6 The vehicle will be examined at the Lessee's expense by an engineer employed or nominated by the Lessor, together with an engineer employed or nominated by the Lessee. The Lessee acknowledges that the signature of such employee or nominee of the Lessee agreeing and accepting any faults that may be determined at such examination will be binding upon the Lessee.

13.7 In the event that on expiry or termination of the Letting of any Goods those Goods are not in a condition which complies with the provisions of Clause 13.4 and, if applicable, Clause 13.5, the Lessee shall pay to the Lessor a sum which in the Lessor's reasonable opinion compensates the Lessor for the Lessee's failure to meet the return conditions provided for in such clauses.

13.8 On expiry or termination of the Letting of any of the Goods or on the return of any of the Goods to the Lessor under this Clause 13 or Clause 14.8 the Lessee shall upon request by the Lessor provide to the Lessor such evidence as the Lessor may reasonably require to enable the Lessor to identify the Goods.

14 Sales Agency

14.1 On expiry of the Letting of any of the Goods and provided the Lessee has not at any time defaulted in the terms of this Lease the Lessee shall if the Lessor so elects pursuant to the terms of Clause 13.2 (iii), use its best endeavours to sell such Goods to a person or persons not being a Connected Person(s) as agent for the Lessor subject to the terms and conditions of Clauses 14.2 to 14.10 (inclusive). Notwithstanding the foregoing, unless the Lessor otherwise agrees, the Lessee shall not be entitled to act as sales agent of the Lessor under this Clause 14 if it has at any time defaulted in its performance of any of the terms of this Lease.

- 14.2 Any sale pursuant to this Clause 14 shall (unless the Lessor expressly consents in writing to the contrary) be at a price not less than the greater of open market value or a sum notified by the Lessor to the Lessee.
- 14.3 Any sale pursuant to this Clause 14 shall be on terms that no representations shall be made and no condition, warranty or other representation shall be given (other than a warranty that the Lessor will pass such title to the Goods as was passed to it).
- 14.4 The Lessee shall indemnify the Lessor against any loss, liability, damage, cost, expense or demand whatsoever which the Lessor may suffer or incur as a result of any claim being made against the Lessor in respect of any Goods following a sale pursuant to this Clause 14.
- 14.5 The Lessee shall notify to the Lessor the name and address of any purchaser(s) to which the Lessee has sold any Goods as agent of the Lessor pursuant to this Clause 14 and the applicable sale price by promptly sending to the Lessor a copy of the applicable sale invoice stating such information and shall account to the Lessor for the full amount of the Sale Proceeds within 28 days of the sale.
- 14.6 The Lessor may at any time terminate the sale agency contained in this Clause 14 in respect of all or any of the Goods on giving 7 day's notice to the Lessee or by notice forthwith if the Lessee has breached any of its obligations under this Clause 14 or under any other term of this Lease.
- 14.7 If any Goods have not been sold by the Lessee as agent for the Lessor within 180 days after the date of expiry of the Letting of such Goods the Lessee shall promptly notify the Lessor in writing whereupon (unless the Lessor informs the Lessee to the contrary) the sale agency in respect of such Goods shall expire.
- 14.8 If the sales agency contained in this Clause 14 terminates for any reason whatsoever or expires the Lessee shall forthwith return the Goods in the condition specified in Clause 13.4 and, if applicable, 13.5. In the event that they are not returned in such condition the provisions of clause 13.6 shall apply.
- 14.9 Any Sale Proceeds held by the Lessee pending payment to the Lessor shall be held on trust by the Lessee for the Lessor.
- 14.10 It is confirmed that the Lessee's obligations to insure the Goods and all the other obligations of the Lessee capable of subsisting until sale with respect to the Goods, under the terms of this Lease shall continue until the Goods have been sold in accordance with the terms of this Clause 14 or redelivered to the Lessor.

15 Interest for Late Payment

- 15.1 Without prejudice to all other rights and remedies of the Lessor any payment due from the Lessee to the Lessor under this Lease not received for cleared money value on the due date shall bear interest at the rate of 5% over Base Rate calculated on a day to day basis ("the Interest Rate") compounded quarterly from the due date. The Lessee shall on demand, pay to the Lessor the amount of such interest free from all deductions or withholdings of whatsoever nature. The interest payable shall not constitute a penalty but is a reasonable compensating payment for the Lessor's loss of income during the period of the Lessee's default.
- 15.2 All interest hereunder will be calculated on the number of days elapsed and on the basis of a 365 day year.

16 Rights and Waiver

- 16.1 This Lease shall not be varied and no right of the Lessor shall be waived otherwise than in writing duly executed by or for both parties. This Lease comprises the whole of the agreement between the Lessor and the Lessee relating to any Goods, all earlier agreements representations and understandings, written or oral, being superseded.
- 16.2 No right or remedy herein of or reserved to the Lessor excludes any other such right or remedy by law or equity provided or permitted, and each shall be in addition to every other right or remedy hereunder or hereafter existing and may be enforced concurrently therewith or from time to time.
- 16.3 No time, forbearance, delay or indulgence by the Lessor shown or granted to the Lessee shall in any way restrict or diminish the full rights of the Lessor hereunder or take effect as a waiver of any breach by the Lessee of any term of this Lease.

17 Notices

Any notice or demand to be given by either party to the other shall be given in writing and delivered or sent by hand or by first class postal service to the addressee at its registered office or principal address. Any such notice sent by post shall be deemed to have been delivered two Working Days after the date of posting. In proving service by post it shall be sufficient proof that an envelope containing the notice was properly addressed and posted as a pre paid letter by first class postal service.

18 General

- 18.1 This Lease shall be governed by and construed in accordance with English Law and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.

- 18.2 The Lessee shall not assign, transfer or make over this Lease or any of its rights, obligations or liabilities hereunder or any part thereof. If Parliament passes legislation obliging the Lessee to transfer or assign its liabilities, responsibilities and obligations hereunder or any or all of the Goods to another person, corporation, authority or other body, then the Lessor may by written notice forthwith and for all purposes terminate the Letting of all or any of the Goods and all or any agency appointments contained in this Lease but without prejudice to the rights of either party that may have accrued up to such date. The provisions of Clause 12.4 shall apply to such termination.
- 18.3 The Lessor shall be entitled to assign to any person its interest in this Lease and in the Goods whether absolutely or by way of charge and whether in whole or in part. The Lessee additionally acknowledges that, in entering into this Lease and any Schedule, the Lessor may be acting as agent for a third party ("herein the Owner") and may cause title to the Goods comprised in any such Schedule to vest in the Owner. In signing this Lease, the Lessee specifically consents to such agency relationships and confirms that it shall owe to the Owner all obligations to be performed by the Lessee under this Lease as if the Owner were named as the Lessor. All references in this Lease to the Lessor shall include a reference to the Owner, if different.
- 18.4 The Lessee shall indemnify the Lessor on demand against all costs and expenses inclusive of Value Added Tax incurred or expended by the Lessor and incidental to the execution and enforcement of any term of this Lease.
- 18.5 The Lessee agrees that if the Lessor so requests it will use reasonable endeavours to obtain confirmation from its external auditor within six months of the end of a financial year of the Lessee that any Schedules entered into during such year are operating leases as defined in Regulation 20 of the Local Authorities (Capital Finance) Regulations 1997 (Statutory Instrument 1997 No 319) (as amended).
- 18.6 The Lessee agrees to send to the Lessor a copy of its annual audited accounts within 7 days of such accounts being signed by the auditor of the Lessee and undertakes to provide the Lessor with such financial and other information about its financial state as the Lessor may from time to time request.
- 18.7 If a term of this Lease shall to any extent be invalid or unenforceable no other terms shall be affected by such invalidity or unenforceability.

AS WITNESS the hands of the duly authorised representatives of the parties the day
and year first above written

SIGNED by Name: *S. Mundy*

Signature: *S. Mundy*

duly authorised for and on behalf of

KBC Lease (UK) Limited

in the presence of:

Name:

Address:

.....

.....

.....

SIGNED by Name: *M. L. CHAPMAN*

Signature: *M. L. Chapman*

duly authorised for and on behalf of

Dorset Fire Authority

in the presence of:

Name: *Ian Cotter*

Address: *Dorset Fire & Rescue Service*

..... *Service Headquarters*

..... *Colliton Park*

..... *Dorchester DT1 4TB*

DRAFT A

FROM : _____
DIRECTOR OF FINANCE
Dorset Fire Authority

Date [_____]

Dear Sirs

I write with reference to the following agreements (jointly referred to as the "Leases"):

- 1 a Master Lease Agreement dated 8 November 2000 between KBC Lease (UK) Limited and Dorset Fire Authority; and
- 2 a Schedule to the Master Lease Agreement referred to above to be dated [_____] between KBC Lease (UK) Limited Dorset Fire Authority

pursuant to which goods ("the Goods") are to be leased to Dorset Fire Authority ("the Authority").

I certify to you as follows:

- (a) On behalf of the Authority I have today estimated that the termination value of the Goods will equal or exceed 10 per cent of the value of the Goods on the commencement date of the lease. I understand that termination value means the value, as estimated by the Authority on the commencement date, of the Goods on the date on which the lease is due to expire or terminate. In making these estimates I have taken into account:-
 - (i) the minimum rental term of the Leases are [_____] years;
 - (ii) the estimated useful life of the Goods is [_____] years; and
 - (iii) [any other relevant factors eg, estimates of technical officers/suppliers]
- (b) I have seen copies of the forms of the Leases and I understand that:-
 - (i) property in the Goods does not pass to the Authority;
 - (ii) no provision is made for an extension of the lease at less than market rates; and
 - (iii) the value of the Goods at the expiry or termination of the lease does not accrue directly or indirectly to the authority

I therefore confirm to you that the Leases are operating leases as defined in Regulation 20 of the Local Authorities (Capital Finance) Regulations 1997 (Statutory Instrument 1997 No 319).

I am sending you under cover of this Certificate copies of the minutes of the Authority and/or Committees of the Authority authorising the execution and delivery on behalf of the Authority of the Leases and this Certificate and specifying officers authorised to sign and/or deliver the Leases. The copy minutes have been certified by [].*

I have made all enquiries and obtained all advice necessary to enable me to issue this Certificate to you. I acknowledge that if you enter into the Leases you will do so in full reliance upon this Certificate. I am duly authorised to give this Certificate on behalf of the Authority by [Resolution etc., to be specified]*

Signed by

Signature

For and on behalf of Dorset Fire Authority.

*** NOTE :** Due account will be taken of the Authority's procedures and these will be altered to suit the Authority's circumstances.

AMENDMENT SCHEDULE TO MASTER AGREEMENT DATED: 8 November 2000

This schedule is by reference to and amends (where the content so admits) the terms and conditions of the Master Agreement referred to above and made between **KBC Lease (UK) Limited** and **Dorset Fire Authority**.

- Clause 6.1** Delete clause in its entirety and replace with 'The Lessee shall at all times keep records of the location of each item of the Goods. These records will be made available for the inspection of the Lessor at any reasonable time if so requested'
- Clause 8** Add at beginning of clause 'Without the Lessor's prior written permission'
- Clause 13.2 (i)** In line 2 after 'United Kingdom' insert '(within 150 miles of the boundaries of the operating area of Dorset Fire Authority)'
- Clause 13.2 (ii)** In line 2 delete '180 days' and replace with '90 days'
- Clause 13.5 (i)** In line 1 after 'equivalent' insert '(unless exempt)'.
In line 2 delete 'six' and replace with 'four'
- Clause 13.6** In line 1 delete 'at the Lessee's expense' and in line 3 after 'Lessee' insert 'with each party being responsible for their own costs'.

It is hereby understood and agreed that this schedule shall be read and construed in accordance with and be deemed to be incorporated in the Master Agreement dated 8 November 2000 made between the undersigning parties.

Dated: 8 November 2000

SIGNED by

Name: *S. MUNDAY*

Signature: *S. Munday*

for and on behalf of
KBC Lease (UK) Limited

in the presence of

Name:

Address:

.....

.....

.....

SIGNED by

Name: *M L CHAPMAN*

Signature: *[Signature]*

for and on behalf of
Dorset Fire Authority

in the presence of

Name: *Ian Gottle*

Address: *Dorset Fire & Rescue Service*

Service Headquarters

Wilton Park

Dorchester DT1 1PS