

£2,000,000 On Demand Facilities Agreement

Dated

19 August 2010

Metals Exploration PLC (as Borrower) (1)
Solomon Capital Limited (as Lender) (2)

16 August 2010
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THIS AGREEMENT is dated

19 August 2010 and made between:

- (1) **METALS EXPLORATION PLC** (Company No: 05098945, a company incorporated in England and Wales as borrower (the "**Borrower**")); and
- (2) **SOLOMON CAPITAL LIMITED** as lender (the "**Lender**")

IT IS AGREED as follows:

SECTION 1

INTERPRETATION

1 Definitions and Interpretation

1.1 Definitions

In this Agreement:

"**Accounting Principles**" means in respect of any person, generally accepted accounting principles in accordance with the relevant GAAP in its jurisdiction of incorporation, including IFRS.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Assignment Agreement**" means an agreement in any form agreed between the relevant assignor and assignee.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Availability Period**" means the period from and including the date of this Agreement to and including the date falling one month prior to the applicable Termination Date.

"**Available Commitment**" means, on any date, such portion of the Lender's Commitment under the Facility as is available for utilisation, calculated in accordance with Clause 5.3(b):

- (a) the amount of any outstanding Utilisations under the Facility; and
- (b) in relation to any proposed Utilisation, the amount of any other Utilisations that are due to be made under the Facility on or before the proposed Utilisation Date.

"**Appropriate Material Contract**" means any agreement where the Borrower has contractual obligations in excess of £100,000.

"**Break Costs**" means the amount (if any) by which:

- (a) the interest which the Lender should have received for the period from the date of receipt of all or any part of a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;
exceeds:
- (b) the amount which the Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Certified Copy" means a copy of an original document which is certified by a director of the relevant Group Company as being a copy of that document.

"Charged Property" means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Closing Date" means the date on which the Lender notifies the Borrower that the conditions precedent referred to in Clause 4.1 have been satisfied or waived, as relevant.

"Commitment" means £2,000,000 to the extent not cancelled, reduced or transferred under this Agreement.

"Constitutional Documents" means the memorandum and articles of association of the Borrower in the agreed form.

"Convertible Loan Notes" means the convertible loan notes 2011 dated 1 August 2007 of the Borrower.

"Debenture" means the debenture or debentures (or equivalent) in agreed form executed or to be executed by each of the Obligors in favour of the Lender.

"Equity Fundraising" means any proposed equity fundraising by the Borrower and approved by the Lender whereby the Borrower intends to raise funds by way of a private placement of shares in the context of securing funds for the purpose of the Runruno Gold/Molybdenum Project.

"Facility" or "Facilities" means any facility or loan made available under this Agreement.

"Facility Office" means the office in the jurisdiction in which the Lender is resident for tax purposes.

"Finance Document" means this Agreement, any Transaction Security Document, any Utilisation Request and any other document designated as a "Finance Document" by the Lender and the Borrower.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds (but not trade instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of finance leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under the Accounting Principles);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of (i) an underlying liability (but not, in any case, Trade Instruments)

of an entity which is not a Group Company which liability would fall within one of the other paragraphs of this definition or (ii) any liabilities of any Group Company relating to any post-retirement benefit scheme;

- (h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the final Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

"Financial Year" means each calendar year ending on 31 December.

"Group" means the Borrower and each of its Subsidiaries for the time being and "Group Company" means any of them.

"Group Structure Chart" means the group structure chart in the agreed form.

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"IFRS" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"Intellectual Property" means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests, whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Group Company.

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 11 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (Default interest).

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

"Lender" means:

- (a) the Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 22 (Changes to the Lenders),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"Limitation Acts" means the Limitation Act 1980 and any other legislation in force for the time being in England and Wales relating to the time barring of claims.

"LMA" means the Loan Market Association.

"Loan" means any loan made or to be made available under this Agreement or, as the case may be, the principal amount outstanding for the time being of that loan.

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, property or condition (financial or otherwise) of the Borrower or of the Group taken as a whole;
- (b) the ability of an Obligor to perform its obligations under the Finance Documents;
- (c) the validity or enforceability of, or the effectiveness or ranking of, any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of the Lender under any of the Finance Documents.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month;

The above rules will only apply to the last Month of any period. "Monthly" shall be construed accordingly.

"Obligor" means a Borrower or any other person who grants Transaction Security.

"Offer Document" means an offer document relating to an offer by Solomon Capital Limited to the shareholders of the Borrower in respect of the purchase of shares in the Borrower.

"Original Audited Financial Statements" means in relation to the Borrower its consolidated audited financial statements for its financial year ended 31 December 2009.

"Original Financial Statements" means in relation to the Borrower the Original Audited Financial Statements and the Original Unaudited Financial Statements.

"Original Unaudited Financial Statements" means in relation to the Borrower its consolidated unaudited financial statements for its financial year ended 30 June 2009.

"Party" means a party to this Agreement.

"Perfection Requirements" means any and all registrations, filings, notices and other actions and steps required to be made in any jurisdiction in order to perfect security created by the Transaction Security Documents or in order to achieve the relevant priority for such Security.

"Permitted Disposal" means any sale, lease, licence, transfer or other disposal:

- (a) of assets in exchange for other assets comparable or superior as to type, value or quality;
- (b) of obsolete or redundant vehicles, plant and equipment for cash;
- (c) arising as a result of any Permitted Security;
- (d) of assets for cash in the ordinary course of business; and
- (e) of shares in any Subsidiary of the Borrower in the context of any amalgamation, demerger, merger, consolidation or corporate reconstruction.

"Permitted Financial Indebtedness" means

- (a) Financial Indebtedness arising under any Permitted Transaction; and
- (b) the Convertible Loan Notes.

"Permitted Security" means:

- (a) any Security granted pursuant to the Transaction Security Documents;
- (b) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any Group Company;
- (c) any netting, set-off or combination of accounts arrangement entered into by any Group Company in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of Group Companies but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of Group Companies which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of Group Companies which are not Obligors;
- (d) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Group Company in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Group Company;
- (e) any Security under netting or set-off arrangements under Treasury Transactions permitted by the Finance Documents; and
- (f) any Transaction Security, including cash collateral to secure obligations under the Finance Documents.

"Permitted Transaction" means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents; or
- (b) transactions (including , but not limited to, forward sales, royalty agreements and other agreements for the sale of molybdenum or gold conducted in the ordinary course of business on arm's length terms; or
- (c) any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of business activities of the Borrower and not for speculative purposes; or
- (d) any Permitted Disposal; or
- (e) the Project Financing Transaction; or
- (f) the Equity Fundraising.

"Project Financing Transaction" means any and all transactions entered into or to be entered into by the Borrower in the context of securing funding by way of debt for the purpose of the Runruno Gold/Molybdenum Project other than for the avoidance of any doubt any Equity Fundraising.

"Qualifying Lender" means:

a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
 - (i) a company resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (for the purposes of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act;
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (for the purposes of section 11(2) of the Taxes Act) of that company; or
- (d) a Treaty Lender.

"Quasi-Security" has the meaning given to that term in Clause 19.3 (Negative pledge).

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"Relevant Interbank Market" means the London interbank market.

"Relevant Jurisdiction" means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

"Repeating Representations" means each of the representations set out in Clause 17.2 (Status) to Clause 17.6 (Validity and admissibility in evidence) (inclusive), Clause 17.8 (No filing or stamp taxes), Clause 17.10 (No default), Clause 17.11 (No misleading information) to Clause 17.13 (Pari passu ranking) (inclusive) and Clause 17.15 (Centre of main interests and establishments).

"Runruno Gold/Molybdenum Project" means the construction and operation of a gold and molybdenum mine and a processing plant at Runruno in the Philippines.

"Secured Parties" means the Lender or any permitted transferee of the Lender from time to time party to this Agreement and any Receiver or Delegate.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Security Period" means the period starting on the date of this Agreement and ending on the date on which all of the liabilities of the Obligors under each Finance Document are irrevocably discharged in full and the Lender has no commitment or liability, whether present or future, actual or contingent, in relation to the Facility.

"Subsidiary" means in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Taxes Act" means the Income and Corporation Taxes Act 1988.

"Termination Date" means the date falling 120 days from the Utilisation Date.

"Trade Instruments" means any performance bonds, advance payment bonds or documentary letters of credit issued in respect of the obligations of any Group Company arising in the ordinary course of trading.

"Transaction Security" means the Security created or expressed to be created in favour of the Lender pursuant to the Transaction Security Documents.

"Transaction Security Documents" means any document required to be delivered to the Lender under Part 1B of Schedule 1 together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

"Transfer Date" means, in relation to an assignment or transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement; and
- (b) the date on which the Lender executes the relevant Assignment Agreement.

"Treasury Transactions" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"Treaty Lender" means a Lender which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected.

"Treaty State" means a jurisdiction having a double taxation agreement (a "Treaty") with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"Utilisation" means a utilisation of the Facility.

"Utilisation Date" means the date on which a Utilisation is made.

"Utilisation Request" means a notice substantially in the form set out in Part 1 of Schedule 2 (Utilisation Request).

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the "Lender", any "Obligor" or any "Party" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) a document in "agreed form" is a document which is previously agreed in writing by or on behalf of the Borrower and the Lender or, if not so agreed, is in the form specified by the Lender;
 - (iii) "assets" includes present and future properties, revenues and rights of every description;
 - (iv) a "Finance Document" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (v) "guarantee" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (vi) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vii) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (viii) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (ix) a provision of law is a reference to that provision as amended or re-enacted; and is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced whether before or after the date of this Agreement; and
 - (x) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.

(c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

(d) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.

1.3 Currency Symbols and Definitions

"£" and "sterling" denotes the lawful currency of the United Kingdom.

1.4 Third party rights

(a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or enjoy the benefit of any term of this Agreement.

(b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

SECTION 2
THE FACILITIES

2 The Facilities

2.1 The Facilities

Subject to the terms of this Agreement, the Lender makes available an on demand loan facility in £ Sterling in an aggregate amount equal to the Commitment.

2.2 Nature of this Agreement

- (a) This Agreement sets out the basis on which the Lender shall, subject to the terms and conditions of this Agreement, from time to time make facilities available to the Borrower.
- (b) The Facility may be amended and/or restated from time to time by agreement in writing between the Parties. The nature of the Facilities and of this Agreement may therefore change from time to time, even to the extent of becoming a new agreement fundamentally different from that which exists at the date of this Agreement and is evidenced by this document. Following any such amendment, it is intended that references to this Agreement shall be to this Agreement as so amended.

3 Purpose

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facilities for its working capital purposes.

3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement and shall not be responsible for, or for the consequences of, such application.

4 Conditions of Utilisation

4.1 Initial conditions precedent

- (a) The Lender will only be obliged to comply with Clause 5.4 (Lender's commitment) in relation to any Utilisation on or before the date of this Agreement, the Lender has received all of the documents and other evidence listed in Part 1A of Schedule 1 (Conditions Precedent), in form and substance satisfactory to the Lender (acting reasonably). The Lender shall notify the Borrower promptly upon being so satisfied.

4.2 Further conditions precedent

Subject to Clause 4.1 (Initial conditions precedent) the Lender will only be obliged to comply with Clause 5.4 (Lender's commitment) if on the date of the Utilisation Request and on the proposed Utilisation Date, all the representations and warranties in Clause 17 (Representations) or, in relation to any other Utilisation, the Repeating Representations, in any case to be made by the Borrower are true in all material respects.

4.3 Further Conditions Precedent to second Utilisation

The Lender will only be obliged to comply with Clause 5.4 (Lender's commitment) in respect of the second Utilisation if not less than 21 days has expired after the date of the Offer Document issued or to be issued by Solomon Capital Limited to the shareholder of the Borrower.

SECTION 3

UTILISATION

5 Utilisation

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 11am ~~two Business Days prior to~~ ~~the~~ the date of the proposed Utilisation. SSB

5.2 Completion of the Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (Currency and amount); and
 - (iii) the proposed Interest Period complies with Clause 11 (Interest Periods).
- (b) Only one Utilisation may be requested in each Utilisation Request and only two Utilisation Requests may be delivered.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be £ Sterling.
- (b) The amount of the proposed Utilisation must in the case of the first Utilisation be an amount not exceeding £1,500,000 and in the case of the second Utilisation must be an amount not exceeding £500,000 and in each case must be an amount not exceeding the Available Commitment.

5.4 Lender's commitment

If the conditions set out in this Agreement have been met, the Lender shall make each Loan available by the Utilisation Date through its Facility Office.

5.5 Cancellation of Commitment

On the last day of the Availability Period in relation to the Facility, all unutilised Commitments under the Facility will automatically be cancelled.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6 Repayment

6.1 Repayment of Loans

The Borrower shall repay the Loans in full within 30 days of written demand for repayment being made by the Lender.

6.2 Final repayment

Notwithstanding any other term or provision of this Agreement any Loans due, owing or incurred under this Agreement and not repaid or prepaid prior to the Termination Date shall be paid or repaid as the case may be on the Termination Date.

7 Illegality, Voluntary Prepayment and Cancellation

7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain the Utilisation:

- (a) the Lender, shall promptly notify the Borrower upon becoming aware of that event;
- (b) the Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay all Loans due, owing or incurred to the Lender hereunder within 30 days of such notification by the Lender to the Borrower.

7.2 Voluntary prepayment of Loans

The Borrower may, if it gives the Lender not less than ten Business Days' (or such shorter period as the Lender may agree) prior notice, prepay on any Business Day the whole or any part of the Loan (but, if in part, being an amount that reduces the principal amount of that Loan by a minimum amount of £100,000).

7.3 Late Payment Fee

If all or any part of the Loan is not repaid when due the Borrower will forthwith on demand by the Lender pay to the Lender a fee equal to three per cent (3%) of the amount of the Loan due to be repaid and not repaid.

7.4 Termination on voluntary prepayment

If all of the Loan is prepaid under Clause 7.2, the Facilities and all other obligations and liabilities of the parties to this Agreement and the other Finance Documents shall terminate on the date of prepayment.

8 Restrictions

8.1 Notices of Cancellation or Prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (Illegality, Voluntary Prepayment and Cancellation) shall (subject to the terms of that Clause) be irrevocable and, unless a contrary indication appears in this Agreement, any such notice shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

8.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and subject to any Break Costs in addition to any other fees, costs or expenses payable in respect of any such prepayment under this Agreement.

8.3 No reborrowing of Facilities

The Borrower may not reborrow any part of a Facility which is prepaid.

8.4 Prepayment in accordance with Agreement

The Borrower shall not repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

8.5 No reinstatement of Commitments

No amount of the Commitments cancelled under this Agreement may be subsequently reinstated.

SECTION 5
COSTS OF UTILISATION

9 Interest

9.1 Calculation of interest

- (a) The rate of interest on each Loan for each Interest Period is ten per cent (10%) per annum.

9.2 Payment of interest

The Borrower shall pay accrued interest on any Loan on the last day of each Interest Period.

9.3 Default interest

- (a) If the Borrower fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at the rate of fifteen per cent (15%) per annum.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

10 Interest Periods

10.1 Selection of Interest Periods and Terms

- (a) Unless otherwise agreed by the Lender in writing the Interest Period applicable to each Loan hereunder will be one Month.
- (b) An Interest Period for a Loan shall not extend beyond the applicable Termination Date.
- (c) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

10.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10.3 Break Costs

The Borrower shall, within three Business Days of demand by the Lender, pay to the Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

11 Fees

11.1 Arrangement fee

The Borrower shall pay to the Lender on the first Utilisation Date an arrangement fee computed at the rate of 2.00 per cent of the Utilisation made on that date and shall pay to the Lender on the second Utilisation Date an arrangement fee computed at the rate of 2.00 per cent of the Utilisation made on that date.

11.2 Closing Date

The Borrower irrevocably authorises the Lender to deduct from the first Utilisation in respect of the Facilities all fees (including legal fees), costs and expenses payable on or before the Closing Date in accordance with this Agreement.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

12 Tax Gross-up and Indemnities

12.1 Definitions

- (a) In this Agreement:

“**Tax Credit**” means a credit against, relief or remission for, or repayment of, any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

“**Tax Payment**” means either the increase in a payment made by the Borrower to the Lender under Clause 13.2 (Tax gross-up) or a payment under Clause 13.3 (Tax indemnity).

Unless a contrary indication appears, in this Clause 13 a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower to the Lender shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due to the Lender if no Tax Deduction had been required.
- (d) If the Borrower is required by law to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender evidence reasonably satisfactory to the Lender that the appropriate payment has been paid to the relevant taxing authority.

12.3 Tax indemnity

- (a) The Borrower shall (within ten Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on the Lender:

- (A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for Tax purposes; or
- (B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

- (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 12.2 (Tax gross-up).

- (A) The Lender shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

12.4 Tax Credit

If the Borrower makes a Tax Payment and the Lender determines acting in good faith that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and
- (b) the Lender has obtained that Tax Credit,

the Lender shall as soon as reasonably practicable pay an amount to the Borrower which the Lender reasonably determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower. Provided that if the Borrower requests the Lender, in writing, to make an application for relief (whether in whole or in part) in respect of any deduction or withholding required by law pursuant to the provisions of a double tax treaty, the Lender shall (at the cost of the Borrower) take such action as the Borrower shall reasonably request to make such application to an applicable tax authority. If the Lender subsequently obtains a repayment (whether in whole or in part) of such deduction or withholding from that tax authority in circumstances where the Borrower has made a Tax Payment under this Clause 13 the Lender shall pay to the Borrower such amount as will leave the Lender in no better and in no worse position than the Lender would have been in if the Tax Payment had not been required.

12.5 Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify the Lender against any cost, loss or liability the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 VAT

- (a) All consideration expressed to be payable under a Finance Document by the Borrower to the Lender shall be deemed to be exclusive of any VAT. If VAT is chargeable on any supply made by the Lender to the Borrower in connection with a Finance Document, the Borrower shall pay to the Lender (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT upon receipt of a valid VAT invoice or in respect of non-UK VAT other evidence that the Lender has been obliged to account for VAT in respect of that supply in accordance with applicable law.
- (b) Where a Finance Document requires the Borrower to reimburse the Lender for any costs or expenses, the Borrower shall also at the same time pay and indemnify the Lender against all VAT incurred by the Lender in respect of the costs or expenses to the extent

that the Lender reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of the VAT. Provided that if the Lender will pay to the Borrower an amount equal to any credit or repayment from the relevant tax authority which it reasonably determines relates to the VAT chargeable on that supply.

13 Increased Costs

13.1 Increased costs

(a) Subject to Clause 13.3 (Exceptions) the Borrower shall, within three Business Days of a demand by the Lender, pay to the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

(b) In this Agreement "Increased Costs" means:

- (i) a reduction in the rate of return from a Facility or on the Lender's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into the Commitment or funding or performing its obligations under any Finance Document.

13.2 Increased cost claims

(a) If the Lender intends to make a claim pursuant to Clause 13.1 (Increased costs) it shall promptly notify the Borrower.

(b) The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

(a) Clause 13.1 (Increased costs) does not apply to the extent any Increased Cost is:

- (i) attributable to a Tax Deduction required by law to be made by the Borrower;
- (ii) compensated for by Clause 12.3 (Tax indemnity);
- (iii) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation; or
- (iv) attributable to a change in the rate of tax on the overall net income of the Lender (or a parent company of it).

(b) In this Clause 13.3 reference to a "Tax Deduction" has the same meaning given to the term in Clause 12.1 (Definitions).

(A) Other Indemnities

13.4 Currency indemnity

(a) If any sum due from the Borrower under this Agreement (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

- (i) making or filing a claim or proof against the Borrower; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

14 Other indemnities

The Borrower shall, within three Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by it as a result of:

- (a) a failure by the Borrower to pay any amount due under this Agreement on its due date;
- (b) funding, or making arrangements to fund, its participation in a Utilisation requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); or
- (c) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by the Borrower;
- (d) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (e) the protection or enforcement of the Transaction Security and the exercise of any of the rights, powers, discretions and remedies vested in the Lender by the Finance Documents or by law and any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.

15 Mitigation by the Lender

15.1 Mitigation

- (a) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (Illegality), Clause 12 (Tax Gross-up and Indemnities) or Clause 13 (Increased Costs) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) The Borrower shall indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 15.1 (Mitigation).
- (b) The Lender is not obliged to take any steps under Clause 15.1 (Mitigation) if, in the opinion of the Lender (acting reasonably), to do so might be materially prejudicial to it.

