

**FIRST AMENDMENT TO THAT CERTAIN AGREEMENT OF
NOVEMBER 20, 2001 BY AND BETWEEN
THE GOVERNMENT OF SIERRA LEONE
AND
SIERRA RUTILE LIMITED**

THIS Agreement (hereafter referred to as the "**First Amendment Agreement**") is entered into this 4th day of February 2004, by and between the Government of the Republic of Sierra Leone (hereafter referred to as the "**Government**"), Sierra Rutile Limited, a company incorporated and existing under the laws of the Republic of Sierra Leone (hereafter referred to as the "**Company**") and SRL Acquisition No.3 Limited, a company incorporated under the laws of the British Virgin Islands ("**SRL No. 3**").

RECITALS

WHEREAS the Government and the Company entered into an agreement dated 20 November 2001 (the "**2001 Agreement**") pursuant to which the Government and the Company replaced the 1989 agreement between the Government and the Company; and,

WHEREAS, Clause 12 of the 2001 Agreement provided for the passing of legislation ratifying and confirming the 2001 Agreement to give it full force and effect; and,

WHEREAS, the 2001 Agreement was ratified by the Government by the passing of an Act of Parliament entitled *The Sierra Rutile Agreement (Ratification) Act, 2002*, which came into force on the 21st day of March 2002 (the "**2002 Act**"); and,

WHEREAS, pursuant to Clause 11(h) of the 2001 Agreement and 2002 Act, the Government and the Company may amend the 2001 Agreement and such amendment shall take effect without further ratification or confirmation by Parliament save to the extent that it may be inconsistent with any law in force in Sierra Leone at the time of amendment; and,

WHEREAS, to make the mining activity of the Company in Sierra Leone commercially viable, the Government and the Company entered into a Memorandum of Understanding dated 30 June 2003 (the "**2003 MOU**") pursuant to which the Government and the Company agreed to modify certain provisions of the 2001 Agreement to procure the transfer to the Government of up to thirty percent (30%) of the issued share capital in Sierra Rutile Holdings Ltd. ("**SRHL**") on the terms and conditions set forth therein; and,

WHEREAS the Company, the Government and SRL No. 3 are entering into this First Amendment Agreement to give effect to the 2003 MOU;

NOW THEREFORE, for the mutual consideration set out hereafter, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the Government, the Company and SRL No.3 enter into this First Amendment Agreement.

SECTION 1: DEFINITIONS

In this First Amendment Agreement, all terms used but not otherwise defined shall have the meaning given to them in the 2001 Agreement and 2002 Act.

For purposes of this First Amendment Agreement, "Government" means the Government of the Republic of Sierra Leone, including, but not limited to: all bureaus, agencies, ministries, port authorities, political subdivisions and other governmental or quasi-governmental entities of any kind.

SECTION 2: FISCAL AMENDMENTS TO 2001 AGREEMENT

The following new Clause 13 is hereby added to the 2001 Agreement:

"13. SUSPENSION OF PAYMENTS

Notwithstanding any other provision of this Agreement to the contrary, the Company and the Government hereby agree:

- (a) That for the period commencing on the date the Company notifies the Government in writing that the Company is starting its refurbishment of the SRL Project (the "Refurbishment Start Date") and ending on 31 December 2014 (the "Suspension Period") the only Payments (as defined below) the Company shall incur and be required to make will be those specified in Clause 13(b) of this Agreement. The Government hereby agrees that no Payments of any kind will be assessed against, accrue, or be incurred by, the Company, its owners, assigns, grantees, transferees or successors during the Suspension Period except those provided for in Section 13(b) below. For purposes of this Clause, "Payments" means all assessments, charges, contributions, co-payments, dues, duties, excise, expenses, fees, levies, NASSIT contributions, payments, rents, royalties, settlements with the Government requiring expenditure of any kind by the Company, taxes, or any other amounts of any kind whatsoever which the Company previously has agreed to, or has been obligated to expend, and any amounts assessed, charged, levied, imposed, or otherwise collected by, or paid or owing to the Government (including any ministry, port authority, subdivision, bureau, agency, and any other governmental or quasi-governmental entity of any type). The purpose of this provision is to cancel any outstanding monetary obligations the Company has to the Government up to Refurbishment Start Date to make the project economically viable. The suspension provided for herein shall not be treated as income nor constitute a sum against which the Government may assess any tax, fee, duty or other charge of any kind against the Company or any related entity.
- (b) The Company shall incur and make the following Payments during the Suspension Period and no others:

- (1) Taxes deducted from or by the Company from the emoluments of employees of the Company as required pursuant to the Income Tax Rules ("PAYE Taxes");
- (2) Withholding tax under Clause 6(f)(iii) of this Agreement;
- (3) Mining Rent under Clause 6(a)(1) of this Agreement;
- (4) Surface Rent under Clause 6(a)(2) of this Agreement;
- (5) Port Charges and Harbor Dues under Clause 11(p) of this Agreement;
- (6) Agricultural Development Fund payments under Clause 10(j) of this Agreement. However, that certain portion of the first sentence of said Clause 10(j), which reads:

"... make payment to the Agricultural Development Fund of the higher of US\$75,000 and 0.1% (one tenth of one percent) of gross sales free alongside ship the Sierra Leone port of shipment..."

shall now read:

"... make payment to the Agricultural Development Fund of the higher of seventy-five thousand United States dollars (US\$75,000.00) or one tenth of one percent (0.1%) of gross sales free alongside ship at the Sierra Leone port of shipment..."

- (7) Road users fuel levy under Clause 11(o) of this Agreement;
- (8) Import and export inspection fees under Clause 11(l) of this Agreement;
- (9) Under Clause 6(b), royalty in respect of each shipment of rutile and/or other titanium-bearing and associated minerals mined under the Mining Lease and sold by the Company at a rate of one-half of one percent (0.5%) of the gross sales price, free alongside the Sierra Leone port up to and including December 31, 2014. After December 31, 2014, the royalty shall revert to the rate provided in Clause 6(b)(1)(i) of this Agreement. The provisions of Clauses 6(b)(2) and 6(b)(3) of this Agreement shall apply to all Royalty payments under this Clause 13(b)(9).
- (10) Under Clause 6(c), in respect of each Financial Year during the Suspension Period, Income (Turnover) Tax at a rate of one-half of one percent (0.5%) of the amount of turnover of the business of the Company in such Financial Year, as such expression is defined in Clause 2 of the Income Tax Act. The Company may offset any future income (turnover) tax liability against any amount paid for the Financial Years ending 31 December 1995 and 31 December 1996. After the Suspension Period, Income Taxes shall be

assessed pursuant to the rates provided in Clause 6(c) of this Agreement.

- (11) Under Clause 6(g)(2), fuel import duty at a rate of one percent (1%) on imports of fuel other than petrol or kerosene.

SECTION 3: GOVERNMENT OPTION AND FOREBEARANCE AMOUNTS

The following new Clause 14 is hereby added to the 2001 Agreement:

“14. Clause 6(b)(ii) is hereby deleted. Clause 9 is deleted and superseded by the following:

GOVERNMENT OPTION AND FOREBEARANCE AMOUNTS

- (a) The option previously reserved in this Clause 9 of the repealed legislation for the Government to acquire forty-seven percent (47%) of the shares of the Company is hereby cancelled.
- (b) The Company and the Government hereby agree that the aggregate total amount of Payments due to the Government from the Company up to the Refurbishment Start Date (hereinafter, the “**Forbearance Liabilities**”) is and shall be irrevocably and unconditionally cancelled. The cancellation provided for in this Clause 9(b) shall not be treated as income nor constitute a sum against which the Government may assess any tax, fee, duty or other charge of any kind against the Company or any related entity.
- (c) The Government hereby irrevocably and unconditionally assigns to SRL No. 3 all its right, title and interest in, to, and under the future PAYE Taxes due from the Company to the Government in an amount not exceeding thirty-seven million United States dollars (\$37,000,000.00 USD)(the “**PAYE Amount**”). The assignment provided for in this Clause 9(c) shall not be treated as income to the Company or SRL No.3 nor constitute a sum against which the Government may assess any tax, fee, duty or other charge of any kind against the Company or SRL No.3.
- (d) In consideration of the foregoing assignment, SRL No. 3, hereby agrees to transfer up to a thirty percent (30%) equity interest in SRHL (the “**Shares**”) to the Government at the times and for the values specified in paragraph 14(e) below.
- (e) Within sixty (60) days of the end of a calendar year commencing on the Refurbishment Start Date, SRL No.3 shall transfer an amount of Shares to the Government equal in value to the PAYE Amounts accrued during such calendar year. The price per Share shall be calculated as follows:

$$\frac{Q}{P} \text{ where:}$$

Q = the PAYE Amount accrued during the applicable calendar year; and

$$P = \frac{37,000,000}{0.3x}$$

where x = the total number of shares then issued by SRHL

(f) SRL No.3 hereby represents and warrants to the Government that:

(i) (1) there is or shall be at the time of transfer, only one class of share issued in SRHL, and (2) SRL No. 3 owns at least thirty percent (30%) of the issued share capital in SRHL; and

(ii) during the period in which the Shares are being allocated to the Government hereunder, SRL No.3 hereby will not to take any action to increase or decrease the issued share capital in SRHL.

SECTION 4: ASSIGNMENT

Clause 11(b) of the 2001 Agreement is hereby amended to delete the words "... *such assignment to include all obligations under this Agreement to a Sierra Leone Corporation*" in the first sentence.

SECTION 5 GOVERNMENT SHARE TRANSFER

5.1 The Government agrees that it will not transfer or otherwise dispose of any of the Shares without: (i) first obtaining SRL No. 3's agreement, which agreement shall not be unreasonably withheld, and (ii) first offering the Shares to SRL No. 3 pursuant to Section 5.2 below.

5.2 The Government hereby grants to SRL No. 3 the right of first refusal to any Shares which the Government wishes to sell, gift, or otherwise dispose of. SRL No. 3 shall have the right to acquire the Shares under the same general terms and conditions of any bona fide offer. If any offer contains a non-cash component, the Government and SRL No. 3 shall agree on the net present cash value of such component. If they cannot agree, then the valuation shall be submitted to binding arbitration pursuant to Clause 11(i) of the 2001 Agreement and 2002 Act. SRL No. 3 must notify the Government in writing within thirty (30) days of a final valuation whether it will acquire the Shares (the "Share Notification"). Should SRL No. 3 decide not to acquire the Shares, then the Government shall be free to dispose of the Shares to the bona fide offeror under the same terms and conditions as those presented to SRL No. 3. The Government agrees that if such transaction is not completed within ninety (90) days of the Government's receipt of SRL No. 3's Share Notification, the Government will not dispose of the Shares without first offering them to SRL No. 3 under the procedure set out in this Section, it being the intent of the Government and SRL No. 3 that any disposition after SRL's share notification be done timely.

SECTION 6 CONTINUING VALIDITY OF 2001 AGREEMENT

The Company and the Government hereby agree that:

- (a) the 2001 Agreement shall remain in full and unvaried force and effect subject only to the amendments made by this First Amendment Agreement. If there is any inconsistency between the 2001 Agreement and this First Amendment Agreement, this First Amendment Agreement shall control; and
- (b) for the avoidance of doubt, nothing in this First Amendment Agreement extinguishes those advances paid by the Company to the Government but not yet applied by the Government in payment of the Company's liabilities under the 2001 Agreement or otherwise (the "Advance Payments"). The Company may apply the Advance Payments to reduce its liabilities under the 2001 Agreement as amended by this First Amendment Agreement.

SECTION 7 REPRESENTATIONS AND WARRANTIES OF THE GOVERNMENT

- (a) The Government hereby represents and warrants to the Company and SRL No. 3:
 - (1) it has duly authorized the execution and delivery of this First Amendment Agreement and has obtained all necessary consents in relation thereto;
 - (2) its obligations hereunder constitute its legal, valid and binding obligations, enforceable in accordance with its terms;
 - (3) nothing in this First Amendment Agreement is inconsistent with any law in force in Sierra Leone as of the date hereof; and
 - (4) it is not necessary to have this First Amendment Agreement ratified by an Act of Parliament to validate and make enforceable this First Amendment Agreement.

SECTION 8 GOVERNING LAW AND EFFECT

This First Amendment Agreement shall be governed by and construed in accordance with the laws of the Republic of Sierra Leone.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment Agreement as of this 4th day of February 2004 in the city of Freetown, Sierra Leone.

FOR THE GOVERNMENT OF SIERRA LEONE

M. Williams

WITNESS: A. A. Rogers

FOR SIERRA RUTILE LIMITED

[Signature]

WITNESS: [Signature]

FOR SRL ACQUISITION NO. 3 LTD.

[Signature]

WITNESS: [Signature]
