

**THIRD 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 "**Third Amendment Agreement**") is entered into this <sup>24</sup> day of August 2021, by and between the Government of the Republic of Sierra Leone (hereafter referred to as the "**Government**"), and Sierra Rutile Limited, a company incorporated and existing under the laws of the Republic of Sierra Leone (hereafter referred to as the "**Company**").

**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, but subject always to Clause 11(e)(3) of that Agreement and that 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** the Company, the Government and SRL Acquisition No. 3 Limited, a company incorporated under the laws of the British Virgin Islands ("**SRL No. 3**") entered into an agreement on 4 February 2004 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 third (30%) of the issued share capital in Sierra Rutile Holdings ("**SRHL**") on the terms and conditions set forth therein (the "**First Amendment Agreement**"); and,

**WHEREAS** the Company, the Government and SRL No. 3 entered into an agreement on 30 April 2012 pursuant to which the Government and the Company agreed to terminate the assignment by the Government in favor of SRL No. 3 of certain PAYE Taxes due from the Company and the corresponding Government entitlement to shares in SRHL, and that the PAYE Taxes which SRL pays shall be made to the Government commencing on 1 January 2012, on the terms and conditions set forth therein (the "**Second Amendment Agreement**"); and,

**WHEREAS** the Company and the Government have agreed to modify certain provisions of the 2001 Agreement relating to the payments to be made by the Company to the Government on and from 1 August 2021 on the terms and conditions set forth herein (the "**Third Amendment Agreement**"); and,

**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, and the Company enter into this Third Amendment Agreement.

## SECTION 1: DEFINITIONS

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

For the purposes of this Third Amendment Agreement, the following definitions are hereby added to the 2001 Agreement in relative alphabetical order:

**"Area 1 Mine"** means the area of the Mining Lease known, at the date of this Third Amendment Agreement, as "Area 1", which does not include, for the avoidance of doubt, the Sembehun Mine.

**"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.

**"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).

**"Sembehun Mine"** means the area of the Mining Lease to be developed by the Company and known, at the date of this Third Amendment Agreement, as "Sembehun".

**"Third Amendment Agreement date"** means the date on which this Third Amendment Agreement is executed by the Government and the Company."

## SECTION 2: ADJUSTMENT OF PAYMENTS

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

### "13A. FURTHER ADJUSTMENT OF PAYMENTS

Notwithstanding any other provisions of this Agreement to the contrary, the Company and the Government hereby agree that on and from 1 August 2021, the Company's obligation to make the Payments specified below, in respect of operations relating to or in connection with the Area 1 Mine only, shall be adjusted in accordance with this Clause 13A to make the Company's operations relating to or in connection with the Area 1 Mine economically viable:

- (1) Under Clause 6(c)(2) of this Agreement, turnover (minimum or revenue) tax for each Financial Year (or part thereof) will be assessed 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. After 31 July 2023, the turnover (minimum or revenue) tax rate for each Financial Year (or part thereof) shall revert to the rate provided in Clause 6(c)(2) of this Agreement, but only if the weighted average gross sales price for the three month period from 1 May 2023 to 31 July 2023 for shipments of standard grade rutile mined under the Mining Lease and sold by the Company exceeds US\$ 2,000 per ton;
- (2) Under Clause 6(b) of this Agreement, 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 will be assessed at a rate of one-half of one percent (0.5%) of the gross sales price,



free alongside the Sierra Leone port. The provisions of Clauses 6(b)(2) and 6(b)(3) of this Agreement shall apply to all Royalty payments under this Clause 13A(2);

- (3) Under Clauses 6(g)(1) and 11(l)(1) of this Agreement, Payments for customs duty and import inspections fees will be assessed at a rate of one-quarter of one percent (0.25%);
- (4) Under Clause 6(g)(2) of this Agreement, Payments for fuel import duty will be assessed at a rate of one percent (1.0%);
- (5) Under Clause 6(f) of this Agreement, no Payments for withholding tax assessed on interest and management fees paid by the Company to its shareholders;
- (6) Withholding tax for the purposes of section 117 of the *Income Tax Act 2000* will be assessed at a rate of one-half of one percent (0.5%); and
- (7) Under Clause 11(p)(2) of this Agreement, no Payments for Port charges and harbour dues.

To avoid doubt, the Government and the Company acknowledge and agree that:

- (a) the provisions of Clause 13A do not derogate from, and are in addition to, the benefits and protections in favour of the Company existing as at the Third Amendment Agreement Date, including those pursuant to Clause 11(e)(3) of this Agreement; and
- (b) the adjustments provided for herein shall not be treated as income nor constitute a sum against which the Government may assess Payments of any kind against the Company or any related entity."

### **SECTION 3: PAYMENT METHODOLOGY AND GOVERNMENT CONSULTATION**

For the purpose of implementing the adjustment of Payments referred to in Section 2 of this Third Amendment Agreement:

- (a) The Government and the Company have agreed a comprehensive assessment methodology to remove any doubt concerning the Company's obligation to calculate and make the Payments in accordance with Clause 13A of the 2001 Agreement. This assessment methodology is set out in the Schedule to this Third Amendment Agreement. In the event of an inconsistency between Section 2 of this Third Amendment Agreement and the Schedule to this Third Amendment Agreement, Section 2 shall prevail.
- (b) On and from the date of this Third Amendment Agreement, the Company shall:
  - (1) consult with the Government from time to time regarding any proposal to assign, directly or indirectly, all or any part of the Mining Lease to a third party, and provide such information as is reasonably requested by the Government during such consultation, including the identity and financial position of any proposed assignee; and
  - (2) not, without the prior written consent of an authorized representative of the Government, propose or commence a redundancy programme applying to employees designated as general staff of the Company, except where the redundancy programme is proposed to commence during a period in which the Company has, or will have, suspended production from the Mining Lease pursuant to a notice issued to the Minister of Mines and Mineral Resources pursuant to section 118(1) of the *Mines and Minerals Act 2009*.



#### **SECTION 4: CONTINUING VALIDITY OF 2001 AGREEMENT**

The Company and the Government hereby agree that the 2001 Agreement (as amended by the First Amendment Agreement and the Second Amendment Agreement), shall remain in full and unvaried force and effect subject only to the amendments made by this Third Amendment Agreement and any reference in the 2001 Agreement to "the Agreement" will be construed as a reference to the 2001 Agreement, or that provision, as amended by the First Amendment Agreement, Second Amendment Agreement, and this Third Amendment Agreement. If there is any inconsistency between the 2001 Agreement (as amended by the First Amendment Agreement and Second Amendment Agreement) and this Third Amendment Agreement, this Third Amendment Agreement shall prevail.

#### **SECTION 5: REPRESENTATIONS AND WARRANTIES OF THE GOVERNMENT**

The Government hereby represents and warrants to the Company that:

- (1) it has duly authorized the execution and delivery of this Third 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 Third Amendment Agreement is inconsistent with any law in force in the Republic of Sierra Leone as of the date hereof; and
- (4) it is not necessary to have this Third Amendment Agreement ratified by an Act of Parliament to validate and make enforceable this Third Amendment Agreement.

#### **SECTION 6: RATIFICATION AND EFFECTIVENESS OF THIS AGREEMENT**

- (1) Following execution of this Third Amendment Agreement, the Government will introduce and cause to be passed by no later than 31 October 2021 legislation for the purpose of ratifying and confirming this Third Amendment Agreement and implementing the terms hereof.
- (2) Subject to the proviso set out in this paragraph (2) of Section 6, this Third Amendment Agreement takes effect on the date that it is duly executed by the Government and the Company, provided that, to avoid doubt, the Company's rights and obligations with respect to the relevant Payments referred to in Section 2 of this Third Amendment Agreement take effect on and from 1 August 2021, being the basis upon which the Schedule to this Third Amendment Agreement has been prepared.

#### **SECTION 7: GOVERNING LAW AND EFFECT**

This Third Amendment Agreement shall be governed by and construed in accordance with the laws of the Republic of Sierra Leone, and such rules of international law as may be applicable.

The provisions of Clauses 11(c), 11(e), 11(h) and 11(v) of the 2001 Agreement shall apply mutatis mutandis to this Third Amendment Agreement as though those clauses were set out in this Third Amendment Agreement, as if references in those clauses to the 2001 Agreement were references to this Third Amendment Agreement.

#### **SECTION 8: ARBITRATION**

- (a) Notwithstanding any other provision of the 2001 Agreement, the First Amendment Agreement, or the Second Amendment Agreement, the parties shall attempt to resolve in good faith any dispute arising out of or in connection with the 2001 Agreement, the First Amendment



Agreement, the Second Amendment Agreement, or this Third Amendment Agreement (a "**Dispute**") through negotiation.

If the Dispute has not been settled by negotiation within 30 days following notification in writing by one of the parties to the other parties of the existence of the Dispute or within such other period as the parties may agree in writing, the Dispute shall be finally settled by way of arbitration in accordance with the remaining provisions of this Section 8.

- (b) Subject to Section 8(a) of this Third Amendment Agreement, the parties hereby consent to submit any Dispute to the International Centre for Settlement of Investment Disputes (the "**Centre**") pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**").

The parties hereby agree that, although the Company is a national of the Republic of Sierra Leone, it is controlled by a national of another Contracting State of the ICSID Convention and shall be treated as a national of another Contracting State for the purposes of the ICSID Convention.

The parties also hereby agree that the transaction to which the 2001 Agreement, the First Amendment Agreement, the Second Amendment Agreement, and this Third Amendment Agreement relate is an investment.

Any arbitration proceedings conducted pursuant to this Section 8(b) shall be held in London. The language of any arbitration conducted pursuant to this Section 8(b) shall be English.

Without prejudice to the power of the arbitral tribunal to recommend provisional measures, any party hereto may for the preservation of its rights and interests request any judicial or other authority to order any provisional or protective measures, including attachment, prior to the instigation of, or during, the arbitration proceedings.

- (c) If for any reason, a Dispute referred to the Centre pursuant to Section 8(b) of this Third Amendment Agreement cannot be decided on the merits, whether in whole or in part (in particular, but not exclusively, should the Centre refuse to register the request for arbitration or should the Centre or the arbitral tribunal find that it does not have jurisdiction to decide the Dispute, whether in whole or in part), then the Dispute (or that part of the Dispute which cannot be decided on the merits) shall be finally resolved under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules.

The seat of the arbitration shall be London.

The language of the arbitration shall be English.

- (d) The Government confirms that it can validly be a party to an arbitration. The Government therefore renounces and waives the right to contest the arbitrability of the Dispute and/or its ability to compromise or contest the validity of this Section 8 of this Third Amendment Agreement.

The Government hereby waives, both with respect to itself (including any of its agencies or instrumentalities) and to its property, any sovereign immunity from jurisdiction and/or execution to which it may be entitled.



**Schedule**

**Company Assessment Methodology**

Description of Tax and provision under the 2002 Act	Current Rate of Tax and Tax Base	Adjusted Rate of Tax under Third Amendment to SR Act	Relevant Amending Provision of Third Amendment Agreement	Period of application
Turnover (Minimum/Revenue) Tax (clause 6(c)(2))	3.5% of turnover	0.50%	Clause 13A(1)	From 1 August 2021. After 31 July 2023, the tax rate will revert to 3.5% but only if the weighted average gross sales price for the three month period from 1 May 2023 to 31 July 2023 for shipments of standard grade rutile mined under the Mining Lease and sold by the Company exceeds US\$ 2,000 per ton
Royalties (clause 6(b))	4% of gross sales	0.50%	Clause 13A(2)	From 1 August 2021
Customs Duty (including import inspection fees under clause 11(1)(1)) - (clause 6(g)(1))	6.50%	0.25% (Import Duty) 0.25% (Import Inspection Fees)	Clause 13A(3)	From 1 August 2021
Fuel Import Duty (clause 6(g)(2))	12.00%	1.00%	Clause 13A(4)	From 1 August 2021



Description of Tax and provision under the 2002 Act	Current Rate of Tax and Tax Base	Adjusted Rate of Tax under Third Amendment to SR Act	Relevant Amending Provision of Third Amendment Agreement	Period of application
Withholding Tax - Interest and Management Fees paid by the Company to its shareholders - (clause 6(f))	10.00%	0.00%	Clause 13A(5)	From 1 August 2021
Withholding Tax (Income Tax Act 2000, section 117)	5%, 10% (where there is a DTA)	0.50%	Clause 13A(6)	From 1 August 2021
Port charges and harbour dues (clause 11(p)(2))	\$1 per metric tonne of Rutile	0.00%	Clause 13A(7)	From 1 August 2021



IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment Agreement on the date specified at the beginning of this Agreement in the city of Freetown, Sierra Leone.

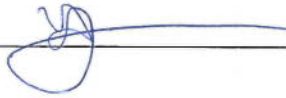
**FOR THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE**

  
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WITNESS:   
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J. I. Kanu

**FOR SIERRA RUTILE LIMITED**

  
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WITNESS:   
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