

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

THIS Agreement (hereafter referred to as the "**Second Amendment Agreement**") is entered into this 30 day of April 2012, 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 (hereinafter referred to as "**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 the Company, the Government and 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 thirty percent (30%) of the issued share capital in Sierra Rutile Holdings Limited ("**SRHL**") on the terms and conditions set forth therein (the "**First Amendment Agreement**"); and,

WHEREAS the Company, the Government and SRL No. 3 have agreed to terminate the assignment by the Government in favour of SRL No. 3 of certain PAYE Taxes due from the Company and the corresponding Government entitlement to shares in SRHL on the terms and subject to the conditions detailed herein; and,

WHEREAS the Company, the Government and SRL No. 3 have agreed that the PAYE Taxes which SRL pays shall be made to the Government commencing on 1 January 2012; 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, the Company and SRL No. 3 enter into this Second Amendment Agreement.

SECTION 1: DEFINITIONS

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

For purposes of this Second 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; and

"Commencement Date" means 1st January 2012.

SECTION 2: AMENDMENTS TO 2001 AGREEMENT

- 2.1 The parties hereby agree and acknowledge that pursuant to the 2001 Agreement and the First Amendment Agreement, the total amount of PAYE Taxes due from the Company between the Refurbishment Start Date, being 1 April 2005, and 31 December 2011 is US\$8,739,192 and that accordingly pursuant to Clauses 9(d) and (e) of the 2002 Act, this equates to 7,085 shares in SRHL. Accordingly, it is hereby agreed and acknowledged that the Company has duly paid and discharged all PAYE Taxes relating to such period and has discharged all obligations regarding the transfer of shares in SRHL in respect of such period.
- 2.2 The parties have agreed that with effect from the Commencement Date:
- a) all PAYE Taxes due from the Company shall be paid directly to the Government;
 - b) PAYE Taxes due (or to become due) from the Company for i) the period beginning on the Commencement Date and ending on 31 March 2012; and ii) the period beginning on 1 April 2012 and ending on 31 March 2014 shall be paid by the Company following signature of this Second Amendment Agreement;
 - c) the assignment by the Government in favour of SRL No. 3 of any right, title and interest in, to, and under any PAYE Taxes accruing on or after the Commencement Date shall terminate; and
 - d) the obligation of SRL No. 3 to transfer Shares in SRHL (and the corresponding right of the Government to acquire such Shares) shall terminate.
- 2.3 The 2001 Agreement (as amended by the First Amendment Agreement) shall be amended with effect from (and including) the date of this Second Amendment Agreement as follows:
- 1) Clause 9(c) of the 2001 Agreement is hereby deleted and replaced with the following language:

"The Government assigned 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 between the Refurbishment Start Date, being 1 April 2005, and 31 December 2011 in an amount of eight million seven hundred and thirty nine thousand one hundred and ninety two United States dollars (US\$8,739,192) (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."

- 2) Clause 9(d) of the 2001 Agreement is hereby deleted and replaced with the following language:

"In consideration of the foregoing assignment, SRL No. 3 transferred seven thousand and eighty five (7,085) shares in SRHL (the "SRHL Shares") to the Government at the times and for the values specified in Clause 9(e) below.

- 3) Clause 9(e) of the 2001 Agreement is hereby deleted and replaced with the following language:

"Within sixty (60) days of the end of a calendar year commencing on the Refurbishment Start Date or as otherwise agreed, SRL No. 3 transferred an amount of Shares to the Government equal in value to the PAYE Amounts accrued during such calendar year. The price per Share was 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"

- 4) Clause 9(f) of the 2001 Agreement is hereby deleted and replaced with the following wording:

"SRL No. 3 has transferred to the Government the number of SRHL Shares which are equal in value to the PAYE Amount calculated in accordance with Clause 9(e) and the Government's rights to acquire the SRHL Shares under this Clause 9 have therefore terminated. As and from that date the Government shall have no rights (residual or otherwise) to acquire any additional SRHL Shares and the obligation of SRL No. 3 to transfer Shares pursuant to Clauses 9(d) and (e) shall terminate."

- 5) A new Clause 9(g) is hereby added to the 2001 Agreement:

"The parties acknowledge and agree that as and from 1 January 2012 the PAYE Taxes which the Company pays in accordance with Clause 13(b)(1) shall be made directly to the Government. The parties further acknowledge and agree that the total PAYE Taxes due from the Company for the period beginning on 1 January 2012 and ending on 31 March 2012 (the "2012 PAYE Period") amount to

US\$612,599.22 (the "2012 PAYE Amount"). No later than seven (7) days following the date of the Second Amendment Agreement, the Company shall pay the 2012 PAYE Amount to the Government in full and final payment of the Company's PAYE Taxes for the 2012 PAYE Period. The Government shall not assess any late charge or penalty on PAYE Taxes which were due and payable by the Company from and including the Effective Date up to and including the end of the 2012 PAYE Period and the Company shall not be liable for any interest, charge or other penalty in respect of such sums."

- 6) A new Clause 9(h) is hereby added to the 2001 Agreement:

"Within seven (7) days following the date of the Second Amendment Agreement, the Company shall pay to the Government the further sum of US\$5,299,368.00 (the "PAYE Pre-payment Amount"). The parties acknowledge and agree that the PAYE Pre-payment Amount represents the parties' best estimate of the Company's total liability for PAYE Taxes for the period beginning 1 April 2012 and ending on 31 March 2014 (the "PAYE Pre-payment Period")."

- 7) A new Clause 9(i) is hereby added to the 2001 Agreement:

"If the Company's total liability in respect of PAYE Taxes for the PAYE Pre-payment Period (the "2012-2014 Actual PAYE Amount") is greater than the PAYE Pre-payment Amount, then the Company shall, within thirty (30) days following the end of the PAYE Pre-payment Period, pay to the Government the amount by which the 2012-2014 Actual PAYE Amount exceeded the PAYE Pre-payment Amount. If the 2012-2014 Actual PAYE Amount is less than the PAYE Pre-payment Amount, then the amount by which the PAYE Pre-payment Amount exceeded the 2012-2014 Actual PAYE Amount shall be offset against future PAYE Taxes due by the Company. The Government shall not assess any late charge or penalty on PAYE Taxes relating to the PAYE Pre-payment Period in the event that the 2012-2014 Actual PAYE Amount is greater than the PAYE Pre-payment Amount, and the Company shall not be liable for any interest, charge or other penalty in respect of such sums ",

and so that the rights and obligations of the parties relating to their performance under the 2001 Agreement, as amended, from (and including) the date hereof shall be governed by, and construed in accordance with the terms of this Second Amendment Agreement.

- 2.3 The parties agree that, with effect from (and including) the date hereof, they shall have the rights and assume the obligations ascribed to them under the 2001 Agreement as amended by the First Amendment Agreement and this Second Amendment Agreement.
- 2.4 With effect from (and including) the date hereof, Section 5 (*Government Share Transfer*) of the First Amendment Agreement shall cease to apply, provided that this Section 2.4 is without prejudice to any liability in respect of a breach of Section 5 of the First Amendment Agreement that occurred prior to the date hereof.

SECTION 3: CONTINUING VALIDITY OF 2001 AGREEMENT

The Company and the Government hereby agree that the 2001 Agreement (as amended by the First Amendment Agreement), shall remain in full and unvaried force and effect subject only to the

amendments made by this Second 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 and this Second Amendment Agreement. If there is any inconsistency between the 2001 Agreement (as amended by the First Amendment Agreement) and this Second Amendment Agreement, this Second Amendment Agreement shall prevail.

SECTION 4: REPRESENTATIONS AND WARRANTIES OF THE GOVERNMENT

The Government hereby represents and warrants to the Company and SRL No. 3 that:

- (1) it has duly authorized the execution and delivery of this Second 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 Second 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 Second Amendment Agreement ratified by an Act of Parliament to validate and make enforceable this Second Amendment Agreement.

SECTION 5: GOVERNING LAW AND EFFECT

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

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

SECTION 6: ARBITRATION

- 6.1 The parties shall attempt to resolve in good faith any dispute arising out of or in connection with this Second Amendment Agreement (a "**Dispute**") through negotiation.

If the Dispute has not been settled by negotiation within 30 days following the 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 6.

- 6.2 Subject to Section 6.1, 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 and this Second Amendment Agreement relate is an investment.

Any arbitration proceedings conducted pursuant to this Section 6.3 shall be held in Paris. The language of any arbitration conducted pursuant to this Section 6.3 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 measure, including attachment, prior to the instigation of, or during, the arbitration proceedings.

- 6.3 If for any reason, a Dispute referred to the Centre pursuant to Section 6.2 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.


- 6.4 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 6.

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.

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IN WITNESS WHEREOF, the parties hereto have executed this Second 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



Secretary of State
Minister of Finance and Economic Development

WITNESS: _____

FOR SIERRA RUTILE LIMITED



WITNESS: _____

FOR SRL ACQUISITION NO. 3, LIMITED



WITNESS: _____

