

THIS DEED is made on 26 October 2016

BETWEEN

- (1) The **Government** (as that term is defined in clause 1.1 below).
- (2) The **NRA** (as that term is defined in clause 1.1 below).
- (3) Each of:
 - (a) **Sierra Rutile Limited**, a company incorporated under the laws of Sierra Leone (**SRL SL**);
 - (b) **Sierra Rutile Limited**, a company incorporated under the laws of the British Virgin Islands with company number 629748 (**SRL BVI**);
 - (c) **Iluka Resources Limited**, a company incorporated under the laws of Australia with Australian Company Number 008 675 018 (**Iluka**); and
 - (d) **Iluka Investments (BVI) Limited**, a company incorporated under the laws of the British Virgin Islands with company number 1919262 (**Iluka BVI**),(together, the **Companies**).

The provisions of this deed take effect on and from the time at which this deed is executed by all of the Parties.

RECITALS:

- (A) SRL SL owns and operates mining operations in Sierra Leone pursuant to the *Sierra Rutile Agreement (Ratification) Act 2002*.
- (B) SRL SL is, ultimately, a wholly-owned subsidiary of SRL BVI.
- (C) Iluka, Iluka BVI and SRL BVI entered into a Merger Implementation Agreement dated 31 July 2016 (**MIA**) in relation to the proposed acquisition by Iluka of the entire issued and to be issued shares of SRL BVI by way of a statutory merger regulated under the laws of the British Virgin Islands (**Merger**).
- (D) The Merger is conditional on (among other things) clearance from the German Antitrust Authority (**Merger Clearance**). Pending receipt of the Merger Clearance, as at the date of this deed, either of Iluka or SRL BVI may terminate the MIA in accordance with the terms of the MIA.
- (E) Subject to satisfaction of the conditions precedent under the MIA (including receipt of the Merger Clearance) and neither of Iluka nor SRL BVI terminating the MIA, the Companies currently anticipate that the Merger shall become legally effective and the Merger consideration shall be paid by or on behalf of Iluka to SRL BVI shareholders during November or December 2016.
- (F) The Government has indicated to the Companies that it considers that capital gains tax under the laws of Sierra Leone (**CGT**) is payable by SRL BVI shareholders in connection with the Merger (and not by any of the Companies), and that the Merger cannot proceed until such CGT as it deems is payable in connection with the Merger is settled in full.
- (G) Pursuant to the terms of this deed, the Parties record their agreement on the quantum of, and the responsibility and mechanism for payment to the Government, or the NRA on behalf of the Government, of CGT in connection with the Merger.

- (H) The Government and the NRA have entered into this deed to irrevocably confirm and agree the matters relating to CGT set out in this deed, for the benefit of the Companies.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In addition to the terms defined elsewhere in this deed, the following definitions apply in this deed.

Government means the Government of the Republic of Sierra Leone, including but not limited to: all bureaus, agencies, ministries, departments, port authorities, political subdivisions and other governmental or quasi-governmental entities of any kind (including, without limitation, the NRA).

NRA means the National Revenue Authority of Sierra Leone.

Pala means Pala Investments Limited.

Parties means each of the parties to this deed.

SRL Shareholder means any person who holds or has held shares in SRL BVI on or prior to completion of the Merger in accordance with the terms of the MIA.

Taxes means all forms of taxation (whether direct or indirect) payable under the laws of Sierra Leone, including a tax, levy, charge, impost, fee, deduction, duty, customs and excise or withholding of any nature, including, without limitation, any goods and services tax, value added tax or consumption tax, which is assessed, levied, imposed or collected by the Government. This includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a document (including this deed) includes any variation or replacement of it;
- (b) "clause", "Annexure" and "Schedule" is to a clause in or annexure or schedule to this deed;
- (c) the singular includes the plural and vice versa;
- (d) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (e) the Government includes reference to the NRA, notwithstanding that the NRA is a Party to this deed in its individual capacity;
- (f) a group of persons or things is a reference to any two or more of them jointly and to each of them individually; and
- (g) "£" or "GBP", is to pounds sterling, the official currency of the United Kingdom.

2. **AGREED CGT AMOUNT**

The Government and the NRA irrevocably confirm to the Companies that the full and final amount of all CGT and any other Taxes payable in connection with the Merger is **US Dollars 8 million (Agreed CGT Amount)**.

3. **PAYMENT OF AGREED CGT AMOUNT**

- (a) If the MIA becomes unconditional in all respects and the Merger completes in accordance with the terms of the MIA (but not otherwise), the Parties agree that the Agreed CGT Amount will be paid for and on behalf of Pala and all other SRL Shareholders who are, or may be deemed by the Government to be, liable to pay CGT, pursuant to an irrevocable instrument of authority and direction to be given by Pala in favour of Iluka and Iluka BVI prior to completion of the Merger, substantially in the form set out in the Annexure (**Pala Direction**).
- (b) If the MIA becomes unconditional in all respects and the Merger completes in accordance with the terms of the MIA the Parties agree that the Agreed CGT Amount will be paid to the Government in accordance with the Pala Direction.
- (c) To avoid doubt, the Parties agree that Iluka will have no obligation in relation to payment of the Agreed CGT Amount, unless and until:
 - (i) it receives a duly executed, valid and binding Pala Direction; and
 - (ii) the MIA becomes unconditional in all respects and the Merger completes in accordance with the terms of the MIA.

4. **GOVERNMENT CGT AGREEMENT**

- (a) By execution of this deed the Government and the NRA irrevocably confirm and agree that, subject only to receipt of the Agreed CGT Amount:
 - (i) any claim by the Government or the NRA for CGT arising as a result of or in connection with the Merger will be satisfied in full and wholly extinguished;
 - (ii) no further CGT, or other Taxes directly or indirectly arising from or related to the completion of the Merger, will be claimed, imposed, or otherwise requested by the Government or the NRA or payable by any of the Companies, Pala or by any other SRL Shareholder as a result of or in connection with completion of the Merger; and
 - (iii) the Government and the NRA will not take any action against or in relation to any of the Companies, Pala or any other SRL Shareholder or any of the respective operations, assets or affairs of any of the Companies, Pala or any other SRL Shareholder, whether prior to or after completion of the Merger, in connection with any CGT or any other Taxes otherwise payable or allegedly payable as a result of or in connection with the Merger,

(the **Government CGT Agreement**).
- (b) The Government CGT Agreement is given for the benefit of each of the Companies, Pala and all other SRL Shareholders.

5. **REPRESENTATIONS AND WARRANTIES OF THE GOVERNMENT**

- (a) The Government and the NRA hereby represent and warrant to each of the Companies that:

- (i) they have duly authorised the execution and delivery of this deed and have obtained all necessary consents in relation thereto;
 - (ii) their obligations under this deed constitute legal, valid and binding obligations, enforceable in accordance with its terms; and
 - (iii) nothing in this deed is inconsistent with any law in force in the Republic of Sierra Leone as at the date of this deed.
- (b) If for any reason any of the representations or warranties given by the Government and/or the NRA in this clause 5 are or become inaccurate or untrue, the Government agrees to take all reasonable steps necessary to give full effect to the relevant representation or warranty and the terms and intent of this deed.

6. **THIRD PARTY RIGHTS**

- (a) With the exception of the rights of Pala and all other SRL Shareholders to enforce the terms of clauses 4(a)(ii), 4(a)(iii) and 4(b) (each such party being a "**Third Party**"), no term of this deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this deed.
- (b) The rights of Pala and all other SRL Shareholders to enforce the terms of clauses 4(a)(ii), 4(a)(iii) and 4(b) against the Government and the NRA are subject to the term that the Companies shall have the right (which they may waive in whole or in part in their absolute discretion and without the consent of or consultation with Pala or any other SRL Shareholder) to have the sole conduct of any proceedings in relation to the enforcement of such rights (including any decision as to commencement or compromise of such proceedings) but will not owe any duty or have any liability to Pala or any other SRL Shareholder in relation to such conduct.
- (c) The rights of Pala and the other SRL Shareholders under clauses 4(a)(ii), 4(a)(iii) and 4(b) are also subject to the other terms of this deed.
- (d) The parties to this deed may by agreement rescind or vary any term of this deed without the consent of Pala or any other SRL Shareholder.

7. **GOVERNING LAW AND EFFECT**

This deed and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

8. **GENERAL**

- (a) No variation of this deed shall be effective unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of the Parties. For this purpose, the term "variation" shall, in each case, include any variation, supplement, amendment, deletion or replacement however effected.
- (b) This deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.
- (c) The Parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this deed and other related documentation.

EXECUTED as a deed.

This Deed has been executed by the each of the Parties and delivered as a deed on 26 October 2016.

EXECUTED on behalf of the REPUBLIC OF SIERRA LEONE:

[Handwritten signature]

Signature of witness

Patricia S. Courtt

Name

[Handwritten signature]

The Hon. Minister of Finance

MOMOH L. KARGBO

Name



EXECUTED on behalf of the NATIONAL REVENUE AUTHORITY OF SIERRA LEONE:

[Handwritten signature]

Signature of witness

Christina Fynn

Name

[Handwritten signature]

Commissioner General of the NRA

Haja Kallah-Kamara

Name

EXECUTED by SIERRA RUTILE LIMITED (SIERRA LEONE), by its duly authorised agent, in the presence of:

[Handwritten signature]

Signature of witness

KABINEH KOROMA

Name

[Handwritten signature]

Signature of agent

JOHN SISAY

Name

EXECUTED by SIERRA RUTILE LIMITED (BVI), by its duly authorised agent, in the presence of:

[Handwritten signature]

Signature of witness

ROBERT EDWARDS

Name

[Handwritten signature]

Signature of agent

JOHN SISAY

Name

EXECUTED by **ILUKA RESOURCES LIMITED**:



Signature of director

TOM O'LEARY

Full name



Signature of ~~director~~/secretary

Nigel George Tinley

Full name

EXECUTED by **ILUKA INVESTMENTS (BVI) LIMITED**, by its duly authorised agent, in the presence of:



Signature of witness

GLADYS H. KARABO

Full name



Signature of agent

TOM O'LEARY

Full name