

SIGNED this 28th day of December, 1989.

J. S. MOMOH,  
President.

LS

No. 8



Sierra Leone

1989

**The Sierra Rutile Agreement, 1989 (Ratification)  
Act, 1989**

Short title.

Being an Act to ratify and confirm an Agreement made for and on behalf of the Government of the Republic of Sierra Leone of the one part and by Sierra Rutile Limited of the other part.

[21st December, 1989]

Date of Commencement.

WHEREAS an Agreement was made on the 3rd day of November, 1989 between the Honourable Dennis Sankoh, Esquire, Acting Minister of Mines, acting for and on behalf of the Government of the Republic of Sierra Leone of the one part and the Sierra Rutile Limited, a Company incorporated and existing under the Laws of Sierra Leone, of the other part;

AND WHEREAS it is provided in the said Agreement that the said Government of Sierra Leone will introduce and cause to be passed legislation for the purpose of ratifying and confirming the said Agreement in all its terms:

AND WHEREAS it is further provided in the said Agreement that such Agreement shall come into full force and effect upon the coming into operation of the said ratification legislation within three months from the date of the said Agreement or such other extended time as may be agreed upon by both parties:

AND WHEREAS it is desirable that the said Agreement shall be ratified and confirmed in all its terms by the said Government of the Republic of Sierra Leone within the stipulated time:

NOW, THEREFORE, BE IT ENACTED by the President and Members of Parliament in this present Parliament assembled as follows:—

Commence-  
ment.

1. This Act shall be deemed to have come into operation on the 21st day of December, 1989.

Confirma-  
tion of  
Agreement.

2. The said Agreement set out in the Schedule hereto is hereby ratified and confirmed in all its terms and all rights and obligations purported to be conferred or imposed thereby are hereby declared valid, any law to the contrary notwithstanding, and notwithstanding anything in any law contained, the Minister assigned with responsibility for matters relating to Mines, or any other person acting under his authority shall have power to do on behalf of the Government of the Republic of Sierra Leone any act which the said Agreement may require or allow, within its scope, in the name of the said Minister of Mines or of the Government of Sierra Leone.

## THE SCHEDULE

## AGREEMENT

## BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE  
AND SIERRA RUTILE LIMITED

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- (k) Amendment of the Mining Leases
- (l) Ratification and Effectiveness of this Agreement

THIS AGREEMENT is made this 3rd day of November, 1989, between the Honourable Dennis Sankoh, Esquire, Acting Minister of Mines acting for and on behalf of the Government of the Republic of Sierra Leone. (hereinafter referred to as "the Government") of the one part and Sierra Rutile Limited, a company incorporated and existing under the laws of Sierra Leone whose registered office is at 12, Lamina Sankoh Street, Freetown. (hereinafter referred to as "the Company") of the other part.

## WHEREAS:

(1) By an agreement dated February 4, 1972 (the "Principal Agreement") as amended by an agreement dated May 23, 1975 (the "Supplemental Agreement"), the Government and the Company agreed upon terms and conditions for the exploration and development by the Company of deposits of titanium-bearing and associated minerals.

(2) The Principal Agreement and the Supplemental Agreement were respectively ratified and confirmed by the Sierra Rutile Agreement 1972 (Ratification) Act, 1972 and by the Sierra Rutile Supplementary Agreement (1975) (Ratification) Act, 1975.

## 11.

## GENERAL PROVISIONS

- (a) Directors
- (b) Assignment
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## WHEREAS:

(1) By an agreement dated February 4, 1972 (the "Principal Agreement") as amended by an agreement dated May 23, 1975 (the "Supplemental Agreement"), the Government and the Company agreed upon terms and conditions for the exploration and development by the Company of deposits of titanium-bearing and associated minerals.

(2) The Principal Agreement and the Supplemental Agreement were respectively ratified and confirmed by the Sierra Rutile Agreement 1972 (Ratification) Act, 1972 and by the Sierra Rutile Supplementary Agreement (1975) (Ratification) Act, 1975.

(3) In pursuance of such agreements and of Section 42 of the Minerals Act (Cap. 196), the Government and the Company entered into three mining leases and dredging licences numbered 2113, 2117 and 2134 and dated January 1, 1978, January 1, 1978 and July 4, 1984, respectively, conferring on the Company the right for the period of 25 years from the date of commencement of mining operations thereunder to mine titanium-bearing and associated minerals within the areas therein respectively described.

(4) The Government and the Company have now agreed to revise and supplement the provisions of the Principal and Supplemental Agreements in the manner hereinafter appearing and, for such purpose, to restate the provisions of those agreements (including all related side letters and minutes), as so revised and supplemented in the form of a single agreement between them, being the present agreement.

(5) In addition, the Government and the Company have now agreed to make the consequential amendments to the said mining leases and dredging licences as hereinafter set forth.

## NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

### 1. DEFINITION

In this Agreement, the following expressions shall, unless a contrary intention appears, have the following meanings, that is to say:

"Additional Mining Lease"—a mining lease and dredging licence granted to the Company pursuant to Clause 2(d) hereof, including any new lease granted to the Company upon the expiry of the original.

"Associated Minerals"—zircon, monazite, columbite, graphite and garnet when occurring in the same deposit with titanium-bearing minerals.

"Additional Mining Lease"—a mining lease and dredging licence granted to the Company pursuant to Clause 2 (d) hereof, including any new lease granted to the Company upon the expiry of the original.

"Associated Minerals"—zircon, monazite, columbite, graphite and garnet when occurring in the same deposit with titanium-bearing minerals.

"Commencement of Mining Operations"—the earlier of:

(a) The date of employment of major items of machinery and equipment on mining operations or

(b) a period of not more than three years after the grant of the Mining Lease or Additional Mining Lease concerned

shall constitute the commencement of mining operations under such Lease for the purpose of this Agreement.

Provided that in case (a) the Company promptly furnish to the Director of Mines notification to that effect.

"Financial Year"—the Company's fiscal year ending December 31.

"Minerals Act"—the Minerals Act (Cap. 196) and any Act amending the same or substituted therefor and all Rules now in force or which may come into force under any of the said Acts during the continuance of this Agreement, provided however that only those provisions of the said Acts and Rules which are inconsistent with this Agreement shall not apply hereto.

"Minerals Concentrates"—the mixture of titanium-bearing minerals and associated minerals from which a major portion of the sand, gravel and other materials has been removed.

"Mining"—any operations for winning or obtaining minerals, including dredging.

"Mining Lease Area"—the lands for the time being comprised in the Mining Lease and in the Additional Mining Leases.

"Mining Leases"—the mining leases and dredging licences referred to in paragraph (3) of the Recitals hereto, including any new lease granted to the Company upon the expiry of the original in accordance with Clause 5 (b) hereof.

"Prospecting Area"—the lands for the time being comprised in any Prospecting Licence.

"Prospecting Licence"—a Special Exclusive Prospecting Licence granted to the Company pursuant to Clause 3 hereof.

"Titanium-bearing Minerals"—ilmenite, rutile and other minerals containing titanium.

"Mining Rent," "Surface Rent," "Royalty," "Additional Royalty," "Income Tax," "Additional Income Tax" and "Special Withholding Tax" shall have the meanings respectively ascribed thereto by Clause 6 hereof.

## 2. THE MINING LEASE

### (a) APPLICATION OF MINERALS ACT

The provisions of the Minerals Act relating to mining leases and dredging licences shall apply to the Mining Leases and Additional Mining Leases except to the extent inconsistent with the special provisions incorporated in this Agreement under the authority granted to the President by Section 42 of the Minerals Act.

### (b) TERM AND RENEWAL

The term of each Mining Lease and Additional Mining Lease shall commence as of the date of its grant by the Government and shall cease at the expiration of 25 years from the date of commencement of mining operations as defined in this Agreement; provided that the Company shall have the right to terminate the same at any time by not less than six (6) months notice in writing

- "Financial Year"—the Company's fiscal year ending December 31.
- "Minerals Act"—the Minerals Act (Cap. 196) and any Act amending the same or substituted therefor and all Rules now in force or which may come into force under any of the said Acts during the continuance of this Agreement, provided however that only those provisions of the said Acts and Rules which are inconsistent with this Agreement shall not apply hereto.
- "Minerals Concentrates"—the mixture of titanium-bearing minerals and associated minerals from which a major portion of the sand, gravel and other materials has been removed.
- "Mining"—any operations for winning or obtaining minerals, including dredging.
- "Mining Lease Area"—the lands for the time being comprised in the Mining Lease and in the Additional Mining Leases.
- "Mining Leases"—the mining leases and dredging licences referred to in paragraph (3) of the Recitals hereto, including any new lease granted to the Company upon the expiry of the original in accordance with Clause 5 (b) hereof.
- "Prospecting Area"—the lands for the time being comprised in any Prospecting Licence.
- "Prospecting Licence"—a Special Exclusive Prospecting Licence granted to the Company pursuant to Clause 3 hereof.
- "Titanium-bearing Minerals"—ilmenite, rutile and other minerals containing titanium.
- "Mining Rent," "Surface Rent," "Royalty," "Additional Royalty," "Income Tax," "Additional Income Tax" and "Special Withholding Tax" shall have the meanings respectively ascribed thereto by Clause 6 hereof.

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### (b) TERM AND RENEWAL

The term of each Mining Lease and Additional Mining Lease shall commence as of the date of its grant by the Government and shall cease at the expiration of 25 years from the date of commencement of mining operations as defined in this Agreement; provided that the Company shall have the right to terminate the same at any time by not less than six (6) months notice in writing

to the Government to that effect; and provided also that, if a Mining Lease or Additional Mining Lease shall not earlier have been terminated under this paragraph (b), the Company may by at least six (6) months previous notice in writing to the Government given prior to the expiration of the period of such Lease, request the Government to grant it a new Mining Lease or such Lease, request the Government to grant it a new Mining Lease or Additional Mining Lease for a further minimum term of 15 years from the date of expiration of the original Lease period, upon the terms and conditions of the original Lease (other than the terms relating to payments by the Company or to renewal). Upon any such request, provided the Company is not then in default hereunder, the Company shall be entitled to the grant of a new Mining Lease or Additional Mining Lease for a further minimum term of 15 years upon such fair and equitable terms as to payment by the Company as may then be agreed upon, or failing agreement, as shall be settled by arbitration in accordance with the provisions of Clause 11(i) hereof.

(c) SURRENDER

(1) The Company may surrender any part or parts but not all of the Mining Lease Area included in a Mining Lease or an Additional Mining Lease at any time during the term of such Lease by notice in writing to the Government to that effect; and upon such surrender the lands surrendered shall cease to be comprised in or subject to the provisions of such Lease.

(2) Upon the surrender or other termination of a Mining Lease or Additional Mining Lease, or of any portion thereof, the Company shall be granted a period of not less than two (2) years, or such longer period as the Director of Mines may specify, immediately following such expiration or termination in which to remove all or any of its buildings, structures, plant, machinery, equipment (including dredges, barges and tow boats) or other effects, from the areas covered by the Lease or portion of the Lease surrendered or terminated. Any of the Company's buildings, structures, plants, machinery or effects which are not removed in accordance with the provisions of this paragraph (2) within the period stated herein, or such longer periods as the Director of Mines may specify, shall at the expiration of such period become the property of the Government. Nothing in this paragraph (2) contained shall prejudice the right of the Government under Section 40 (2) of the Minerals Act to take possession of any building, plant, machinery or other effects which are the property of the Company and which on the expiration, surrender or other termination of any lease are left upon the area of such Lease if the Company is knowingly in default in payments due to the Government in respect of such Lease.

(d) ADDITIONAL MINING LEASES

(1) At any time and from time to time while a Prospecting Licence is in effect, the Company may request and shall be granted an Additional Mining Lease for titanium-bearing and associated minerals covering such areas within a Prospecting Area included in a Prospecting Licence as the Company may

designate by filing with the Director of Mines a map of the areas selected together with a descriptive statement setting forth in general terms the approximate boundaries and area thereof. All such Additional Mining Leases granted pursuant to the provisions of this paragraph (1) shall be upon terms and conditions provided herein with respect to the Mining Leases, except that upon the expiration of 25 years from the date of commencement of mining operation for titanium-bearing and associated minerals or mineral concentrates, the Government may require that the terms of any such Additional Mining Leases as may then be in effect or as may be thereafter granted, insofar as they relate to payments by the Company, be redetermined in the manner provided for in paragraph (b) of this Clause 2 for determining terms as to payments by the Company that will be applicable during the renewal term of the Additional Mining Lease.

(e) INDEMNIFICATION

The Government shall for claims arising during the term of the Mining Lease and Additional Mining Leases indemnify the Company against such claims by owners or occupiers (including the Chiefdom Councillors) in respect of the Mining Lease Area other than claims for compensation made in accordance with the provisions of the Minerals Act but subject to Clause 10(b) of this Agreement.

(f) OTHER MINERALS

(1) Although the Mining Leases and Additional Mining Leases are to be confined to titanium-bearing and associated minerals and the Company's mining operations will be directed toward the extraction and recovery thereof, the parties recognise that mining operations such as the Company plans to conduct will of necessity turn up along with titanium-bearing and associated minerals other minerals or metals that may be intermixed with or in close proximity thereto.

(2) (i) If any diamonds are recovered by the Company, they shall be delivered by the Company to the Director of Mines or to such other Government Agency or Depository as the Director of Mines shall designate for such purpose. The Government shall have the right to make such disposition of any diamonds so delivered by the Company as the Government deems proper, making such distribution of the proceeds derived therefrom as the Government considers fair and equitable. Except with respect to diamonds, the Company shall have the right to extract, recover, process and sell any such other minerals and metal which it extracts with titanium-bearing and associated minerals in its mining operations. It is expressly understood, however, that the Company will be governed by, and will comply with all valid and applicable Acts, rules and regulations governing the possession and marketing of any such other minerals and metals, including any applicable Acts, rules or regulations relating to radioactive minerals, and will pay any valid taxes or other government charges assessed against any such minerals and metals paid by other producers thereof including any royalty so assessed.

designate by filing with the Director of Mines a map of the areas selected together with a descriptive statement setting forth in general terms the approximate boundaries and area thereof. All such Additional Mining Leases granted pursuant to the provisions of this paragraph (1) shall be upon terms and conditions provided herein with respect to the Mining Leases, except that upon the expiration of 25 years from the date of commencement of mining operation for titanium-bearing and associated minerals or mineral concentrates, the Government may require that the terms of any such Additional Mining Leases as may then be in effect or as may be thereafter granted, insofar as they relate to payments by the Company, be redetermined in the manner provided for in paragraph (b) of this Clause 2 for determining terms as to payments by the Company that will be applicable during the renewal term of the Additional Mining Lease.

(e) INDEMNIFICATION

The Government shall for claims arising during the term of the Mining Lease and Additional Mining Leases indemnify the Company against such claims by owners or occupiers (including the Chiefdom Councillors) in respect of the Mining Lease Area other than claims for compensation made in accordance with the provisions of the Minerals Act but subject to Clause 10(b) of this Agreement.

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to use in its commercial operations under an Additional Mining Lease and to retain or dispose of any minerals so raised or obtained, subject to the same conditions as are prescribed in Section 17 of the Minerals Act with respect to minerals raised or obtained to test the mineral bearing qualities of the land.

(2) Subject as hereinafter mentioned, the Company shall be under no obligations during the period of a Prospecting Licence to survey, demarcate, beacon or clear the boundaries of the Prospecting Areas included therein.

(3) If the Company and/or owner of any adjacent prospecting licence, mining right or lease shall require that any common boundary be cleared, surveyed, beacons and demarcated, the Company shall procure that this be done and the Company and each adjacent owner shall share the cost thereof in accordance with the provisions of the Minerals Act.

#### (c) PROSPECTING AREA EXPENDITURE

The Company shall throughout the period of each Prospecting Licence undertake an expenditure in the aggregate each year of not less than US \$2,500 (two thousand five hundred US Dollars) per square mile or part thereof on exploring, prospecting and developing the Prospecting Area included in that Prospecting Licence. The Company shall submit a detailed work and expenditure programme for that Prospecting Area for the approval of the Director of Mines. Compliance with this paragraph (c) shall constitute full compliance with the requirements of Section 18 of the Minerals Act relating to *bona fide* prospecting operations. The Company shall submit to the Director of Mines at the end of each prospecting year detailed returns of expenditure incurred in respect of the requirements of this paragraph (c).

#### (d) INDEMNIFICATION

The Government shall indemnify the Company against all claims of any owners or occupiers (including the Chiefdom Councillors) in respect of a Prospecting Area other than claims for compensation made in accordance with the provisions of Section 20 of the Minerals Act but subject to Clause 10(b) of this Agreement.

#### (e) RENT

The rent payable by the Company under each Prospecting Licence shall be at the rate of US \$20 (twenty US Dollars) a year for each square mile or part thereof contained in a Prospecting Area payable to the Government annually in advance.

#### (f) SURRENDER

(1) The Company may surrender a Prospecting Licence in its entirety or relinquish any area included therein at any time during the term of a Prospecting Licence by written notice to the Director of Mines to that effect. The expenditure obligations of the Company under Clause 4(c) hereof relating to any surrendered area shall continue to apply until the end of the year of the Prospecting Licence in which such surrender shall take place.

(2) Upon the surrender or other termination of a Prospecting Licence granted hereunder, or of any portion thereof, the Company shall be granted a period of not less than one year, or such longer period as the Director of Mines may specify, immediately following such expiration or termination in which to remove all or any of its buildings, structures, plants, machinery or effects from the Prospecting Areas so surrendered or terminated. Any such buildings, structures, plants, machinery or effects which are not removed in accordance with the provisions to this paragraph (2) within the period stated herein, or such longer period as the Director of Mines may specify, shall at the termination of such period become the property of the Government.

(g) ADDITIONAL AREAS

In the event that the Company delineates a deposit within a Prospecting Area which indicates that the limits of such deposit extend beyond the Prospecting Area, the Company may with the consent of the Director of Mines, which consent shall not be unreasonably withheld, incorporate in the Prospecting Area such additional land as it may select, which land will be contiguous to the Prospecting Area by filing with the Director of Mines a plan of the additional area selected, and such descriptive data as he may reasonably require to identify the same provided that such area is not then the subject of any prospecting Licence or mining lease granted by the Government.

## 5. RENEWAL OF PROSPECTING LICENCE

Upon written application by the Company not later than 6 months prior to the expiration of a Prospecting Licence, the Company shall be entitled to the renewal of that Prospecting Licence for a further period of two years from and after such expiration date upon the same terms and conditions as herein above provided for, except the working obligations and annual rental payable by the Company under Clause 4(c) and Clause 4(e) hereof, which are to be agreed upon, and provided that the Company is not then in default under any of the terms and conditions of the Prospecting Licence or this Agreement. But the said renewal for a further period of two years will only be granted if the Company has applied under Clause 2 of this Agreement for an Additional Mining Lease in respect of an area included in such Prospecting Licence.

## 6. RENTS, ROYALTIES, TAXES AND DUTIES

(a) MINING AND SURFACE RENT

(1) The Company shall pay to the Government annually in advance Mining Rent under each Mining Lease and Additional Mining Lease for each square mile or part thereof embraced within the Mining Lease Area commencing with the Financial Year ending December 31, 1989 and for each subsequent Financial Year, at the rate of US \$400 for the first year increasing annually thereafter at the cumulative rate of 5% per annum.

(2) In addition, the Company shall pay to the Government annually in advance a Surface Rent under the Mining Lease for all land occupied or used

thereunder, for the purposes enumerated in Section 35(1) of the Minerals Act at the rate of US \$4 (four US Dollars) per acre per annum. The Company may designate and shall demarcate one or more areas within the Mining Lease Area, not to exceed two square miles in total area, for permanent processing and other plant facilities.

(b) ROYALTY

(1) As from January 1, 1989, the Company shall, subject to Clause 6(d) below, pay a Royalty to the Government in US Dollars 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 as follows:

(i) a Royalty at the rate of 3.5% (three and one-half per cent) of the gross sales price, free alongside the Sierra Leone port of shipment, payable to the Company in respect of such shipment, and

(ii) in respect of rutile only, the Royalty rate shall be increased from 3.5% to 4% (four per cent) of the amount by which the gross sales price per ton of rutile sold, free alongside the Sierra Leone port of shipment, payable to the Company in respect of any shipment, exceeds \$600 (six hundred US Dollars) per ton in the case of rutile shipments in the Financial Year 1989, with such base rutile price increasing in respect of each subsequent Financial Year at the cumulative rate of 4% per annum.

(2) Royalty payable hereunder shall constitute an operating cost of the Company and shall be allowed as a deductible expense in ascertaining its income for income tax purposes. Royalty shall not be credited against or considered as part payment of the aggregate income tax liability payable to the Government.

(3) Royalty shall be payable to the Government within forty-five days after the end of the months of shipment. The Company shall prepare and deliver to the Director of Mines a statement certified by the Company's representative stating the total tonnage of minerals of each kind and quantity shipped by the Company from Sierra Leone in that month, together with a statement of the gross sales price free alongside the Sierra Leone port of shipment. Upon delivery of such statement the Company will pay to the Government the Royalty payable with respect to the minerals covered by such statement. Every statement of export shall specify the designations and names and addresses of the consignees and shall be accompanied by a copy of the export entries certified by the Comptroller of Customs and Excise.

(c) INCOME TAX

(1) Subject to Clause 6(d) below, the Company in the conduct of its activities in Sierra Leone pursuant to the provisions of this Agreement shall be liable to Income Tax, including Surtax, (both hereinafter referred to as "Income Tax") upon its income derived therefrom as well as upon any other income accruing in, brought into or received in Sierra Leone in accordance

thereunder, for the purposes enumerated in Section 35(1) of the Minerals Act at the rate of US \$4 (four US Dollars) per acre per annum. The Company may designate and shall demarcate one or more areas within the Mining Lease Area, not to exceed two square miles in total area, for permanent processing and other plant facilities.

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(1) As from January 1, 1989, the Company shall, subject to Clause 6(d) below, pay a Royalty to the Government in US Dollars 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 as follows:

(i) a Royalty at the rate of 3.5% (three and one-half per cent) of the gross sales price, free alongside the Sierra Leone port of shipment, payable to the Company in respect of such shipment, and

(ii) in respect of rutile only, the Royalty rate shall be increased from 3.5% to 4% (four per cent) of the amount by which the gross sales price per ton of rutile sold, free alongside the Sierra Leone port of shipment, payable to the Company in respect of any shipment, exceeds \$600 (six hundred US Dollars) per ton in the case of rutile shipments in the Financial Year 1989, with such base rutile price increasing in respect of each subsequent Financial Year at the cumulative rate of 4% per annum.

(2) Royalty payable hereunder shall constitute an operating cost of the Company and shall be allowed as a deductible expense in ascertaining its income for income tax purposes. Royalty shall not be credited against or considered as part payment of the aggregate income tax liability payable to the Government.

(3) Royalty shall be payable to the Government within forty-five days after the end of the months of shipment. The Company shall prepare and deliver to the Director of Mines a statement certified by the Company's representative stating the total tonnage of minerals of each kind and quantity shipped by the Company from Sierra Leone in that month, together with a statement of the gross sales price free alongside the Sierra Leone port of shipment. Upon delivery of such statement the Company will pay to the Government the Royalty payable with respect to the minerals covered by such statement. Every statement of export shall specify the designations and names and addresses of the consignees and shall be accompanied by a copy of the export entries certified by the Comptroller of Customs and Excise.

(c) INCOME TAX

(1) Subject to Clause 6(d) below, the Company in the conduct of its activities in Sierra Leone pursuant to the provisions of this Agreement shall be liable to Income Tax, including Surtax, (both hereinafter referred to as "Income Tax") upon its income derived therefrom as well as upon any other income accruing in, brought into or received in Sierra Leone in accordance

1981 shall not exceed the sum of two million US Dollars. No limit shall apply to the amount of capital allowances which the Company may claim in respect of qualifying expenditures incurred after December 31, 1981.

(v) For the purposes of this paragraph (4), "qualifying expenditures" shall have the meaning set forth, in paragraph 2 of Part II of the Third Schedule to the Income Tax Act. (Cap. 273), and shall apply to all expenditures of the Company within the meaning of that expression, whensoever incurred, and "initial allowance" and "annual allowance" shall have the meanings set forth in paragraphs 3 and 4 of the said Part II, respectively.

(d) MAXIMUM INCOME TAX AND ROYALTY DUE IN RESPECT OF FINANCIAL YEARS 1989 AND 1990.

(1) (i) The amount of Income Tax payable by the Company in respect of its Financial Years ending December 31, 1989 and 1990 shall not exceed 150% and 200%, respectively, of the amount of Income Tax paid by the Company in respect of its Financial Year ended December 31, 1988.

(ii) The amount of Royalty payable by the Company in respect of its financial years ending December 31, 1989 and 1990 shall not exceed 150% and 200%, respectively, of the amount of Royalty paid by the Company in respect of its Financial Year ended December 31, 1988.

(iii) In the event that either Income Tax or Royalty payable pursuant to Paragraph (d) (1) (i) or (ii) above does not equal 150% or 200% as the case may be, of the amount of Income Tax or Royalty paid by the Company in respect of its Financial Year ended December 31, 1988, the following shall be applicable in substitution for the said paragraphs.

The combined amount of Income Tax and Royalty payable by the Company in respect of its Financial Years ending December 31, 1989 and 1990 shall not exceed 150% and 200% respectively, of the combined amounts of Income Tax and Royalty paid by the Company in respect of its Financial Year ended December 31, 1988.

(iv) The amounts of Income Tax paid by the Company in Leones in respect of its Financial Year ending December 31, 1988 shall be expressed in US Dollars at the official rates of exchange respectively prevailing on the due dates for the payment thereof.

(2) By way of credit against future royalties as provided in paragraph (3) below, the Company will advance to the Government on an interest free basis the total sum of US \$2,040,000 (hereinafter the "Royalty Credit"), of which US\$1,000,000 shall be advanced on January 19, 1990, and the balance of US\$1,040,000 shall be advanced on January 18, 1991.

(3) (i) Until exhausted, the Royalty Credit shall be offset against Royalties payable by the Company in respect of its Financial Year ending December 31, 1991 and of each succeeding Financial Year in an amount equal to the amount by which the aggregate of Royalty and Income Tax paid by the Company in respect of such Financial Year exceeds US \$8,200,000.

1981 shall not exceed the sum of two million US Dollars. No limit shall apply to the amount of capital allowances which the Company may claim in respect of qualifying expenditures incurred after December 31, 1981.

(v) For the purposes of this paragraph (4), "qualifying expenditures" shall have the meaning set forth, in paragraph 2 of Part II of the Third Schedule to the Income Tax Act. (Cap. 273), and shall apply to all expenditures of the Company within the meaning of that expression, whensoever incurred, and "initial allowance" and "annual allowance" shall have the meanings set forth in paragraphs 3 and 4 of the said Part II, respectively.

(d) MAXIMUM INCOME TAX AND ROYALTY DUE IN RESPECT OF FINANCIAL YEARS 1989 AND 1990.

(1) (i) The amount of Income Tax payable by the Company in respect of its Financial Years ending December 31, 1989 and 1990 shall not exceed 150% and 200%, respectively, of the amount of Income Tax paid by the Company in respect of its Financial Year ended December 31, 1988.

(ii) The amount of Royalty payable by the Company in respect of its financial years ending December 31, 1989 and 1990 shall not exceed 150% and 200%, respectively, of the amount of Royalty paid by the Company in respect of its Financial Year ended December 31, 1988.

(iii) In the event that either Income Tax or Royalty payable pursuant to Paragraph (d) (1) (i) or (ii) above does not equal 150% or 200% as the case may be, of the amount of Income Tax or Royalty paid by the Company in respect of its Financial Year ended December 31, 1988, the following shall be applicable in substitution for the said paragraphs.

The combined amount of Income Tax and Royalty payable by the Company in respect of its Financial Years ending December 31, 1989 and 1990 shall not exceed 150% and 200% respectively, of the combined amounts of Income Tax and Royalty paid by the Company in respect of its Financial Year ended December 31, 1988.

(iv) The amounts of Income Tax paid by the Company in Leones in respect of its Financial Year ending December 31, 1988 shall be expressed in US Dollars at the official rates of exchange respectively prevailing on the due dates for the payment thereof.

(2) By way of credit against future royalties as provided in paragraph (3) below, the Company will advance to the Government on an interest free basis the total sum of US \$2,040,000 (hereinafter the "Royalty Credit"), of which US\$1,000,000 shall be advanced on January 19, 1990, and the balance of US\$1,040,000 shall be advanced on January 18, 1991.

(3) (i) Until exhausted, the Royalty Credit shall be offset against Royalties payable by the Company in respect of its Financial Year ending December 31, 1991 and of each succeeding Financial Year in an amount equal to the amount by which the aggregate of Royalty and Income Tax paid by the Company in respect of such Financial Year exceeds US \$8,200,000.

commission a facility to produce zircon from current stock piles and from on-going production operations,

(2) provide the funds required to construct such facility in an estimated amount of US \$6 million, and

(3) use its best endeavours to commence zircon production in September, 1990.

## 11 GENERAL PROVISIONS

### (a) DIRECTORS

The Government shall have the right to nominate two Directors to the Board of the Company.

### (b) ASSIGNMENT

The Company shall have the right to assign all or any portion of the rights, privileges and franchises including fiscal provisions and tax benefits and immunities granted to the Company, such assignment to include all obligations under this Agreement to a Sierra Leone Corporation. An assignment if made and the insurance, ownership, transfer or redemption of securities, shares or stock, bonds, notes and other evidences of ownership and indebtedness issued by the Company in connection with such assignment, shall be exempt from the payment of any tax, levy, duty or fee, exclusive of stamp or registration duties whether national or local. Provided that whenever an assignment is in the form of a security for a loan, the Mining Leases, additional Mining Leases and Prospecting Licences and any rights and interests under them shall not be assigned without the prior written consent of the Minister of such assignment thereof. Except as herein above provided in this paragraph (b), the Company shall not assign this Agreement or any rights, privileges or franchise included herein without the prior written consent of the Government signified by endorsement on the instrument of assignment. Whenever a prior written consent is signified, the Minister shall notify that it has been so signified by Order published in the *Gazette*.

### (c) NOTICES

(1) All orders, approvals, declarations, notices and communications of any kind between the Minister or any other representative of the Government and the Company shall be in writing and the contracting parties shall not under any circumstances be permitted to allege or to rely upon any oral order, approval, declaration, notice or communication.

(2) all orders, approvals, declarations, notices and communications from the Government to the Company shall be delivered to the representative of the Company in Freetown.

(3) All declarations, notices and communications from the Company to the Government shall, unless otherwise required by law or by the terms of this Agreement or unless the Government shall otherwise direct by written notice to the Company, be mailed or delivered to the Director of Mines at his office in Freetown.

(d) PRIOR CONSENT OR APPROVAL

Whenever, under the terms of this Agreement the right of the Company or of the Government, as the case may be, to do or perform any act or thing is conditioned on the prior consent of the other party to the Agreement, or of an official or representative of such other party, it is hereby stipulated and agreed by and between the parties hereto that the requisite consent or approval will not in any instance be unreasonably withheld.

(e) LIMITATION OF MINERALS ACT APPLICATION

The provisions of the Minerals Act and amending Acts and Rules made and to be made thereunder including the provisions of any official forms prescribed by such Rules, shall be binding upon and inure to the benefit of the Company except such provisions thereof as may be inconsistent with the terms or provisions of this Agreement. Any inconsistency between a provision of any such Act or Rule and a provision of this Agreement shall be resolved by giving effects to the provisions of this Agreement.

(f) REVOCATION BY THE GOVERNMENT

If and whenever any sum of money payable hereunder by the Company as rent or royalty shall be in arrears for the space of six months after the date on which it becomes due and payable, or if there shall be any breach or non-observance by the Company of any of the terms of any licence or lease granted herein or hereunder, or if the licensee or lessee thereunder shall become bankrupt or make or enter into any arrangement or composition with its creditors, or if a receiver is appointed for the licensee or lessee or if it shall enter into liquidation whether compulsorily or voluntarily (except a voluntary liquidation of a solvent company for the purpose of reconstruction) then and in any such case, the Government may revoke the license lease in question and thereupon the same and all rights thereunder granted pursuant to this Agreement shall cease and determine but subject nevertheless and without prejudice to any obligation or liability imposed by or incurred under the terms and conditions thereof. Provided always that save as to the non-payment of rent or taxes the aforesaid power shall not be exercised unless and until notice has been given to the licensee or lessee specifying the particular breach complained of and, if the breach is capable of remedy, requiring the licensee or lessee to remedy the breach and in any case requiring the licensee or lessee to make compensation in money for the breach if such breach is compensable, and the licensee or lessee fails within a reasonable time thereafter to remedy the breach if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the Government for the breach.

(g) FORCE MAJEURE

(1) Failure on the part of the Company to fulfil any of the terms and conditions of this Agreement shall not give the Government any claim against the Company or be deemed a breach of this Agreement insofar as such failure arises from *force majeure* and if through *force majeure* the fulfillment by the Company

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(g) FORCE MAJEURE

(1) Failure on the part of the Company to fulfil any of the terms and conditions of this Agreement shall not give the Government any claim against the Company or be deemed a breach of this Agreement insofar as such failure arises from *force majeure* and if through *force majeure* the fulfillment by the Company

of any of the terms and conditions of this Agreement is delayed, the period of such delay shall be added to the periods fixed by this Agreement.

(2) In this Clause the expression "*Force Majeure*" includes an act of God, war, insurrection, riot, civil commotion, tide, storm, tidal wave, flood, lightning explosion, fire, earthquake and any other happening which the Company could not reasonably prevent or control.

(h) AMENDMENT

In the event that the Government and the Company mutually agree to amend any of the provisions of this Agreement, such amendment may be effected by agreement between the parties evidenced by an instrument in writing. Any such amending agreement 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 when such agreement between the parties is executed.

(i) INTERPRETATION AND ARBITRATION

(1) Except as may be otherwise herein expressly provided, this Agreement shall be construed, and the rights of the Government and the Company hereunder shall be determined according to the Laws of Sierra Leone and such rules of international law as may be applicable.

(2) If at any time during the life of this Agreement, any question or dispute shall arise between the Government and the Company regarding this Agreement or any matter or thing connected herewith, the powers, duties or liabilities of the Company or the Government hereunder, or the amount or payment of any sum required to be paid by the Company to the Government pursuant to any provision hereof, and the parties to the dispute shall be unable to resolve the same amicably, then and in all such cases the matter in dispute shall be submitted to the jurisdiction of the International Centre for the Settlement of Investment Disputes of the International Bank for Reconstruction and Development. Such submission is made pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States to which Sierra Leone is a Contracting State

(3) For the purposes of such Convention, the Government and the Company agree that the Company shall be treated as a National of a Contracting State other than Sierra Leone.

(4) The Government and the Company agree that the ICSID Arbitration Rules of September, 26, 1984 shall be applicable to all arbitration proceedings conducted pursuant to this Agreement.

(i) TERMINATION OF PRINCIPAL AND SUPPLEMENTAL AGREEMENTS

Upon the coming into effect of this Agreement in accordance with Clause 11(1) hereof, the Principal Agreement and the Supplemental Agreement (including all related side letters and minutes) shall thereupon terminate, save that any rights and obligations thereunder which shall have arisen or accrued prior to such termination shall be deemed to be rights and obligations which have arisen or accrued under this Agreement.

(k) AMENDMENT OF THE MINING LEASES

Upon the coming into effect of this Agreement in accordance with Clause 11 (l) hereof, the Mining Leases shall be deemed to be hereby amended as required to conform to the financial and other provisions of this Agreement. References therein to the Principal Agreement and to the Supplemental Agreement shall accordingly be construed as reference to this Agreement.

(l) RATIFICATION AND EFFECTIVENESS OF THIS AGREEMENT

(1) Following the execution of this Agreement, the Government will introduce and use its best endeavours to cause to be passed legislation for the purpose of ratifying and confirming this Agreement and implementing the terms hereof.

(2) If such legislation shall not be duly passed and become law within three months from the date of this Agreement or within such extended time as the Government and the Company may in writing agree, this Agreement and all rights granted hereunder shall cease and determine upon the expiration of such three months period or such extended time so agreed, and without penalty with respect to any actions taken by the Company thereunder, prior to the date of such termination.

(3) This Agreement shall come into full force and effect upon the coming into operation of such legislation within the period specified in paragraph (2) hereof.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

FOR THE GOVERNMENT OF SIERRA LEONE

Signed, Sealed and Delivered by the Honourable Dennis Sankoh, Esquire, Acting Minister of Mines, in the presence of:

*Witness*

R. A. Spencer-Walters  
*Permanent Secretary, Ministry of Mines.*

LS

DENNIS SANKOH,  
*Acting Minister of Mines.*

FOR SIERRA RUTILE LIMITED

Signed, Sealed and Delivered by Richard L. Steinberger, Vice-Chairman of Sierra Rutile, Limited, in the presence of:

*Witnesses:*

Leonard Lichter  
D. J. S. Fraser  
Arthur W. Lewis

LS

RICHARD L. STEINBERGER,  
*Vice-Chairman of Sierra Rutile, Limited.*

Passed in Parliament this 21st day of December, in the year of our Lord one thousand nine hundred and eighty-nine.

C. B. FOFANA

*Acting Clerk of Parliament.*

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

C. B. FOFANA

*Acting Clerk of Parliament.*