

ACT

18th day of March, 2002.

K. R. All

ALHAJI AHMAD TEJAN KABBAH,
President.



Sierra Leone

2002

The Sierra Rutile Agreement (Ratification) Act, 2002 Short title.

/

] Date of commencement.

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.

WHEREAS an Agreement was made on the 3rd day of November, 1998 between the Government of the Republic of Sierra Leone of the one part and the Sierra Rutile Limited of the other part:

AND WHEREAS this Agreement was ratified and confirmed by Parliament as the Sierra Rutile Agreement 1989 (Ratification) Act, 1989 (Act No. 8 of 1989):

AND WHEREAS as a result of the effect of the ten year rebel war and other factors on the operations of Sierra Rutile Limited the Government of the Republic of Sierra Leone and Sierra Rutile Limited found it necessary to review the 1989 Agreement:

AND WHEREAS as a result of the review it was agreed by the Government of the Republic of Sierra Leone and Sierra Rutile Limited to enter into a new Agreement to replace the 1989 Agreement:

AND WHEREAS an Agreement was made on the 20th day of November, 2001 between Alhaji M. Swarray Deen, Minister of Mineral Resources, 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 Agreement that the Government of the Republic of Sierra Leone will introduce and cause to be passed legislation for the purpose of ratifying and confirming the Agreement in all its terms:

AND WHEREAS it is further provided in the Agreement that such Agreement shall come into force and effect upon the coming into operation of such legislation:

AND WHEREAS it is desirable that the Agreement shall be ratified and confirmed in all its terms:

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

Confirmation
of Agreement.

The Agreement set out in the Schedule is hereby ratified and confirmed in all its terms and all rights and obligations purported to be conferred or imposed by the Agreement are hereby declared valid, any law to the contrary notwithstanding and notwithstanding anything contained in any law, the Minister of Mineral Resources or any person acting under his authority shall have power to do on behalf of the Government of Sierra Leone any act which the Agreement may require or allow, within its scope, in the name of the Minister of Mineral Resources or of the Government of Sierra Leone.

SCHEDULE

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

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

This Agreement is made the 20th day of November, 2001 BETWEEN THE
Government acting for and on behalf of the Government of Sierra Leone (hereinafter
"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
situated at Lamina Sarkoh Street, Freetown, (hereinafter referred to as "the Company")
of the other part.

AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1. DEFINITIONS

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

- "Additional Mining Lease" means 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" means zircon, monazite, columbite, graphite and garnet when occurring in the same deposit with titanium bearing minerals;
- "commencement of mining operations" means the date of employment of the dredge, wet plant and land plants on mining operations, provided that the Company promptly furnishes to the Director of Mines notification to that effect;
- "Effective Date" means date of coming into force of this agreement pursuant to clause 12 (3).;
- "Financial Year" means the Company's fiscal year ending December 31 of each calendar year.
- "Group Office Expenses" means any expenditure incurred or reimbursed by the Company in maintaining an overseas office of the Company;
- "Immigration Fees" means any fees or other taxes payable under the Non-citizens (Registration, Immigration and Expulsion) Act, 1965;
- "Lease" means a Mining Lease or an Additional Mining Lease, as applicable;

“marketing commissions and fees” means charges in respect of the promotion, solicitation of orders for and negotiation of the terms and conditions of sales of the Company’s products, and charges in respect of shipping arrangements including insurance and other incidental matters;

“Minerals Act” means the Mines and Minerals Act, 1994 (Act No. 5 of 1994);

“minerals concentrates” means 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” means any operations for winning or obtaining minerals, including dredging,

“Mining Lease Area” means the lands for the time being comprised in the Mining Lease and in the Additional Mining Leases,

“Mining Leases” means the mining leases and dredging licences granted to the Company in accordance with Clause 2 hereof.

“Minister” means the Minister for Mineral Resources;

“payroll taxes” means any Taxes payable under the Payroll Tax Act, 1972;

“Prospecting Area” means the lands for the time being comprised in any Prospecting Licence;

“Prospecting Licence” means a special exclusive prospecting licence granted to the Company pursuant to Clause 3 hereof;

“public body” means the State, its agencies and authorities and any legal body whose functions are laid down by legislation or other mandate of the State (including another Public Body and regional or local authorities) or that depends upon the authority of the State for:

- (a) the appointment of its members;
 - (b) the observance of the obligations arising out of its measures;
- or

- (c) the collection of revenue which it is empowered to collect, provided that any such body shall be regarded as a public body notwithstanding that it is not part of the administrative set-up of the State.

“Refurbishment Works” means the restoration and rehabilitation of the Company’s mining operations and construction in progress in Sierra Leone to their condition as on 19th January, 1995 including but not limited to the replacement or repair of mining machinery, plant and equipment, infrastructure (including, without limitation, buildings and site improvements) consumable mining and other stores and assets.

“State” means the present, past and future government or other governing authority of Sierra Leone, including regional or local authorities or any other public body.

“taxes” means all and any taxes, royalties, duties, excise, charges, levies, fees, dues, contributions, payments or other impositions of any kind whatsoever payable to, or at the direction of, any public body.

“titanium-bearing minerals” means ilmenite, rutile and other minerals containing titanium.

“ton” means metric tonne.

“turnover” means in respect of a year of assessment the value of the total gross receipts or amounts receivable in money or money’s worth which give rise to business income for the year of assessment:

- (a) reduced by that part of the gross receipts for the year of assessment or a previous year of assessment that are bad debt claims; and
- (b) increased by any amounts recovered in respect of bad debt claims that arose in previous years of assessment.

as defined by Section 2 of the Income Tax Act, 2000 (Act No. 8 of 2000).

References herein to Public Body, entities, statutes, regulations and other pronouncements shall include their respective successors thereof and substitutions therefore.

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 that they are inconsistent with the express or any implied terms and conditions of this Agreement, in which event the provisions of this Agreement shall prevail.

(b) TERM AND RENEWAL

The term of each of the Mining Leases shall commence as of the date of its grant by the Government and shall cease at the expiration of thirty-three (33) 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 prior notice in writing to the Government to that effect; and provided also that if a Mining Lease shall not earlier have been terminated under this paragraph, the Company may, by giving at least six (6) months notice in writing to the Government prior to the expiration of the period of such Lease, request the Government to grant it a new Mining Lease for a further minimum term of fifteen (15) years from the date of expiration of the original Lease term, 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 for a further minimum term of fifteen (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. The Minister is hereby authorized and empowered to grant further extensions of the term of each Mining Lease in the event that the Company's ability to enjoy the full benefits thereof is adversely affected by any *force majeure*.

(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, expiration, 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 surrender, expiration or termination in which to remove all or any of its buildings, structures, plants, 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 within the period stated herein, or such longer period as the Director of Mines may specify, shall at the expiration of such period become the property of the Government. Nothing contained in this paragraph shall prejudice the right of the Government 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

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 shall be upon terms and conditions provided herein with respect to the Mining Leases, except that the term of each Additional Mining Lease shall cease at the expiration of twenty-five (25) years from the date of commencement of mining operations as defined in this Agreement.

(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 Section 26 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 metals 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.

- (ii) If no royalty is established in the Minerals Act for any such other mineral or metal other than diamonds surrendered to the Government, the Government reserves the right to establish a royalty payable therefor that shall be consistent with the royalties payable for comparable minerals or metals and the Company agrees to pay a royalty so assessed.
- (3) (i) At any time during the period of a Prospecting Licence, the Company shall upon written request to the Director of Mines be entitled to the grant of a Mining Lease for any minerals or metals other than diamonds and titanium-bearing or associated minerals, the presence of which have been proven to be in commercial quantities by the Company's prospecting activities including any water and/or other rights as granted in this Agreement or easements required in connection therewith in respect of any lands within a Prospecting Area, provided that such minerals or metals are not then subject to any active mining right or lease, or other conflicting property interest granted by the Government to another and that the grant will not conflict with Government's policy on mining which policy shall not be discriminating against the Company.
- (ii) Any such Leases shall be granted under terms and conditions which shall be fair and reasonable at the time. Any dispute as to the terms and conditions upon which any such Leases shall be granted shall be referred to arbitration in accordance with Clause 11(i) of this Agreement.

3. SPECIAL EXCLUSIVE PROSPECTING LICENCES FOR AREAS OUTSIDE LEASE AREA

- (a) In the event that the Government shall grant to the Company upon application a Prospecting Licence for titanium-bearing and associated minerals over an area which is not included in the Mining Lease Area, the terms and conditions set out in Clause 4 hereof shall apply thereto.

- (b) The provisions of the Minerals Act relating to exclusive prospecting licences shall apply to all Prospecting Licences granted hereunder except to the extent inconsistent with the special provisions incorporated in this Agreement

4. TERMS OF LICENCES

(a) TERM

The term of each Prospecting Licence shall be two (2) years from the date of issue.

(b) RIGHTS AND OBLIGATIONS

(1) Each Prospecting Licence shall confer on the Company in addition to the rights granted by the Minerals Act, the right to raise or obtain in the course of prospecting such quantities of titanium-bearing and associated minerals as it may reasonably think necessary to test the adequacy and operating effectiveness of the machinery and equipment which the Company proposes 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 47(3) 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.

(c) PROSPECTING AREA EXPENDITURES

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 United States 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 shall constitute full compliance with the requirements of Section 47(1)(a) 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.

(d) INDEMNIFICATION

Subject to Clause 10(b) of this Agreement, the Government shall indemnify the Company against all claims of any owners or occupiers (including the Chiefdom Councilors) in respect of a Prospecting Area other than claims for compensation made in accordance with the provisions of Section 26 of the Minerals Act.

(e) RENT

The rent payable by the Company under each Prospecting Licence shall be at the rate of US\$20 (twenty United States 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 in which such surrender of the Prospecting Licence 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 buildings, structures, plants, machinery or effects from the Prospecting Areas surrendered or terminated. Any such buildings, structures, plants, machinery or effects which are not removed in accordance with the provisions of this paragraph 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 each 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 six (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 (2) years from and after such expiration date upon the same terms and conditions as herein above provided for, except in respect of the working obligations and annual rent 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 (2) 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 67 of the Minerals Act at the rate of US\$4 (four United States Dollars) per acre per annum. Beginning January 1, 2003, the rate shall increase to US\$10 (ten United States Dollars) per acre per annum, such rate increasing in respect of each subsequent year at the rate of 3% 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), pay a Royalty to the Government in United States 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 percent) of the gross sales price, free alongside the Sierra Leone port of shipment, payable to the Company in respect of such shipment, such rate to increase beginning January 1, 2006, to 4% (four percent), and
- (ii) an additional royalty in the amount of US\$1,667,000 for each of the years 2010 to 2014 and in the amount of US\$1,665,000 for the year 2015, payable in respect of each year but not later than December 31 of such year.

(2) Royalties 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.

Royalties shall not be credited against or considered as part payment of the aggregate income tax liability payable to the Government.

(3) Royalties shall be payable to the Government within forty-five (45) 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), the Company in the conduct of its activities in Sierra Leone pursuant to this Agreement shall be liable for taxes upon its income derived from such activities as well as upon any other income of the Company accruing in, brought into or received in Sierra Leone at a fixed rate of 37.5% per annum or in accordance with the then prevailing fixed rate applicable to companies generally as set forth in the Income Tax Act, 2000, whichever is lower.

(2) Notwithstanding the provisions of paragraph (1), the Income Tax payable by the Company in respect of any Financial Year shall not be less than an amount equal to 3.5% (three and one-half percent) of the amount of the turnover of the business of the Company in such Financial Year, as such expression is defined by Section 2 of the Income Tax Act, provided that the Company shall not be liable to pay Income Tax pursuant to the provisions of this Clause until the Financial Year ending December 31, 2005. The Company may offset against any future income tax liability any amount paid under this Clause for the Financial Years ending December 31, 1995 and December 31, 1996.

(3) The balance sheets, statements of earnings and cash flow and other financial statements and books of account of the Company shall be restated, maintained and expressed in United States Dollars, and the Income Tax liability of the Company for each year of assessment after June 30, 1987, the end of the Tax Holiday previously granted under the Principal and Supplemental Agreements, shall be assessed and payable in United States Dollars.

- (4)
- (i) All capital expenditures incurred by the Company since its inception and in the future shall be restated, maintained and/or expressed at their original United States Dollar cost.
 - (ii) The chargeable income of the Company for each Financial Year shall be determined after deduction of the following capital allowances, to the extent claimed by the Company in respect of such Financial Year, and subject to paragraph (iii) hereof: an initial allowance in the first year at the rate of 40% (forty percent) of the original United States Dollar cost of qualifying expenditures, and thereafter, an annual allowance at the rate of 20% (twenty percent) per annum of the original United States Dollar cost of qualifying expenditures until the whole of such cost is allowed.

- (iii) Subject to the limitation in paragraph (iv) below, the Company may, in respect of the whole or any part of its qualifying expenditures whensoever incurred, elect to defer claiming deductions in respect of any Financial Year for capital allowances thereon and to claim the annual allowance thereon in subsequent Financial Years (whether or not consecutive), without limit in time, until the whole of the expenditures shall have been allowed.
- (iv) Without limiting the total amount of capital allowances which may be claimed by the Company, the maximum amount of capital allowances which the Company may claim in any Financial Year in respect of qualifying expenditures incurred by it in or prior to the Financial Year ended December 31, 1981 shall not exceed the sum of two million United States 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, "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, provided that qualifying expenditures incurred by the Company in or prior to the Financial Year ended December 31, 1981 shall be deductible at an annual rate of 20% without limitation.

(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 December 31, 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 Royalties payable by the Company in respect of its Financial Years ending December 31, 1989 and December 31, 1990 shall not exceed 150% and 200% respectively, of the amount of Royalties paid by the Company in respect of its Financial Year ended December 31, 1988.
- (iii) In the event that either Income Tax or Royalties payable pursuant to Paragraph (d) (1) (i) or (ii) does not equal 150% or 200% as the case may be, of the amount of Income Tax or Royalties paid by the Company in respect of its Financial Year ended December 31, 1988, the combined amount of Income Tax and Royalties 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 Royalties 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 United States 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) the Company will advance to the Government on an interest free basis the total sum of US\$2,040,000 (hereinafter referred to as the "Royalty Credit"), of which US\$1,000,000 was advanced on January 19, 1990, and the balance of US\$1,040,000 was advanced on January 18, 1991.

(3) Until exhausted, the Royalty Credit shall be offset against any royalties payable by the Company, whether due at the date of this Agreement or any time thereafter.

(e) ADDITIONAL INCOME TAX

(1) The Company shall pay to the Government in United States Dollars an Additional Income Tax to the extent that the annual weighted average gross sales price per ton of all rutile sold, free alongside the Sierra Leone port of shipment, payable to the Company in respect of total shipments during each Financial Year

US\$625 per ton, adjusted as set forth in paragraph (2). Such excess shall be divided into the increments shown in Column 1 of the table below. Additional Income Tax shall be due on each such increment at the rate applicable thereto shown in Column 2 of that table, the aggregate thereof being the total Additional Income Tax payable per ton of rutile shipped by the Company in such Financial Year.

<i>(Column 1)</i> Increments in Price per Ton US\$	<i>(Column 2)</i> Rate of Tax on each Increment %
625-675	10
676-725	15
726-775	20
776 and up	25

(2) With effect from January 1, 1992 the rutile price of US\$625 per ton together with the prices defining the four increments of any excess over that price shown in Column 1 of the table above shall each be increased at the cumulative rate of 4% (four percent) per annum.

(3) Additional Income Tax payable hereunder, as well as Minor Taxes as provided for under Clause 6(i) hereof, shall constitute an operating cost of the Company and shall be allowed as a deductible expense in ascertaining its income for purposes of Income Tax.

- (4) (i) Where in any month the Company ships rutile sold at a price per ton in excess of the price of US\$625 per ton (as increased in accordance with paragraph (2)) the Company shall submit to the Commissioner of Income Tax within forty-five (45) days after the end of that month a statement certified by the Company's representative stating the total tonnage of such rutile shipped by the Company from Sierra Leone in that month and the gross sales price payable therefor free alongside the Sierra Leone port of shipment. Upon delivery of such statement the Company will pay to the Government on a provisional basis the amount of Additional Income Tax which the Company estimates will be due as at the end of the Financial Year with respect to such rutile shipment. Every such statement

shall specify the designation 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.

- (ii) Within forty-five (45) days from the end of each Financial Year, the Company shall submit to the Commissioner of Income Tax a statement certified by the Company's representative stating the total tonnage of all rutile shipped by the Company from Sierra Leone in the prior Financial Year and the weighted average gross sales price thereof free alongside Sierra Leone port of shipment. Upon delivery of such statement, the Company will pay to the Government (or deduct from the next payment due it) the difference between the total amount of Additional Income Tax due as aforesaid and the aggregate of the estimated monthly Additional Income Tax payments made by the Company for such Financial Year in accordance with sub-paragraph (i).

(f) SPECIAL WITHHOLDING TAX

Withholding taxes on dividends, interest and management fees paid by the Company to its shareholders shall be as follows:

- (i) any such tax on dividends shall not be charged on dividends paid prior to the Financial Year commencing January 1, 2005 and shall not in any event exceed 10% (ten percent) of the gross amount of the dividend paid;
- (ii) any such tax on interest shall not be charged on interest paid prior to the Financial Year commencing January 1, 2011 and shall not in any event exceed 10% (ten percent) of the gross amount of interest paid; and
- (iii) a tax shall not be charged on management fees paid prior to the Financial Year commencing January 1, 2003 and shall not in any event exceed 10% of the gross amount of the management fee paid.

LIMITATION OF CHARGES ON IMPORTS

- (1) Notwithstanding the current charges, fees, duties and levies made by the Government on imports into Sierra Leone, the Government and the Company agree that for the duration of this Agreement the percentage *ad valorem* charges for levies, duties, fees, Taxes, surcharges and all other amounts levied on, or payable by the Company in respect of, imports of mining machinery, plant and equipment and consumable mining stores as defined in paragraph (ii) of this Clause will be 5% (five percent) in the aggregate, provided that the Company shall not be liable to pay any levies, duties, fees, Taxes, surcharges, and other amounts (including, without limitation, any inspection fee, whether pursuant to Clause 11(1) (1) or otherwise) levied on or payable by the Company in respect of imports of mining machinery, plant and equipment and consumable mining stores (as defined in Clause 6(g) (1) (ii) of this Agreement) necessary to complete the Refurbishment Works, subject to the following:
- (a) the Company submitting comprehensive schedules of items for which the concession is sought;
 - (b) the Company providing an inventory, to the best of its ability, as of December 31, 1994; and
 - (c) the Company providing an asset register, to the best of its ability, as of December 31, 1994.
- (ii) The term "mining machinery, plant and equipment and consumable mining stores" shall include all machinery, plants and equipment useful to and used by the Company in clearing land, removing minerals therefrom and transporting, separating, handling, and packaging such minerals for sale, including, without prejudice to the generality of the foregoing, construction materials for mining and processing, dredges, barges, tow boats, pumps, piping, screens, concentrating and separating

equipment, power generating and distributing equipment, cranes, lorries, road building equipment, mineral storage, conveying handling and consumable mining stores and packaging facilities together with accessories, spare parts and appliances for use and used exclusively with any of the foregoing.

(iii) The term "plant" includes prefabricated fixtures not including buildings or building materials, as well as special purpose vehicles such as dumpers and shuttle trucks for use in mining or dredging.

(iv) The term "machinery" means machinery consisting of a combination of moving parts and mechanical elements, which may be put in motion by physical or mechanical force, admitted as such by the Comptroller of Customs and Excise.

(2) (i) For the duration of this Agreement, the Company shall have the right to import into Sierra Leone the whole of its requirements for fuel other than petrol and kerosene from such suppliers and on such terms and conditions as it may determine, provided that the Company may purchase fuel in Sierra Leone where such fuel can be supplied on a competitive basis in terms of price, quality and other delivery terms.

(ii) The maximum amount of import, customs and excise duties and all other levies or charges (including the import inspection fee referred to in Clause 11(1) imposed by the Government on such fuel imports shall be as follows:

Imports in Financial Years 1997 through 2003:	8% of CIF price payable by the Company;
Imports in Financial Years 2004 and 2005:	10% of CIF price payable by the Company;
Imports thereafter:	12% of CIF price payable by the Company.

- (iii) Subject to the provisions of this Agreement, the Company in the conduct of its activities in Sierra Leone pursuant to the provisions of this Agreement shall be subject to the provisions of the Customs Act Cap. 271, and the Customs Tariff Act, No. 16 of 1978 and Rules thereunder currently in force and as may be from time to time amended.

(h) DEVELOPMENT CERTIFICATE

The Government and the Company agree and confirm that for the purposes of the Development Act (and the Development Certificate No. 32 dated March 15, 1972 issued to the Company thereunder), the Income Tax Act, this Agreement and the Agreements replaced hereby and for all other purposes that:

- (i) the Production Day of the Company was June 30, 1984 and that the expiration date of the Tax Holiday period was June 30, 1987, and
- (ii) in respect of the Tax Holiday period referred to in paragraph (i), no income taxes, surtaxes, or taxes based on minimum chargeable income are or shall become due or payable or outstanding by the Company and/or by its parent company with respect to the Company.

(i) NO OTHER TAXES ETC.

(1) The Company shall not be liable for any Taxes other than:

- (i) those expressly assumed by the Company pursuant to the provisions of this Agreement;
- (ii) the payment of taxes deducted from the emoluments of employees of the Company as required under the Income Tax (PAYE) Rules;
- (iii) the payment of Payroll Taxes at the applicable rate;
- (iv) the payment of Immigration Fees at the applicable rate; and
- (v) Minor Taxes.

(2) For the purpose of paragraph (1), the expression "Minor Taxes" means all Taxes that:

- (i) are generally applicable to all corporations on a non-discriminatory basis, and
- (ii) do not result in a payment, or payments in the aggregate, which exceed(s):
 - (a) in any Financial Year, the equivalent of US\$100,000, or
 - (b) over any five year period, the equivalent of US\$250,000

and the "applicable rate" in respect of Payroll Tax shall not exceed US\$10 (or its Leone equivalent) per annum per employee who is a national of any of the Economic Community of West African States ("ECOWAS") and US\$500 (or its Leone equivalent) per annum per employee who is not an ECOWAS national and in respect of Immigration Fees (consisting of Residence Permit, Work Permit and Multiple Entry Visa) shall not exceed US\$110 (or its Leone equivalent) for each ECOWAS national and US\$450 (or its Leone equivalent) for each national other than an ECOWAS national.

(3) If notwithstanding the above provisions the Company or its shareholders, as a result of either the activities of the Company or as the result of distributions or other payments made by the Company to its shareholders, or either of them, becomes liable to pay any Taxes pursuant to the laws of Sierra Leone, except for those expressly assumed by the Company pursuant to this Agreement, then the Government will, upon demand, hold the Company harmless in respect of any payment of Taxes made by the Company, including for this purpose any penalties, fines or interest paid or payable by the Company in connection therewith, whether for late payment or otherwise.

(4) The Company may, as an alternative to exercising its rights under paragraph (3) elect to offset any sum otherwise payable to the Company under that provision against any monies then or subsequently due to the Government under the provisions of this Agreement.

COMING INTO EFFECT OF FISCAL REGIME

Subject to the coming into effect of this Agreement in accordance with Clause 6 thereof, the fiscal regime described in this Clause 6 shall take effect beginning January 1, 1989 and, subject always to Clause 6(d) hereof, the provisions relating to payments herein contained shall be deemed to have been in force from that date.

7. LIMITATION ON RIGHTS GRANTED TO OTHERS

The Government shall use its best endeavours to discourage or prevent the grant or acceptance of any concession contemplated by the Concessions Act which would hamper or restrict the operations of the Company or prove an inconvenience to the Company in the due exercise of its rights under this Agreement.

8. REPATRIATION OF FUNDS

- (a) The Company shall, during the period of this Agreement, undertake to pay in freely convertible foreign currency to a Bank nominated by the Bank of Sierra Leone, all taxes, royalties, duties and other levies due to the Government. The Company shall also meet all its operating costs in Sierra Leone by remittance of funds from abroad and pay for all capital expenditures brought to Sierra Leone, and all other foreign costs and expenses, with funds from abroad.
- (b) Subject to Clause 8(a), the Company shall have the right, during the term of this Agreement freely to receive, hold in banks of its own selection wherever located and dispose of funds in any country.

9. GOVERNMENT OPTION

The option previously reserved in this Clause 9 of the repealed legislation for the Government to acquire 47% (forty-seven percent) of the shares of the Company is hereby released in favour of the Company in consideration of a payment by the Company to the Government of a royalty in the amount of US\$10,000,000 which shall be paid in accordance with Clause 6(b)(ii) of this Agreement.

10. GENERAL RIGHTS AND OBLIGATIONS OF THE COMPANY

In addition to the other rights granted by this Agreement and the Minerals Act and other applicable laws of Sierra Leone, the Company shall have the following rights (with the prior written consent of the Minister which shall not be unreasonably withheld) and obligations:

(a) RIGHTS INCIDENTS TO MINING OPERATIONS

(1) Except with respect to mineral concentrates recoverable from coastal beaches, it is contemplated that some of the Company's mining operations under this Agreement will consist of mining in the beds and in the environs of rivers, streams and watercourses. To permit and facilitate such mining, the Company shall have the right:

- (i) either within or outside the Mining Lease Area to dig, widen and deepen channels in rivers, streams and watercourses as may be necessary to permit or facilitate access to the area to be mined and to afford barge access thereto.
- (ii) within the mining Lease Area:
 - (A) to use the water from any natural watercourse and to return the same together with mining spoils to the river, streams or water courses, provided that, in so doing, the Company shall not discharge or permit to be discharged any poisonous or noxious matter not present in the intake water;
 - (B) on the lands included within the Mining Lease Area to cut, take and use any tree when necessary in the course of mining operations or when required for mining or domestic purposes, provided that it shall not cut or take any trees in a forest reserve or protected forest except with the consent of a forest officer or before paying the fees and royalties prescribed by the Forestry Act 1988, (Act No. 7 of 1988).
 - (C) to divert streams, including the right to secure water from the river stream or watercourse for the purpose

of obtaining and maintaining a mining operation, and to build temporary dams and impound water therein as required for such mining operations.

Provided, however, that before taking any action under sub-paragraphs (i) or (ii)(C) which would alter the water supply of any lands in such a manner as would prejudicially affect the water supply enjoyed by any other person or lands, the Company shall obtain the prior consent of the District Officer having jurisdiction over the person or lands that would be prejudicially affected.

(2) The Company agrees that if its operations, including the exercise of any of the rights incident thereto as herein above enumerated, shall be deemed by the Director of Mines to be likely to pollute, impair, divert or destroy the normal supply of potable water of any village, the Company will provide an alternative adequate water supply to be determined and approved by the Minister of Health.

(b) OCCUPATION OF SURFACE LAND

(1) In order to exercise its exploration rights and mining rights under this Agreement and subject to the limitations of sections 40 and 61 of the Minerals Act, the Company shall have the right to occupy and utilize permanently or temporarily within a Prospecting Area or Mining Lease Area such parts of the surface land, whether Government owned or otherwise, as may be reasonably required for necessary works and installations of the type listed in paragraph (c) of this Clause which are necessary or useful for its operations, and such part of the surface as may be required for its prospecting and mining operations. The Company shall endeavour to make satisfactory arrangements for payment of a fair and reasonable compensation for any prospective damage to any crops, buildings, trees or works therein. The Government shall negotiate on behalf of the landowners or occupiers with the Company to assess the compensation to be paid. The landowners or occupiers shall have the right to participate in the negotiations.

(2) (i) It is recognized that the Company's mining operations will of necessity disturb the top soil and intermix sub-soil strata therewith, and that such disturbance and intermixing is a necessary incident to the alluvial mining of titanium-bearing and associated minerals. Accordingly, it is agreed that such disturbance and intermixing, and their effect, if any, on the future use

and occupancy of the surface land shall not be taken into account or evaluated in determining compensatory damages payable to the owner or occupier of the land. To minimize such disturbances, the Company agrees that it will restore all mined areas to reasonable surface contours not in substantial contrast with the contours of the adjacent and surrounding land surface.

- (ii) In case it shall not be possible for the Company to reach a satisfactory agreement with the owner or occupier of the surface, in case of land not owned by the Government, within thirty (30) days after the commencement of its efforts to do so, or such extended time as the Company and such owner or occupier shall agree, the Company, unless it elects not to occupy and utilize such surface areas, shall bring the matter to the attention of the District Officer having jurisdiction by filing a petition setting forth the facts of the case and specifying as exactly as may be possible the land which it requires and the nature of the occupation of the same, whether for accessory works and installations or for prospecting or mining operations. As soon as may be conveniently done thereafter, but not more than sixty (60) days after the date of the filing of the said petition, the Government shall cause the District Officer to assess the compensation to be paid to the owner of the land when and if such prospective damages, loss or destruction of goods or property are inflicted by the Company, and to promptly notify the parties of the sum awarded. If the owner of the land should be unknown or there should be a controversy as to the ownership, the Company shall make a payment to the District Officer who shall determine its disposition. Either party who is dissatisfied with the award of the District Officer may appeal to the Minister who may render a decision or refer the dispute for determination by arbitration. The decision by the Minister or the arbitrators shall be final and binding on the parties. Upon agreeing to pay the amount specified, the Company may enter the land, but shall not be required to agree to pay such amount if it withdraws its petition to enter upon such land and has not already entered upon such land.

- (iii) The compensation payable by the Company pursuant to this Clause shall be based on the estimated monetary amount (or fair market value) of the damage to be done to the crops, buildings, trees or works on the land. Any compensation with reference to the fact that the owner will be deprived of the use and occupancy of the land is included in and covered by the surface rent payable pursuant to Clause 6(a)(2) hereof.
- (iv) The Company shall not unduly disturb and interfere with the living conditions of local population settled within the Mining Lease Area. The Company shall respect and cause its employees and contractors to respect the customs of the local populations.
- (v) If at any point a resettlement of the local population appears to be absolutely essential, the Company shall move with utmost caution, with the consent of the Government and in consultation with local authorities in persuading the local population to resettle and provide a fully adequate resettlement programme in accordance with the directions of the responsible Minister.

(c) ACCESSORY WORKS AND INSTALLATIONS

Subject to the provisions of sections 40 and 61 of the Minerals Act, the Company shall have the right to construct and operate within the Prospecting Area or Mining Lease Area, roads, buildings, plants, structures, living quarters, water supply systems, pipelines, communications systems, electric power systems, ship loading stations, airstrips, barge channels, storage facilities, and other similar accessory works and installations which are necessary or useful in carrying out its operations under this Agreement.

(d) EXPORT OF TITANIUM MINERALS

The Company shall have the right to export all titanium and associated minerals or mineral concentrates raised or obtained in the course of mining operations to any country other than countries to which the laws of the Republic of Sierra Leone prohibit such exports.

(e) ENTRY OF PERSONNEL

(1) The Company and/or its contractors shall not import unskilled labour for the carrying out of any operations, developments, or maintenance undertaken by them by virtue of this Agreement.

(2) Subject to the foregoing restrictions and to any applicable provisions of the Non-Citizens (Registration, Immigration and Expulsion) Act No. 14 of 1965), all persons deemed by the Company and/or its contractors to be required for the prosecution of its work, including executives, officers, engineers, consultants, technicians, skilled and semi-skilled labour, shall have the right to enter and reside in Sierra Leone and to depart therefrom. The Government agrees that it will encourage and assist the efforts of the Company to secure and maintain an adequate labour supply.

(3) In selecting employees to carry out its operations under this Agreement the Company shall give preference to qualified and competent Sierra Leone executives, officers, engineers, consultants, technicians and skilled and semi-skilled labour. The Company shall also establish a systematic training programme as to enable Sierra Leoneans to assume technical and managerial functions in the Company.

(f) HOUSING OF LABOURERS

Rule 43 (4) of the General Minerals Rules shall not preclude the Company from demanding and receiving rents at such rates and subject to such conditions as may be approved by the Commissioner of Labour in respect of the occupation by labourers or others of huts or houses constructed by or at the cost of the Company within a Prospecting or Mining Lease Area.

(g) GOVERNMENT PROTECTION AND ASSISTANCE

The Government undertakes to grant to the Company such assistance as it reasonably can to enable the experts and other technicians sent by it to carry out its tasks in the best and most efficient manner. The Government will make available to the Company all aerial, magnetometer and other geological surveys and photographs and all other plans, maps, information and advice relating to titanium-bearing and associated minerals which in the opinion of the Government it can disclose and will permit the Company to obtain copies of all such surveys, photographs, plans, maps and information for their own use upon payment of the actual cost of making such documents. The Company will make available to the Government Geological Survey Department all similar data that it compiles or acquires from others under circumstances which permit disclosure thereof to others provided, however, that the

Government agrees that its said Department will treat all such data so made available as confidential and will not communicate it to others during the life of this Agreement without the Company's prior consent.

(b) IMPORTATION OF MACHINERY

The Government agrees that it will grant any and all permits and permissions of whatever nature necessary for the importation into Sierra Leone of machinery, equipment, supplies (including foodstuffs) and services necessary or desirable for the conduct of prospecting, mining, processing and transport operations contemplated by the Agreement and of such manufacture and types from whatever source as are normally employed by the Company.

(c) SURVEYS

The Company may arrange that all survey work to be performed in connection with the clearing, survey, demarcation and beaconing of boundaries or otherwise, shall be carried out by a licenced surveyor approved by the Government, subject to the consent of the Government to cause the required survey work for any disputed boundary to be performed by the Director of Surveys and Lands, whose determination shall be final, including the assessment of the survey costs as between the Company and the other disputing party or parties.

(d) AGRICULTURE DEVELOPMENT FUND

The Company shall with effect from the financial year commencing January 1, 1995 (it being understood that, notwithstanding any previous version of this Clause, the Company shall be excused from making any payment to the Agricultural Development Fund for the period from January 1, 1995 through and including December 31, 2002) make payment to the Agricultural Development Fund of the sum of US\$75,000 and 0.1% (one tenth of one percent) of gross sales free of duty on the Sierra Leone port of shipment in United States Dollars or its Leone equivalent. The Fund shall be utilised for the development of agriculture in the affected areas and shall be controlled by representatives of the Government, local representatives and the Company's representatives.

(e) RECLAMATION AND REHABILITATION OF MINED OUT AREAS

- (i) The Company will prepare at its expense a comprehensive master plan that will address the issues of reclamation and rehabilitation of mined-out areas. The Company shall adopt and implement at its expense

programmes and measures approved by Government for the effective reclamation of mined out areas including replanting and dealing with impounded water and mining spoils. In this regard, a detailed programme for the progressive reclamation and rehabilitation of lands disturbed by mining and for the minimisation of the effects of such mining on adjoining land/water areas shall be submitted for approval. The Company shall, in consultation with appropriate Government Agencies, undertake suitable reforestation, agricultural and other projects within the Mining Lease Area.

- (ii) The master plan will consider the ultimate outline of the lakes resulting from dredging and the benefits to be gained from the impounded water which will include fish farming, flood control, and use of water in agriculture. The plan will consider the disposal, contouring and reforestation of the processed sands and the potential use of the new land areas, and the different products. All new roads and village sites and potential agricultural sites will be identified. Compensable crops and structures will be assessed and the timing of necessary moves determined well ahead of time.
- (iii) Within two (2) months from the date of ratification of this Agreement, the Company shall submit to the Government an initial report including overall objective for this broad ranging programme. Within six (6) months from the ratification date, the Company shall submit to the Government for its approval, a final report including the reports of experts in various aspects covered by the report. Such final report shall be in sufficient detail to define the programme objectives, costs, and methods and time frame for implementation. Approval of the final report by the Government shall not be unreasonably withheld. Should the programme not be adhered to by the Company after it has been approved by the Government, the Government reserves the right to carry out the programme on behalf of and at the expense of the Company.

(I) FEASIBILITY STUDY

The Company shall conduct feasibility studies on the local production of paint pigments and other products from rutile produced in Sierra Leone. The Government shall give the necessary investment incentives for the production of these and other products.

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 evidence 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, which consent shall not be withheld unreasonably. Except as provided in this paragraph, 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, which consent shall not be withheld unreasonably. 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 APPLICATION OF MINERALS ACT AND OTHER ACTS

(1) The provisions of the Minerals Act and the Rules made under it, including the provision 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 any of the express or implied terms or conditions of this Agreement.

(2) Any such inconsistency referred to in paragraph (1) shall be resolved by giving effect to the provisions of this Agreement.

(3) In the event that the Government enacts any legislation or changes any administrative rule or practice which under the laws of Sierra Leone is binding upon the Company and which results in more onerous obligations being placed upon the Company than those subsisting at the Effective Date (save for any financial obligations that are the subject of Clause 6(i)(3)), then without prejudice to any other right the Company may have against the Government, the Government shall hold the Company harmless in respect of the increased cost of performing the more onerous obligation.

(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 (6) months after the date on which it becomes due and payable, or if there shall be any breach or nonobservance 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 licence or 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 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 either the Company or the Government to fulfil any of the terms and conditions of this Agreement shall not give rise to a claim by the other party or be deemed to be a breach of the Agreement insofar as the failure arises from *force majeure*, and if through *force majeure* the fulfilment by either the Company or the Government of any of the terms and conditions of this Agreement is delayed, then subject to Clause (g)(2) the period of such delay shall be added to the periods fixed by this Agreement.

(2) For the avoidance of doubt, the Company's payment obligations shall be suspended for the duration of any *force majeure* event except in respect of any amounts due at the date of the occurrence of the *force majeure* event, which shall remain due and payable.

(3) In this clause the expression "*force majeure*" includes without limitation an act of God, war (declared or undeclared), insurrection, riot, civil commotion, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake, terrorist activity or other hostilities of the types and any other happening which the party affected could not reasonably prevent or control and the expression "the Agreement" includes not only terms and conditions of this Agreement, but also terms and conditions of the Mining Leases.

(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) The parties shall in good faith endeavour to reach an amicable settlement of all differences of opinion or disputes which may arise between them in respect to the execution, performance and interpretation of termination of this Agreement, and in respect of the rights and obligations of the parties deriving therefrom.

(3) In the event that the parties shall be unable to reach an amicable settlement of such dispute within a period of three (3) months from entering into negotiations thereon, either party may submit the matter to the exclusive jurisdiction of a Board of three (3) Arbitrators who shall be appointed and carry out their mission in accordance with the Arbitration Rules and Regulations of the International Chamber of Commerce (ICC). The venue of the arbitration shall be London. The English language shall be used in the proceedings. The award and any decision of the Arbitration Board shall be binding upon either Party having the same force and effect as a judgement of a Court of last resort of the party's concerned country.

(j) TERMINATION OF PRINCIPAL AND SUPPLEMENTAL AGREEMENTS

Upon the coming into effect of this Agreement in accordance with Clause 12 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 12 of 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) IMPORT AND EXPORT INSPECTION FEES

(1) Except as otherwise provided in this Agreement, the Company shall, with effect from the Effective Date, pay an inspection fee in respect of all goods imported by or on behalf of the Company into Sierra Leone at a rate not to exceed 1.5% (one and a half percent) of the CIF price of the imported goods.

(2) With effect from the Effective Date, the Company shall pay an inspection fee in respect of all goods exported by or on behalf of the Company from Sierra Leone at a rate not to exceed 0.25% (one quarter of one percent) of the gross sales price of such goods, free alongside the Sierra Leone port of shipment.

(m) DEDUCTIBILITY OF LOSSES

(1) The Company may make a claim requiring that the amount of any loss incurred by the Company during any of the nine Financial Years ending prior to December 31, 1999, and the amount of loss incurred by the Company during any subsequent period, or any portion thereof, after December 31, 1999 shall be carried forward and, as far as may be, deducted from or set off against profits (of whatever description, including whether from operating or other revenues or capital transactions) in which the Company is charged any tax in any subsequent years.

(2) The Government may instruct an independent firm of accountants to assist it in verifying the losses that have been incurred by the Company during the Financial Years ending December 31, 1995 through December 31, 1999 and the Company will provide all such information, including copies of documents and other papers, that such accountants may reasonably request. The cost of the independent firm of accountants shall be borne by the Government.

(n) DEDUCTIBILITY OF OUTGOINGS AND EXPENSES

(1) The Company has advised the Government that it proposes moving its head office function to Sierra Leone not later than December 31, 2003.

(2) Notwithstanding the provisions of Section 103 of the Minerals Act and the provisions of the Income Tax Act, 2000, the Company, in computing its chargeable income shall:

- (a) for all financial years up to the Financial Year ending December 31, 2003, be entitled to deduct all Group Office Expenses wholly, exclusively and necessarily incurred in carrying out its activities;
- (b) with effect from the Financial Year commencing January 1, 2004, be entitled to deduct Group Office Expenses, where the Group Office functions are carried on outside Sierra Leone, subject to the following limitations:
 - (i) for the Financial Years commencing January 1, 2004 and January 1, 2005, such deductions shall not exceed 5% (five percent) of the Company's turnover for the period; and
 - (ii) for any Financial Year commencing after December 31, 2005, such deduction shall not exceed 1.5% (one and a half percent) of the Company's turnover for the relevant period.

(3) For the avoidance of doubt, the above provisions shall not in anyway restrict the Company's ability when computing its chargeable income for any period, to deduct all outgoings and expenses that are exclusively and necessarily incurred by the Company whether inside or outside Sierra Leone in carrying out its activities during the relevant period, except that the Company shall not be entitled to deduct more than 2.5% (two and a half percent) of its turnover for the relevant period in respect of marketing commissions and fees.

(o) ROAD USERS FUEL LEVY

(1) Notwithstanding the provisions of the Road Users Charges Act, 1994, the Company shall, with effect from January 1, 2003, be liable for road users fuel levy applicable to users generally in respect of petrol or diesel consumed by the Company's vehicles on highway roads. This liability shall be the Company's sole liability in respect of such tax. For the avoidance of doubt, off-highway usage and usage in respect of power generation shall not attract any road users fuel levy.

(2) For the purpose of calculating the amount of road users fuel levy payable by the Company for the Financial Year ending December 31, 2003, the tax shall be based on actual consumption of the Company's vehicles on highway roads and for periods thereafter upon a percentage rate of total petrol and diesel purchases made by the Company during the relevant period, such percentage rate to be agreed between the Government and the Company on the basis of actual usage.

(g) PORT CHARGES AND HARBOUR DUES

(1) The Sierra Leone Ports Authority may levy port charges in respect of vessels carrying solely the Company's goods as follows:

- (i) compulsory pilotage will be payable by the Company in respect of any such vessels entering and leaving any Sierra Leone port of shipment at a rate not exceeding US\$1200 (or its Leone equivalent) per vessel;
- (ii) bouyage fees will be payable by the Company at a rate not exceeding US\$0.10 (or its Leone equivalent) multiplied by the gross registered tonnage of the relevant vessel; and
- (iii) light dues will be payable by the Company at a rate not exceeding US\$0.10 (or its Leone equivalent) multiplied by the gross registered tonnage of the relevant vessel.

(2) With effect from but not prior to the Effective Date the Sierra Leone Ports Authority may levy harbour dues at a maximum rate of US\$1 (or its Leone equivalent) per ton of rutile carried on behalf of the Company by vessels leaving any Sierra Leone port of shipment. Neither the Company nor its carriers or agents will be liable for harbour dues in respect of ilmenite or any other goods carried on behalf of the Company by vessels leaving any Sierra Leone port of shipment.

(3) With effect from but not prior to the Effective Date the Sierra Leone Ports Authority may levy a freight levy in respect of goods exported by or on behalf of the Company from any Sierra Leone port of shipment at the following rates:

- (i) in respect of rutile and zircon, a maximum rate of US\$1 (or its Leone equivalent) per ton;
- (ii) in respect of ilmenite, a maximum rate of US\$0.25 (or its Leone equivalent) per ton; and

(iii) in respect of all other goods, a maximum rate of US\$1.20 (or its Leone equivalent) per ton.

(4) The Company will not be liable for freight levy in respect of any mining machinery, plant, equipment, consumable mining stores and goods imported by or on behalf of the Company through any Sierra Leone port.

(5) The Company's liability under the provisions of this Clause is in substitution for and not in addition to any liability that might otherwise be imposed, either hereto before or hereafter, on its carriers or agents, and whether by the Sierra Leone Ports Authority or any other Public Body, in respect of the aforementioned matters.

(6) In the event that the Sierra Leone Ports Authority or other responsible public body fails to provide any of the services for which the Company is required to pay port charges, harbour dues and any other amounts pursuant to this Clause, including, but not limited to, positioning and lighting of buoys, and the Company incurs any costs or expenses in providing or obtaining such services, the Company shall be entitled to deduct such costs and expenses from any amounts that are otherwise payable to the Sierra Leone Ports Authority or any other public body pursuant to this Clause.

(q) SECURITY

(1) The Government and the Company recognise that an effective security regime is important to ensure the safety of the Company's assets and personnel.

(2) In order to achieve an effective security regime, the Company may create and maintain a security force to provide a deterrent, defence and reaction capability to incidents.

(3) The Company may import such arms and ammunition that are appropriate to such a security force subject only to the prior approval of the Government and the security force may carry and use such arms and ammunition for the purpose of carrying out its functions.

(r) REPORTING

(1) Without prejudice to any reporting obligations under this Agreement, the Company shall provide to the Government not later than the end of March of each year after resumption of its operations a report showing:

- (i) market developments for the Company's products over the previous twelve month period;
- (ii) how the Company has responded to such developments; and
- (iii) how the market is expected to develop over the following year.

(2) The Company shall notify the Government of the contract price for any long-term contract for the sale of rutile, ilmenite or zircon the Company enters within thirty days of entering into the contract.

(3) The Company shall instruct its auditors to provide a quarterly report to the Government confirming that during the relevant quarter:

- (i) all sales have been made to unconnected parties, or otherwise to connected parties at prices based on or equivalent to arm's length sales to unconnected parties and in accordance with such terms and conditions on which agreements would be made if the parties had not been connected;
- (ii) all sales other than those on the spot market have been made under long-term contracts; and
- (iii) all royalties arising from such sales have been correctly calculated and have either been paid or accrued as appropriate under the agreed terms of payment.

(s) COMMUNICATIONS

The Government shall procure SIERRATEL or its successors, the Minister of Transport and Communications, or other appropriate bodies to give effect to the arrangements reached between the Company and SIERRATEL contained in a letter from SIERRATEL to the Company dated February 26, 1997 and shall ensure that the consent of SIERRATEL or its successors, the Minister of Transport and Communications, or other appropriate bodies, where required under the terms of such letter, shall not be unreasonably withheld or delayed.

(t) FOREIGN CONTRACTORS

(1) In order to assist the Company to undertake the Refurbishment Works, all and any third party contractors, including their sub-contractors and their respective employees and agents, shall, to the extent that they are engaged in such Refurbishment Works, be exempt from all local taxes, including payroll tax, immigration and labour fees, withholding tax, PAYE and income tax.

(2) In the event of any such contractor, or any of their employees, being engaged by the Company to carry out both Refurbishment Work and other work, whether pursuant to the same contract or otherwise, the Government and the Company will agree as to the percentage of the contractors and their employees work which is Refurbishment Work and entitled to the above exemption.

(3) The Company shall promptly notify the Government of the employment of any contractor to carry out Refurbishment Works and shall certify to the Government that the contractor and its named employees are entitled to the above exemption.

(u) EXPORTATION OF SURPLUS EQUIPMENT

The Government will grant any permit and permission of whatever nature necessary for the Company to export from Sierra Leone any mining machinery, plant, equipment, consumable mining stores, goods and surplus equipment of whatever description imported by it for the conduct of its prospecting, mining, processing and transport operations contemplated by this Agreement.

(v) CONFIDENTIALITY

The Government will keep confidential all information provided to it by the Company, whether before or after the date of this Agreement and confirms that it shall not disclose such information to any third party without the Company's prior written consent.

(v) GOVERNMENT ASSISTANCE

The Government will extend to the Company all reasonable assistance to enable and facilitate the Company to carry out its functions and achieve its objectives in the best and most efficient manner and, without limitation, to enjoy its rights and privileges under this Agreement. The Government shall, and shall procure all relevant public bodies to, make such lawful orders and administrative acts as may be reasonable from time to time for this purpose.

(vi) AMENDMENT OF THE MINING LEASES

All Mining Leases shall be deemed to have been amended as required to give effect to the financial and other provisions of this Agreement.

12. 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 45 days 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 and all obligations assumed hereunder shall cease and determine upon the expiration of such forty-five (45) day 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 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 said Alhaji M. S. Deen, Minister of Mineral Resources, for and on behalf of the Government of Sierra Leone, in the presence of:

Date: 20th November, 2001

Witness:

.....

Date: 20th November, 2001

FOR SIERRA RUTILE LIMITED

Signed, Sealed and Delivered by the said, Sierra Rutile Limited Chief Operating Officer, for and on behalf of the Sierra Rutile Limited, in the presence of:

Date: 20th November, 2001

Witness:

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Date: 20th November, 2001

PASSED in Parliament this 7th day of MARCH, in the year of our Lord two thousand and two.

J. A. CARPENTER, 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.

J. A. CARPENTER, Clerk of Parliament.