

FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT

This **FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT** (this "Agreement") is made and entered into in _____, Philippines, this _____ day of _____, by and between:

THE REPUBLIC OF THE PHILIPPINES, represented in this act by Executive Secretary _____, acting "By authority of the President," *His Excellency*, _____, with office at Malacañang, Manila (the "Government"),

and

_____, a corporation
duly organized and existing under the laws of the Republic of the Philippines
with office address at _____

President, _____
(the "Contractor").

WITNESSETH:

WHEREAS, the 1987 Constitution of the Republic of the Philippines provides in Article XII, Section 2 that all lands of the public domain, waters, minerals, coal, petroleum and other natural resources are owned by the State and that the exploration, development and utilization of natural resources shall be under the full control and supervision of the State;

WHEREAS, the Constitution also provides that the President may, for the Government, enter into agreements involving either technical or financial assistance for large-scale exploration, development and utilization of minerals and mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the Republic of the Philippines;

WHEREAS, pursuant to Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 which took effect on 09 April 1995, the President is authorized to execute and approve on behalf of the Government Financial or Technical Assistance Agreements to be entered into with qualified entities in furtherance of the objectives of the Government to encourage investments from both domestic and international sources for large-scale exploration, development and commercial utilization of mineral resources;

WHEREAS, pursuant to Department of Environment and Natural Resources (DENR) Administrative Order No. 96-40, as amended, otherwise known as the Revised Implementing Rules and Regulations of Republic Act No. 7942, which took effect on 23 January 1997, the DENR has adopted the principle of sustainable mining;

WHEREAS, the Contractor desires to join and assist the Government in the large-scale exploration, development and commercial utilization of Minerals in the Contract Area, for which purpose the Contractor desires to obtain the exclusive right to conduct Mining Operations therein;

WHEREAS, the Contractor has submitted to the Government all application requirements

for a Financial or Technical Assistance Agreement as provided in the Act and its Revised Implementing Rules and Regulations, including proof of the Contractor's technical, financial, managerial and environmental capability, details regarding the technology and technical personnel presently proposed to be employed therein, and all evidence required by the Government that the Contractor possesses a satisfactory environmental management record and community relations record;

WHEREAS, the Government has found all such application requirements to be sufficient and meritorious in form and substance after evaluation and has determined that the Contractor has all the qualifications and none of the disqualifications, as defined under the Act and its Revised Implementing Rules and Regulations, to be granted a Financial or Technical Assistance Agreement;

WHEREAS, the Government desires to avail itself of the financial resources (including access to international sources of financing), technical competence, managerial, environmental and other skills which the Contractor is capable of applying to Mining Operations;

WHEREAS, the Government and the Contractor desire a stable investment regime which reflects the twin principles that:

- (1) the Government expects real contributions to the economic growth and general welfare of the country from the large-scale exploration, development and utilization of mineral resources under its national sovereignty and patrimony; and
- (2) the Contractor expects that the terms of this Agreement shall enable it to plan, obtain and commit large-scale financial and technical resources to the Mining Operations in order to realize a return of its investment which takes into account the high risks of exploration, the requirements of financiers, the high cost and long term nature of mining activities, the terms and conditions prevailing internationally and domestically in the mining industry, and any enhanced return achieved as a result of the Contractor's performance; and

WHEREAS, the terms of this Agreement have been negotiated and agreed upon by the Contractor and the Negotiating Panel constituted pursuant to Section 58 of the Revised Implementing Rules and Regulations of the Act, endorsed by the Secretary of DENR and approved by the President;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants, terms and conditions hereinafter set forth, the Contractor and the Government hereby stipulate and agree as follows:

SECTION I SCOPE

- 1.1 Purpose of the Agreement. This Agreement is a Financial or Technical Assistance Agreement entered into by and between the President, for the Government, and the Contractor, pursuant to the Act and the IRR. The primary purpose of this Agreement is to provide for the large-scale exploration, development, and commercial utilization of Minerals within the Contract Area, with all the necessary technology, management, financing and personnel to be provided or arranged for by the Contractor in accordance with the provisions of this Agreement.

- 1.2 Minerals Subject of this Agreement. This Agreement covers the exploration, development and commercial utilization of Minerals as herein defined found to exist within the Contract Area.
- 1.3 Exclusive Right of the Contractor. The Contractor is hereby granted the exclusive rights to explore, mine, utilize, process, refine, market, transport, export and dispose of Minerals and mineral products and by-products that may be derived or produced from the Contract Area, subject to such permitting requirements that may be applicable under pertinent laws, rules and regulations. The Contractor shall not, by virtue of this Agreement, acquire any title to lands within the Contract Area: *Provided*, That it may do so by any mode of acquisition provided by the laws of the Republic of the Philippines.
- 1.4 Contractor's Acceptance of Risk. The Contractor shall assume all the exploration risks such that if no Minerals in commercially viable quantity are developed and produced, it shall not be entitled to reimbursement of its expenses.
- 1.5 Expenditure Commitment. The Contractor shall commit minimum Ground Expenditures for each Contract Year during the Exploration/Pre-Feasibility Study Period, as follows:

<u>Contract Year (during Exploration/ Pre-Feasibility Study Period)</u>	<u>US \$ (or PhP Equivalent)/Hectare</u>
1	2
2	2
3	8
4	8
5	18
6	23

based on the Contract Area held by the Contractor at the beginning of each Contract Year. The Contractor shall also be required to commit a minimum investment of Fifty Million US Dollars (\$50,000,000.00) or its Philippine Peso equivalent, on infrastructure and development in the Contract Area, which amount shall include all Pre-Operating Expenses incurred after the commencement of the Development and Construction Period. The obligations of the Contractor under this clause are subject to the termination of this Agreement for any reason, including, but not limited to, an election by the Contractor to withdraw from this Agreement under Clause 17.3.

SECTION II DEFINITION AND INTERPRETATION

- 2.1 Definition. As used in this Agreement, the following words and terms shall have the following respective meanings:
- a. "Act" refers to Republic Act No. 7942, otherwise known as the "Philippine Mining Act of 1995."
 - b. "Agreement" means this Financial or Technical Assistance Agreement.
 - c. "Budget" means an estimate of minimum expenditures to be made by the Contractor in Mining Operations contemplated hereunder to accomplish the Work Program for each Period or part of a Period, as required to be prepared by

the Contractor pursuant to this Agreement.

- d. "Bureau" means the Mines and Geosciences Bureau under the Department of Environment and Natural Resources.
- e. "Calendar Quarter" means a period of three (3) consecutive calendar months, commencing on the first days of January, April, July and October, respectively.
- f. "Calendar Year" or "Year" means a period of twelve (12) calendar months commencing on the first day of January and ending on December 31.
- g. "Claimowners' Rights" means any rights or interests of persons or entities in Minerals derived under any form of mining rights provided by prior law (including interests in patented and unpatented mining claims, leases, contracts, permits, licenses, operating agreements, applications, and any other Mining Rights), or derived under any form of mining right provided under the Act and the IRR (including interests in Financial or Technical Assistance Agreements, Mineral Agreements, Mining Permits, Mineral Processing Permits, and Mining Applications).
- h. "Claimowners" means the persons or entities from which the Contractor has derived, or derives during the Term of this Agreement, Claimowners' Rights in any part or parts of the Contract Area, by any means, including assignment, option, waiver or consent to the grant of this Agreement in substitution for that person's or entity's Claimowners' Rights.
- i. "Constitution" or "Philippine Constitution" means the 1987 Constitution of the Republic of the Philippines adopted by the Constitutional Convention of 1986 on October 15, 1986 and ratified by the People of the Republic of the Philippines on February 2, 1987.
- j. "Contract Area" means the land or body of water, as described and determined under Section V and Annex "B".
- k. "Contract Year" means a consecutive period of twelve (12) months commencing on the Effective Date or on each anniversary of the Effective Date.
- l. "Contractor" means herein represented by its President, Jose T. Limjoco, and includes its successors and assignee or assignees of any of its interests under this Agreement: *Provided*, That the assignment of any interest is accomplished pursuant to Clause 18.14 hereof.
- m. "Date of Commencement of Commercial Production" or "Commencement of Commercial Production" refers to the date of written declaration by the Contractor to start commercial operations after the conduct of Test Run, including Debugging, and its approval by the Regional Office concerned.
- n. "Debugging" refers to a detailed commissioning program undertaken by the Contractor after the Test Run to optimize operating parameters and variables in the processing plant.
- o. "Declaration of Mining Project Feasibility" refers to a written notice submitted by the Contractor to the Mines and Geosciences Bureau proclaiming the feasibility of commercial utilization of the minerals identified in the Contract

Area by internationally accepted sound mining practices, and supported by a Mining Project Feasibility Study and other requirements prescribed in Section 30 of the IRR. This document is filed by the Contractor during the Feasibility Period.

- p. “Deductible Expenses” refer to cash operating expenses incurred by the Contractor during a Calendar Year, which are directly and reasonably related and are necessary to the Mining Operations in the Contract Area during the Operating Period.
- q. “Department” or “DENR” means the Department of Environment and Natural Resources and includes its successors.
- r. “Development and Construction Period” means the Period of this Agreement as described under Clause 4.2(d).
- s. “Director” means the Director of the Bureau.
- t. “Effective Date” means the date on which this Agreement is registered, as provided in Clause 18.21.
- u. “Exploration” means searching or prospecting for Mineral Resources by geological, geochemical, or geophysical surveys, remote sensing, test pitting, trenching, drilling, shaft sinking, tunneling or any other means for the purpose of determining the existence, extent, quality and quantity of Mineral Resources and the feasibility of mining them for profit.
- v. “Exploration Period” means the Period of this Agreement as described under Clause 4.2(a).
- w. “Feasibility Study Period” means the Period of this Agreement as described under Clause 4.2(c).
- x. “Force Majeure” means acts or circumstances beyond the reasonable control of the Party affected thereby, including, but not limited to:
 - i. war (whether declared or not), revolution, public disorder, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, and strikes, lockouts, and any other labor disputes;
 - ii. any dispute with persons or entities who claim they may be significantly affected by Mining Operations, such as but not limited to, other holders of mining rights or mining applications (including Claimowners), members of the local community, industry, Local Government Units, Nongovernmental Organizations, People’s Organizations, surface owners and occupants, and Indigenous Cultural Communities;
 - iii. epidemic, earthquake, storm, flood, volcanic eruption, tidal wave or other adverse or severe weather conditions, explosion, fire, failure or delay in transportation;
 - iv. adverse action or lack of action by the Government, including, but not limited to, any failure to confirm or deny any necessary approval, permit, license or consent for which the Contractor has duly submitted all applicable requirements;

- v. expropriation, government requisition, or nationalization;
- vi. any act of God or of any public enemy; and
- vii. any other cause as herein described over which the affected Party has no reasonable control:

Provided, That the Government shall not be entitled to claim Force Majeure by reason of any event described in paragraph (ii), (iv) or (v).

- y. "Government" means the Government of the Republic of the Philippines and includes the President and all of its agencies and instrumentalities.
- z. "Gross Output" shall be interpreted as the actual market value of minerals or mineral products, or of bullion from each mine or mineral land operated as a separate entity, without any deduction from mining, milling, refining (including all expenses incurred to prepare the said minerals or mineral products in a marketable state), as well as transporting, handling, marketing or any other expenses: *Provided*, That if the minerals or mineral products are sold or consigned abroad by the Contractor under C.I.F terms, the actual cost of ocean freight and insurance shall be deducted: *Provided further*, That in the case of mineral concentrates not traded in commodity exchanges in the Philippines or abroad, such as copper concentrates, among others, the actual market value shall be the world price quotations of the refined mineral products content thereof prevailing in the said commodity exchanges, after deducting the smelting, refining and other charges incurred in the process of converting mineral concentrates into refined metal traded in those commodity exchanges. The actual market value of gold and silver bullions or doré shall be determined in the same manner as mineral concentrates.
- aa. "Ground Expenditures" mean the field and laboratory costs and expenses of searching for Minerals and delineating new or extension Ore bodies in the Contract Area, incurred in or for the benefit of the Contract Area, including the costs and expenses of:
 - i. social preparation and contributions to communities (for example, the costs incurred in connection with the Contractor's obligations contained in Chapter XIV of the IRR to assist in the development of communities, technology and geosciences), compensation paid under Chapter X of the IRR, and the costs incurred in obtaining the consent of any Indigenous Cultural Community (excluding any royalty negotiated with such community);
 - ii. Exploration (including laboratory work such as metallurgical test work, etc.);
 - iii. Pre-Feasibility Studies;
 - iv. reasonable administrative expenses not to exceed 15% of the total ground expenditures; and
 - v. Environment-related expenses (for example, the costs of implementing and complying with the Contractor's Environmental Work Program).
- ab. "IRR" means DENR Administrative Order No. 96-40, as amended, or the Revised Implementing Rules and Regulations of the Act, signed by the

Secretary of the Department which took effect on 23 January 1997.

- ac. "Loan Principal Amortization" refers to the sum of money paid to a loan creditor over regular periods to defray the principal portion of a Contractor's loan.
- ad. "MPSA" means a Mineral Production Sharing Agreement on the same terms and conditions at the time of request for conversion pursuant to Clause 18.2 (a) hereof.
- ae. "Mineral Processing" refers to milling, beneficiation, leaching, smelting, cyanidation, calcination or upgrading of ores, minerals, rocks, mill tailings, mine wastes and/or other metallurgical by-products or by similar means to convert the same into marketable products.
- af. "Mill Tailings" means materials, whether solid, liquid or both, segregated by the Contractor from the Ores during the concentration/milling operations which have no present economic value to the Contractor.
- ag. "Mine Development" means the work undertaken to explore and prepare an Ore body or a Mineral deposit for mining and mineral processing including the construction and commissioning of necessary infrastructure and related facilities (for example, production, treatment, milling, processing, refining, transportation, communication and electrical infrastructure and facilities).
- ah. "Mine Wastes" means soil and rock minerals generated by the Contractor from its surface or underground mining operations with no economic value to the Contractor.
- ai. "Mineral Resources" means any concentration of Ores, Minerals or rocks with proven or potential economic value.
- aj. "Minerals" means all naturally occurring inorganic substances in solid, liquid, gas or any intermediate state, excluding energy materials such as coal, petroleum, natural gas, radioactive materials and geothermal energy, and excluding cement raw materials, marble, granite, sand and gravel and construction aggregates.
- ak. "Mining Area" means the portion or portions of the Contract Area identified by the Contractor for Mine Development, mining, utilization, and sites for support facilities or in the immediate vicinity of mining operations.
- al. "Mining Operations" means Exploration, Mine Development, Pre-Feasibility Studies, Feasibility Studies, utilization (including, but not limited to, mining, production and all related activities necessary to discover, evaluate and assess the feasibility of Minerals in the Contract Area and if commercially feasible, develop and operate a mine and extract, utilize, process and dispose of Minerals), and/or rehabilitation.
- am. "Mining Project Feasibility Study" refers to a document officially submitted by the Contractor as part of its Declaration of Mining Project Feasibility, and subsequently approved by the Mines and Geosciences Bureau. It contains the minimum information on geology and mineral resources, mining, mineral processing, environmental and social management, financing and related information required under the implementing rules and regulations of the Philippine Mining Act of 1995.

- an. “Negotiating Panel” refers to a panel provided under Section 58 of DENR Administrative Order No. 96-40, as amended, (Revised Implementing Rules and Regulations of the Philippine Mining Act of 1995) which shall evaluate and negotiate all applications for Financial or Technical Assistance Agreement.
- ao. “Net Cash Flow” refers to the actual cash balance during a calendar year after deducting from the Gross Output the allowable deductible cash expenses, Loan Principal Amortization and Ongoing Capital Expenditures.
- ap. “Net Mining Revenue” refers to the Gross Output less Deductible Expenses.
- aq. “Notice” means a written notice delivered in accordance with Clause 18.3 of this Agreement.
- ar. “Ongoing Capital Expenditures” refer to expenses incurred by the Contractor for the purchase of equipment and machineries and the construction of buildings and other infrastructures necessary for the mining operations during the Operating Period as provided for in the approved Mining Project Feasibility Study.
- as. “Operating Period” refers to the period commencing from the Date of Commencement of Commercial Production in any Mining Area to the expiry date of this Agreement.
- at. “Ore” means a naturally occurring substance or material from which a Mineral or element can be mined or processed for profit.
- au. “Party” shall mean either the Contractor or the Government, and “Parties” shall mean both.
- av. “Period” means the Exploration Period, Pre-Feasibility Study Period, Feasibility Study Period, Development and Construction Period or Operating Period, as the case may be.
- aw. “Pollution” means any alteration of the physical, thermal, chemical and/or biological properties of any water, air and/or land resources of the Republic of the Philippines or discharge thereto of any liquid, gaseous or solid wastes, or production of unnecessary noise or any emission of objectionable odor as will or is likely to create or to render such water, air and land resources harmful, detrimental or injurious to public health, safety or welfare, or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.
- ax. “Pre-Feasibility Studies” means preliminary studies, prior to the conduct of Feasibility Studies or further Exploration of the Contract Area, to evaluate and assess the potential economic value of identified Mineral Resources. Such preliminary studies may include, but are not limited to:
 - i. additional Exploration;
 - ii. analyses of various alternatives for mining, processing and beneficiation of Minerals;
 - iii. analyses of alternative mining, milling, and production rates;

- iv. analyses of alternative sites for placement of facilities (*i.e.*, water supply facilities, transport facilities, reagent storage, offices, shops, warehouses, stockyards, explosives storage, handling facilities, housing, public facilities, etc.);
 - v. analyses of alternatives for treatment and handling of Mine Wastes and Tailings (including a description of each alternative of the method of tailings disposal and the location of the proposed disposal site);
 - vi. estimates of recoverable reserves of Minerals, in terms of technical and economic constraints (extraction and treatment of Minerals), including the effect of grade, losses, and impurities, and the estimated Mineral composition and content thereof, and review of mining rates commensurate with such reserves;
 - vii. analyses of environmental impacts of the various alternatives, including an analysis of the permitting and other implications of each alternative, and costs of environmental compliance for each alternative;
 - viii. appropriate metallurgical tests to determine the efficiency of alternative extraction, recovery and processing techniques, including an estimate of water, power, and reagent consumption requirements;
 - ix. hydrology and other studies related to any required dewatering; and
 - x. other studies and analyses to determine the commercial viability of Minerals discovered in the Contract Area.
- ay. “Pre-Feasibility Study Period” means the Period of this Agreement described in Clause 4.2(b).
- az. “Pre-Operating Expenses” refers to all expenditures incurred by the Contractor in and for the benefit of the Contract Area from the date of filing of the Financial or Technical Assistance Agreement application up to the Date of Commencement of Commercial Production.
- ba. “President” means the President of the Republic of the Philippines.
- bb. “Recovery Period” refers to a time period allowing the Contractor to recover its Pre-Operating Expenses as provided in Clause 9.7(a) hereof.
- bc. “Regional Director” means the Regional Director of the Regional Office.
- bd. “Regional Office” means the Mines and Geosciences Bureau Regional Office having jurisdiction over the Contract Area: *Provided*, That if more than one region is covered, the Region with the larger portion of the Contract Area shall have primary jurisdiction on monitoring of compliance with the terms and conditions of this Agreement.
- be. “Secretary” means the Secretary of the Department of Environment and Natural Resources.
- bf. “Special Allowance” refers to the payment to Claimowners or surface right owners during the transition period from Presidential Decree No. 463 and Executive Order No. 279 to the Mining Act of 1995.

- bg. "Temporary Exploration Permit" means a temporary exploration permit issued by the Secretary pursuant to Section 62 of the IRR.
- bh. "Term" means the term of this Agreement as provided in Clause 4.1.
- bi. "Test Run" refers to an approved initial commissioning plan conducted by the Contractor under the supervision of the DENR to establish operating parameters and variables and/or to appraise the efficiencies of installed machineries, equipment and structures especially those that pertain to pollution control.
- bj. "Work Program" means a document setting out the Contractor's plan of operations and the corresponding Budget, for each Period or part of a Period of the Mining Operations, as required, submitted and approved pursuant to this Agreement.
- bk. "Working Capital" means Current Assets less Current Liabilities excluding cash, bank deposits and debt obligations due within 12 months, calculated in accordance with generally accepted accounting principles.

2.2 Interpretation. In this Agreement, unless the context otherwise requires:

- a. the singular includes the plural and vice versa;
- b. a reference to a sum of money, unless otherwise expressly provided, is a reference to that sum of money in Philippine Pesos;
- c. the headings in this Agreement are for convenience of reference and do not affect interpretation;
- d. a reference to a Party includes that Party's successors and permitted assigns;
- e. if any area is described in this Agreement both by way of geographical coordinates and by way of a sketch or map, the geographical coordinates shall prevail to the extent of any inconsistency;
- f. an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and
- g. terms used in this Agreement which are not defined in this Agreement have the meaning given to them in Section 5 of the IRR.

2.3. Annexes. Each Annex attached constitutes an integral part of this Agreement.

SECTION III REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Contractor. The Contractor represents and warrants to the Government as of the date of this Agreement that:

- a. all information provided by Contractor in its application for this Agreement was free of any intentional and materially false statement or omission of facts;

- b. the Contractor is a corporation duly organized and validly existing and in good standing and has the full power and authority to own and operate its properties and to carry on its business. There is no pending or threatened action for the dissolution, liquidation, insolvency or rehabilitation of the Contractor, whether voluntary or involuntary;
- c. the Contractor has, or has access to, all the financial, managerial and technical expertise and, if circumstances demand, the technology required to promptly and effectively carry out the terms of this Agreement, with the understanding to timely utilize these resources under its supervision to accomplish the objectives of its Work Programs;
- d. the Contractor has all the qualifications and none of the disqualifications, as defined under the Act and the IRR, to be granted a Financial or Technical Assistance Agreement, including a satisfactory environmental record and community relations record;
- e. the Contractor has the full legal right and capacity to execute, deliver and perform this Agreement and the transactions contemplated hereby, in accordance with the terms of this Agreement; and
- f. A copy of the resolution of the Contractor's Board of Directors authorizing its President to enter into this Agreement for and on the Contractor's behalf is attached as Annex "A".

3.2 Representations and Warranties of Government. The Government represents and warrants to the Contractor as of the date of this Agreement that:

- a. the President or his duly authorized representative, for the purposes of this Agreement, is the authorized representative of the Government and is entitled to enter into this Agreement in such capacity and to bind the Government to adhere to the terms of this Agreement;
- b. based on available data and clearances issued, there are no other mining rights, mining applications, claims, option agreements, leases, licenses, operating contracts, production sharing agreements, or other encumbrances against or affecting the Contract Area or the Contractor's rights under this Agreement; the Government is not aware of any notices, objections or other proceedings or litigation pending concerning the Contract Area; and
- c. the execution, delivery and performance of this Agreement in accordance with its terms does not violate any law, regulation or order of any governmental authority, bureau or agency.

SECTION IV TERM AND PHASES OF THE AGREEMENT

4.1 Term. The Term of this Agreement shall be for a period of twenty-five (25) years from the Effective Date hereof.

4.2 Phases of the Agreement. The phases of this Agreement shall be divided into periods as follows:

- a. Exploration Period - This phase consists of a period not exceeding two (2)

years starting from the Effective Date of this Agreement, which shall be extended for another period not exceeding two (2) years if the Contractor complies with Section 52(a) of the IRR and the terms and conditions of the Agreement: *Provided*, That in case of conversion from an Exploration Permit, the term of said Exploration Permit shall be deducted from the Exploration Period and/or the Pre-Feasibility/Feasibility Period, as the case may be.

- b. Pre-Feasibility Study Period - This phase consists of the period not exceeding two (2) years commencing from the expiration or termination of the Exploration Period.
 - c. Feasibility Study Period - This phase consists of the period of two (2) years commencing from the expiration or termination of the Exploration or Pre-Feasibility Study Period.
 - d. Development and Construction Period - This phase consists of the period commencing on the date of the approval of the Declaration of Mining Project Feasibility and ending on the day before the Date of Commencement of Commercial Production. For the avoidance of any doubt, the expiration of the Feasibility Study Period may not coincide with the commencement of the Development and Construction Period.
 - e. Operating Period - This phase consists of the period commencing on the Date of Commencement of Commercial Production in any Mining Area and ending on the termination of the Term of this Agreement.
- 4.3 Multiple Activities During Periods. In the event that the Contractor elects to proceed to a later Period during the Term of this Agreement, the Contractor may continue any type of Mining Operations conducted in an earlier Period, and may commence Mining Operations associated with a later Period before the commencement of such later Period in any portion or portions of the Contract Area. For example, the Contractor may elect to conduct Pre-Feasibility Studies during the Exploration Period, or may elect to conduct additional Exploration and Pre-Feasibility Studies on lands within any Mining Area during the Operating Period. Such Mining Operations shall, however, be subject to other applicable provisions of this Agreement including, among others, compliance with the requirements of Clause 7.1 prior to construction of mining and processing facilities and utilization.
- 4.4 Additional Mine Development. After the Feasibility Study Period, Clause 8.5 shall apply instead of Sections VI and VII to any subsequent Mine Development activities in any Mining Area, including but not limited to, subsequent expansions, modifications, improvements, or replacements of existing mining facilities, addition of new facilities, and utilization of additional Mineral Resources identified in any Mining Area.
- 4.5 Renewal.
- a. Availment of Renewal. The Contractor may renew this Agreement for a period specified by it, not exceeding twenty-five (25) years, upon Notice given by the Contractor not less than one (1) year prior to the expiration of the Term of this Agreement. The Contractor may give such Notice at any time during the Term of this Agreement upon identifying a Mineral Resource that, based on its Pre-Feasibility Studies or Feasibility Studies, will require a period for utilization longer than the remaining period of the Term of this Agreement. Renewal shall not be allowed if the Contractor commits any material breach of this Agreement (as finally determined under Section XVI) and fails to timely remedy such breach under Section XVII.
 - b. Terms of Renewal. The Government and the Contractor shall use their best efforts to mutually agree on the terms and conditions for renewal as

expeditiously as possible after the Contractor gives Notice of renewal. If the terms of renewal differ from the terms and conditions of this Agreement, the Parties agree that any amendments negotiated or imposed through arbitration shall result in both Parties receiving benefits from the amended Agreement that are no less favorable to each Party, to the extent practicable than would have been the case if renewal had been on the same terms and conditions as this Agreement.

- c. Resolution of Disagreements on Terms of Renewal. The parties shall first attempt to resolve any dispute concerning terms and conditions of renewal by consultation under Clause 16.1 and, at the request of either Party, mediation. If mediation is requested, the Parties shall attempt to agree on the modes of mediation, including the facilitator(s) to be used and the venue of the same. If the Parties do not mutually agree on all terms and conditions for renewal within ninety (90) days after the Contractor gives Notice of renewal (including due to lack of agreement on the mode or venue for mediation), any terms and conditions on which the Parties have not reached agreement shall be finally resolved by arbitration in accordance with Clause 16.2 hereof.
- d. Operation Pending Renewal. The Contractor shall be permitted to continue Mining Operations beyond the end of the Term of this Agreement for a period not exceeding one (1) year on the existing terms and conditions pending the outcome of any negotiations, mediation and arbitration conducted pursuant to the immediately preceding subsection. Also, in the event of any such negotiation, mediation or arbitration, the Secretary shall, prior to the end of the Term, withdraw the Contract Area from any mining applications of Parties other than the Contractor pending the outcome of the dispute.
- e. Nominee for Renewal. The Contractor may nominate a Qualified Person to take the renewal of this Agreement and, if that Qualified Person complies with the requirements of Clause 18.14(a)(iv), the Government shall enter into the renewal of this Agreement with such Qualified Person. Such nominee shall be entitled to participate in the negotiation of any changes to the terms and conditions of this Agreement required under paragraph Clause 4.5(b).

SECTION V CONTRACT AREA

- 5.1 Size, Shape and Location of Contract Area. The Contract Area consists of all of the area within the boundaries described and shown on the map attached as Section 1 of Annex "B", containing an area of : *Provided*, That any areas with conflict, within ancestral lands/domains without the free and prior informed consent by the concerned Indigenous Peoples, within adequately stocked forests/proclaimed watershed forest reserves/critical watersheds, and/or classified under the National Integrated Protected Areas System are excluded therefrom.
- 5.2 Voluntary Relinquishment of Portion(s) of the Contract Area. During the Exploration Period and Pre-Feasibility Study Period, the Contractor shall relinquish part or parts of the Contract Area.
- 5.3 Contractor's Choice of Relinquishment Areas. The areas to be relinquished shall be selected by the Contractor at its discretion and the areas retained after relinquishment need not be one contiguous block.

- 5.4. Exploration Over the Remaining Portions of the Contract Area. The Contractor shall have the right during the Pre-Feasibility Study Period to conduct Exploration over any part of the Contract Area which has not been relinquished. Should the Contractor submit a Notice to commence feasibility study over a portion or portions of the Contract Area during the Exploration Period or the Pre-Feasibility Study Period, the Contractor shall have the right to continue Exploration during the Feasibility Study Period over the remaining Contract Area necessary for Mining Operations.

Each Mining Area after final relinquishment shall not exceed five thousand (5,000) hectares: *Provided*, That the Director may, subject to technical verification by the Bureau and with the approval of the Secretary, allow the Contractor to hold a larger Mining Area if it is reasonably required by the Contractor due to the nature and size of the relevant Mineral deposit or the anticipated surface or sub-surface activities of the proposed Mining Operations. The Mining Area shall be selected by the Contractor at its discretion and need not be one contiguous block. Upon request of the Contractor and subject to technical verification by the Bureau, the boundaries of the Mining Area as defined in the Declaration of Mining Project Feasibility may be revised if more convenient for Mining Operations, or to address issues raised in the process of approving an Environmental Compliance Certificate or Environmental Enhancement and Protection Program, so long as the maximum area is not exceeded.

- 5.5 Survey of Mining Area(s). Upon each Declaration of Mining Project Feasibility, the Contractor shall undertake a boundary survey of the declared Mining Area, in accordance with the provisions of Chapter XXV of the IRR. If the boundaries of any Mining Area are thereafter revised under Clause 5.4, the Contractor shall undertake to revise the boundary survey accordingly.

SECTION VI EXPLORATION, PRE-FEASIBILITY STUDY AND FEASIBILITY STUDY PERIODS

- 6.1 Commencement of Exploration. The Contractor shall commence Exploration not later than three (3) months after the Effective Date.
- 6.2 Work Program. The Contractor shall comply with the approved Exploration Work Program it prepares and submits pursuant to Section 53(a)(4) and, if applicable, Section 52(a)(4) of the IRR and the approved Environmental Work Programs it prepares and submits pursuant to Section 168 of the IRR. The Exploration Work Program and the Environmental Work Program are attached as Annexes "C" and "D", respectively, and are hereby approved by the Government.
- 6.3 Conduct of Pre-Feasibility Studies. If, in the Contractor's opinion, findings from Exploration warrant preliminary studies prior to the conduct of Feasibility Studies or further Exploration of the Contract Area is for any reason warranted, the Contractor may conduct such Pre-Feasibility Studies as it determines are warranted. If the Contractor elects to commence Pre-Feasibility Studies with respect to all or part of its Contract Area, it shall submit written Notice and the corresponding Work Program thereof to the Director not later than the commencement of the Pre-Feasibility Study Period. The Work Program shall be subject to the approval of the Director. The giving of such Notice prior to the end of the Exploration Period shall not shorten the length of the Exploration Period provided in Clause 4.2(a).

6.4 Expenditure Requirements

- a. The Contractor shall expend on Exploration and Pre-Feasibility Studies not less than the minimum Ground Expenditures for that Contract Year as calculated in accordance with Clause 1.5 of this Agreement.
- b. If, during any Contract Year, the Contractor expends more than the minimum Ground Expenditures for that Contract Year as calculated in accordance with Clause 1.5 of this Agreement, the excess may be carried forward and subtracted from the minimum Ground Expenditures required to be expended by the Contractor during succeeding Contract Years.
- c. If the Contractor does not in any Contract Year, for justifiable reasons as determined by the Director, expend the minimum Ground Expenditures for that Contract Year, the deficiency may be expended on succeeding Contract Years. Such deficiency shall be an accrued obligation, and any unexpended amount shall be immediately payable to the Bureau in the event that the Contractor subsequently withdraws from this Agreement. In the event the Contractor fails to pay any such deficiency after withdrawal, the amount thereof may be deducted by the Government from the financial guarantee/bond posted by the Contractor under Clause 11.5.
- d. In the event of termination of or withdrawal from this Agreement, the Contractor shall pay the Government the unexpended minimum Ground Expenditures for the remaining year/years of the Pre-Feasibility Period as provided in Clause 1.5.

In the event the Contractor fails to pay any such accrued obligation for Ground Expenditures, including any deficiency for prior Contract Years accrued under Clause 6.4(c), after termination or withdrawal, the amount thereof may be deducted by the Government from the financial guarantee/bond posted by the Contractor under Clause 11.5.

6.5 Commencement of Feasibility Studies. If, during or upon expiration of the Exploration Period or Pre-Feasibility Study Period, the Contractor considers that the Contract Area or any part thereof may contain Minerals that may be commercially utilized by internationally accepted sound mining methods, the Contractor may file with the Regional Director, copy furnished the Director and Secretary, a Notice to conduct feasibility studies with respect to that part of the Contract Area. Subject to its relinquishment obligations, the Contractor may during the Exploration Period or the Pre-Feasibility Study Period make any number of declarations over part or parts of the Contract Area. Submission of a Notice prior to the end of the Pre-Feasibility Period shall not shorten the length of the Exploration Period and the Pre-Feasibility Period provided in Clause 4.2(a) and (b).

6.6 Conduct of Feasibility Studies. The Contractor shall, during the Feasibility Study Period, conduct Feasibility Studies covering one or more Mining Area(s).

6.7 Reporting Requirements. The Contractor shall submit the following reports:

- a. Quarterly Reports. During the Exploration Period, Pre-Feasibility Study Period and the Feasibility Study Period, the Contractor shall prepare and submit to the Regional Director, copy furnished the Director, not later than 30 days after the end of each Calendar Quarter, a report signed by a licensed Mining Engineer or Geologist summarizing the Exploration conducted in such quarter. If drilling is

conducted during such calendar quarter, the Contractor shall include in its quarterly report the information required under Section 270(i) of the IRR.

- b. Annual Reports. During the Exploration Period, Pre-Feasibility Study Period and the Feasibility Study Period, the Contractor shall prepare and submit to the Regional Director, copy furnished the Director, not later than ninety (90) days after the end of each Contract Year, an annual progress report of its Mining Operations signed by a licensed Mining Engineer or Geologist. This progress report shall be accompanied by raw geologic, geophysical and geochemical data plotted in a 1:50,000 scale map.
- c. Final Report. Within ninety (90) days after the end of the sixth Contract Year, the Contractor shall prepare and submit to the Regional Director, copy furnished the Director, a final report setting out by category the amount and nature of all Ground Expenditures made pursuant to Clause 6.4. The Final Report shall be accompanied by raw geologic, geophysical and geochemical data including geologic map of the remaining Contract Area at a scale of 1:50,000.
- d. Relinquishment Report. The Contractor shall submit to the Regional Director, copy furnished the Director, a separate relinquishment report in accordance with Section 60 of the IRR not later than ninety (90) days from the expiration of the applicable relinquishment period under Clause 5.2, together with a detailed geologic report of the relinquished area accompanied by maps at a scale of 1:50,000, results of analyses, and corresponding Ground Expenditures.
- e. All other reports required by the Act and the IRR.

SECTION VII DEVELOPMENT AND CONSTRUCTION PERIOD

- 7.1 Submission of a Declaration of Mining Project Feasibility. The Contractor shall submit a Declaration of Mining Project Feasibility Study not later than three (3) months after the lapse of the Feasibility Study Period in respect of the Mining Area covered by that Declaration of Mining Project Feasibility to the Secretary for his approval, thru the Regional Director and Director. The Declaration of Mining Project Feasibility shall be accompanied by the Mining Project Feasibility Study that shall contain, among others, a quantification of the Government Share and the benefits to be derived from the operation of the mine. The Director shall take into consideration in the approval of the Declaration of Mining Project Feasibility the expected life of the mine for a minimum of fifteen (15) years, proposed mining sequence, grade management, and the Project's capability to contribute the Government Share and to absorb the environmental and social costs. In addition to the Mining Project Feasibility Study, the Declaration of Mining Project Feasibility shall be accompanied by the following:
- a. a Development and Construction Work Program;
 - b. an application for Order of Survey or an approved Survey Plan of the Mining Area;
 - c. an Environmental Compliance Certificate in accordance with Presidential Decree No. 1586 and its implementing rules and regulations (or, if this certificate has not been granted, reasonable evidence that the Contractor has applied for the certificate); and

- d. an Environmental Protection and Enhancement Program for the Development and Construction Period.

Evaluation of the Development and Construction Work Program shall follow the procedures set out in Section XI of this Agreement. The content of the Environmental Protection and Enhancement Program shall be as provided in Section 169 of the IRR, and approval of the Environmental Protection and Enhancement Program shall follow the procedures prescribed by Section 170 of the IRR.

Any other Mining Area declared out of such remaining Contract Area may be covered by this Agreement or as a separate Agreement subject to Clause 5.2(c) of this Agreement.

All the remaining Contract Area at the expiration of the Feasibility Study Period which shall not be covered by a Declaration of Mining Project Feasibility and has not previously been the subject of a Declaration of Mining Project Feasibility shall be automatically relinquished to the Government.

- 7.2 Timetable. During the Development and Construction Period, the Contractor shall complete Mine Development in the Mining Area(s) identified in the Mining Project Feasibility Study filed pursuant to Clause 7.1(a). The Contractor shall also have the right in its discretion to continue Exploration activities and other Mining Operations in any Mining Area during this Period.
- 7.3 Expenditure Commitment. The Contractor shall expend in total not less than Fifty Million US Dollars (US\$50,000,000.00) or its Philippine Peso equivalent on infrastructure and development in the Contract Area, which amount shall include all Pre-Operating Expenses incurred after the commencement of the Development and Construction Period. In the event this expenditure commitment is not or cannot be met, the Contractor has the option to convert this Agreement into a Mineral Production Sharing Agreement or withdraw from this Agreement in accordance with the terms prescribed in Clause 18.2 and Clause 17.3, respectively.
- 7.4 Reporting Requirements. The Contractor shall submit the following reports during the Development and Construction Period:
 - a. Exploration Reports. With respect to any Exploration activities unrelated to Mine Development, the Contractor shall submit to the Regional Director, copy furnished the Director, the reports identified in Clause 6.7(a) and (b) of this Agreement. Exploration activities related to Mine Development shall be included in the annual progress reports under paragraph (b) of this Clause.
 - b. Annual Reports. Within ninety (90) days after the end of each Contract Year, the Contractor must prepare and submit to the Regional Director, copy furnished the Director, an annual progress report of its Mine Development activities for that Contract Year, including major activities, achievements and expenditures, signed by a licensed Mining Engineer or Geologist.
 - c. Final Report on Mine Development Expenditures. Within ninety (90) days after it completes Mine Development on the Mining Area(s) identified in the Mining Project Feasibility Study filed pursuant to Clause 7.1, the Contractor shall prepare and submit to the Regional Director, copy furnished the Director, a final report itemizing the amount and nature of all Mine Development activities and expenditures made in satisfaction of the Contractor's commitment under Clause 7.3.

- d. All other reports required by the Act and the IRR.

SECTION VIII OPERATING PERIOD

- 8.1 Commencement of Commercial Production. Within thirty (30) days after the Date of Commencement of Commercial Production, the Contractor shall notify the Secretary, Director and Regional Director of such commencement.
- 8.2 Work Programs. At least thirty (30) days before the expiration of the Development and Construction Period, the Contractor shall submit to the Regional Director, for approval by the Director, an initial Work Program covering the first three (3) years of the Operating Period. The Contractor shall, at least thirty (30) days before the expiration of each consecutive three (3)-year period of the Operating Period, submit to the Regional Director, for approval by the Director, a Work Program covering the next three (3)-year period. The Contractor shall have the right to continue Mining Operations while approval of any Work Program is pending. The Contractor shall also during the Operating Period have the right in its discretion to continue Exploration activities in any Mining Area.
- 8.3 Conduct of Mining Operations. The Contractor shall conduct Mining Operations during the Operating Period in accordance with the relevant approved Work Program: *Provided*, That the timing, nature and extent of Mining Operations during the Operating Period shall be in the sole discretion of the Contractor: *Provided further*, That the Contractor continues to otherwise comply with the terms of this Agreement and all applicable laws of the Republic of the Philippines and adhere to internationally accepted sound mining production practices.

The Contractor shall in accordance with Sections 171 and 144 of the IRR, respectively, submit to the Regional Director, copy furnished the Director, an Annual Environmental Protection and Enhancement Program and a Safety and Health Program covering each Mining Area in which Mining Operations are to be conducted.

- 8.4 Reporting Requirements.
- a. The Contractor shall submit to the Regional Director, copy furnished the Director, all reports required for FTAA contractors under Section 270 of the IRR.
- b. The Contractor shall submit annually to the Regional Director, copy furnished the Director, a copy of the Contractor's latest updated General Information Sheet, certified and duly stamped "Received" by the Securities and Exchange Commission.
- 8.5 Expansion and Modification of Facilities; Development of Additional Deposits.
- a. The Contractor may make expansions, modifications, improvements, and replacements of the mining facilities and may add new facilities, as the Contractor may consider necessary for Mining Operations. The Contractor shall conduct any Pre-Feasibility Studies or Feasibility Studies it deems necessary and shall obtain any Environmental Compliance Certificate, or supplement of its existing Environmental Compliance Certificate, required by law for any such activity. Such activities shall be embodied in an appropriate Work Program submitted to the Regional Director, copy furnished the Director. Approval of the Development and Construction Work Program shall follow the procedures set out in Section XI of this Agreement.

- b. In the event of any expansion, modification, improvement, or replacement of existing mining facilities, addition of new facilities, or utilization of additional Mineral Resources in the Contract Area, the Contractor may avail of applicable fiscal and non-fiscal incentives as provided for under the Act and the IRR, Executive Order No. 226 (EO 226), and other laws.
- c. The Contractor may mine and utilize at any time during the Operating Period any additional Mineral Resources identified during the Term of this Agreement in the Mining Area in which its initial Mine Development occurs.
- d. The timing, nature and extent of Mining Operations with respect to any expansion, modification, improvement, or replacement of existing mining facilities, addition of new facilities, or utilization of additional Mineral Resources in the Contract Area shall be in the discretion of the Contractor subject to Clauses 8.5(a) through (c), including the Contractor's determination of the sufficiency of its existing Mineral reserves and capacity of its existing mining and processing facilities, the feasibility of utilizing additional Mineral Resources, the availability and adequacy of terms of any financing needed, and the existing and anticipated market conditions for Minerals.

8.6 Surface Areas Necessary to the Mining Operations

Surface areas which are necessary and vital to the mining operations of the FTAA Contractor may be acquired by the Government at the expense of the Contractor subject to the terms and conditions of this Agreement.

SECTION IX FISCAL REGIME

9.1 General Principles.

- a. The Total Government Share from this Agreement shall comprise of a Basic Government Share and, if warranted, an Additional Government Share.
- b. The Basic Government Share shall consist of direct taxes, royalties, fees and other related payments as defined in this Agreement.
- c. The Additional Government Share is the amount to be paid by the Contractor when the Basic Government Share is less than fifty percent (50%) of the Net Mining Revenue.
- d. The Net Mining Revenue is Gross Output less Deductible Expenses.

9.2 Basic Government Share

The Basic Government Share shall consist of all direct taxes, royalties, fees and related payments required by existing laws, rules and regulations to be paid by the Contractor. It shall be the minimum share that Government shall receive during any calendar year. The following national and local taxes, royalties and fees paid by the Contractor to the Government during a calendar year constitute the Basic Government Share:

- a. Contractor's income tax;
- b. Customs duties and fees on imported capital equipment;
- c. Value-added tax on imported goods and services;
- d. Withholding tax on interest payments on foreign loans;

- e. Withholding tax on dividends to foreign stockholders;
- f. Documentary stamps taxes;
- g. Capital gains tax;
- h. Excise tax on minerals;
- i. Royalties For Mineral Reservations and to Indigenous Peoples, if applicable;
- j. Local business tax;
- k. Real property tax;
- l. Community tax;
- m. Occupation fees;
- n. Registration and permit fees; and
- o. All other national and local Government taxes, royalties and fees as of the effective date of this Agreement.

Related payments made by the Contractor for Special Allowance and Royalty to Indigenous Peoples or Indigenous Cultural Communities, if applicable, and which are subject of agreements entered into by and between the Contractor and concerned individuals or private parties, and were duly approved by the Government, shall be considered as part of the Basic Government Share.

Starting from the effective date of this Agreement, the Contractor shall pay all applicable taxes, royalties, fees and other related payments subject to the following:

- i. From the date of approval of the Declaration of Mining Project Feasibility up to the end of the Recovery Period as defined in this Agreement, the Contractor shall pay above Items (h) to (o) which includes Excise Tax on Minerals, Royalty on Mineral Reservations and local taxes, fees and related imposts due to Local Government Units.
- ii. After the Recovery Period, the Contractor shall then pay all applicable taxes, fees, royalties and other related payments to the national and local Governments [Items (a) to (o) above].
- iii. Any value-added tax on exported products refunded by or credited to the Contractor shall not form part of the Basic Government Share.

9.3 Deductible Expenses

The following cash expenses shall be allowed for deduction from the Gross Output to determine the Net Mining Revenue:

- a. Mining, milling, transport and handling expenses together with smelting and refining costs other than smelting and refining costs paid to third parties;
- b. General and administrative expenses actually incurred by the Contractor in the Philippines;
- c. Environmental expenses of the Contractor including such expenses necessary to fully comply with its environmental obligations as stipulated in the environmental protection provision of this Agreement and in the IRR;
- d. Expenses for the development of host and neighbouring communities and for the development of geosciences and mining technology including training costs and expenses as stipulated in this Agreement and in the IRR;
- e. Royalty payments to Claimowners or surface land owners relating to the Contract Area during the Operating Period, if any;
- f. Continuing mine operating development expenses within the Contract Area

after the pre-operating period; and

- g. Interest expenses charged on loans or such other financing-related expenses incurred by the Contractor subject to the financing requirement in this Agreement, which shall not be more than the prevailing international rates charged for similar types of transactions at the time the financing was arranged, and where such loans are necessary for the operations.

9.4 Additional Government Share

After the Recovery Period, the Contractor shall pay an Additional Government Share if the Basic Government Share is less than fifty percent (50%) of the Net Mining Revenue.

This Additional Government Share shall be the difference of the fifty (50) percent of the Net Mining Revenue and the Basic Government Share during the calendar year.

9.5 Sales of Minerals or Mineral Products

- a. Sales and Exportation of Minerals or Mineral Products - The Contractor shall endeavor to dispose the Minerals and by-products produced in the Contract Area at the highest commercially achievable market price and lowest commercially achievable commissions and related fees under circumstances then prevailing, and to negotiate for sales terms and conditions compatible with world market conditions. The Contractor may enter into long-term sales and marketing contracts or foreign exchange and commodity hedging contracts for its minerals or mineral products.

The Contractor shall inform the Government when it enters into a marketing agreement or sales contract with foreign and local buyers. Marketing contracts and sales agreements involving commercial disposition of minerals and by-products shall be subject for approval by the Secretary upon recommendation of the Director: *Provided*, That approved marketing contracts and sales agreements shall be registered with the Bureau, and shall be treated with confidentiality between the Government and the Contractor.

The Government shall be entitled to examine all sales and exportation of minerals or mineral products including the terms and conditions of all sales commitments.

Sales commitments with affiliates, if any, shall be made only at prices based on or equivalent to arm's length sales and in accordance with such terms and conditions at which such agreement would be made if the parties had not been affiliated, with due allowance for normal selling discounts or commissions. Such discounts or commissions allowed the affiliates must be no greater than the prevailing rate so that such discounts or commissions will not reduce the net proceeds of sales to the Contractor below those which it would have received if the parties had not been affiliated. The Contractor shall, subject to confidentiality clause of this Agreement, submit to the Government evidence of the correctness of the figures used in computing the prices, discounts and commissions, and a copy of the sales contract.

For purposes of this clause, an affiliate or an affiliated company means:

- i. any company in which the Contractor holds fifty percent (50%) or more of the shares;
- ii. any company which holds fifty percent (50%) or more of the Contractor's

shares;

- iii. any company affiliated by the same definition in (i) or (ii) to an affiliated company of the Contractor is itself considered an affiliated company for purposes of this Agreement;
- iv. any company which, directly or indirectly, is controlled by or controls, or is under common control by the Contractor;
- v. any shareholder or group of shareholders of the Contractor or of an affiliated company; or
- vi. any individual or group of individuals in the employment of the Contractor or of any affiliated company.

Control means the power exercisable, directly or indirectly, to direct or cause the direction of the management and policies of a company exercised by any other company and shall include the right to exercise control or power to acquire control directly or indirectly, over the company's affairs and the power to acquire not less than fifty percent (50%) of the share capital or voting power of the Contractor. For this purpose, a creditor who lends, directly or indirectly, to the Contractor, unless he has lent money to the Contractor in the ordinary course of money-lending business, may be deemed to be a Person with power to acquire not less than fifty percent (50%) of the share capital or voting power of the Contractor if the amount of the total of its loan is not less than fifty percent (50%) of the total loan capital of the company.

If a person ("x") would not be an affiliate or an affiliated company ("y") on the basis of the above definition but would be an affiliate if each reference in that definition to "fifty percent (50%)" was read as a reference to "forty percent (40%)" and the Government has reasonable grounds for believing that "x" otherwise controls "y" or "x" is otherwise controlled by "y", then, upon the Contractor being notified in writing by the Government of that belief and the grounds therefore, "x" and "y" shall be deemed to be affiliates unless the Contractor is able to produce reasonable evidence to the contrary.

- b. Price or Cost Transfers. The Contractor commits itself not to engage in transactions involving price or cost transfers in the sale of its minerals or mineral products and in the purchase of input goods and services resulting either in the illegitimate loss or reduction of Government Share or illegitimate increase in Contractor's share. If the Contractor engages affiliates or an affiliated company in the sale of its mineral products or in providing goods, services, loans or other forms of financing hereunder, it shall do so on terms no less than would be the case with unrelated persons in arms-length transactions.
- c. Documentary Proof of Payment – The Contractor shall furnish the Bureau with documentary proof of final payment of each and every mineral sales it undertakes not later than seven (7) days upon receipt of its payment from such sales. The documentary proof shall contain information on the F.O.B. gross value of the sales; the particular deductions applied on the sales, initial payments received; if any, and the final net sales value in the denomination of the payment received and its equivalent in Philippine Peso at the time the Contractor received the payment.

9.6 Payment of Government Share

- a. Occupation Fees. Prior to or upon registration of this Agreement and on the

same date every year thereafter, the Contractor shall pay to the concerned Treasurer of the municipality(ies) or city(ies) the required Occupation Fee over the Contract Area at the rate provided for by existing laws, rules and regulations.

- b. Government Taxes, Royalties and Other Fees. The Contractor shall promptly pay all the taxes, royalties and fees required by the Government in carrying out the activities covered in this Agreement and in such amount, venue, procedure and time as stipulated by the particular law and implementing rules and regulations governing such taxes and fees, subject to all rights of objection or review as provided for in relevant laws, rules and regulations. In the case of non-payment of certain taxes and fees during the Recovery Period, the Contractor shall follow the prevailing procedures for availing non-payment in accordance with pertinent laws, rules and regulations.
- c. Additional Government Share. - Payment of the Additional Government Share shall commence after the Recovery Period. The Additional Government Share shall be computed and filed by the Contractor using the procedure in the applicable rules and regulations. The amount shall be paid to the Bureau within thirty (30) days after the filing and payment date of the final income tax return to the Bureau of Internal Revenue. The Bureau shall conduct a post-audit of the payment and shall notify the Contractor of any deficiency in its payment of Additional Government Share.

For the purpose of determining the amount of Additional Government Share, the Contractor shall furnish the Director certified true copies of receipts of all of its payments of taxes, royalties and fees comprising the Basic Government Share during the calendar year, including its income tax returns, not later than fifteen (15) days after the date of its filing.

Late filing and payment of the Additional Government Share shall be subject to the same penalties applicable to late filing of income tax returns. Non-settlement of deficiencies in the payment of Additional Government Share within thirty (30) days from receipt of notice shall be a ground for withholding the issuance of Ore Transport Permits and/or suspension or cancellation of this Agreement. The appropriate penalties and fines for income tax returns shall be applied to non-complying Contractors for this offense.

9.7 Recovery of Pre-Operating Expenses

- a. Recovery Period. Considering the high risk, high cost and long term nature of an FTAA mining operation, the Contractor shall be given an opportunity to recover the expenses incurred during its pre-operating period. After this period, the Government shall receive its rightful share from the national patrimony. Recovery Period, as used in this Order, shall be a maximum of five (5) years or at a date when the aggregate of the Net Cash Flows from the mining operations is equal to the aggregate of its Pre-Operating Expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first.

For this purpose, the above Net Cash Flows and Pre-Operating Expenses refer to the actual Net Cash Flows from mining operations and the actual Pre-Operating Expenses incurred by the Contractor, respectively, converted into its United States dollar equivalent at the time the expenditure was incurred.

In case the project incurs very large investments with high production rate and

extensive mine life, as determined by the Bureau, the Recovery Period may be extended upon negotiation with the Negotiating Panel and subject to approval by the Secretary.

- b. Recoverable Pre-Operating Expenses. All Pre-Operating Expenses allowed for recovery under this Agreement shall be approved by the Secretary upon recommendation of the Director. It shall be limited to actual expenses and capital expenditures relating to the following:
1. Acquisition, maintenance and administration of any mining tenements or agreements covered by this Agreement;
 2. Exploration, evaluation, feasibility and environmental studies, production, mining, milling, processing and rehabilitation;
 3. Stockpiling, handling, transport services, utilities and marketing of minerals and mineral products;
 4. Development within the Contract Area relating to the mining operations;
 5. Infrastructure contributions and payments made to local Governments except taxes, royalties and fees;
 6. Payments to landowners, surface rights holders, Claimowners and to indigenous cultural people or indigenous cultural communities, if any;
 7. Expenses incurred in fulfilling the Contractor's obligations to contribute to national development and training of Philippine personnel;
 8. Consulting fees incurred inside and outside the Philippines for work related directly to the mining operations and consistent with the Contractor's approved Work Program;
 9. The establishment and administration of field and regional offices including administrative overheads incurred within the Philippines which are properly allocable to the mining operations and directly related to the performance of the Contractor's obligations and exercise of its rights under this Agreement;
 10. Costs incurred in financial development, including interest on loans payable within or outside the Philippines, subject to the financing requirements required in this Agreement and to a limit on debt-equity ratio of 5:1 for investments equivalent to US\$200 Million or less, or for the first US\$200 Million of investments in excess of US\$200 Million; or 8:1 for that part of the investment which exceeds US\$200 Million: *Provided*, That the interests shall not be more than the prevailing international rates charged for similar types of transaction at the time the financing was arranged;
 11. All costs of constructing and developing the mine incurred before the Date of Commencement of Commercial Production, including capital and property as hereinafter defined irrespective as to their means of financing, subject to the limitations defined by Clause 9.7.b (10) of this Section, and inclusive of the principal obligation and the interests arising from any Contractor's leasing, hiring, purchasing or similar financing arrangements including all payments made to Government, both national and local; and
 12. General and administrative expenses actually incurred by the Contractor for the benefit of the Contract Area.

All Pre-Operating Expenses reported for recovery shall be subject to verification by Government or its designated representative or auditor. All expenses to be incurred in the verification will be chargeable against the Contractor.

9.8 Examination of Accounting Books, Records and Related Documents

The Contractor shall keep accurate records of all transactions relating to Pre-Operating Expenses, capital expenditures, gross sales, Deductible Expenses, recoverable expenses, Basic Government Share and the computation of Additional Government Share, and related financial matters. Upon prior written notice, the Contractor shall, at all reasonable times, make them available for inspection and audit by Government representatives authorized by the Secretary.

The Contractor, through its President, shall submit to the Bureau a sworn semi-annual summary of its actual financial records covering its gross sales, Deductible Expenses, recoverable expenses, basic government share paid and other related financial documents without prejudice to the submission of other reportorial requirements under the Act and the IRR.

**SECTION X
INCENTIVES**

10.1 Entitlement to Incentives. The Contractor may be entitled to the incentives granted under EO 226, as amended, otherwise known as the “Omnibus Investment Code of 1987,” the Act and other pertinent laws, rules and regulations, subject to the Contractor’s compliance with the terms and conditions of this Agreement and the provisions under Chapter XXIII of the IRR. Fiscal and non-fiscal incentives sought to be availed of shall require prior approval from the agency administering the incentives.

10.2 Incentives under EO 226, as amended. The Contractor can avail of fiscal and non-fiscal incentives granted under EO 226, as amended, subject to its registration with the Board of Investments (BOI) and compliance with requirements provided for in EO 226 and its rules and regulations. The incentives availed of under EO 226, as amended, shall be administered by BOI.

10.3 Incentives for Pollution Control Devices. Pollution control devices and facilities which were acquired, constructed or installed by the Contractor shall not be considered as improvements on the land or building where they are placed, and therefore, shall not be subject to real property tax and other taxes or assessments.

The Contractor may avail of this incentive in writing to the Director supported by a sworn report containing a detailed list of such devices and infrastructure together with relevant maps or diagrams indicating their location and use in the operations. Such report shall include the acquisition and installation cost of the devices or infrastructure, the corresponding amount of tax exemption availed of by the Contractor. If such devices and infrastructure, after evaluation by the Bureau, are found necessary and appropriate for the operations, the Director shall issue a Certificate of Tax-Exemption covering the declared devices and infrastructure for the purpose of availing of exemption from Local Government taxes and assessments. The Director or his/her representative shall monitor the utilization of these devices and infrastructure in relation to the Contractor’s operation to ascertain that such are used for pollution control purposes.

10.4 Incentive for Income Tax-Carry Forward of Losses. A net operating loss without

benefit of income tax incentives incurred in any of the first ten (10) years after the Date of Commencement of Commercial Production may be carried over as a deduction from taxable income for the next five (5) years immediately following the year of such loss. Any portion of such loss which exceeds the taxable income for a particular taxable year shall be deducted from the succeeding years taxable income but not to exceed the fifth year. This incentive cannot be availed of simultaneously with the income tax holiday provided under EO 226, as amended.

The Contractor shall not carry over losses incurred in activities other than those pertinent to the mining operations covered by this Agreement. Only such losses attributable to mining operations covered by this Agreement and incurred after its approval, and within the ten (10) year period from Date of Commencement of Commercial Production shall be considered for purpose of availment of incentives on income tax-carry forward of losses.

The incentive on income tax-carry forward of losses may be granted in accordance with the IRR after compliance of the requirements as provided therein.

10.5 Incentive for Income Tax-Accelerated Depreciation. At the option of the Contractor and in accordance with procedure established by the Bureau of Internal Revenue (BIR), fixed assets may be depreciated as follows:

- a. Fixed Assets with Expected Life of Ten (10) Years or Less. May be depreciated to the extent of not more than twice as fast as the normal rate of depreciation or depreciated at normal rate; or
- b. Fixed Assets with Expected Life of More Than Ten (10) Years. May be depreciated over any number of years between five (5) years and the expected life and the depreciation thereon shall be allowed as a deduction from taxable income subject to the Contractor notifying the BIR at the beginning of the depreciation period which depreciation rate allowed by this section will be used.

If a Contractor shifts from a normal depreciation rate to an accelerated rate, only the applicable book value of the asset as defined by the BIR which shall be the written down value as of the end of the previous taxable year shall be used in the computation of the depreciation charge.

The Contractor may avail of this incentive in writing to the Director accompanied by a sworn report containing detailed list of the fixed assets relevant to the Contractor's operation together with relevant maps and diagrams indicating the location and names of the assets. Such report shall include the applicable book value, expected life in years, depreciation schedule and the fixed asset's use in the Contractor's operation.

10.6 Amortization of Exploration and Development Expenses. In computing taxable income, the Contractor may, at its option, deduct exploration and development expenditures accumulated at cost as of the Effective Date as well as exploration and development expenditures incurred during the taxable year: *Provided*, That the total amount deductible for exploration and development expenditures incurred prior to the Date of Commencement of Commercial Production shall not exceed twenty-five percent (25%) of the Net Income from Mining Operations. The actual exploration and development expenditures shall be carried forward to the succeeding years until fully deducted.

Net Income from Mining Operations for the purpose of implementing this clause shall mean the Gross Output less Deductible Expenses and Depreciation Charges.

10.7 Investment Guarantees. The Contractor shall be entitled to the investment

guarantees provided in the Act and its IRR.

- 10.8 Incentives for Expansions and Modifications to Existing Facilities and for Development of New Mineral Resources. Incentives for expansions and modifications relating to existing Mining Operations shall be governed by the applicable provisions of EO 226, as amended. If the expansion or modification would qualify for incentives under the provisions of EO 226, the Contractor may elect by notice in writing to the Government to avail of either the incentives available under the said Executive Order or of the incentives provided for under Section X hereof. In determining the application of the incentives availed of, only the expenditures incurred on the expansion or modification and the income from that expansion or modification shall be taken into account. For development of new Mineral Resources covered by another Mining Area as earlier declared by the Contractor within the original Contract Area, the Contractor shall be entitled to a new set of incentives.
- 10.9 Conditions for Availment of Incentives. The Contractor's right to avail of the incentives provided herein shall be subject to the conditions provided in Section 228 of the IRR. The Contractor may avail of exemption from payment of income tax during the Recovery Period as provided for under Clause 9.7 of this Agreement or the Income Tax Holiday under EO No. 226: *Provided*, That the total period of availment of income tax incentive shall not exceed the maximum period provided under EO 226: *Provided, further*, That availment of income tax incentives shall be reckoned from the Date of Commencement of Commercial Production. The Contractor shall declare its intent to avail of such incentives during its Declaration of Mining Project Feasibility: *Provided, furthermore*, That there is sufficient ore reserves in the mining area to sustain a projected total mine life of three (3) times the projected number of operating years with incentives, but the total of which should not be less than ten (10) years: *Provided, finally*, That for every year of incentives, the Contractor should operate for two (2) years without incentives, thereby allowing the Government to collect its rightful share from the utilization of the minerals.

SECTION XI EVALUATION OF WORK PROGRAMS

- 11.1 Submission to Government. The Contractor shall prepare and submit for each Period of the Mining Operations the Work Programs described in Clauses 6.2, 7.1, 8.2 and, if applicable, 8.5 of this Agreement.
- 11.2 Evaluation and Proposed Revision. The Director shall evaluate the Work Program to determine whether or not it is in accordance with the Contractor's obligations under this Agreement, the Act and the IRR. Should the Director determine that a certain specific feature of the Work Program is not in accordance with this Agreement, the Act or the IRR, he or she shall, within thirty (30) days after receipt thereof provide a Notice to the Contractor specifying in detail the reasons therefore. Within a period of thirty (30) days thereafter, the Director and Contractor will meet to consider and endeavor to agree on a mutually acceptable revision to the Work Program. Pending such agreement, the Contractor may continue any Mining Operations that are consistent with the last Work Program or Mining Operations under the proposed Work Program that are not disputed, or both.
- 11.3 Approval. After evaluation and any revision, the Director shall approve the proposed Work Program. A Work Program, or amendment thereof, shall be deemed approved if no Notice is received by the Contractor under Clause 11.2 hereof within thirty (30) days after submission.

11.4 Contractor's Changes to Work Program. It is recognized by the Government and the Contractor that the details of any Work Program may require revisions in the light of changing circumstances, including the ongoing results of Mining Operations. The Contractor may make such revisions provided they do not materially alter the general objective of the Work Program. Any change that materially alters the general objectives of the Work Program, and any change entailing a negative variance of at least twenty percent (20%) from the original Budget for an Exploration Work Program shall be submitted to the Director, for approval under Clause 11.2 hereof with as much advance notice as is reasonable under the circumstances, and shall be evaluated on a priority basis so as not to hinder or delay the ongoing Work Program. Notwithstanding the foregoing, in case of emergency or unexpected events that are beyond its reasonable control, the Contractor may take any action it deems necessary to protect life, limb or property, or to comply with law or Government regulation: *Provided*, That the Contractor shall notify the Regional Director, copy furnished the Director, as soon as practicable of any actions it may have taken.

11.5 Financial Guarantees.

- a. Prior to Approval of this Agreement, the Contractor shall post with the Secretary a financial guarantee or performance bond, letter of credit, or other forms of negotiable instrument in an amount equivalent to the Ground Expenditure obligation of the Contractor for the first Contract Year. Within thirty (30) days after the commencement of the second through sixth Contract Years, the Contractor shall increase the amount of such financial guarantees, or the Secretary shall authorize the release of a portion of such financial guarantees, to reflect the amount of the Ground Expenditure obligation for such Contract Year plus any unexpended deficiency from prior Contract Years under Clause 6.4(c).
- b. Within thirty (30) days after the earlier of the end of the sixth Contract Year or the termination of or withdrawal of the Contractor from this Agreement, the Secretary shall authorize the release to the Contractor of the entire amount of the financial guarantees, less any amount deducted pursuant to Clause 6.4(c) and 6.4(e).

**SECTION XII
ENVIRONMENTAL PROTECTION; MINE SAFETY AND HEALTH;
SOCIAL DEVELOPMENT; AND DEVELOPMENT OF MINING
TECHNOLOGY AND GEOSCIENCES**

12.1 Environmental Protection. Consistent with the basic policy of the State to assure the availability, sustainability and equitable distribution of the country's natural resources, the Contractor shall manage its mining operations in a technically, financially, socially, culturally and environmentally responsible manner to promote the general welfare of the country and the sustainable development objectives and responsibilities as provided for in the Act and the IRR. The Contractor shall conduct all Mining Operations in accordance with the provisions of the Act, IRR and applicable laws concerning environmental protection, mine safety and health, using appropriate anti-pollution technology and facilities to protect the Environment and to rehabilitate areas mined out or affected by Mine Wastes and Mill Tailings or other Pollution or surface disturbance of the Contract Area by the Contractor.

12.2 Pre-Existing Environmental Liabilities. The Contractor shall assume any environmental liabilities with respect to the Contract Area caused by third parties

prior to the Effective Date or during the Term of this Agreement.

12.3 Environmental Work Programs.

- a. The Contractor shall submit an Environmental Work Program ("EWP"), as prescribed in Section 168 in the IRR, for all Exploration conducted during the Exploration Period, the Pre-Feasibility Study Period and the Feasibility Study Period. Exploration during subsequent Periods shall be incorporated into the Environmental Protection and Enhancement Program (EPEP) and Annual Environmental Protection and Enhancement Programs (AEPEP), rather than an EWP.
- b. Each EWP shall detail the environmental impact control and rehabilitation activities proposed for the Exploration activities covered by such program, including the costs to enable sufficient financial resources to be allocated to meet the environmental and rehabilitation commitments. The EWP shall provide a description of the expected and considered acceptable impacts and shall set out the environmental protection and enhancement strategies based on best practice in environmental management in mineral exploration. It shall include a statement on post-exploration land use potential for various types of disturbed land and extend to the completion of the commitments in the rehabilitation of the disturbed land in a technically, socially and environmentally competent manner. The program shall be based on acceptable, practical and achievable options and demonstrated practice. Finally, the program shall include implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.

12.4 Environmental Compliance Certificate. The Contractor shall not commence any Mine Development or construction work in the Contract Area, other than additional Exploration, without first securing an Environmental Compliance Certificate in accordance with Presidential Decree No. 1586 and its implementing rules and regulations. No Environmental Compliance Certificate shall be required for Exploration, Pre-Feasibility Studies or Feasibility Studies.

In the process of obtaining approval of its Environmental Compliance Certificate, the Contractor shall participate in scoping, information dissemination and consultation with affected communities concerning its proposed project, and shall consider concerns raised by the community, as required under pertinent laws, rules and regulations.

12.5 Environmental Protection and Enhancement Program.

- a. Timing of Submission. The Contractor shall submit within thirty (30) days after the issuance and receipt of the ECC, an EPEP using the form prescribed in the IRR and covering all areas to be affected by Mine Development, utilization, processing and decommissioning under this Agreement.
- b. Contents of EPEP. The EPEP shall provide a description of the expected and considered acceptable impacts and shall set out the life-of-mine environmental protection and enhancement strategies, including final mine rehabilitation and/or decommissioning, based on best practice in environmental management in mining. It shall include a statement on post-mining land use potential for various types of disturbed land (*inter alia*, pits, Mine Waste dumps, Mill Tailings-impounding structures and infrastructure sites) and extend to the

completion of the commitments in the rehabilitation of the disturbed land in a technically, socially and environmentally competent manner. The program shall be based on practical and achievable options and demonstrated practice. Finally, the program shall include implementation schedules, system of environmental compliance guarantees, monitoring, reporting and cost provisions. Where proposed practices are unproven, a research program to prove the impact control and rehabilitation technology shall be required.

- c. Initial Environment-Related Expenditures. The Contractor shall allocate for its initial environment-related capital expenditures as part of its capital costs for Mine Development, construction and utilization approximately ten percent (10%) of the total project cost or such other amount appropriate for the environment/geological condition, nature and scale of operations and technology to be employed in the Contract Area. Initial environmental-related capital expenditures may include environmental studies and design cost, Mine Waste area preparation, Mill Tailings/slimes containment/disposal system, Mine Waste disposal system, wastewater/acid mine drainage treatment plants, dust control equipment, air pollution control facilities, drainage system and other environment-related mitigating measures and capital expenditures.

12.6 Annual Environmental Protection and Enhancement Program. The Contractor shall submit within thirty (30) days prior to the beginning of every Calendar Year an AEPEP based on the approved EPEP using the form prescribed in the IRR. The AEPEP shall be implemented during the year for which it was submitted. To implement its AEPEP, the Contractor shall allocate annually three to five percent (3%-5%) of its direct mining and milling cost depending on the environment/geologic condition, nature and scale of operations and technology employed in the Contract Area.

12.7 Contingent Liability and Rehabilitation Fund. Cognizant of the need to ensure just and timely compensation for damages and progressive and sustainable rehabilitation for any adverse effects of the Mining Operation, the Contractor shall establish a Contingent Liability Rehabilitation Fund (CLRF). It shall be in three (3) forms, the Mine Rehabilitation Fund, the Mine Wastes and Tailings Fee, and the Final Mine Rehabilitation and Decommissioning Fund:

- a. Mine Rehabilitation Fund. Subject to Section 181 of the IRR, the Contractor shall establish a Mine Rehabilitation Fund (MRF) based on the financial requirements of the approved EPEP as a reasonable deposit to ensure satisfactory compliance with the commitments/strategies of the EPEP/AEPEP and availability of funds for the performance of the EPEP/AEPEP during the specific project phase. The MRF shall be deposited as a Trust Fund in a government depository bank and shall be used for physical and social rehabilitation of areas affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation. The MRF shall be in two (2) forms, namely:
 - i. Monitoring Trust Fund (MTF). The MTF shall be for the exclusive use in the approved monitoring program; and
 - ii. Rehabilitation Cash Fund (RCF). The RCF shall be designated to ensure the strict compliance of the approved rehabilitation activities and schedules for specific mining project phase, including research programs as defined in the EPEP/AEPEP. The RCF shall be equivalent to ten percent (10%) of the total amount needed to implement the EPEP or Five Million Pesos (₱ 5,000,000.00), whichever is lower.

- b. Mine Waste and Tailings (MWT) Reserve Fund. Mine waste and tailings fees shall be collected semi-annually from the Contractor based on the amounts of mine waste and mill tailings it generated for the said period. The amount of fees collected shall accrue to a MWT Reserve Fund and shall be deposited in a Government depository bank to be used for payment of compensation for damages caused by any mining operations. The Mine Wastes and Tailings Fee (MWTF) mechanisms required under Section 189 to 192 of the IRR shall be the sole source of the MWT Reserve Fund. The fees shall be payable to the Bureau within forty-five (45) days after the end of each semester and shall be based on the sworn MWTF semi-annual report submitted to the Bureau.
- c. Final Mine Rehabilitation and Decommissioning Fund. Subject to Section 187 of the IRR, the Contractor shall establish a Final Mine Rehabilitation and Decommissioning Fund (FMRDF) to ensure the full implementation of the activities and programs set forth in the Final Mine Rehabilitation and Decommissioning Plan (FMRDP). The FMRDF shall be deposited as a trust fund in a Government depository bank and shall be used solely for the implementation of the approved FMRDP.

Annual cash provisions shall be made by Contractor to the FMRDF, within sixty (60) days from the date of the FMRDP's approval and every anniversary date thereafter, based on the formula as provided in the IRR, as follows:

$$\text{Annual Provision} = \text{Cost of Implementing the Approved FMRDP} \times \text{Percentage Required (per implementing rules and regulations on FMRDP)}$$

- 12.8 Mine Wastes and Mill Tailings Management System. In accordance with its approved ECC and EPEP, the Contractor shall set up mitigating measures such as Mine Waste and Mill Tailings disposal system, mine rehabilitation plan, water quality monitoring and other appropriate measures to minimize land degradation, air and water pollution, acid rock drainage and changes in hydrogeology.
- 12.9 Development of Mining Communities, Mining Technology and Geosciences. In accordance with the Act and the IRR, the Contractor shall: assist in the development of its mining community to promote the general welfare and enhance the quality of life of its inhabitants, both Indigenous Cultural Community and Non-indigenous, living in the host and neighboring communities; assist in developing mining technology and geosciences as well as corresponding manpower training and development; and allot annually each Contract Year after the Date of Commencement of Commercial Production an amount equivalent to the rate provided by the prevailing pertinent rules and regulations at the time of the approval of the Declaration of Mining Project Feasibility. The management of this amount shall be governed by such prevailing pertinent rules and regulations.
 - a. Social Development and Management Programs. To assist in the development of the mining community, the Contractor shall formulate and implement a Social Development and Management Program (SDMP), in consultation and in partnership with the host and neighboring communities. It shall include all plans, projects, and activities towards the sustained improvement of the living standards of the host and neighboring communities by creating responsible, self-reliant and resource-based communities capable of developing, implementing and managing community development programs, projects, and activities in a manner consistent with the principle of people empowerment.

To meet the changing needs and demands of the communities, the Contractor

shall submit a five-(5) year SDMP and an Annual SDMP to the Regional Office for evaluation and approval as provided in the IRR.

In implementing its SDMP, the Contractor shall, among others:

- i. Coordinate with proper authorities and consult with the host and the neighboring communities in assisting such communities in implementing their development plans, in accordance with the sustainable development objectives of the IRR;
 - ii. Assist in creating self-sustaining, income-generating activities, such as but not limited to, reforestation and production of goods and services needed by the mine and the community. Where traditional self-sustaining income and community activities are identified by such communities to be present, the Contractor shall work with such communities in the preservation or enhancement of such activities;
 - iii. Give preference to qualified Filipino citizens in the hiring of personnel for its mining operation, the majority of which shall originate according to priority from the host and neighboring communities: the host municipality and province where mine is located: *Provided*, That the Contractor shall organize, at its own expense, skills enhancement programs in the absence of the needed skills: *Provided further*, That the Contractor shall give its firm commitment to skills reformation and entrepreneurship development for people in the mining communities as an integral part of the mine decommissioning process; and
 - iv. Recognize and respect the rights, customs and traditions of local communities.
- b. Development of Mining Technology and Geosciences. The Contractor shall, among others:
- i. Produce, in the course of its operations, geological, geophysical, geochemical and other types of maps and reports that are appropriate in scale and which in format and substance are consistent with the internationally accepted standards and practices. Such maps shall be made available to the scientific community in the most convenient and cost effective forms, subject to the condition that the Contractor may delay release of said information for a reasonable period of time which shall not exceed three (3) years or such earlier time that the Contractor relinquishes the portion of the Contract Area or Mining Area to which such information relates;
 - ii. Systematically keep the data generated from the Contract/Mining Area such as cores, assays and other related information, including economic and financial data and make them accessible to students, researchers and other persons responsible for developing mining, geoscience and processing technology subject to the condition that the Contractor may delay release of data to the science and technology community within a reasonable period of time which shall not exceed three (3) years or such earlier time that the Contractor relinquishes the portion of the Contract Area or Mining Area to which such information relates; and
 - iii. Replicate the data, maps and reports cited in paragraphs (i) and (ii) hereof, and furnish the Director and Regional Director for archiving and systematic safekeeping which shall be made available to the science and technology

community for conducting research and undertaking other activities which contribute to the development of mining, geoscience and processing technology and the corresponding national pool of manpower talents: *Provided*, That the release of data, maps and the like shall be similarly constrained in accordance with paragraphs (k-i) and (k-ii) above.

- 12.10 Mine Environmental Protection and Enhancement Office. The Contractor shall incorporate in its organizational structure a Mine Environmental Protection and Enhancement Office ("MEPEO"), which shall set the level of priorities and marshal the resources needed to implement environmental management programs. The MEPEO shall be headed preferably by either a licensed Mining Engineer, Geologist or Metallurgical Engineer or by an Environmental Engineer with at least five (5) years experience in actual mining environment work and shall be responsible for addressing the environmental concerns of the Contractor through adequate and sustainable programs.
- 12.11 Mine Safety and Occupational Health. The Contractor shall be responsible in the monitoring of environmental, safety and occupational health conditions in the Contract Area in accordance with pertinent laws, rules and regulations, and shall comply with pertinent mine safety rules and regulations.
- 12.12 Final Mine Rehabilitation/Decommissioning Plan. The Contractor shall integrate in the EPEP the Final Mine Rehabilitation and/or Decommissioning Plan (FMRDP) as provided for in existing laws, rules and regulations. Using risk-based methodologies/approaches, the FMRDP shall consider all mine closure scenarios and shall contain cost estimates for the implementation of the FMRDP, taking into consideration expected inflation, technological advances, the unique circumstances faced by the mining operation, among others: *Provided*, That such estimates shall be based on the cost of having the decommissioning and/or rehabilitation works done by third party contractors: *Provided further*, That the estimates, on a per year basis, shall cover the full extent of work necessary to achieve the objectives of mine closure such as, but shall not be limited to, decommissioning, rehabilitation, maintenance and monitoring and employee and other social costs, including residual care, if necessary, over a ten-year period.

SECTION XIII RIGHTS AND OBLIGATIONS OF THE PARTIES

- 13.1 Obligations of the Contractor.
- a. To conduct Mining Operations within the Contract Area in accordance with this Agreement, the Act, the IRR, including the principle of sustainable mining and other principles embodied therein and with efficient, internationally accepted Mining Operation practices.
 - b. To construct and operate all infrastructure and facilities necessary for Mining Operations in accordance with the terms of this Agreement and approved Work Programs.
 - c. To provide or procure all necessary materials, labor, equipment, services, managerial resources, technology and financing for Mining Operations: *Provided*, That the Contractor shall give preference to goods and services produced and offered in the Philippines of equivalent quality, and which are available on equivalent terms. In particular, the Contractor shall give preference to qualified Filipino enterprises, construction materials and skills available in the Philippines, Filipino sub-contractors for road construction and transportation and Philippine household, furniture and food.
 - d. To secure all permits required for Mining Operations.

- e. To keep accurate technical records about the Mining Operations as well as financial and marketing accounts and make them available for inspection by authorized Government representatives as provided in Clause 18.15, subject to the confidentiality provisions of Clause 18.6. During the Term of this Agreement, the Contractor shall not be required to provide any information, data or documents to any person other than authorized Government representatives where authorized and in accordance with existing laws and for the purposes described in Clause 18.15.
- f. To furnish the Regional Director, copy furnished the Director with all data, information and reports required under this Agreement and the IRR, subject to the confidentiality provisions of Clause 18.6.
- g. To transfer to Filipinos employed in Mining Operations appropriate knowledge of the technology used in the performance of their duties in connection with the Contractor's Exploration, Mine Development and commercial utilization of the Minerals in the Contract Area, subject to protection of the Contractor's and third parties' proprietary rights in such technology. This technology transfer obligation may be accomplished pursuant to training programs, research activities, studies and other activities implemented under Chapter X of the Act and Chapter XIV of the IRR.
- h. To hold the Government free and harmless from all claims and accounts of all kinds, as well as demands and actions arising out of the accidents or injuries to persons or properties caused by Mining Operations of the Contractor and indemnify the Government for any expenses or costs it incurs in connection with the defense of any such claims accounts, demands or actions.
- i. To assist in the development of the host and neighboring communities, and the mining technology and geosciences, in accordance with the Act, the IRR and Clause 12.9 hereof.
- j. Indigenous Peoples
 - i. To recognize and respect the rights, customs and traditions of Indigenous Peoples within the Contract Area in accordance with pertinent laws, rules and regulations.
 - ii. To comply with existing laws, rules and regulations respecting the rights of the Indigenous Peoples over their area within the Contract Area.
 - iii. To comply with any and all obligations as may be provided under specific agreements entered into with the Indigenous Peoples within the Contract Area.
- k. To advance its Mining Operations from one Period to the next Period within the time periods defined for each Period of this Agreement, in accordance with its Work Programs, subject to Clauses 4.3 and 4.4 and save as may be excused by the suspension, termination and withdrawal provisions of Section XVII.
- l. To pay just compensation in accordance with Section 75 of the Act and Section 104 of the IRR when it builds, constructs or installs infrastructure and facilities on lands owned, operated or leased by other persons and, if necessary, enter into one or more agreements with affected local communities, Indigenous Cultural Communities and Local Government Organizations.

13.2 Rights of the Contractor. The Contractor shall have the following rights:

- a. The exclusive right to conduct Mining Operations in the Contract Area in accordance with the terms and conditions hereof, the Act, IRR and other pertinent laws, rules and regulations, and to determine the timing, nature, extent and location of Exploration, Mine Development, construction, and the mining and treatment process to be utilized in the Mining Operations.
- b. Of possession of the Contract Area, with full rights of ingress and egress and the right to occupy the same, including the right to enter private lands and concession areas to conduct Mining Operations, subject to prior notice and to payment of compensation for damage caused by such operations, in accordance with Section 76 of the Act and Sections 105 to 108 of the IRR.
- c. Subject to payment of just compensation in accordance with Section 75 of the Act and Section 104 of the IRR, to build, construct or install infrastructure and facilities on lands owned, operated or leased by other persons when necessary for purposes of more convenient Mining Operations.
- d. To use and have access to all declassified geological, geophysical, drilling, production and other information held by the Government or any agency or enterprise thereof, now or, in the future, relative to the Contract Area.
- e. To sell, assign, transfer, convey, encumber and create security interests, or otherwise dispose of all its rights, interests and obligations under the Agreement, subject to the approval of the Government to the extent required under Clause 18.14.
- f. Subject to Clause 15.1, Section XV of this Agreement and applicable laws, rules and regulations, to employ or bring into the Philippines foreign technical and specialized personnel (including the immediate members of their families) as may be required in the operations of the Contractor.
- g. To enjoy, subject to pertinent laws, rules and regulations and any prior valid existing rights of third parties, easement rights and use of timber, water and other natural resources in the Contract Area, including, but not limited to:
 - i. the right to extract, use and remove from the Contract Area, in accordance with Section 48 of the Act, sand and gravel and other loose unconsolidated materials without the need of a separate permit but shall be covered by an ECC, EPEP and the necessary Work Programs: *Provided*, That the Contractor shall use such materials exclusively for Mining Operations, make no commercial disposition of the same, and submit to the Regional Director monthly reports of the quantity of such materials extracted;
 - ii. subject to applicable forestry laws, rules and regulations, the right to cut trees or timber within the Contract Area as may be necessary for Mining Operations: *Provided*, That if the Contract Area is covered by existing timber concessions as of the Effective Date, the volume of timber needed and the manner of cutting and removal thereof shall be determined by the Regional Director, upon consultation with the Contractor, the timber concessionaire or permittee and the Forest Management Bureau of the Department: *Provided further*, That in case of disagreement between the Contractor and the timber concessionaire, the matter shall be submitted to the Secretary whose decision shall be final; and
 - iii. water rights for Mining Operations upon approval of application with the appropriate government agency in accordance with existing water laws, rules and regulations promulgated thereunder: *Provided*, That water rights

already granted or vested through long use, recognized and acknowledged by local customs, laws, and decisions of courts shall not be impaired: *Provided further*, That the Government reserves the right to regulate water rights and the reasonable and equitable distribution of water supply so as to prevent the monopoly of the use thereof.

- h. Subject to existing laws, rules and regulations, and payment of Government Share as provided in Section IX hereof, to repatriate capital and remit profits, dividends, and interest and principal of loans from third parties or affiliates of Contractor, including the rights to:
 - i. repatriate the capital investment actually brought into the country in foreign exchange or other assets and registered with the Bangko Sentral ng Pilipinas;
 - ii. convert into foreign exchange and remit abroad any excess balances of their Peso earnings from Mineral production and sales over and above the working current balances they require;
 - iii. convert foreign exchange into Philippine currency for all purposes in connection with its Mining Operations at rates prevailing at the time of remittance no less favorable to Contractor than those available to any other purchaser of such currency; and
 - iv. convert into foreign exchange and remit abroad sums received for expropriated or requisitioned property under Clauses 13.2(k) and 13.2(l). The Government shall make all of the foregoing rights with respect to exchange of foreign currency available to Contractor on the most favorable terms and conditions available to Filipino citizens or entities and other foreign citizens or entities under the laws of the Republic of the Philippines;
- i. Subject to existing laws, rules and regulations of the Bangko Sentral ng Pilipinas and Monetary Board policies, to purchase, sell, use and retain, any acceptable foreign currency or currencies it may determine; to open, maintain and use accounts in foreign banks and financial institutions, local banks and financial institutions, or both, for such purposes, from which payment may be made to financiers, suppliers and subcontractors, employees and expatriates, and for other expenses of Mining Operations; and to deposit into and withdraw freely from the above described foreign and local accounts, in local or foreign currency, the proceeds of any debt or equity financing, proceeds from the sale of Minerals and mineral products, and any other cash from, or required for, Mining Operations;
- j. Subject to existing laws, rules and regulations, the Contractor shall have the right to import into the Philippines all equipment, machinery and spare parts required by Contractor for Mining Operations, and to export the same when no longer needed for Mining Operations: *Provided*, That machinery, equipment and spare parts of comparable price and quality are not manufactured domestically, are actually needed and will be used exclusively by the Contractor in its Mining Operations, and are covered by shipping documents in the name of the Contractor to whom the shipment will be delivered direct by the customs authorities.

From the date of approval of the Declaration of Mining Project Feasibility until the end of the Recovery Period and/or within a period of five (5) years from the date of acquisition of such machinery, equipment and spare parts, the Contractor may not sell, transfer, or dispose of such machinery, equipment and spare parts within the Philippines without the prior approval of the Director and

payment of any taxes due the Government that were previously exempted: *Provided*, That should the Contractor sell, transfer or dispose of such machinery, equipment and spare parts within the Philippines without the prior consent of the Director within the prescribed period, it shall pay twice the amount of the tax exemption granted: *Provided further*, That the Director may allow the sale, transfer, or disposition of the said items within the Philippines within the prescribed period without payment of previously granted tax and duty exemptions under terms and conditions to be formulated by the Bureau: *Provided finally*, That any sale, transfer or disposition made after the prescribed period shall not require prior approval of the Director but notice thereof shall be made within ten (10) days from the sale, transfer or disposition thereof.

- k. To be free from expropriation by the Government of the rights granted under this Agreement or the property represented by investments or loans or of the property used in Mining Operations except for public use or in the interest of national welfare or defense and then only upon payment of just compensation.
- l. To be free from requisition of the rights granted under this Agreement, the property represented by the investment or of the property of the enterprise except in case of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time or immediately after cessation of the state of war or national emergency.
- m. To maintain all books of accounts and records in accordance with generally accepted accounting standards, principles, and procedures. The Contractor may use U.S. Dollars as the basis for calculating the Government Share as provided for in Section IX hereof.
- n. To receive and to make payments for goods and services utilized in Mining Operations, including payments to employees and subcontractors, whether Filipino citizens or expatriates, in accordance with the applicable laws of the Republic of the Philippines regarding payments in foreign currency.
- o. To transport from the Contract Area to any place of export, and to export from the Philippines, any and all Minerals and mineral products in accordance with Chapter IX of the Act and pertinent rules and regulations.

13.3 Obligations of the Government. The Government shall:

- a. Ensure that the Contractor has the Government's full cooperation in the exercise of the rights granted to it under this Agreement. The Government shall ensure that where any right or assurance given to the Contractor under this Agreement requires any Government department or authority:
 - i. to approve any act, matter or thing; or
 - ii. to grant authority under applicable law or regulations for its exercise or performance,

and the Contractor has supplied any and all necessary information to such Government department or authority as may be required thereby and otherwise met the conditions of this Agreement, such approval is given or such authority is granted as expeditiously as possible such that Contractor is not hindered from complying with the time frames provided for the various Periods of this Agreement. The Government shall ensure that the various tax and other incentives provided in this Agreement are implemented in full, if necessary

through appropriate legislative or regulatory amendments, memoranda of understanding among the DENR and other executive agencies, including the Board of Investments, and other means;

- b. Use its best efforts to ensure the timely issuance of necessary permits and similar authorizing documents for Mining Operations, including use of surface of the Contract Area;
- c. Indigenous Peoples:
 - i. The Government, when necessary and appropriate, shall use its best efforts:
 - a. to ensure the strict compliance by the Contractor and the concerned Indigenous Peoples with any and all terms and conditions of any agreement entered into by and between said parties; and
 - b. to facilitate when requested, any future agreements that the Contractor and the Indigenous Peoples may enter into.
 - ii. The Government shall respect any and all agreements entered into between the Contractor and the Indigenous Peoples and shall not impose conditions on the Contractor's Mining Operations on Ancestral Lands/Domains that are more restrictive than those imposed by law, rules or regulations, and those agreed upon by and between the affected Indigenous Peoples and the Contractor;
 - iii. The intention of the parties in their voluntary agreements shall prevail to the extent consistent with pertinent laws, rules and regulations.
- d. If the Contractor so requests, use its best efforts to assist in the acquisition at the Contractor's expense of any rights required by the Contractor to conduct Mining Operations hereunder: *Provided*, That all obligations, payments, and expenses arising from, or incident to such agreements or acquisition of rights shall be for the account of the Contractor.
- e. Assist in the Contractor's right of entry under Section 76 of the Act into private lands in connection with the conduct of Mining Operations hereunder.
- f. In cases of agreements pertaining to payment of just compensation, encourage, facilitate and respect such agreements that are freely entered into between the Contractor and such affected communities, and agree not to impose requirements with respect to social or cultural acceptability beyond what is required by pertinent laws, rules and regulations, and those voluntarily agreed to between the affected communities and the Contractor.

SECTION XIV ASSETS AND EQUIPMENT

- 14.1 Acquisition. The Contractor shall acquire for the Mining Operations only such assets that it reasonably estimates to be required in carrying out such Mining Operations.
- 14.2 Removal and Export. All materials, equipment, plant and other installations erected or placed on the Contract Area by the Contractor may be removed and re-exported subject to Clause 17.4 hereof and existing rules and regulations.

**SECTION XV
EMPLOYMENT AND TRAINING OF PHILIPPINE PERSONNEL**

- 15.1 Employment Preference. The Contractor shall conform with laws, rules and regulations regarding labor and safety standards. In giving preference to Filipinos in all types of mining employment for which they are qualified, the Contractor shall employ Filipino personnel in its Mining Operations with preference to those who have established domicile in the host province(s) and municipality(ies) and shall, after the Date of Commencement of Commercial Production, in consultation and with consent of the Government, elaborate an appropriate training program for employment of suitable Filipino nationals at all levels of employment. If necessary skills and expertise are currently not available, the Contractor must immediately prepare and undertake a training and recruitment program at its expense to identify suitably qualified Filipinos in the host and neighboring communities with the aptitude to acquire the necessary skills and expertise.
- 15.2 Alien Employment. For highly-technical and specialized mining operations, the Contractor may, subject to the necessary government clearances, employ qualified foreigners. It is agreed that alien employment shall be limited to technologies requiring highly specialized training and experience, subject to the required Government clearance under existing laws, rules and regulations, as provided in Section 62 of the Act. Where foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken.
- 15.3 Non-Discrimination. The Contractor shall not discriminate on the basis of gender. The Contractor shall respect the rights provided by law for all workers to participate in policy and decision-making processes affecting their rights and benefits.

**SECTION XVI
ARBITRATION**

- 16.1 Mediation, Consultation and Negotiation. Before resorting to arbitration, the Government and the Contractor shall consult with each other in good faith and shall attempt to amicably settle any and all disputes or disagreements (Dispute) arising out of or relating to: validity, interpretation, enforceability, or performance of this Agreement, by:
- a. mediation in the event of a Dispute concerning the terms of renewal under Clause 4.5(c), the mediator of which shall be selected by both Parties; or
 - b. consultation and negotiation in the event of any other Dispute.

In the event that either party gives written Notice of a Dispute, the Parties shall promptly hold a meeting attended by individuals for each Party with decision-making authority regarding the Dispute to attempt in good faith to negotiate a mutually acceptable resolution of the Dispute. Disputes that cannot be settled amicably within a reasonable period shall be resolved by arbitration under Clause 16.2. Such period shall not be longer than ninety (90) days from the giving of Notice in the event of a Dispute concerning the terms of renewal under Clause 4.5(c), or one (1) year from the giving of Notice of any other Dispute, and such period shall be determined taking into account the need for expeditious resolution of Disputes given the time periods defined for each Period of this

Agreement.

16.2 Arbitration. The Parties hereby agree to submit to binding arbitration all Disputes which cannot be settled as provided in Clause 16.1. The Parties shall attempt to agree on the rules under which the arbitration will be conducted, the venue of the arbitration and any other procedural matters necessary to conduct the arbitration within thirty (30) days after either party invokes arbitration. Absent such mutual agreement, the Parties hereby agree to the following procedures:

- a. All arbitration shall be conducted in accordance with:
 - i. the arbitration law of the Philippines;
 - ii. United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules; or
 - iii. the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “Convention”) and the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings issued by the International Center for the Settlement of Investment Disputes (“ICSID”) plus the Rules of Procedure for Arbitration Proceedings issued by ICSID.
- b. In the case of arbitration under the UNCITRAL or ICSID, unless the Parties agree otherwise, arbitration shall be conducted in Singapore at The Singapore International Arbitration Centre (“SIAC”) or, if the SIAC is unavailable for any reason, at another location in Singapore chosen by the parties; or

If ICSID arbitration is selected and the venue chosen pursuant to the preceding sentence is not approved by the arbitral tribunal after consultation with the Secretary-General of ICSID, or if the Parties cannot agree on an alternate venue in Singapore, arbitration shall be held at the ICSID Centre.

- c. Each Party shall pay fifty percent (50%) of the fees and expenses of the arbitrators and the costs of arbitration. Each Party shall pay its own costs and attorney’s fee: *Provided*, That when one of Parties is found by the arbitrators to have acted in bad faith or to have been responsible for a material breach of the terms and conditions of this Agreement, such Party shall be responsible for the reasonable costs and attorney’s fees of the other Party, such amount to be determined by the arbitrators: *Provided further*, That any costs or fees incidental to enforcing the arbitral award shall be borne by the Party resisting such enforcement.
- 16.3 Continued Performance. Except as provided in Clauses 17.1(a) and 17.2(b), each Party shall continue to perform all of its obligations under this Agreement during the pendency of the consultations or negotiations under Clause 16.1 and the arbitration proceedings: *Provided*, That the Parties shall maintain the status quo ante regarding the matters that are the subject of the dispute submitted to arbitration.
- 16.4 Relief in Aid of Arbitration. With this arbitration provision, the Parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment or other preliminary remedy in aid of arbitration proceedings and enforcement of the award.

SECTION XVII

SUSPENSION, TERMINATION OR WITHDRAWAL FROM AGREEMENT

17.1 Suspension of Agreement.

- a. Suspension by Government. This Agreement may be suspended by the Secretary upon recommendation by the Director for:
 - i. failure of the Contractor to comply with any provision or requirement of this Agreement, the Act and the IRR; or
 - ii. failure of the Contractor to pay taxes and fees due the Government.

The rights and privileges of the Contractor including its right to the availment of incentives under the Act and the IRR are likewise suspended: *Provided*, That the availment of such incentives shall not be extended for the same period of suspension. The Government shall give prior written notice to the Contractor of its intention to suspend this Agreement under this Clause, which suspension shall be effective if the Contractor does not remedy such cause for suspension within thirty (30) days in the case of failure to make any required payment, or within six (6) months in the case of any non-monetary cause.

If any non-monetary related cause for suspension cannot reasonably be remedied within such six-month period, the Contractor may request an additional period to remedy such cause, which extension shall be subject to verification and approval of the Secretary upon recommendation of the Director. If such remedy is completed within the prescribed period, no suspension shall be imposed.

- b. Suspension Due to Force Majeure
 - i. Notwithstanding any other provisions of this Agreement, any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure, subject to verification by the Bureau.
 - ii. If Mining Operations are delayed, curtailed or prevented by such Force Majeure causes, then the time for enjoying the rights and carrying out the obligations thereby affected, the Term of this Agreement, and all rights and obligations hereunder, shall be extended for a period equal to the period involved.
 - iii. The Party whose ability to perform its obligations is affected by Force Majeure shall promptly give Notice to the other Party in writing of any such delay or failure of performance, the expected duration thereof, and its anticipated effect on the Party expected to perform. After giving any such Notice, the Party who invokes Force Majeure shall exert all reasonable efforts to ameliorate the delay or failure of performance caused by the events or circumstances constituting the Force Majeure, except that in case of labor disputes, neither Party shall be under any obligation to settle such disputes except under conditions acceptable to it or pursuant to the final decision of any arbitral, judicial, or statutory agencies having jurisdiction to finally resolve the dispute. The Party who invokes Force Majeure shall resume performance as soon as reasonably possible and as verified by the Bureau, given the nature of the Force Majeure event.
 - iv. Matters on suspension due to Force Majeure shall not be subject to

consultation and arbitration under Section XVI hereof.

17.2 Termination.

- a. Grounds. This Agreement may be terminated, after due process, for any of the following causes:
 - i. a material violation by either Party of the terms and conditions of this Agreement, such as, but not limited to, failure to implement approved Work Programs, timely lodge Declaration of Mining Project Feasibility, renew Exploration Period, comply with approved plans and designs of mine facilities, equipment and/or structures;
 - ii. failure of the Contractor to pay taxes and fees due the Government for two (2) consecutive years;
 - iii. any intentional and materially false statement or omission of facts by a Party;
 - iv. failure of the Contractor to establish a Mine Rehabilitation Fund as provided in Section 71 of the Act and Section 181 of the IRR; and
 - v. failure of the Contractor to cause the registration of this Agreement within the period provided in Clause 18.21.
- b. Expiration of Term. This Agreement shall terminate upon expiration of its Term if not renewed by the Contractor under Clause 4.5, and if renewed, shall terminate upon expiration of the renewal Term.

17.3 Withdrawal. At any time during the Term of this Agreement, after having exerted reasonable diligence in its Mining Operations under this Agreement, if in the opinion of the Contractor, continued Mining Operations will no longer be economically feasible, the Contractor may, by giving due Notice to the Government, apply for its withdrawal. Withdrawal may be approved on the following grounds:

- a. for any withdrawal occurring during the Exploration Period or Pre-Feasibility Period, payment to the Government of the unexpended minimum Ground Expenditures, as provided in Clause 6.4(e);
- b. for any withdrawal occurring during the Feasibility Study Period, turnover of all exploration and other technical data; and
- c. for any withdrawal occurring during the Development and Construction Period or the Operating Period, turnover of all technical data.

After verification by the Bureau of the cause of withdrawal and of the satisfaction of all the Contractor's financial, environmental and legal obligations as of the date the Contractor gives its Notice of withdrawal, which verification shall be completed within sixty (60) days after receipt of Notice, the Contractor's withdrawal shall be approved by the Secretary. This Agreement shall then be terminated and the Contractor shall be relieved of further obligations hereunder except as specifically provided in this Section.

17.4 Effects of Termination or Withdrawal.

- a. Should termination or withdrawal occur during the Exploration or Pre-

Feasibility Study Period, the Contractor shall have a period of six (6) months within which to sell, remove or otherwise dispose of its property in the Contract Area and to furnish the Government with the information to be turned over to it in respect of the work which the Contractor has performed as of the date of giving of the Notice of termination or withdrawal. Any property not so removed or otherwise disposed of shall become the property of the Government without any compensation to the Contractor.

- b. Should termination or withdrawal occur during the Feasibility Study Period, the Development and Construction Period, the Operating Period, upon the completion of commercial operations or at the expiration of the Term of this Agreement, the Contractor may sell, remove or otherwise dispose of any or all movable or immovable property of the Contractor located in the Contract Area during a period of one (1) year after the Contractor ceases all Mining Operations. Any property not so sold, removed or otherwise disposed of during such one year period, including all infrastructures and facilities located on public lands, shall become the property of the Government without any compensation to the Contractor.
- c. Notwithstanding Clause 17.4 (a) and 17.4 (b) hereof, however, it is agreed that any property of the Contractor in the Contract Area at the termination of this Agreement, movable or immovable and used for public purposes such as roads, schools, hospitals with their equipment and all other infrastructures and facilities used by the public, shall immediately become the property of the Government or Indigenous Cultural Community, as appropriate, without any compensation to the Contractor.
- d. Approval of termination or withdrawal under this Section XVII shall release the Contractor from any obligation under this Agreement.

Within a period of one (1) year upon termination, the Contractor shall be entitled to exercise all rights under this Agreement required to wind up and terminate its Mining Operations.

SECTION XVIII OTHER PROVISIONS

- 18.1. Suspension of Mining Operations. The Contractor may notify the Director and Regional Director to suspend Mining Operations in the said Mining Area due to Temporary Non-Feasibility.
- a. "Temporary Non-Feasibility" means that the continuation of Mining Operations is not viable for the time being due to one or more of the following circumstances, as verified by the Bureau:
 - i. the Contractor's costs of production exceed the realizations from the Minerals or mineral products, determined using spot market prices;
 - ii. the identified Mineral Resource is uneconomic at current spot market prices, although the Mineral Resource may reasonably be expected to become economic in the future based on market prices prevailing at other times during the Term of the Agreement;
 - iii. the development or continued utilization of the Mineral Resource is prevented or made uneconomic by technical problems that cannot be

overcome with generally available technology, including but not limited to difficult metallurgy, lack of proven Mineral Processing technology necessary to beneficiate the identified Mineral Resources, or lack of appropriate anti-pollution technology and facilities necessary to adequately protect, restore or rehabilitate the Environment to the degree required by applicable environmental laws or the Contractor's EPEP;

- iv. the development or continued utilization of the Mineral Resources is prevented or made uneconomic by unanticipated marketing problems that are not within the Contractor's control, such as distance of the identified Mineral Resource from an existing market or marketing problems caused by a third party, including bankruptcy of any purchaser of Minerals or mineral products or failure or refusal of any purchaser to honor existing marketing arrangements; or
 - v. the Contractor is unable to obtain debt or equity financing for Mining Operations on reasonable terms, under conditions then prevailing in the international financial markets, including specific requirements of international financing sources for financing of mining operations in the Republic of the Philippines.
- b. At least 30 days prior to its intended date of suspension of Mining Operations due to Temporary Non-Feasibility, the Contractor shall file a Notice of suspension with the Director, describing the reasons therefore, the expected duration thereof, and its anticipated effect on the Mining Operations. Suspension on the basis for Temporary Non-Feasibility shall be subject to approval of the Director based solely on verification by the Bureau of the existence of any of the circumstances described in Clause 18.1(a). Such verification and approval shall be presumed unless Notice to the contrary is given by the Director within 30 days after the Contractor gives Notice of suspension.
- c. During any period of suspension for Temporary Non-Feasibility, the Contractor's obligations and time for enjoyment or performance of the Contractor's rights and obligations under Clauses 1.5, 4.2, 5.2, 6.2 through 6.6, 7.1 through 7.3, 8.2, 8.3, 11.1, and 13.1(i), (j), (k) and (m) shall be suspended. The Contractor shall continue to comply with its other obligations under this Agreement during the period of suspension, including, among others, its obligations under Section XII hereof with respect to any Mining Operations conducted by the Contractor during the period of suspension.

In the event that the nature of the Temporary Non-Feasibility does not affect one or more Mining Areas, the Contractor shall continue to comply with all of its obligations under this Agreement with respect to the unaffected Mining Area(s). The Contractor shall also continue to comply with any applicable obligations under any agreements between the Contractor and Indigenous Peoples or local communities. The Contractor shall exert all reasonable efforts to ameliorate the circumstances resulting in Temporary Non-Feasibility. The Term of this Agreement shall not be extended by any period of suspension for Temporary Non-Feasibility.

- d. Continued suspension shall be subject to submission by the Contractor of evidence of the continuing reasons therefore, annually on each anniversary of the giving of the original Notice of suspension. Continued suspension shall be subject to approval of the Director based solely on verification by the Bureau of the continued existence of any of the circumstances described in Clause 18.1(a). Such verification and approval shall be presumed unless Notice

to the contrary is given by the Director within 30 days after the Contractor submits its annual evidence of continuing reasons for suspension. The Contractor shall resume performance as soon as reasonably possible given the nature of the Temporary Non-Feasibility, and shall give Notice to the Director upon resuming performance.

18.2 Option to Convert into a Mineral Production Sharing Agreement; Separate FTAA's or Combining of FTAA's.

- a. Conversion to MPSA. The Contractor may at any time give Notice to the Secretary of its intention to convert this Agreement or any portion of the Contract Area thereof into a Mineral Production Sharing Agreement (MPSA) prevailing at the time of conversion, subject to compliance with Section 39 of the Act and Section 65 of the IRR, including technical verification and validation by the Bureau and approval of the Secretary: *Provided*, That if a portion of the Contract Area is to be converted to a MPSA, the remaining portion shall continue to comply with the expenditure commitment provided in Clause 7.3 of this Agreement. Promptly after approval of conversion, and subject to compliance with the Mining Act and the Contractor becoming a Qualified Person or nominating a Qualified Person reasonably acceptable to the Government and approved thereby to enter into the MPSA in its place, the Secretary and the Contractor or its approved nominee shall execute the MPSA.
- b. Effect of Execution of MPSA.
 - i. In case of full conversion, the execution of the MPSA shall cause the termination of this Agreement; or
 - ii. If the Contractor has converted a portion of this Agreement, the portion covered thereof shall be excluded from this Agreement and the remaining portion of the Contract Area shall continue to be covered by the terms and conditions of this Agreement.

Any expenditure incurred pursuant to Clause 7.3 on part or all of the Contract Area covered by conversion prior to execution of the MPSA shall be credited against the expenditure obligations under the MPSA.

- c. Separate FTAA. The Contractor shall at any time have the option to enter into a separate FTAA in respect of any part of the Contract Area, on the same terms and conditions as this Agreement unless otherwise required by law or agreed upon by the Parties, subject to the approval and other requirements of Section 66 of the IRR. The Secretary shall determine whether or not to permit such separation promptly upon request by the Contractor.
- d. Combination of FTAA's. The contract areas or portions of the contract areas of any other FTAA/s may be combined with this Agreement and vice versa, on the same terms and conditions as this Agreement unless otherwise required by law or agreed upon by the Parties, subject to the approval and other requirements of Section 66 of the IRR. The combined contract area shall not exceed the maximum area allowed by the Act and the IRR. The Secretary shall determine whether or not to permit such combination upon request by the Contractor.

18.3 Notice. All documents, notices, request, waivers, consents, communications or approvals required or permitted to be given under this Agreement shall be in writing and shall be delivered either personally, or sent by telegram, cable, radiogram, facsimile or ordinary mail postage paid. Any document, notice or communication so given shall be deemed to have been served:

- a. If delivered personally - on the Working Day of personal delivery;
- b. If sent by registered mail – the service is deemed complete and effective upon actual receipt of the addressee, as shown by the registry return card. However, if the addressee is so negligent that he fails to claim his mail from the post office within five (5) days from the date of the first notice sent to him by the postmaster, then the service is deemed complete and effective at the expiration of such time.
- c. If sent by facsimile - on receipt by the sender of a transmission control report from the dispatching machine showing the relevant facsimile machine number and the result of the transmission as "OK" or similar response: *Provided*, That hard copy is received by the addressee by mail or courier not later than one (1) month from the date of transmission. If as a result of the foregoing document, notice or communication would be deemed to be given or made after 4:00 P.M. on the working day in the place of address it shall instead be deemed to be given or made on the next working day.

Notices shall be sent to the following:

If for the Government:

THE PRESIDENT
Republic of the Philippines
Malacañang Palace, Manila
FAX No. (63-2) 733-2101

If for the Secretary:

THE SECRETARY
Department of Environment and Natural Resources
DENR Building, Visayas Avenue
Diliman, Quezon City
FAX No. (63-2) 920-4352/926-2688

If for the Director or Regional Director:

THE DIRECTOR
Mines and Geosciences Bureau
North Avenue, Diliman
Quezon City
FAX No. (63-2) 920-9130

or

THE REGIONAL DIRECTOR
Mines and Geosciences Bureau Regional Office No.

FAX No.

If for the Contractor:

THE PRESIDENT

FAX NO.

The date/time of receipt of documents shall be determined solely by delivery to the main Party and not to the copy-furnished Party.

Either Party may substitute or change its address by giving due Notice to the other Party. Failure to do so will not excuse such Party from the consequences of its non-receipt of any document, notice or communication.

18.4 Change in Law; Government Action.

- a. As soon as possible after any exercise by the Government of police power which results or may result in the derogation of any right of the Contractor hereunder, the President shall review such action and determine that such action was necessary to protect the health, safety or welfare of the Filipino people. In the event that prior review of such action is possible under the circumstances requiring such exercise of police power, the President shall review such action before it is taken to make the foregoing determination. If any such action is approved by the President, the Government and the Contractor shall use their best efforts to minimize to the extent possible the impact on the rights of Contractor hereunder.

The President shall review and approve any exercise of police power by any Local Government Unit only to the extent that the President may lawfully do so, and in the absence of such authority, the President shall request that such review be conducted by the highest governmental official with jurisdiction over the Local Governmental Unit exercising such police power. This provision is in addition to, and not in lieu of, any remedy that the Contractor may have hereunder or by law as a result of such exercise of police power.

- b. If, after the Effective Date of the Agreement, any existing law or regulation of the Republic of the Philippines or any Government agency or other authority, is amended, modified, repealed, or interpreted by any court or agency, or if any new law, regulation or interpretation comes into effect, or any action is taken by any such agency or authority which, when considered alone or in conjunction with any other such change or action, prejudices, reduces or otherwise adversely affects either Party's assets or its rights under this Agreement, then the Government and the Contractor shall negotiate amendments to this Agreement which shall result in the Parties receiving benefits from this Agreement that are no less favorable to them than would have been the case if such change in law, interpretation, or action had not occurred. Such negotiation may include, but not limited to, amendment of the government share defined in Section IX hereof, or any other means which fully remedies the impacts.
- c. Any increase or decrease in the Government share under any future Financial or Technical Assistance Agreement shall not be subject to Clause 18.4(b): *Provided*, That any increase or decrease in the amount of any generally applicable government exaction, including but not limited to any increase or decrease in the amount or rate of corporate income tax or excise tax on minerals, shall be subject to Clause 18.4(b).

18.5 Governing Law. The relation between the Parties hereto shall be governed by and

construed in accordance with this Agreement, the provisions of the Act, the IRR, and, consistent with the foregoing, other relevant laws and regulations of the Republic of the Philippines and generally accepted principles of international law. The Contractor shall be entitled to the basic rights and guarantees provided in the Constitution and its rights enumerated hereunder, which rights shall be recognized by the Government.

18.6 Confidentiality.

- a. Pursuant to Section 229 of the IRR, any information supplied by the Contractor which has been agreed herein as confidential pursuant to the Act and the IRR shall be treated as such during the Term of this Agreement. However, information concerning the following matters shall not be classified as confidential:
 - i. Quantities of Minerals Produced and sold from the Contract Area;
 - ii. Employment, including the Contractor's training programs and other methods of achieving compliance with the requirements of Section XV hereof;
 - iii. Royalty and tax payments made pursuant to this Agreement, but not the particular terms of payment to Claimowners and Indigenous Cultural Communities;
 - iv. Metallic and non-metallic reserves: *Provided*, That disclosure shall not be required that would violate any securities laws applicable to the Contractor;
 - v. Operational parameters such as mining and milling capacities and rates, mine and mill recoveries, and dilution factors: *Provided*, That disclosure shall not be required that would violate any securities laws applicable to the Contractor;
 - vi. Information contained in relinquishment reports filed under Clause 6.7(d) and all other information relating to relinquished areas;
 - vii. Information in the possession of the Government prior to receipt from the Contractor which has been lawfully disclosed by another person not under a confidentiality obligation to the Contractor; and
 - viii. Other data as may be agreed upon in writing by the Parties.
- b. The requirement to keep information confidential shall not prevent the Director or his/her representative(s) from using the data internally within the Bureau for monitoring and for policy, planning and research studies.
- c. Each Party shall keep confidential all data and information provided to it in relation to the Mining Operations and declared as "Confidential" by the other Party or pursuant to this Agreement and shall not disclose the same to any third Party except as expressly provided hereunder:
 - i. With the prior written consent of either Party;
 - ii. To its employees or consultants for the purposes of the Mining Operations or to any affiliated/subsidiary corporation or the employees or consultants thereof of such purposes, subject to such person(s)/entity(ies) taking the customary precautions to ensure that the recipient of such information keeps such information confidential;

- iii. As may be required by any Stock Exchange on which the shares of the Contractor or of any affiliated/subsidiary corporation may then be listed;
 - iv. As may, in the opinion of the Solicitor or Counsel for such Party or for any affiliated/subsidiary corporation, be required by law or for the reasonable protection of such Party or affiliated/subsidiary corporation or their respective directors or president; or
 - v. To any government authority to the extent validly required pursuant to legislation, orders or regulations of the Philippines.
- d. Data or information required to be submitted by the Contractor in accordance with Clause 8.4 of Section VIII which are published periodically by the Bureau and other Government agencies are exempted from the confidentiality provisions of this Clause.
 - e. All data, information, reports and Work Programs required by the Government shall be supplied by the Contractor at all times pursuant to this Agreement.
 - f. Any Party required or wishing to make information public shall notify the other Party of the proposed announcement in advance as reasonably possible, but in any event not less than twenty four (24) hours before the proposed announcement.
 - g. The obligations imposed upon the Parties by this Clause 18.6 shall expire upon termination of this Agreement or as provided by pertinent laws, rules and regulations.
- 18.7 Infrastructure, Power and Other Requirements. The Contractor shall, subject to existing laws, rules and regulations, have access to and the right to use roads, bridges, airfields, port facilities and other transportation facilities, and power, fuel, telephone or other communication, and water services, owned or provided by any agency or entity owned or controlled by the Government, and shall not be required to pay any charges in excess of those charged to Filipino citizens and other foreign persons or entities therefor.

The Contractor shall, subject to existing laws, rules and regulations, have the right to construct, use, improve and maintain such additional roads, bridges, airfields, port facilities and other transportation facilities, and to construct, use, improve or maintain any power plants, power lines, telephone lines or other communication facilities, pipelines, water conveyance facilities, or other utility lines or facilities, required for Mining Operations for the exclusive use of the Contractor, if no local enterprise can supply within a reasonable period and at reasonable cost the facility or service needed by the Contractor in its Mining Operations. Upon the request of the Contractor, the Contractor and the Government shall review these infrastructure and other requirements of the Mining Operations including, but not limited to, transportation, power and port requirements, with the end in view of providing a fair and equitable sharing of the benefits derived from the infrastructure requirements of such Mining Operations. Expenses incurred by the Contractor in constructing or upgrading any of the foregoing may be credited as community development expenses in accordance with Section 12.9 hereof.

- 18.8 Amendments. This Agreement shall not be amended or modified in any respect except by mutual consent in writing of the Parties.
- 18.9 Waiver. No waiver by any Party or any one or more defaults by any other Party in

the performance of this Agreement shall operate or be construed as a waiver of any future default or defaults by the same Party whether of a like or different character. Any failure or delay in exercising any rights shall not operate as a waiver or variation of that or any other right. Any defective or partial exercise of any right shall not preclude any other or further exercise of that or any other right.

- 18.10 Entire Agreement. The terms of this Agreement shall constitute the entire Agreement between the Parties hereto and no previous communications, representations or agreements either oral or written, between the Parties hereto with respect to the subject matter thereof shall vary the terms of this Agreement.
- 18.11 Costs. The Contractor shall bear its own legal costs and expenses in relation to the preparation and the implementation of this Agreement, such as notarial fee, registration fee and other related expenses.
- 18.12 Currency Conversion. In so far as it is necessary for the purpose of this Agreement to adopt a currency conversion rate for conversion of US dollars to Pesos or vice versa, the Parties shall use the daily rate set by the Bangko Sentral ng Pilipinas.
- 18.13 Effect of Illegality. If for any reason, any provision of this Agreement is or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any competent authority to be invalid, illegal or unenforceable, then
- a. the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired; and
 - b. the Parties shall negotiate in good faith with a view to agreeing on amendments to or replacements for the illegal, unenforceable or invalid provisions such that the amended or substituted provisions are satisfactory to all relevant competent authorities. Any such unresolved dispute shall be settled in accordance with Section XVI on Arbitration.
- 18.14 Assignment; Transfer of Controlling Interest in Shares of Contractor.
- a. Assignment. In accordance with Section 66 of the IRR, any rights, obligations or privileges under this Agreement shall not be assigned or purported to be assigned or transferred, whether in whole or in part, without the express prior consent of the Government. Should the Contractor wish to transfer or assign its rights under this Agreement, it shall, upon payment of the proper application fee, file an application for the total or partial transfer or assignment of the same with the Regional Director, copy furnished the Director. The Contractor's application for assignment or transfer shall be conditioned on the following:
 - i. That such transfer or assignment may be allowed only to another Qualified Person;
 - ii. That the Contractor has complied with all the relevant terms and conditions of the Agreement and provisions of the Act and the IRR;
 - iii. That there are no Notices of suspension or termination outstanding under Section XVII that have not been remedied; and
 - iv. That the pertinent Deed of Assignment shall have been duly executed stating, among others, that the transferee or assignee assumes all the obligations of the Contractor under this Agreement: *Provided*, That denial of the application for assignment shall result in the automatic revocation of such Deed of Assignment.

- b. Approval of Assignment. After evaluation, the Director may endorse the Contractor's application for assignment to the Secretary, who may then recommend the same to the President for his approval. Any transfer or assignment shall be deemed automatically approved if not acted upon by the President within thirty (30) calendar days from official receipt thereof, unless patently unconstitutional, illegal or where such transfer or assignment violates pertinent rules and regulations.
- c. Transfer of Controlling Interest in Shares of Contractor. Any direct disposition of greater than 50% of the legal or beneficial ownership of voting securities of the Contractor, by sale, voting trust, or otherwise, so as to transfer effective control of the Contractor shall be deemed an assignment under paragraph (a) of this Clause. Any direct disposition of 50% or less of the legal or beneficial ownership of voting securities of the Contractor shall not require the consent of the Government: *Provided*, That the Contractor shall immediately give Notice to the Government of such disposition, and provide detailed information on the names and nationality of the new owners and their corresponding shares. No approval of the Government shall be required for any direct or indirect disposition or change in the legal or beneficial ownership of any securities of any affiliate or parent company of the Contractor, as the result of sale, assignment, merger, acquisition, reorganization, amalgamation or otherwise, either among affiliates of Contractor or involving unaffiliated Parties involving less than 50% of the legal or beneficial ownership, and any such change in ownership shall not affect any of Contractor's rights or obligations under this Agreement: *Provided*, That the Contractor shall immediately give Notice to the Government of such action, and provide detailed information on the names and nationality of the new owners and their corresponding shares.

18.15 Government Inspection and Audit

- a. The Government, through the Secretary or his authorized representatives shall have the right to free ingress and egress within any part of the Contract Area at any reasonable time to inspect works or activities being undertaken or implemented by the Contractor in order to monitor and verify compliance with the terms of this Agreement and all applicable laws, rules and regulations.
- b. The Government, through the Secretary or representatives authorized by the Secretary, shall have access to the Contractor's financial and other records and transactions at any time upon reasonable advance notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Contractor with the terms of this Agreement and all applicable laws, rules and regulations or to aid in the enforcement of the same.
- c. Authorized representatives of other Government agencies may also have access to Contractor's financial and other records in accordance with existing laws, rules and regulations.
- d. The Government, shall upon reasonable notice to the Contractor, have the right to audit the Contractor's books, records and accounts relating to this Agreement for any Calendar Year within the one (1) year period following the end of such Calendar Year. Any such audit will be completed within twelve (12) months after its commencement. Any exception must be made in writing within sixty (60) days following the completion of such audit and failure to give such written exception within such time shall establish the correctness of the Contractor's books, records and accounts for the period of such audit.

- 18.16 No Partnership; Third Party Beneficiaries. Neither this Agreement nor the performance by the Parties hereto of their obligations thereunder shall constitute a partnership between the Parties. Neither Party shall have any authority, unless expressly conferred in writing and not for the time being revoked, to bind the other. Except for Clause 18.19, this Agreement shall be construed to benefit the Parties and their respective successors and permitted assigns only, and shall not be construed to create third party beneficiary rights in any other party or in any governmental organization or agency.
- 18.17 Computation of Time. Times referred to in this Agreement are times in Metro Manila, Philippines. Unless otherwise provided by law or rules and regulations, in computing any period of time under this Agreement, the day of the act, event or default from which period of time begins to run shall be included. If the last day of any period of time is not a business day, the period shall run until the end of the next following business day.
- 18.18 Further Assurances. From time to time, as and when requested by a Party, the other Party shall execute and deliver or cause to be executed and delivered all such documents and instruments, and shall take or cause to be taken all such further or other actions, as such Party may reasonably deem necessary or desirable to give effect to the provisions of this Agreement.
- 18.19 Project Financing and Other Financing.
- a. Financing. The Contractor shall have the sole responsibility for financing its Mining Operations and shall maintain sufficient capital to carry out its obligations under this Agreement. The Contractor may determine the extent to which the financing shall be accomplished through issuance of shares of the Contractor or through borrowings by the Contractor. Any long-term borrowing by the Contractor under this Agreement shall be on such repayment terms and at such effective rates of interest (including discounts, compensating balances and other costs of obtaining such borrowings) which are reasonable and appropriate for mining companies in circumstances then prevailing in the international money and/or stock markets after complying with existing procedures for obtaining and reporting of foreign loans.
 - b. Necessity for Financing; Consideration of Amendments to Facilitate Financing. It is recognized that a portion of the financing for the development, construction and production of the mine and its associated facilities, as well as the Working Capital needed for Mining Operations, will be funded by debt or equity financing, and that the Contractor shall be liable for periodic and regular principal repayments and interest payments on its loans. Further, it is recognized that the success of the Contractor in availing of financing for the development, construction and production of the mine and its associated facilities depends largely on the assurance that can be offered by the Contractor to its financiers that they will have a certain reasonable degree of control over the cash flow of the project being financed. Therefore, the Government shall exert its best efforts to the extent consistent with relevant laws, rules and regulations, favorably consider any request from the Contractor for amendment(s) of this Agreement which are deemed necessary in order for the Contractor to successfully obtain the financing for Mining Operations.
 - c. No Local Financing. Except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the Contractor

shall not raise, directly or indirectly, any form of financing from sources of funds within the Republic of the Philippines, whether in Philippine or foreign currency, for conducting its Mining Operations for and in the Contract Area.

18.20 Third Party Applications for Mineral Rights. The Government agrees and acknowledges that in the event that a third party lodges an application over all or part of the Contract Area for quarry resources and sand and gravel mining applications other than for Minerals covered by this Agreement, the Contractor shall, subject to verification by the Bureau, be entitled to withhold its consent if it considers that there may be Minerals of potentially economic significance in the area applied for (including because such area has not yet been explored by the Contractor) or that the activities of the applicant may interfere with the Contractor's Mining Operations. Whether or not the consent of the Contractor is required, no other Mineral development shall be conducted in a manner that interferes with the Contractor's Mining Operations.

18.21 Registration. Within thirty (30) days following approval and execution of the FTAA by the President, the President shall notify Congress of the execution of this Agreement, the President's office shall forward the FTAA through the DENR to the Regional Office for registration, and the Regional Office shall notify the Contractor of approval. Upon receipt of Notice of approval from the Regional Office, the Contractor shall within fifteen (15) working days cause the registration of this Agreement at the Regional Office by payment of the necessary registration, occupation and other fees in accordance with existing rules and regulations.

18.22 Confirmation. The Government confirms and agrees that by virtue of the Negotiating Panel's approval and recommendation of this Agreement for execution by the President, the Secretary has determined that the terms and conditions of this Agreement are consistent with the Constitution, the Act, and the IRR, and that the terms of this Agreement are for the best interest of the State and the welfare of the Filipino people.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

REPUBLIC OF THE PHILIPPINES

By authority of the President:

By:

TIN:

Executive Secretary

President

RECOMMENDED BY:

Secretary
Department of Environment and

SIGNED IN THE PRESENCE OF:

ACKNOWLEDGMENT

Republic of the Philippines)
_____) s.s

Before me, a Notary Public for and in the City of _____
personally appeared _____ in his capacity as Executive Secretary
with Community Tax Certificate No. _____ issued at _____ on
_____ and _____, in his capacity as President of
_____ with Community Tax Certificate No. _____
issued at _____ on _____, known to me and to me known to
be the same persons who executed the foregoing instrument which they signed and
acknowledged before me as their voluntary act and deed.

The foregoing instrument relates to a Financial or Technical Assistance Agreement
consisting of fifty-five (55) pages, including the page on which this acknowledgment is
written, and has been signed on each and every page thereof by the Parties and their
witnesses, and sealed with notarial seal.

WITNESS MY HAND AND SEAL this _____ day of _____, _____ at
_____.

Notary Public

Doc. No. _____
Page No. _____
Book No. _____
Series of _____