

MINERAL PRODUCTION SHARING AGREEMENT

MPSA No. 095-97-V

This **MINERAL PRODUCTION SHARING AGREEMENT** (this "Agreement") is made and entered into in Quezon City, Metro Manila, Philippines, this _____ day of NOV 20 1997 by and between :

THE REPUBLIC OF THE PHILIPPINES, hereinafter referred to as the GOVERNMENT, represented in this Act by the Secretary of the Department of Environment and Natural Resources, with offices at Department of Natural Resources Building, Visayas Avenue, Diliman, Quezon City, Metro Manila

and

BASE METALS MINERAL RESOURCES CORPORATION (BMMRC), a corporation duly organized and existing under the laws of the Republic of the Philippines, hereinafter referred to as the CONTRACTOR, with offices at the 4th and 6th Floor, Trans Phil House 1177 Chino Roces Ave., Cor. Bagtikan St., Makati City 1231 and represented in this act by its Chairman, **FRANK N. LUBBOCK**, as authorized by its Board under Annex "A" which forms an integral part hereof.

WITNESSETH :

WHEREAS, the 1987 Constitution of the Republic of the Philippines (the "Constitution") 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 shall be under the full control and supervision of the State;

WHEREAS, the Constitution further provides that the State may directly undertake such activities, or it may enter into a Co-Production, Joint Venture, or Mineral Production Sharing Agreement with Filipino citizens, or cooperatives, partnerships, corporations or associations at least sixty per centum of whose capitalization is owned by such citizens;

WHEREAS, pursuant to Republic Act No. 7942, otherwise known as "The Philippine Mining Act of 1995", which took effect on 09 April 1995, the Secretary of the Department of Environment and Natural Resources is authorized to enter into Mineral Production Sharing Agreements in furtherance of the objectives of the Government and the Constitution to bolster the national economy through sustainable and systematic development and utilization of mineral lands;

WHEREAS, the government desires to avail itself of the financial resources, technical competence and skill which Contractor is capable of applying to the mining operations of the project contemplated herein;

WHEREAS, the contractor desires to join and assist the Government in the sustainable development and utilization for commercial purposes of certain gold and silver and other minerals existing in the Contract Area (as hereinafter defined) and any other Minerals which may be discovered in such Contract Area;

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WHEREAS, the Contractor has, or has access to all the financing, technical competence, technology and environmental management skills required to promptly and effectively carry out the objectives of this Agreement.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants, terms and conditions hereinafter set forth, it is hereby stipulated and agreed as follows:

SECTION I

SCOPE

- 1.1 This Agreement is a Mineral Production Sharing Agreement entered into pursuant to the provisions of the Act (R.A No. 7942) and its Revised Implementing Rules and Regulations. The primary purpose of this agreement is to provide for the exploration, sustainable development and commercial utilization of gold and silver and other mineral deposits existing within the Contract Area, with all necessary services, technology and financing to be furnished or arranged for by the Contractor in accordance with the provisions of this Agreement. The Contractor shall not, by virtue of this Agreement, acquire any title over the contract/mining area without prejudice to the acquisition by the Contractor of the land/surface rights through any mode of acquisition provided for by law.
- 1.2 The Contractor shall undertake and execute, for and on behalf of the Government, sustainable mining operations in accordance with the provisions of this Agreement, and is hereby constituted and appointed, for the purpose of this Agreement, as the exclusive entity to conduct mining operations in the Contract Area.
- 1.3 The Contractor shall assume all the exploration risk such that if no minerals in commercial quantity are developed and produced, it will not be entitled for reimbursement.
- 1.4 During the term of this Agreement, the total value of production and sale of minerals derived from the mining operations contemplated herein shall be accounted for and divided between the Government and the Contractor in accordance with Section VIII hereof.

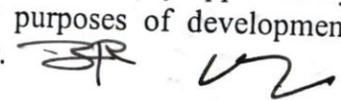
SECTION II

DEFINITIONS

As used in this Agreement, the following words and terms, whether singular or plural, shall have the following respective meaning:

- 2.1 "The Act" refers to R.A. No. 7942, otherwise known as the "Philippine Mining Act of 1995"
- 2.2 Agreement means this Mineral Production Sharing Agreement
- 2.3 Associated Minerals mean other ores/minerals which occur together with the principal ore/ mineral.

- 2.4 Bangko Sentral means Bangko Sentral ng Pilipinas.
- 2.5 Budget means an estimate of expenditures to be made by Contractor in mining operations contemplated hereunder to accomplish the Work Program for each particular period.
- 2.6 Calendar Year or Year means a period of twelve (12) consecutive months starting with the first day of January and ending on December 31, while "Calendar Quarter" means a period of three consecutive months with the first calendar quarter starting with the first day of January.
- 2.7 Commercial Production means the production of sufficient quantity of minerals to sustain economic viability of mining operations reckoned from the date of commercial operation as declared by the Contractor or as stated in the feasibility study, whichever comes first.
- 2.8 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.
- 2.9 Contract Area means the area onshore or offshore delineated under the Mineral Production Sharing Agreement subject to the relinquishment obligations of the Contractor and properly defined by latitude and longitude.
- 2.10 Contract Year means a period of twelve (12) consecutive months counted from the Effective Date of this Agreement or from the anniversary of such Effective Date.
- 2.11 Contractor means **Base Metals Mineral Resources Corporation (BMMRC for brevity)**, or its assignee or assignees of interest under this Agreement provided the assignment of any of such interest is accomplished pursuant to the provision of the Implementing Rules and Regulations (DAO 96-40), or in accordance with Section 11.2 (I).
- 2.12 Declaration of Mining Feasibility means a document proclaiming the presence of minerals in a specific site that are recoverable by socially acceptable, environmentally safe and economically sound methods specified in the Mine Development Plan.
- 2.13 Department or DENR means the Department of Environment and Natural Resources.
- 2.14 Director means the Director of Mines and Geosciences Bureau.
- 2.15 Effective Date means the date of execution of this Agreement by the Contractor and by the Secretary in behalf of the Government.
- 2.16 Environment means all facets of man's surroundings: physical, ecological, aesthetic, cultural, economic, historic, institutional, and social.
- 2.17 Exploration means searching or prospecting for mineral resources by geological, geophysical, geochemical 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.

- 2.18 Exploration Period shall mean the time period from the effective date of this Agreement which shall be for two (2) years, renewable for like periods but not to exceed a total term of six (6) years: Provided That the Contractor has complied with all the requirements of the Revised Implementing Rules and Regulations.
- 2.19 Force Majeure means acts or circumstances beyond the reasonable control of Contractor including but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, strike, and lockout, any dispute with surface owners and other labor disputes, epidemics, earthquake, storm, flood, or other adverse weather conditions, explosion, fire, adverse action by the government, or by any of its instrumentality or subdivision thereof, Act of God or any public enemy and any cause as herein described over which the affected party has no reasonable control.
- 2.20 Foreign Exchange means any currency other than the currency of the Republic of the Philippines acceptable to the Government and the Contractor.
- 2.21 Government means the Government of the Republic of the Philippines or any of its agencies and instrumentalities.
- 2.22 Gross Output means the actual market value of the minerals or mineral products from each mine or mineral land operated as a separate entity, without any deduction for mining, processing, refining, 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 which are not traded in commodity exchanges in the Philippines or abroad such as copper concentrate, the actual market value shall be the world price quotation of the refined mineral products contained thereof prevailing in the said commodity exchanges, after deducting the smelting, refining, treatment, insurance, transportation and other charges incurred in the process of converting mineral concentrates into refined metal traded in those commodity exchanges.
- 2.23 Mine Development refers to work undertaken to prepare an ore body or a mineral deposit for mining, including the construction of necessary infrastructure and related facilities.
- 2.24 Minerals mean 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.
- 2.25 Mineral Products mean materials derived from mineral ores/rocks and prepared into marketable state by metallurgical processes which include beneficiation, cyanidation, leaching, smelting, calcination and other similar processes.
- 2.26 Mining Area means that portion of the Contract Area identified by the Contractor as defined and delineated in a Survey Plan duly approved by the Director/Concerned Regional Offices for purposes of development and/or utilization and sites for support facilities. 

- 2.27 Mining Operations means mining activities involving exploration, feasibility study, environmental impact assessment, development, utilization, mineral processing, and mine rehabilitation.
- 2.28 Notice means notice in writing, or by telex or by telecopy (authenticated by answer back or confirmation received) addressed or sent as provided in Section 16.2 of this Agreement.
- 2.29 Ore means naturally occurring substance or material from which a mineral or element can be mined and/or processed for profit.
- 2.30 Pollution means any alteration of the physical, chemical and/or biological properties of any water, air and/or land resources of the Philippines, or any discharge thereto of any liquid, gaseous or solid wastes or any production of unnecessary noise or any emission of objectionable odor, as will or is likely to create or 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.
- 2.31 Secretary means the Secretary of the Department of Environment and Natural Resources.
- 2.32 State means the Republic of the Philippines.
- 2.33 Work Program means a document which presents the plan of major mining operations and the corresponding expenditures of the Contractor in its Contract Area during a given period of time, including the plan and expenditures for development of host and neighboring communities and of local geoscience and mineral technology, as submitted and approved in accordance with the Revised Implementing Rules and Regulations.

SECTION III

TERM OF AGREEMENT

- 3.1 This Agreement shall have a term of twenty-five (25) years from Effective Date, and may be renewed thereafter for another term not exceeding twenty five (25) years. The renewal of this Agreement, as well as the changes in the terms and conditions shall be upon mutual consent by the parties. In the event the Government decides to allow mining operations thereafter by other Contractor, this must be through competitive public bidding. After due publication of notice, the Contractor shall have the right to equal the highest bid upon reimbursement of all reasonable expenses of the highest bidder.

SECTION IV

CONTRACT AREA

- 4.1 Size, Shape, and Location of Contract Area. This Agreement covers a total area of **Two Hundred Eighty Nine and 9466/10,000 hectares (289.9466 has.)**, situated at Barangays Bangon, Syndicate and Panique,

Municipality of Aroroy, Province of Masbate, and bounded by the following geographical coordinates (Please refer to ANNEX "B"):

| POINT | LATITUDE | LONGITUDE |
|-------|-------------|--------------|
| 1 | 12° 29' 30" | 123° 23' 00" |
| 2 | 12° 29' 30" | 123° 24' 30" |
| 3 | 12° 27' 30" | 123° 24' 30" |
| 4 | 12° 27' 30" | 123° 23' 00" |

SECTION V

EXPLORATION PERIOD

5.1 Timetable for Exploration - The Contractor shall commence Exploration activities not later than three (3) months after the Effective Date for a period of two (2) years renewable for like periods but not to exceed a total term of six (6) years, subject to annual review by the Director to evaluate compliance with the terms and conditions of this Agreement.

At anytime during the exploration period, the Contractor may submit a Declaration of Mining Feasibility in accordance with Section 5.5 on the basis of its past exploration work on the contract area.

5.2 Work Programs and Budgets - The Contractor shall strictly comply with the approved Exploration and Environmental Work Programs together with their corresponding Budgets (Please refer to ANNEXES "C" and "D").

The amount to be spent by the Contractor in conducting exploration activities under the terms of this Agreement during the exploration period shall be in the aggregate of not less than that hereinafter specified for each of the below Contract Years, as follows:

For the Exploration Work Program:

| | | |
|--------------------|---|--------------------------------|
| Ist Contract Year | : | PHP 7,306,200.00 |
| 2nd Contract Year: | : | 14,494,700.00 |
| Total | : | <u>PHP21,800,900.00</u> |

Total Estimated Budget for the Environmental Work Program : PHP1,000,000.00

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In the event of extension, the amount to be spent every year shall first be agreed upon by the parties. The previous exploration expenditure of Contractor in the amount of US\$ 5 Million is hereby recognized, which amount of work can be the basis of a Declaration of Mining Feasibility of the project at anytime during the exploration period. If the Declaration of Mining Feasibility is submitted, the Contractor shall not be required to spend the budget herein, provided Contractor proceeds with the development of the mine.

In the event of termination of this Agreement, the Contractor shall only be obliged to expend the pro-rata amount for the period of such Contract Year prior to termination. If during any Contract Year, the Contractor should expend more than the amount to be expended as provided above, the excess may be subtracted from the amount required to be expended by the Contractor during the succeeding Contract Years, and should the Contractor, due to unforeseen circumstances or with the consent of the Government expend less during a year, then, the deficiency shall be applied to the amount to be expended during the succeeding Contract Years.

- 5.3 Relinquishment of Total/Portion of the Contract Area - During the Exploration Period, the Contractor may relinquish totally or partially the original Contract Area. After the Exploration Period and prior to or upon approval of the Declaration of Mining Project Feasibility, the Contractor shall finally relinquish any portion of the contract area not necessary for mining operations and not covered by any declaration of mining project feasibility.

Each mining area after final relinquishment shall not be more than five thousand (5,000) hectares for metallic minerals or two thousand (2,000) hectares for non-metallic minerals.

The Contractor may be allowed by the Director, with the approval of the Secretary, to hold a larger mining area depending upon the nature of the deposit subject to technical verification and evaluation by the Bureau as to the technical/financial capability of the Contractor.

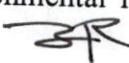
- 5.4 Survey of the Contract Area - The previously approved survey plan of the Contract Area is hereby recognized and no new survey shall be required.
- 5.5 Declaration of Mining Project Feasibility - During the Exploration Period, the Contractor shall submit to the Regional Director, copy furnished the Director, a Declaration of Mining Project Feasibility together with a Mining Project Feasibility Study, a Three (3) Year Development and Construction or Commercial Operation Work Program, a complete geologic report of the area and an Environmental Compliance Certificate. Failure of the Contractor to submit a Declaration of Mining Project Feasibility during the Exploration Period shall be considered a substantial breach of this Agreement.
- 5.6 Reporting
- a) Periodic Reports - During the Exploration Period, the Contractor shall submit to the Regional Director, copy furnished the Director, quarterly and annual accomplishment reports under oath on all activities conducted in the Contract Area from the Effective Date of this Agreement. The quarterly report shall be submitted not later

than fifteen (15) days at the end of each Calendar Quarter while the annual accomplishment report shall be submitted not later than thirty (30) days from the end of each Calendar Year. Such information shall include detailed financial expenditures, raw and processed geological, geochemical, geophysical and radiometric data plotted in a 1:50,000 scale at a minimum, copies of originals of assay results, duplicated samples, field data, copies of originals from drilling reports, maps, environmental work program implementation and detailed expenditures showing discrepancies/deviations with approved exploration and environmental plans and budgets as well as all other information of any kind collected during the exploration activities. All information submitted to the Bureau shall be subject to the confidentiality clause of this Agreement.

- b) Final Report - The Contractor shall submit to the Regional Director, copy furnished the Director, a final report under oath upon the expiration of the Exploration Period which shall be in the form and substance comparable to published professional reports of respectable international institutions and shall incorporate all the findings in the Contract Area including location of samples, assays, chemical analysis, and assessment of mineral potentials together with a geologic map of 1:50,000 scale at the minimum showing the results of the exploration. Such report shall also include detailed expenditures incurred during the Exploration Period. In case of diamond drilling, the Contractor shall, upon request of the Director/concerned Regional Director, submit to the Regional Office a quarter of the core samples which shall be deposited in the Regional Office Core Library for safe keeping and reference.
- c) Relinquishment Report - The Contractor shall submit a separate relinquishment report with a detailed geologic report of the relinquished area accompanied by maps at a scale of 1:50,000 and results of analyses and detailed expenditures, among others.

SECTION VI

DEVELOPMENT AND CONSTRUCTION PERIOD

- 6.1 Timetable - The Contractor shall complete the development of the mine including the construction of production facilities within thirty six (36) months from the submission of the Declaration of Mining Project Feasibility or issuance of the Environmental Compliance Certificate, whichever shall be later, subject to such extension based on justifiable reasons as the Secretary may approve, upon recommendation of the Regional Director, through the Director.
- 6.2 Reporting
 - a) Annual - The Contractor shall submit, within sixty (60) days after December 31 of each year, to the Regional Director, copy furnished the Director, an annual report which states the major activities, achievements and detailed expenditures during the year covered, including maps, assays, rock and mineral analyses and progress geological and environmental reports during the development and construction period.  

- b) Final Report - Within six (6) months from the completion of the development and construction activities, the Contractor shall submit a final report to the Regional Director, copy furnished the Director. Such report shall integrate all information in maps of appropriate scale and quality as well as in monographs or reports in accordance with international standards.

SECTION VII

OPERATING PERIOD

- 7.1 Timetable - The Contractor shall submit, within thirty (30) days before completion of mine development and construction of production facilities, to the Secretary through the Regional Director, copy furnished the Director, a Three Year Commercial Operation Work Program. The Contractor shall commence commercial utilization immediately upon approval of the aforesaid Work Programs. Failure of the Contractor to commence Commercial Production within the period shall be considered a substantial breach of the Agreement.
- 7.2 Commercial Operation Work Program and Budget - During the Operating Period, the Contractor shall submit to the Secretary through the Regional Director, copy furnished the Director, Work Programs covering a period of three (3) years each which shall be submitted not later than thirty (30) days before the expiration of the period covered by the previous Work Programs.

The Contractor shall conduct mining operations and other activities for the duration of the Operating Period in accordance with the duly approved Work Programs and corresponding Budgets and any modification thereof shall be approved by the Secretary.

- 7.3 Expansion and Modification of Facilities - 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 the operations, provided such plans shall be embodied in an appropriate Work Program approved by the Secretary.

7.4 Reporting

- a) Quarterly Reports - Beginning with the first Calendar Quarter following the commencement of the Operating Period, the Contractor shall submit, within thirty (30) days after the end of each Calendar Quarter, to the Secretary through the Regional Director, copy furnished the Director, a Quarterly Report stating the tonnage of production in terms of ores, concentrates, and their corresponding grades and other types of products; value, destination of sales or exports and to whom sold; terms of sales and expenditures.
- b) Annual Reports - During the Operating Period, the Contractor shall submit, within sixty (60) days from the end of each Calendar Year, to the Secretary through the Regional Director, copy furnished the Director, an Annual Report indicating in sufficient detail:
 - b.1) The total tonnage of ore reserves whether proven, probable, or inferred, the total tonnage of ores, kind by kind, broken down

between tonnage mined, tonnages transported from the minesite and their corresponding destination, tonnages stockpiled in the mine and elsewhere in the Philippines, tonnages sold or committed for export (whether actually shipped from the Philippines or not), tonnages actually shipped from the Philippines (with full details as to purchaser, destination and terms of sale), and if known to the Contractor, tonnages refined, processed or manufactured in the Philippines with full specifications as to the intermediate products, by-products or final products and of the terms at which they were disposed;

- b.2) Work accomplished and work in progress at the end of the year in question with respect to all the installations and facilities related to the utilization program, including the investment actually made or committed;
- b.3) Profile of work force, including management and staff, stating particularly their nationalities, and for Filipinos, their place of origin (i.e., barangay, town, province, region); and
- b.4) Ownership of the Contractor, particularly with respect to nationality.

SECTION VIII

FISCAL REGIME

- 8.1 General Principle - The financial regime of this Agreement shall be governed by the principle according to which the Government expects a reasonable return in economic value for the utilization of non-renewable natural resources under its natural sovereignty while the Contractor expects a reasonable return on its investment with special account to be taken for the high risk of exploration , the terms and conditions prevailing elsewhere in the industry and any special efficiency to be gained by a particularly good performance of the Contractor.
- 8.2 Registration Fees - Within fifteen (15) days upon receipt of the notice of approval of the MPSA from the Regional Office, the Contractor shall cause the registration of this Agreement at the concerned Regional Office and pay the registration fee in the amount of P100 and an additional P10 for P.D. 1856. Failure of the Contractor to cause the registration of this Agreement within the prescribed period shall be sufficient ground for cancellation of the same.
- 8.3 Occupation Fees - Upon registration of this Agreement and at the same date every year thereafter, the Contractor shall pay to the concerned Municipal/City Treasurer an Occupation Fee over the Contract Area at the annual rate of fifty pesos (P50.00) per hectare or fraction thereof. If the fee is not paid on the date specified, the Contractor shall pay a surcharge of twenty five percentum (25%) of the amount due in addition to the occupation fees.

- 8.4 Share of the Government - The government share shall be the excise tax on mineral products at the time of removal and at the rate provided for in Republic Act No. 7729 amending Section 151 (a) of the National Internal Revenue Code, as amended, as well as other taxes, duties, and fees levied by existing laws.

For purposes of determining the amount of the herein government share, the Contractor shall strictly comply with the auditing and accounting requirements prescribed, under existing laws and regulations.

The government share shall be allocated in accordance with Sections 290 and 292 of R. A. No. 7160, otherwise known as "The Local Government Code of 1991".

- 8.5 Pricing of Sales - The Contractor shall endeavor to obtain the best achievable price for its production and pay the lowest achievable marketing commissions and related fees. Contractor shall seek to strike a balance between long-term sales comparable to policies followed by independent producers in the international mining industry.

The Contractor shall likewise seek a balanced distribution among consumers. Insofar as sales to Contractor's affiliates are concerned, prices shall be at arm's length standard and competing offers for large scale and long-term contracts shall be procured. The Bureau shall be furnished a copy of the said Sales Agreement subject to confidentiality between the Bureau and the Contractor.

- 8.6 Associated Minerals - If Minerals, other than gold are discovered in commercial quantities in the Contract Area, the value thereof shall be added to the value of the principal mineral in computing the share of the government.

SECTION IX

WORK PROGRAMS

- 9.1 Submission to Government - Within the periods stated herein, the Contractor shall prepare and submit to the Secretary through the concerned Regional Director, copy furnished the Director, a Work Program and corresponding Budget for the Contract Area stating the mining operations and expenditures which the Contractor proposes to carry out during the period covered with the details and particulars set forth elsewhere in this Agreement or in the supporting documents.
- 9.2 Government's Examination and Revision of Work Program - Should the Government wish to propose a revision to a certain specific feature in the Work Program or Budget, it shall within thirty (30) days after receipt thereof provide a Notice to the Contractor specifying in reasonable detail its reasons therefore. Promptly thereafter, the Government and Contractor will meet and endeavor to agree on the revision proposed by the Government. In any event, any portion of said Work Program or Budget as to which the Government shall fail to notify the Contractor of proposed revision shall insofar as possible be carried out as prescribed herein. If the Government should fail within sixty (60) days from receipt thereof to

notify Contractor of the proposed revisions, the Work Program and Budget proposed by the Contractor shall be deemed to be approved.

- 9.3 Contractor's Changes to Work Program - It is recognized by the Government and the Contractor that the details of any Work Program may require changes in the light of changing circumstances. The Contractor may make such changes provided they do not change the general objective of the Work Program, and provided further, that changes which entail a variance of at least twenty percentum (20%) shall be subject to the approval of the Secretary.
- 9.4 The Government's approval of a proposed Work Program and Budget will not be reasonably withheld.

SECTION X

ENVIRONMENTAL PROTECTION AND MINE SAFETY AND HEALTH

- 10.1 The Contractor shall manage its mining operations in a technically, financially, socially, culturally and environmentally responsible manner to achieve the sustainable development objectives and responsibilities as provided for under the revised implementing rules and regulations of the Act.
- 10.2 The Contractor shall prepare a plan of mining so that its damage to the environment will be minimal. To the extent possible, control of pollution and the transformation of the mined-out areas or materials into economically and socially productive forms must be done simultaneously with mining.
- 10.3 The Contractor shall submit an Environmental Work Program during the Exploration Period as prescribed in Section 168 in the revised implementing rules and regulations of the Act.
- 10.4 An Environmental Compliance Certificate (ECC) shall be secured first by the Contractor prior to the conduct of any mine development work and construction of production facilities in the Contract Area.
- 10.5 The Contractor shall submit within thirty (30) Calendar days after the issuance and receipt of the ECC, an Environmental Protection and Enhancement Program (EPEP) using MGB Form No. 16-2 covering all areas to be affected by mining development, utilization and processing under this Agreement. The Contractor shall allocate for its initial environment-related capital expenditures approximately ten percent (10%) of the total project cost or in such amount depending on the environment/geological condition, nature and scale of operations and technology to be employed in the Contract Area.
- 10.6 The Contractor shall submit, within thirty (30) days prior to the beginning of every calendar year, an Annual Environmental Protection and Enhancement Program (AEPEP) using MGB Form 16-3 which shall be based on the approved EPEP. 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.

- 10.7 The Contractor shall establish a Mine Rehabilitation Fund (MRF) based on the financial requirements of the approved EPEP as a reasonable environmental 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 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.
- 10.8 The Contractor shall set-up mitigating measures such as mine waste and mill tailings disposal system, mine rehabilitation or plan, water quality monitoring, etc. to minimize land degradation, air and water pollution, acid rock drainage and changes in hydrogeology.
- 10.9 The Contractor shall set-up an Environmental and Safety Office at its minesite manned by qualified personnel to plan, implement and monitor its approved EPEP.
- 10.10 The Contractor shall be responsible in the monitoring of environmental safety and health conditions in the Contract Area and shall strictly comply with all the rules and regulations embodied under Mines Administrative Order No. 51, Series of 1991, otherwise known as the "Revised Mine Safety Rules and Regulations".
- 10.11 The Contractor shall be responsible for the submission of a final mine rehabilitation and/or decommissioning plans including its financial requirements and incorporating the details and particulars set forth in the revised implementing rules and regulations of the Act.

SECTION XI

RIGHTS AND OBLIGATIONS OF THE PARTIES

- 11.1 Obligations of the Contractor:
 - a) To exclusively conduct sustainable mining operations within the Contract Area in accordance with the provisions of the Act and its revised implementing rules and regulations;
 - b) To construct and operate any facilities specified under the Mineral Agreement or approved Work Program;
 - c) To determine the exploration, mining and treatment process to be utilized in the mining operations;
 - d) To extract, remove, use and dispose of any tailings as authorized by an approved Work Program;
 - e) To secure all permits necessary or desirable for the purpose of mining operations;

- f) To keep accurate technical records about the mining operations as well as financial and marketing accounts and make them available to Government representatives authorized by the Director for the purpose of assessing the performance and compliance of the Contractor with the terms of this Agreement. Authorized representatives of other Government Agencies may also have access to such accounts in accordance with existing Laws, Rules and Regulations;
- g) To furnish the Bureau all the data and information gathered on the Contract Area and that all the books of accounts and records shall be open for inspection;
- 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 cost incurred by the Government by reason of any such claims accounts, demands or actions;
- i) In the development of the community:
 - i.1) To recognize and respect the rights, customs and traditions of indigenous tribal communities over their ancestral lands and to allocate royalty payment of not less than one percent (1%) of the value of the gross output of minerals sold;
 - i.2) To coordinate with proper authorities in the development of the mining community and for those living in the host and neighboring communities through social infrastructure, livelihood programs, education, water, electricity and medical services. Where traditional self-sustaining income and the community activities are identified to be present, the Contractor shall assist in the preservation and/or enhancement of such activities;
 - i.3) To allot annually a minimum of one percent (1%) of the direct mining and milling costs necessary to implement the activities undertaken in the development of the host and neighboring communities. Expenses for community development maybe charged against the royalty payment of one percent (1%) of the gross output intended for the indigenous cultural community;
 - i.4) To give preference to Filipino citizens, who have established domicile in the neighboring communities, in the hiring of personnel for its mining operations. If necessary skills and expertise are currently not available, the Contractor must immediately prepare and undertake a training and recruitment program at its expense;
 - i.5) To incorporate in the mine feasibility study the planned expenditures necessary to implement (i.1) to (i.3) of this section;
- j) In the development of Mining Technology and Geosciences:
 - j.1) In the course of its operations, to produce geological, geophysical, geochemical and other types of maps and reports that are appropriate in scale and in format and substance which 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;

- j.2) To 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;
- j.3) To transfer to the Government or local mining company the appropriate technology it may adapt in the exploration, development and commercial utilization of the minerals in the Contract Area;
- j.4) To allocate research and development budget for the advancement of mining technology and geosciences in coordination with Bureau, Research Institutions, Academe, etc.;
- j.5) To replicate data, maps and reports cited in (j.1) and (j.2) and furnish the Bureau 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, however, that the release of data, maps and the like shall be similarly constrained in accordance with (j.1) and (j.2) above;
- k) To pay all other taxes and fees mandated by existing laws, rules and regulations.

11.2 Rights of the Contractor

The Contractor shall have the right:

- a) To conduct mining operations within the confines of its Contract/ Mining Area in accordance with the terms and conditions hereof and that it shall not interfere with the rights of other Contractors/ Lessees/Operators/Permittees;
- b) Of possession of the Contract Area, with full right of ingress and egress and the right to occupy the same, subject to surface and easement rights;
- c) To use and have access to all declassified geological, geophysical, drilling, production and other data relevant to the mining operations;
- d) To sell, assign, transfer, convey or otherwise dispose of all its rights, interests and obligations under the Agreement subject to the approval of the Government;
- e) To employ or bring into the Philippines foreign technical and specialized personnel, including the immediate members of their families as maybe required in the operations of the Contractor, subject to applicable laws and regulations: provided, that if the

employment connection of such foreign persons with the Contractor ceases, the applicable laws and regulations on immigration shall apply to them. Everytime foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken. Alien employment shall be limited to technologies requiring highly specialized training and experience subject to the required approval under existing laws, rules and regulations;

- f) To enjoy easement rights and use of timber, water and other natural resources in the Contract Area subject to pertinent laws, rules and regulations and the rights of third parties;
- g) Of repatriation of capital and remittance of profits, dividends and interest on loans, subject to existing laws and Bangko Sentral rules and regulations; and
- h) To import when necessary all equipment, spare parts and raw materials required in the operations in accordance with existing laws and regulations.
- i) To assign its right, title and interest in this Agreement for the purpose of securing financing for the project with right of further assignment by the financial institution in favor of a qualified third party subject to the approval of the Secretary, which consent and approval shall not be unreasonably withheld; Provided, that each assignment shall be deemed automatically approved, if not acted upon by the Secretary within thirty (30) working days from the receipt of the application; Provided further, that, notwithstanding such assignment, the Contractor shall continue to be bound to perform its obligations and responsibilities under this agreement; Provided further, that the assignment shall not adversely affect the rights of the Government under this agreement.

11.3 Obligation 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;
- b) Use its best efforts to ensure the timely issuance of necessary permits and similar authorizing documents for use of surface of the Contract Area; and
- c) To cooperate with the Contractor in its efforts to obtain financing contemplated herein from banks or other financial institutions, provided that such financing arrangements will in no event reduce Contractor's obligation on Government rights hereunder.

SECTION XII

ASSETS AND EQUIPMENT

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- 12.1 Contractor shall acquire for the Mining Operations only such assets that are reasonably estimated to be required in carrying out such Mining Operations.
- 12.2 All materials, equipment, plant and other installations erected or placed on the Contract Area of a movable nature by the Contractor shall remain the property of the Contractor and shall have the right to remove and re-export such materials and equipment, plant and other installations from the Philippines, subject to existing rules and regulations. In case of cessation of Mining Operations on public lands occasioned by its voluntary abandonment or withdrawal, the Contractor shall have a period of one (1) year from the time of cessation within which to remove its improvements; otherwise, all social infrastructures and facilities shall be turned over or donated tax free to the proper government authorities, national or local, to ensure that said infrastructures and facilities are continuously maintained and utilized by the host and neighboring communities.

SECTION XIII

EMPLOYMENT AND TRAINING OF PHILIPPINE PERSONNEL

- 13.1 The Contractor agrees to employ, to the extent possible, qualified Filipino personnel in all types of mining operations for which they are qualified; and after Commercial Production commences shall; in consultation and with consent of the Government, prepare and undertake an extensive training programme suitable to Filipino nationals in all levels of employment. The objective of said programme shall be to reach within the time table set forth below the following targets of "Filipinization".

| | Unskilled | Skilled | Clerical | Professional | Management |
|---------|-----------|---------|----------|--------------|------------|
| Year 1 | 100 % | 95 % | 100 % | 70 % | 60 % |
| Year 3 | 100 % | 95 % | 100 % | 80 % | 65 % |
| Year 5 | 100 % | 95 % | 100 % | 85 % | 70 % |
| Year 7 | 100 % | 95 % | 100 % | 90 % | 80 % |
| Year 10 | 100 % | 100 % | 100 % | 100 % | 90 % |
| Year 15 | 100 % | 100 % | 100 % | 100 % | 100 % |

- 13.2 Cost and expenses of training such Filipino personnel and the Contractor's own employees shall be included in the Operating Expenses.
- 13.3 The Contractor shall not discriminate on the basis of gender and shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits.

SECTION XIV

ARBITRATION

- 14.1 The Government and the Contractor shall consult with each other in good faith and shall exhaust all available remedies to settle any and all disputes or disagreements arising out of or relating to the validity, interpretations, enforceability, or performance of this Agreement before resulting to arbitration as provided for in Section 14.2 below.

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- 14.2 Any disagreement or dispute which can not be settled amicably within a period of one (1) year from the time the issue was raised by a Party shall be settled by a tribunal of three (3) arbitrators, one to be appointed by the Contractor, another to be appointed who shall serve as Chairman. The first two appointed arbitrators shall continue to consider names of qualified persons until agreement on a mutually acceptable Chairman of the tribunal is needed. Such arbitration shall be initiated and conducted pursuant to Republic Act No. 876, otherwise known as the "Arbitration Act".

In any event, the arbitration shall be conducted applying the substantive laws of the Republic of the Philippines.

- 14.3 Each party shall pay fifty per centum (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.

SECTION XV

SUSPENSION OR TERMINATION OF CONTRACT, TAX INCENTIVES AND CREDITS

- 15.1 This Contract may be suspended for failure of the Contractor: (a) to comply with any provision or requirement of the Philippine Mining Act of 1995 and/or its Implementing Rules and Regulations; (b) to pay taxes, fees and/or other charges demandable and due the Government.
- 15.2 This Agreement terminates or may be terminated for the following causes: (a) expiration of its term whether original or renewal; (b) withdrawal from the agreement by the Contractor; (c) violation by the Contractor of the Agreement's terms and conditions; (d) failure to pay taxes, fees/or charges or financial obligations for two(2) consecutive years; (e) false statement or omission of facts by the Contractor; and (f) any other cause or reason provided under the Act and its Implementing Rules and Regulations, or any other relevant laws and regulations.
- 15.3 All statements made in this Agreement shall be considered as conditions and essential parts hereof, and any falsehood in said statements or omission of facts which may alter, change or affect substantially the fact set forth in said statements shall be a ground for its revocation and termination.
- 15.4 The Contractor may, by giving due notice at any time during the term of this Agreement, apply for its cancellation due to causes which, in the opinion of the Contractor, render continued mining operation no longer feasible or viable. In this case, the Secretary shall decide on the application within thirty (30) days from notice, provided that the Contractor has met all the financial, fiscal and legal obligations.
- 15.5 No delay or omissions or course of dealing by the Government shall impair any of its rights under this Agreement, except in the case of a written waiver. The Government's right to seek recourse and relief by all other means shall not be construed as a waiver of any succeeding or other default unless the contrary intention is reduced in writing and signed by the party authorized to exercise the waiver.

- 15.6 In case of termination, the Contractor shall pay all the fees and other liabilities due up to the end of the year in which the termination becomes effective. The Contractor shall immediately carry out the restoration of the Contract Area in accordance with good mining industry practice.
- 15.7 The withdrawal by the Contractor from the Mineral agreement shall not release it from any and all financial, environmental, legal and fiscal obligations under this Agreement;
- 15.8 The following acts or omission, inter alia shall constitute breach of contract upon which the Government may exercise its right to terminate the Contract:
- a) Failure of the Contractor without valid reason to commence Commercial Production within the period prescribed; and
 - b) Failure of the Contractor to conduct quarrying operations and other activities in accordance with the approved Work Programs and/or any modification thereof as approved by the Secretary.
- 15.9 The Government may suspend and cancel tax incentives and credits if the Contractor fails to abide by the terms and conditions of said incentives and credits.

SECTION XVI

OTHER PROVISIONS

- 16.1 Any terms and conditions resulting from repeal or amendment of any existing laws or regulation or from the enactment of a law, regulation or administrative order shall be considered a part of this agreement.
- 16.2 Notice

All notices, demands and other communications required or permitted hereunder shall be made in writing or by telex or telecopy and shall be deemed to have been duly given in the case of telex or telecopy notice if answered back or confirmation received, or if delivered by hand upon receipt or ten days after being deposited in the mail, airmail postage prepaid and addressed as follows:

If to the Government:

THE SECRETARY
Department of Environment and Natural Resources
DENR Building, Visayas Avenue
Diliman, Quezon City

If to the Contractor :

FRANK N. LUBBOCK
Chairman of the Board
Base Metals Mineral Resources Corporation
4th & 6th Floor, Trans-Phil House Bldg.,
1177 Chino Roces Avenue, Cor. Bagtikan St.,
Makati City 1231

Either party may substitute or change such address on notice thereof to the other party

16.3 Governing Law

This Agreement and the relation between the parties hereto shall be governed by and construed in accordance with the laws of the Republic of the Philippines. The Contractor hereby agrees and obliges itself to comply with the provisions of the Act, its Implementing Rules and Regulations and other relevant laws and regulations.

16.4 Suspension of Obligation

- a) Any failure or delay on the part of any party in the performance of its obligation or duties hereunder shall be excused to the extent attributable to Force Majeure.
- b) 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.
- c) The party whose ability to perform its obligations shall promptly give Notice to the other in writing of any such delay or failure of performance, the expected duration thereof, and its anticipated effect on the Party expected to perform and shall use its efforts to remedy such delay, except that neither Party shall be under any obligation to settle a labor dispute.

16.5 Amendments

This Agreement shall not be annulled, amended or modified in any respect except by mutual consent in writing of the herein parties.

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

THE REPUBLIC OF THE PHILIPPINES

BY :



VICTOR O. RAMOS

Secretary

*Department of Environment and
Natural Resources*



BASE METALS MINERAL RESOURCES CORPORATION

BY :

Frank N. Lubbock

FRANK N. LUBBOCK
Chairman of the Board

SIGNED IN THE PRESENCE OF :

Francis Pa... _____ *Theo...* _____

ACKNOWLEDGMENT

Republic of the Philippines)
Quezon City) s s

Before me, a Notary Public for and in the City of *Quezon*
personally appeared **HON. VICTOR O. RAMOS**, with Community Tax Certificate
No. *5763757* issued on *8-7-97* at *QC*, in his
capacity as Secretary of the Department of Environment and Natural Resources and
FRANK N. LUBBOCK, with Australian Passport no. E5121033 issued on 9 September
1990, in his capacity as Chairman of the Board of **Base Metals Mineral Resources
Corporation** both known to me and to me known to be the same persons who executed
the foregoing instrument consisting of _____ () pages, including this
acknowledgment page, and acknowledged to me that the same is their voluntary acts and
deeds.

IN WITNESS WHEREOF, I have hereunto set my hand and affix my notarial seal,
this *7th* day of *November*, 1997.

P. Benavidez II
ATTY. PAZ J. BENAVIDEZ II
Notary Public
UNTIL DECEMBER 31, 1997
PTR NO. *845438*
1-31-97
QC

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