

MINERAL PRODUCTION SHARING AGREEMENT

MPSA No. 163 - 2000 - V

This **MINERAL PRODUCTION SHARING AGREEMENT** ("Agreement") is made and entered into in Quezon City, Philippines, this _____ day of SEP 12 2000 by and between:

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

and

UNGAY-MALOBAGO MINES, INC. a corporation duly organized and existing under the laws of the Republic of the Philippines, with offices at JTKC Center, 3rd Floor, 2155 Pasong Tamo, Makati City and represented in this act by its President, Mr. Dominador R. Aytona, as authorized by its Board of Directors (please refer to ANNEX "A"), and

RAPU-RAPU MINERALS, INC., a corporation duly organized and existing under the laws of the Republic of the Philippines, with offices at Suite 23, Legaspi Suites, 178 Salcedo St., Legaspi Village, Makati City and represented in this act by its Director, Mr. Roderick R.C. Salazar III, as authorized by its Board of Directors (please refer to ANNEX "A-1")

both referred to herein as the "CONTRACTOR"

WITNESSETH :

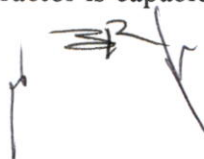
WHEREAS, the 1987 Constitution of the Republic of the Philippines provides in Article XII, Section 2 thereof that all lands of the public domain, waters, minerals, coal, petroleum, and other natural resources are owned by the State and that their exploration, development and utilization shall be under 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 the Contractor is capable of applying to the mining operations of the project contemplated herein;

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WHEREAS, the Contractor desires to join and assist the Government in the sustainable development and utilization for commercial purposes of certain **gold, copper, silver** and other associated minerals existing in the Contract Area (as herein defined);

WHEREAS, the Contractor 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 foregoing 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 and its implementing rules and regulations. The primary purpose of this Agreement is to provide for the sustainable development and commercial utilization of certain **gold, copper, silver** and other mineral deposits existing within the Contract Area, with all necessary services, technology and financing to be furnished or arranged 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 to 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 "Act" refers to Republic Act 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 the Contractor in the 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 or bearing and distance.
- 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 **UNGAY-MALOBAGO MINES, INC. AND RAPU-RAPU MINERALS, INC.** or its assignee or assignees of interest under this Agreement: Provided, That the assignment of any of such interest is accomplished pursuant to the pertinent provisions of the implementing rules and regulations of the Act.
- 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 on behalf of the Government. In case an Exploration Permit/Temporary Exploration Permit had been availed of by the Contractor, the Effective Date of this Agreement shall be the date of issuance of said Exploration Permit/Temporary Exploration Permit.

- 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 and 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 eight (8) years subject to the pertinent provisions of the implementing rules and regulations of the Act.
- 2.19 Force Majeure means acts or circumstances beyond the reasonable control of the Contractor including, but not limited to war, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, strike, 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 therein 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 Director 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, telex or 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 mining technology, as submitted and approved in accordance with the implementing rules and regulations of the Act.

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 thereof, 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.

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**SECTION IV
CONTRACT AREA**

4.1 Size, Shape, and Location of Contract Area. This Agreement covers a total area of one hundred sixty seven & 8625/10000 hectares (167.8625 has.), situated at Malobago, Rapu-Rapu, Albay and bounded by the following technical description (please refer to ANNEX "B" - 1:50,000 scale Location Map/Sketch Plan):

LINE	BEARING	DISTANCE
1-2	S89°-49'E	300.00M
2-3	S00°-11'W	900.00M
3-4	N89°-49'W	300.00M
4-5	S00°-11'W	197.75M
5-6	S45°-11'W	42.65M
6-7	N44°-49'W	300.00M
7-8	S45°-11'W	300.00M
8-9	N44°-49'W	300.00M
9-10	S45°-11'W	300.00M
10-11	N44°-49'W	300.00M
11-12	S45°-11'W	300.00M
12-13	N44°-49'W	600.00M
13-14	N45°-11'E	321.32M
14-15	N00°-11'E	476.44M
15-16	S89°-49'E	600.00M
16-17	S00°-11'W	300.00M
17-18	S89°-49'E	600.00M
18-19	N00°-11'E	300.00M
19-1	S89°-49'E	300.00M

Tie Point: Triangulation Station Rapu-Rapu, USC & GS, S70°05'W
4,756.81 Meters to corner No. 1 of Contract Area.

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 eight (8) years, subject to annual review and approval by the Director to evaluate compliance with the terms and conditions of this Agreement: Provided, That further renewal may be granted by the Secretary under circumstances as defined in the implementing rules and regulations of the Act.

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 not be less than that specified in the approved Work Programs, such that during the first two (2) years of the Exploration Period, this amount shall be as follows:

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For the Exploration Work Program:

1st Contract Year	:	₱ 9,969,561.00
2nd Contract Year:	:	₱ 11,309,099.00
Total	:	₱ 21,278,660.00

For the Environmental Work Program

Total	:	₱ 2,120,000.00
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In the event of renewal of the Exploration Period, the amount to be spent every year shall first be agreed upon by the parties.

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.

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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.

5.4 Survey of the Contract Area - The Contractor shall cause the survey of the perimeter of the Contract Area through an application for survey, complete with requirements, filed with the concerned Regional Office simultaneous with the submission of the Declaration of Mining Project Feasibility. Survey returns shall be submitted to the concerned Regional Director for approval within one (1) year from receipt of the Order of Survey complete with the mandatory requirements stated in the implementing rules and regulations of the Act.

5.5 Declaration of Mining Project Feasibility - During the Exploration Period, the Contractor shall submit to the Director through the concerned Regional 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. The Declaration of Mining Project Feasibility, Mining Project Feasibility Study Report and Work Programs are subject to approval by the Director.

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

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- a. Periodic Reports - During the Exploration Period, the Contractor shall submit to the Director through the concerned Regional 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 on a map at a minimum 1:50,000 scale, 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 Director through the concerned Regional 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 safekeeping 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 approval of the Declaration of Mining Project Feasibility, subject to such extension based on justifiable reasons as the Director may approve, upon recommendation of the Regional Director.
- 6.2 Reporting
- a. Annual - The Contractor shall submit, within sixty (60) days after December 31 of each year, to the Director through the concerned Regional 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 geological and environmental reports progress 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 Director through the concerned Regional 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 Director through the concerned Regional Director, a Three-Year Commercial Operation Work Program. The Contractor shall commence commercial utilization immediately upon approval of the aforesaid Work Program. 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 Director through the concerned Regional Director, Work Programs and Budgets 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 Program.

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 subject to approval by the Director.

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, That such plans shall be embodied in an appropriate Work Program approved by the Director.

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 Director through the concerned Regional 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 Director through the concerned Regional Director, 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.

The Contractor shall also comply with other reporting requirements provided under Section 270 of the implementing rules and regulations of the Act.

SECTION VIII

FISCAL REGIME

- 8.1 General Principle - The fiscal 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 mineral resources under its national 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 concerned Regional Office, the Contractor shall cause the registration of this Agreement with the said Regional Office and pay the registration fee at the rate provided in the existing rules and regulations. 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 - Prior to 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 provided in the existing rules and regulations. 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.