

MINERAL PRODUCTION SHARING AGREEMENT

No. MPSA No.214-2005-XI

This **MINERAL PRODUCTION SHARING AGREEMENT** is made and entered into in Quezon City, Philippines, this _____ day of JUN 10 2005 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

GALACTICA MINING AND DEVELOPMENT CORPORATION, a corporation duly organized and existing under the laws of the Republic of the Philippines, herein referred to as the **CONTRACTOR**, with office at 21-C Sta. Teresita St., Brgy. Kapitolyo, Pasig City and represented in this act by its President, **Ms. Ma. VICTORIA O. LLENOS-FLAUTA** as authorized by its Board of Directors (please refer to ANNEX "A")

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;

Ms. Victoria O. Llenos-Flauta
VP

VP

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;

WHEREAS, the Contractor desires to join and assist the Government in the initial rational exploration and possible development and utilization for commercial purposes of certain **nickel** and other associated mineral deposits 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 rational exploration, development and commercial utilization of certain **nickel** and other associated 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.

Mr. Dan F. Lawler
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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 Contractor in mining operations contemplated hereunder to accomplish the Work Program for each particular period.
- 2.6. Bureau means Mines and Geosciences Bureau.
- 2.7. 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.
- 2.8. 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.
- 2.9. 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.
- 2.10. 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.
- 2.11. 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.
- 2.12. Contractor means **Galactica Mining and Development Corporation** 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.

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- 2.13. Declaration of Mining Feasibility means a document proclaiming the presence of minerals in a specific site, which are recoverable by socially acceptable, environmentally safe and economically sound methods specified in the Mine Development Plan.
- 2.14. Department or DENR means the Department of Environment and Natural Resources.
- 2.15. Director means the Director of Mines and Geosciences Bureau.
- 2.16. Effective Date means the date of execution of this Agreement by the Contractor and by the Secretary on behalf of the Government.
- 2.17. Environment means all facets of man's surroundings: physical, ecological, aesthetic, cultural, economic, historic, institutional and social.
- 2.18. 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.
- 2.19. Exploration Period shall mean the 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 for nonmetallic minerals and eight (8) years for metallic minerals, subject to the pertinent provisions of the implementing rules and regulations of the Act.
- 2.20. 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.
- 2.21. Foreign Exchange means any currency other than the currency of the Republic of the Philippines acceptable to the Government and the Contractor.
- 2.22. Government means the Government of the Republic of the Philippines or any of its agencies and instrumentalities.
- 2.23. 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.

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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.

- 2.24. 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.
- 2.25. 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.
- 2.26. 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.
- 2.27. 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/Regional Director concerned for purposes of development and/or utilization and sites for support facilities.
- 2.28. Mining Operations means mining activities involving exploration, feasibility study, environmental impact assessment, development, utilization, mineral processing and mine rehabilitation.
- 2.29. 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.
- 2.30. Ore means naturally occurring substance or material from which a mineral or element can be mined and/or processed for profit.
- 2.31. 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.
- 2.32. Secretary means the Secretary of the Department of Environment and Natural Resources.

M. Delos Flamingo
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2.33. State means the Republic of the Philippines.

2.34. 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.

SECTION IV

CONTRACT AREA

4.1. Size, Shape, and Location of Contract Area - This Agreement covers a Contract Area of approximately Two Thousand Three Hundred Thirty Seven (2,337) hectares, situated in Mati, Davao Oriental and bounded by the following geographical coordinates (please refer to ANNEX "B" - 1:50,000 scale Location Map/Sketch Plan):

Parcel - I

Area = 320 hectares

Corner	Latitude	Longitude
1	6° 43' 31.40"	126° 11' 11.19"
2	6° 43' 57.45"	126° 11' 11.19"
3	6° 43' 57.45"	126° 11' 37.24"
4	6° 44' 23.50"	126° 11' 37.24"
5	6° 44' 23.50"	126° 12' 55.39"
6	6° 43' 57.45"	126° 12' 55.39"
7	6° 43' 57.45"	126° 12' 03.29"
8	6° 43' 31.40"	126° 12' 03.29"

M. Montalva
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Parcel – IV

Area = 128 hectares

Corner	Latitude	Longitude
1	6° 44' 23.50"	126° 13' 21.44"
2	6° 44' 49.54"	126° 13' 21.44"
3	6° 44' 49.54"	126° 14' 13.54"
4	6° 44' 23.50"	126° 14' 13.54"

Parcel – V

Area = 115 hectares

Corner	Latitude	Longitude
1	6° 43' 31.40"	126° 13' 30.00"
2	6° 43' 57.45"	126° 13' 30.00"
3	6° 43' 57.45"	126° 14' 00.00"
4	6° 43' 45.80"	126° 14' 00.00"
5	6° 43' 45.80"	126° 14' 30.00"
6	6° 43' 31.40"	126° 14' 30.00"

The Contractor is not allowed to undertake any mining activities within the portion of the Contract Area covered by any DENR Project Areas, without the prior consent of the contractor(s)/concessionaire(s) concerned.

Portions of the Contract Area within the proposed Mt. Hamiguitan Range Wildlife Sanctuary, including its buffer zone, and within elevations of 1,000 meters and above shall be temporarily excluded in this Agreement, pending final resolution of the attendant issues. In the event that said issues are resolved in favor of the Contractor, such temporarily excluded areas shall be included to and form part of the Contract Area, without need of any further agreement or amendment hereof, subject only to the issuance of the appropriate Order by the Director.

Portion of the Contract Area that may be found and verified as old growth and/or mossy forests shall be automatically excised from said 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 six (6) years for nonmetallic minerals and eight (8) years for metallic

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minerals, subject to annual review and approval by the Director in accordance with the implementing rules and regulations of the Act.

- 5.2. **Renewal of Exploration Period** - In case the Contractor opts for a renewal of its Exploration Period, it shall file prior to the expiration thereof, a renewal application in the Regional Office concerned, accompanied by the mandatory requirements stipulated in the implementing rules and regulations of the Act. The Director may grant the renewal of the Exploration Period on condition that the Contractor has substantially complied with the terms and conditions of the Agreement.

In cases where further exploration is warranted beyond the six (6)- or eight (8)-year period and on condition that the Contractor has substantially implemented the Exploration and Environmental Work Programs as verified by the Bureau, the Director may further grant renewal of the Exploration Period: Provided, That the Contractor shall be required to set up a performance surety equivalent to the expenditure requirement of the Exploration and Environmental Work Programs.

- 5.3. **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 specified for each of the Contract Years, as follows:

For the Exploration Work Program:

1st Contract Year	:	PhP	1,664,000
2nd Contract Year	:	PhP	2,040,000
Total	:	PhP	3,704,000

For the Environmental Work Program : PhP 370,400

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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- 5.4. 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 a Declaration of Mining Feasibility by the Director, the Contractor shall finally relinquish any portion of the Contract Area not necessary for mining operations and not covered by any Declaration of Mining Feasibility.
- 5.5. Final Mining Area - The Director may allow the Contractor to hold more than one (1) final Mining Area subject to the maximum limits set under the implementing rules and regulations of the Act: Provided, That each final Mining Area shall be covered by a Declaration of Mining Feasibility.
- 5.6. Declaration of Mining Feasibility - Within the term of the Exploration Period, the Contractor shall file in the Regional Office concerned, the Declaration of Mining Feasibility of the Contract Area/final Mining Area supported by Mining Feasibility Study, Three (3)-Year Development and Construction or Commercial Operation Work Program, complete geologic report, an application for survey and the pertinent Environmental Compliance Certificate, among other applicable requirements. Failure of the Contractor to submit the Declaration of Mining Feasibility during the Exploration Period shall be considered a substantial breach of this Agreement.
- 5.7. Survey of the Contract Area - The Contractor shall cause the survey of the perimeter of the Contract Area/final Mining Area through an application for survey, complete with requirements, filed in the Regional Office concerned simultaneous with the submission of the Declaration of Mining Feasibility. Survey returns shall be submitted to the Regional Director concerned 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.
- 5.8. Reporting
- a. During the Exploration Period, the Contractor shall submit to the Director, through the Regional Director concerned, 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 Regional Director concerned, 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/Regional Director concerned, submit to the Regional Office concerned 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 submission of the Declaration of Mining Feasibility, subject to such extension based on justifiable reasons as the Director may approve, upon recommendation of the Regional Director concerned.
- 6.2. Reporting
 - a. Annual - The Contractor shall submit, within sixty (60) days after December 31 of each year, to the Director, through the Regional Director concerned, 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 progress 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 Director, through the Regional Director concerned. 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.

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; and
- 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).

The Contractor shall also comply with other reporting requirements provided for in 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 Agreement from the Regional Office concerned, 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 Municipal/City Treasurer concerned 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 percent (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

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by existing laws. The Excise Tax shall be timely and completely paid to the nearest Bureau of Internal Revenue Office in the province concerned.

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 Republic Act No. 7160, otherwise known as "The Local Government Code of 1991."

- 8.5. Pricing of Sales - The Contractor shall dispose of the minerals and by-products produced at the highest market price prevailing in the locality: The Contractor shall also pay the lowest achievable marketing commissions and related fees and shall negotiate for more advantageous terms and conditions subject to the right to enter into long-term sales or marketing contracts or foreign exchange and commodity hedging contracts, which the Government acknowledges to be acceptable notwithstanding that the sale price of the minerals and by-products may from time to time be lower, or the terms and conditions of sales are less favorable, than that available elsewhere. The Contractor shall seek to strike a balance between long-term sales or marketing contracts or foreign exchange and commodity hedging contracts 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 affiliate(s) are concerned, prices shall be at arm's length standard, and competing offers for large scale and long-term contracts shall be procured. Before any sale and/or shipment of mineral product is made, existing and future marketing contract(s)/sales agreement(s) shall be submitted to the Director, copy furnished the Regional Director concerned, for registration. At the same time, the Contractor shall regularly inform the Director in writing of any revisions, changes or additions in said contract(s)/agreement(s).

The Contractor shall reflect in its Monthly/Quarterly Report on Production, Sales and Inventory of Minerals, as well as in the Integrated Annual Report, the corresponding registration number(s) of the marketing contract(s)/agreement(s) governing the export or sale of minerals.

- 8.6. Associated Minerals - If minerals other than **nickel** 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 Government share.

SECTION IX

WORK PROGRAMS

- 9.1. Submission to Government - Within the periods stated herein, the Contractor shall prepare and submit to the Director, through the Regional Director concerned, a Work Program and corresponding Budget for the Contract Area

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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 development, utilization and processing activities 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 environmental/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 costs depending on the environmental/geologic condition, nature and scale of operations and technology employed in the Contract Area.

10.7. The Contractor shall establish a Contingent Liability and Rehabilitation Fund (CLRF) which shall be in the form of the Mine Rehabilitation Fund (MRF) and the Mine Waste and Tailings Fee (MWTF).

The MRF shall be 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.

The MWTF shall be collected based on the amounts of mine waste and mill tailings generated during the conduct of Mining Operations. The MWTF collected shall accrue to a Mine Waste and Tailings Reserve Fund and shall be deposited in a government depository bank for payment of compensation for damages caused by the Mining Operations.

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 DAO No. 2000-98, otherwise known as the "Mine Safety and Health Standards."

- k.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;
- k.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;
- k.4. To allocate research and development budget for the advancement of mining technology and geosciences in coordination with the Bureau, research institutions, academe, etc.; and
- k.5. To replicate data, maps and reports cited in (k.1) and (k.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 (k.1) and (k.2) above;
- l. To incorporate in the Mining Feasibility Study the planned expenditures necessary to implement all the plans and programs set forth in this Agreement; and
- m. To pay all other taxes and fees mandated by existing laws, rules and regulations.

11.2. Rights of the Contractor:

- a. To conduct Mining Operations within the confines of its Contract/Mining Area in accordance with the terms and conditions hereof and without interfering with the rights of other Contractors/Lessees/Operators/ Permittees/Permit Holders;
- b. 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 may be 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. Every time foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken. The 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. Repatriation of capital and remittance of profits, dividends and interest on loans, subject to existing laws and Bangko Sentral ng Pilipinas 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.

11.3. Obligations of the Government:

- a. To ensure that the Contractor has the Government's full cooperation in the exercise of the rights granted to it under this Agreement;
- b. To use its best efforts to ensure the timely issuance of necessary permits and similar authorizing documents for use of the 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 the Contractor's obligation on Government rights hereunder.

SECTION XII

ASSETS AND EQUIPMENT

- 12.1. The Contractor shall acquire for the Mining Operations only such assets that are reasonably estimated to be required in carrying out such Mining Operations.

- 14.2. Any disagreement or dispute which can not be settled amicably within a period of one (1) year from the time the issue is raised by a Party shall be settled by a tribunal of three (3) arbitrators. This tribunal shall be constituted as follows: one to be appointed by the Contractor and the other to be appointed by the Secretary. The first two appointed arbitrators shall consider names of qualified persons until agreement on a mutually acceptable Chairman of the tribunal is selected. 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 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.

SECTION XV

SUSPENSION OR TERMINATION OF CONTRACT, TAX INCENTIVES AND CREDITS

- 15.1. This Agreement may be suspended for failure of the Contractor: (a) to comply with any provision or requirement of the Act and/or its implementing rules and regulations; (b) to pay on time the complete 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 Agreement:
- a. Failure of the Contractor without valid reason to commence Commercial Production within the period prescribed; and/or
 - b. Failure of the Contractor to conduct mining operations and other activities in accordance with the approved Work Programs and/or any modification thereof as approved by the Director.
- 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, telex or telecopy and shall be deemed to have been duly given notice, in the case of telex or telecopy, 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

Mineral
LB

CLM

If to the Contractor:

THE PRESIDENT

Galactica Mining and Development Corporation
21-C Sta. Teresita Street
Brgy. Kapitolyo, Pasig City

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* as defined in the Act: Provided, That the suspension of Mining Operations due to *Force Majeure* causes shall be subject to approval by the Director.
- 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 is affected by such *Force Majeure* causes, 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 and shall use its efforts to remedy such delay, except that neither Party shall be under any obligation to settle a labor dispute: Provided, That the suspension of obligation by the Contractor shall be subject to prior approval by the Director.

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:


MICHAEL T. DEFENSOR



Secretary

Department of Environment and Natural Resources

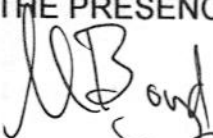
GALACTICA MINING AND DEVELOPMENT CORPORATION

TIN: _____


BY:


Ma. VICTORIA O. LLENOS-FLAUTA
President

SIGNED IN THE PRESENCE OF:


MALCOLM SUBIDO

(Signature over Printed Name)



(Signature over Printed Name)

DEINRADO SIMON D. DIMALIBOT
Undersecretary
Mining and Legal Affairs

ACKNOWLEDGMENT

Republic of the Philippines)
Quezon City) s s

Before me, a Notary Public for and in the City of Quezon, personally appeared **MICHAEL T. DEFENSOR**, with Community Tax Certificate No. 15653147 issued on January 5, 2005 at Quezon City, in his capacity as Secretary of the Department of Environment and Natural Resources, and **Ma. VICTORIA O. LLENOS-FLAUTA**, with Community Tax Certificate No. 16184023 issued on February 3, 2005 at Makati City, in her capacity as President of Galactica Mining and Development Corporation, both known to me and to me known to be the same persons who executed the foregoing instrument consisting of twenty six (26) 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 29 JUN 2005 day of _____.

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Series of 2005

Jewelyn B. Valenton Carreon
JEWELYN B. VALENTON CARREON
NOTARY PUBLIC
Notary Public
Commission Expires December 31, 2015
IDP O.R. No. 617608, 1-7-05, Mla.
PTR O.R. No. 3607645, 1-7-05, Mla.
TIN No. 204005051

Victoria O. Llenos-Flauta
VP

DMT