

**TERMS OF REFERENCE**  
of the  
**PROPOSED JOINT OPERATING AGREEMENT**  
between  
**PHILIPPINE MINING DEVELOPMENT CORP. (PMDC) and**  
**PROSPECTIVE PARTNER/s for**  
**HERNANI CHROMITE PROPERTY**

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**1. THE CONTRACT AREA**

The prospective partner shall exclusively undertake exploration and/or mining operations in Philippine Mining Development Corporation's (PMDC) **HERNANI CHROMITE Property** located in the Municipality of Hernani, Llorente, and General MacArthur, Province of Eastern Samar, Region 8, containing an area of Seven Hundred Fifty Four and 70/100 (754.70) hectares *(as per the attached Location Map in Annex "A")* and the following Technical Description:

Corners	Latitude			Longitude		
	Degrees	Minutes	Seconds	Degrees	Minutes	Seconds
1	11	18	0	125	32	30
2	11	18	0	125	34	0
3	11	19	30	125	34	0
4	11	19	30	125	32	30

**2. QUALIFICATIONS OF JOA PARTNER**

2.1. The prospective partner should be duly-registered with the Securities and Exchange Commission (SEC) and organized as a mining corporation for at least two (2) years in accordance with the laws of the Philippines. At least sixty percent (60%) of the outstanding capital stocks of the prospective partner/s should be owned by citizens of the Philippines. It should be financially capable to finance the project, and as proof thereof, the prospective partner shall submit certified true copies of the following:

- a. Audited Financial Statements for the last three (3) years of operations,
- b. Latest Interim Financial Statements of the current year, and
- c. Bank Certifications on bank balance accounts as indicated in Audited and Interim Financial Statements.

2.2. The prospective partner must show proof that its key technical personnel have been involved in the exploration or operation of mines for at least two (2) years.

2.3. The prospective partner must have a minimum authorized capital of ONE HUNDRED MILLION PESOS (PhP100,000,000.00), and a

minimum paid-up capital of TWENTY FIVE MILLION PESOS (PhP25,000,000.00).

- 2.4. The prospective partner shall comply with all the legal, financial and technical requirements/ documents mentioned in the eligibility and qualification requirements checklist and in existing laws and regulations under Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, and its Implementing Rules and Regulations.
- 2.5. The prospective partner must submit an approved credit line for the project from a licensed reputable bank amounting to at least FIFTY MILLION PESOS (PhP50,000,000.00).
- 2.6. The prospective partner may be required to submit additional documents to show its legal, financial and technical capabilities to operate a mining property.
- 2.7. The winning bidder shall submit an Exploration Work Program (ExWP) for the specific Mining Asset together with his bid. Such ExWP shall strictly follow the format of MGB Form 05-4. (*See Annex "B"*)
- 2.8. The winning bidder shall, within ninety (90) days from the signing of an agreement with PMDC, submit a more detailed ExWP as may be deemed necessary, for the approval of PMDC.

### **3. EXPLORATION REQUIREMENTS**

- 3.1 The winning bidder shall register the Joint Operating Agreement (JOA) to MGB Regional Office No. VIII within a period of thirty (30) days from the date of signing of JOA.
- 3.2 The winning bidder shall, within ninety (90) days from the date of signing of the contract, start actual exploration work (i.e. rock sampling, securing permits, etc.) in accordance with its approved ExWP, timetable, and committed budget. It shall also include a maximum one (1) year development period (i.e. construction of facilities, etc.) prior to actual mining operations.
- 3.3 The ExWP shall cover a period not exceeding two (2) years, renewable for another two (2) years upon application of the winning bidder, subject to the review and approval of PMDC, which should enable the winning bidder to gather sufficient information and decide whether to proceed with mining operation or not. All geologic data (reports of seismic survey, geological/geochemical and assay/lab tests, reconnaissance (aerial/otherwise) and other reports on area potential) gathered by the winning bidder should be disclosed to PMDC in a timely manner as agreed upon. The exploration period shall not exceed six (6) years.
- 3.4 If the winning bidder decide to withdraw from the Agreement, it shall first submit to PMDC all geologic data and other reports gathered from

the area, including receipts and certifications from the concerned government agencies stating that it has paid all fees and has no pending obligations whatsoever.

#### **4. OPERATIONAL REQUIREMENTS**

- 4.1 Within the exploration period, the winning bidder shall inform PMDC in writing of its decision to mine/operate based on its feasibility studies. The monthly, quarterly and annual mining plans shall be submitted to PMDC. It is during this exploration period that all documents, i.e. business permits, and community's and/or Indigenous Peoples' consent, if needed, shall be secured. Also, an Environmental Impact Assessment and Environmental Compliance Certificate must be secured, and the Declaration of Mine Project Feasibility (DMPF) must be filed before the MGB Regional Office No. VIII, and copies thereof provided to PMDC.
- 4.2 The winning bidder shall be responsible for the provision of manpower, tools and equipment, power, materials and appropriate ventilation (for underground operations) necessary for the mining operations, especially those for mine safety and health.

#### **5. MINING OPERATION**

- 5.1. The winning bidder shall commence its operation immediately after the acquisition of the approval of DMPF. Failure to operate the property within the given period shall constitute a major violation of its Agreement with PMDC and shall entitle PMDC to cancel the Agreement.
- 5.2. The mining operations of the winning bidder during the effectivity of the JOA shall be covered by a mining plan to be submitted to the PMDC. The said mining plan shall be regularly updated by the winning bidder and submitted to the PMDC.
- 5.3. PMDC may provide technical assistance to the winning bidder such as geological and mining services for which PMDC shall charge the appropriate fees/charges.
- 5.4. The winning bidder shall have the obligation to guard and protect its working area from intruders.
- 5.5. The winning bidder shall submit to the PMDC, copy furnished the MGB Regional Office No. VIII, within fifteen days (15) after the end of each quarter a verified report of the volume and grade of the monthly mineral ore production covering said quarter. The winning bidder shall likewise comply with all the lawful orders of the PMDC, DENR, MGB, and other government entities as well as the submission of all reports or documents that may be required by PMDC or other government entities.

- 5.6. The winning bidder shall comply with the existing rules and regulations, as well as the requirements of the MGB Regional Office No. VIII and/or PMDC on mine safety, such as the use of personal safety apparels (skull guards, safety boots, etc.), health, sanitation and environmental aspects of its operations.
- 5.7. The winning bidder shall allow the MGB Regional Office No. VIII, PMDC and/or its duly authorized representatives complete access to all working areas and any place within the Hernani Chromite Property anytime to ensure that the mine safety, health and environmental provisions of the mining and environmental laws are complied with.
- 5.8. The winning bidder shall allow and accept the designation/appointment of a full or part time representative of the PMDC at the mining site of the winning bidder to monitor compliance with the provisions of the JOA and existing laws and regulations.
- 5.9. The JOA or any interest therein cannot be assigned, transferred or sublet, in whole or in part, by the winning bidder without prior approval of PMDC. Otherwise, such assignment, transfer or sublease shall be deemed void and ineffective.
- 5.10. Pursuant to DENR Administrative Order No. 2015-07 re: Mandating Mining Contractors to Secure ISO 14001 Certification, the winning bidder shall apply for the certification of ISO 14001:2015 called the Environmental Management System.

## **6. FISCAL OBLIGATIONS**

- 6.1. PMDC shall receive a minimum of TEN PERCENT (10%) share from the gross sales of the mineral products.
- 6.2. Based on exploration data gathered, the winning bidder shall guarantee PMDC in its mining plan, a minimum of 30,000 metric tons annual mine production of chromite ore.
- 6.3. The winning bidder shall be responsible for the royalty payment, fees or taxes to local and national government and to the Indigenous Peoples.
- 6.4. The winning bidder shall be responsible for the just compensation of any vested rights.
- 6.5. PMDC and the winning bidder shall be responsible for the payment of their respective taxes whether national or local taxes, as provided for by law or ordinance.

## **7. SELECTION CRITERIA**

- 7.1. The exploration and development of the Mining Asset shall be awarded to the bidder who submits the highest bid offer on the commitment fee referred to in Section 9(a).
- 7.2. The bidder shall not bid below the amount of commitment fee stipulated under Section 9(a).
- 7.3. To break the tie in case of two (2) or more similar bid offers, the prospective partners involved shall submit a new offer higher than the previous bid proposal.

## **8. OTHER PROVISIONS**

- 8.1 The winning bidder is an independent contractor and the JOA with the PMDC shall not be construed as constituting an employee-employer relationship.
- 8.2 The winning bidder shall furnish the PMDC with a list of its members who will be working in the contract area and shall be provided the appropriate identification cards (mining chapa). Persons not included in the list shall not be allowed to work in the contract area without a written request from the prospective operator and the approval of PMDC.
- 8.3 The winning bidder shall have the right to hire, discharge, promote and transfer its employees/members; to establish and enforce reasonable standards of production; to introduce labor saving equipment and materials; to determine the number of craftsman necessary to perform a task; and to establish, maintain and enforce rules and regulations conducive to efficient and productive operations.
- 8.4 The winning bidder shall assume all risks and expenses connected with mining operations within the contract area, including but not limited to business losses and claims and actions on account of death, sickness or injury to persons caused by the mining operations conducted under the JOA. The winning bidder shall comply with all labor laws and standards with respect to its employees, their wages and their working conditions and environment.
- 8.5 The winning bidder shall provide the PMDC on regular basis with full and complete copies of the financial, technical and operational reports covering the exploration, development and operations of the Mining Project, and such other reports, data, or documents as may be required by PMDC.
- 8.6 The winning bidder will provide the PMDC with two (2) copies of the audited financial statements covering the results of the Mining Project operations as well as two (2) copies of the winning bidder's Annual

Reports prepared for the partners' own stockholders and board of directors.

The submissions per Section 8.5 and 8.6 will be used by PMDC to assess partner compliance with the agreement and other monitoring requirements.

8.7 The winning bidder agrees to abide by the terms and conditions of this TOR and commits to enter into a contract embodying the said terms and conditions within thirty (30) days from award of the Project/Contract.

## 9. COMMITMENT FEE

The winning bidder shall pay PMDC the following non-refundable minimum commitment fees:

(a) TWENTY MILLION PESOS (PhP20,000,000) or WINNING BIDDER'S BID OFFER VAT Included	Upon signing of the Contract
(b) FIVE MILLION PESOS (PhP5,000,000) VAT Included	Within twelve (12) months after the signing of the Contract or from the commencement of commercial operations, whichever comes first

If applicable, upon renewal of another two (2) years, subject to the review and approval of PMDC, the following shall be paid by the winning bidder:

(c) FIVE MILLION PESOS (PhP5,000,000) VAT Included	Upon signing of the Renewal
(d) FIVE MILLION PESOS (PhP5,000,000) VAT Included	Within twelve (12) months after the signing of the Renewal or from the commencement of commercial operations, whichever comes first

For the final renewal of two-year exploration period, if applicable, the winning bidder shall pay the following:

	Upon signing of the Final Renewal
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(e) FIVE MILLION PESOS (PhP5,000,000) VAT Included	
(f) FIVE MILLION PESOS (PhP5,000,000) VAT Included	Within twelve (12) months after the signing of the Final Renewal or from the commencement of commercial operations, whichever comes first

## 10. PENALTY

If the winning bidder failed in its commitment to pay on agreed due date, the share due PMDC, as well as the balance, if any, on the commitment fee, the winning bidder shall pay a penalty on pro-rata per day basis an interest based on Philippine Dealing System Treasury Fixing (PDSTF) plus ten (10%) percent. PMDC however reserves the option to rescind/cancel the JOA at anytime after the prospective partner's failure to pay said share/commitment fee as discussed under sections 6.1 and 9.

## 11. BIDDER'S BOND

All bids submitted by eligible parties must be accompanied by a bid security, callable on demand and valid for a period of *one hundred twenty (120)* calendar days reckoned from the date of bid opening. The Bid Security may be in any of the following forms:

Form of Security	Total Two-Year Commitment Fee
1. Cash, cashier's / manager's check, bank draft / guarantee confirmed by a Universal or Commercial Bank	Two percent (2%)
2. Irrevocable letter of credit issued by a Universal or Commercial Bank: <i>Provided, however,</i> That it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	Two percent (2%)
3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Five percent (5%)

## 12. PERFORMANCE BOND

The JOA shall comply with the requirements of the Philippine Laws and Regulations and consistent with the objectives of both parties. To guarantee the faithful performance by the winning bidder of its obligations under the contract prepared in accordance with the bidding documents, it shall post Performance Security prior to the signing of the contract. The Performance Security may be in any of the following forms:

**13.1 Exploration Period:** During the exploration work period, the performance bond shall be based on the ExWP Expenditures which may be in any of the following terms:

Form of Security	Two-Year ExWP
1. Cash, cashier's / manager's check, bank draft / guarantee confirmed by a Universal or Commercial Bank	Ten percent (10%)
2. Irrevocable letter of credit issued by a Universal or Commercial Bank: <i>Provided, however,</i> That it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	Ten percent (10%)
3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

**13.2 Production:** After the exploration period, the performance bond shall be based on the Minimum Guaranteed Annual Production as agreed upon by the parties.

Form of Security	Total First Year Annual Production
1. Cash, cashier's / manager's check, bank draft / guarantee confirmed by a Universal or Commercial Bank	Ten percent (10%)
2. Irrevocable letter of credit issued by a Universal or Commercial Bank: <i>Provided, however,</i> That it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a	Ten percent (10%)



foreign bank.	
3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

**13. DURATION OF THE JOINT OPERATING AGREEMENT (JOA)**

The duration of this Agreement is **twenty five (25) years**, unless PMDC and the prospective partner have renegotiated an extension of the term or shall enter into a new agreement.

**14. NON – ENFORCEABILITY OF THE JOA**

The JOA shall be deemed to be of no force and effect: (a) upon being superseded by any kind of partnership agreement, defining the terms and conditions of the relationships of the parties; (b) non-renewal or cancellation of the JOA; or (c) non-compliance by the winning bidder with any of its obligations provided in the JOA. In case of non-compliance, the winning bidder shall have a period of sixty (60) days from being given such written notice of non-compliance by PMDC to remedy such non-compliance before the JOA is deemed to be of no force and effect.

**15. FORCE MAJEURE**

- a. “Force Majeure” means acts or circumstances beyond the reasonable control of the party to the Agreement, including war, insurrection, civil disturbances, blockade, sabotage, embargo, strike and other labor conflict, riot, epidemic, earthquake, storm, flood, or other adverse weather conditions, explosion, fire, act of God or public enemy, acts or restraint of any other government or governmental or semi-governmental authority and any cause (whether or not hereinbefore described) over which the affected party has no reasonable control and which is of such a nature as to delay, curtail or prevent timely action by the party affected.
- b. Notwithstanding any other provisions of the JOA, any failure or delay on the part of any party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure and the time for a party to enjoy the rights and carry out the obligations hereby affected shall be extended for a period equal to the period thus involved.

**16. APPROVAL OF THE JOA**

This JOA shall be subject to the approval of the PMDC Board.