

Developing a Regulatory Framework for Mineral Exploitation in the Area

Report to Members of the Authority and all Stakeholders

This Report contains a first working draft of the Regulations and Standard Contract Terms on Exploitation for Mineral Resources in the Area. The Report seeks the views and opinions of stakeholders on the working draft.



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Purpose of this Report

1. The purpose of this Report of the Legal and Technical Commission (the Commission) is to introduce a first working draft of the Regulations and Standard Contract Terms on Exploitation for Mineral Resources in the Area for consideration by the Members of the Authority and all stakeholders.
2. At this stage the Commission is seeking the views and opinions on the content and structure of the draft at Annex 1 from the Authority's stakeholder base. It is proposed that any fine-tuning of the drafting language will take place at a later date by a legal draftsman and translated into the Authority's official languages.

Progress to date

3. At its July 2015 meeting the Commission reflected on a revised draft framework and action plan to guide and direct the delivery of draft Exploitation regulations. The revised draft took account of stakeholder responses and input following the issue of the *Report to Members of the Authority and all stakeholders* in March 2015. The revised draft framework and action plan, as amended by the Commission, together with a discussion over the high-level issues was issued on 15 July 2015 to the Council and made publicly available.¹ The Commission also proposed a list of seven priority deliverables which the Council duly endorsed at its 21st Session. This included the preparation of a "zero draft" of the Exploitation Regulations.² Owing to its excessive workload, the Commission was not in a position to complete its work on a working draft in February 2016 as intended and it was not therefore possible at that time to issue a working draft for comment by the Authority's stakeholder base.
4. Since March 2016, the Secretariat has issued 4 discussion papers which are directly relevant to the current and future development of the regulatory code. These technical discussions papers relate to dispute resolution; confidentiality; communication and engagement by the Authority and enforcement and liability issues in the Area.³ Additionally, the development of a full regulatory code will be subject to any recommendations adopted by the Authority flowing from the current Article 154 Review.
5. At its July 2016 meeting the Commission reviewed a revised working draft which is now made available to stakeholders at Annex I to this Report.
6. The draft at Annex I is seen as Phase 1 in the development of the full regulatory code for the regulation of exploitation activities in the Area. It is issued on the basis that it is work in progress and does not represent the final views of the Commission on any matter or issue under consideration.
7. The draft addresses the following issues, in particular:

¹ Available at <https://www.isa.org.jm/files/documents/EN/Survey/Report-2015.pdf>.

² Identified as Priority deliverable No. 1 in ISBA/21/C/16, Annex III.

³ See <https://www.isa.org.jm/legal-instruments/ongoing-development-regulations-exploitation-mineral-resources-area>.

- (a) the orderly, safe and rational management of the resources, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;
- (b) to develop an effective regulatory regime to organize and control activities in the Area;
- (c) to allocate rights to exploit resources in the Area efficiently to further the objectives of the Convention and the granting of contracts for exploitation only to applicants suitably qualified to undertake exploitation activities in the Area;
- (d) providing for security of tenure in respect of the exploitation rights allocated;
- (e) to uphold the carrying out of activities in the Area in accordance with good industry practice;
- (f) to provide for necessary measures for the discharge of the Authority's responsibilities and duties under the Convention;
- (g) to facilitate the adoption and development of risk assessment and risk management and other standards and systems to measure, monitor and mitigate, environmental, occupational health and safety and operational risk and performance;
- (h) the delivery of the financial objectives of the Convention and a fair financial return to mankind for its resources;
- (i) to promote accountable, transparent and fair decision-making in respect of the regulation and management of activities in the Area;
- (j) to promote a robust, stable, predictable and cost-effective regulatory mechanism;
- (k) to develop the resources of the Area with reasonable regard to the rights and legitimate interests of other users of the marine environment;
- (l) to the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of activities in the Area in accordance with best environmental practice and the precautionary approach (*to be developed under the environmental regulations*);
- (m) to promote the safety of life and property at sea;
- (n) to encourage and promote the continued development of technology necessary to recover the resources of the deep seabed.

8. The Commission considers the draft as providing for the basic elements of the application process and subsequent administration of contractor activities, rights and obligations including a first blush of the financial terms applicable to exploitation contracts.⁴ Detailed plans of work will need to be crafted so that clear performance objectives can be articulated and ultimately measureable, monitored and enforced under an exploitation contract. The regulatory code will also be supported going forward by a number of guidelines and recommendations by the Commission.

⁴ See also *Conference Report on the Deep Seabed Mining Payment Regime Workshop* San Diego, 17-18 May 2016. Available at <https://www.isa.org.jm/files/documents/EN/Pubs/2016/DSM-ConfRep.pdf>.

Environmental and Seabed Mining Directorate Regulations

9. As to other elements of the full regulatory code, current thinking is a need for two further and separate sets of regulations, namely “Environmental Regulations” and “Seabed Mining Directorate Regulations”.

10. The Environmental Regulations would cover matters such as the development of strategic environmental management plans: regional management plans; the environmental impact assessment process; environmental management and monitoring obligations, including emergency orders; the environmental approval process and environmental obligations. A timeline with deliverable products would be a priority task for the upcoming Commission. The environmental regulations and related guidelines would also seek to operationalize the concept serious harm, practical application of the precautionary approach and others required in this theme. The workshop held in Surfer's Paradise sponsored by the Government of Australia⁵ addressed some of these issues. The approach of separate Environmental regulations will facilitate their formulation.

11. A separate “Seabed Mining Directorate Regulations” could direct the development of the day-to-day functioning (administrative, reporting, enforcement) and operating procedures of the Authority as regulator, including that of an inspectorate. They could also, if necessary, clarify the powers and functions bestowed on the various organs of the Authority by the Convention. Their content may also reflect any recommendations that flow from and are adopted by the Authority following the Article 154 review, not least the way the Authority may change the way it conducts business in view of it operating as a mining regulator.⁶

Next steps

12. The Commission acknowledges that once all draft regulations have been prepared, there will be a need to review their content for any overlap and ambiguity, particularly as regards clarity in duties and obligations. Furthermore, in connection with this “building block” approach to regulatory development, it should be understood that “nothing is agreed until everything is agreed”.

13. As part of its submission to the Council at its 22nd Session, the Commission will, in its Chair's Report provide a summary of progress, particularly in respect of the priority deliverables and will identify next steps in the development of the Mining Code.

14. Responses to this Report from Members of the Authority and all stakeholders are invited by early November 2016 so that the Secretariat can prepare an update for the first session of the new Commission in February 2017.

⁵ See *Co-Chair's Report of the Griffith Law School and the International Seabed Authority Workshop on Environmental Assessment and Management for Exploitation of Minerals in the Area Surfer's Paradise*, 23-26 May 2016. Available at <https://www.isa.org.jm/files/documents/EN/Pubs/2016/GLS-ISA-Rep.pdf>.

⁶ See also High-level issue No. 14 which relates to the development of a mining directorate / inspectorate and environmental regulator and the recommended benchmarking of land-based / oil and gas regulators.

15. It is proposed that the next Commission will formulate a clear methodology with regard to the elaboration of the Mining Code, timelines and an effective and efficient stakeholder participation strategy in connection with regulatory development being undertaken by Council.

16. As highlighted above, the Commission is seeking views and comments to the draft from the Authority's stakeholder base. In particular, the Commission would appreciate specific observations on the following:

- (a) Whether the structure and content is sufficiently adequate and clear for the intended purpose and objectives of the regulations?
- (b) Whether stakeholders consider that separate regulations in respect of the environmental matters and a mining directorate are appropriate?
- (c) Given the depth and breadth of the task in developing a regulatory code, what recommendations do stakeholders have for the Authority to ensure its development in a transparent and inclusive manner while at the same time recognizing a need for efficiency?
- (d) Any comments related to the ISA Discussion Papers referred to at paragraph 4 above.

Making a submission

Structure of submission

Please would you kindly structure your submission as follows:

- An opening paragraph introducing you and / or your organization and your direct and / or indirect interest in activities in the Area (Please note for those stakeholders who previously responded to the Authority's Stakeholder Survey and other consultation documents, this is not required).
- Your comments and / or suggestions referenced to the relevant part of the working draft.
- Any other general and / or specific comments you wish to make on the development of the regulatory framework.
- A list of any supporting documents accompanying your submission, together with website links where applicable.
- Your express consent (see below) to make your personal details and submission publicly available (note: the Authority may also reference your comments against specific parts of the draft for ease of reading by all stakeholders).
- Your contact details clearly identified.

Closing date

The closing date for submissions is Friday, 2nd November 2016 at 1800hr (EST).

Submission details

Submissions should be sent by post or electronically as follows:

Working draft – Exploitation regulations (ISBA/Cons/2016/1)
International Seabed Authority
14-20 Port Royal Street
Kingston
Jamaica

Email: consultation@isa.org.jm (format: PDF or Microsoft Word document).

Online submission publication & confidentiality

In the interests of transparency and to promote and encourage further discussion, the Authority may publish all submissions on a dedicated area of its website at <http://www.isa.org.jm/en/home>.

However, the Authority requires your express consent and approval to make submissions publicly available (i) including your name and organization as appropriate or (ii) to make your comments without disclosing any of your personal details. Please include such express consent in your submission where applicable. The default position is that your comments and personal details will be kept confidential without attribution.

Future engagement & privacy

The Authority will retain your personal contact details securely and in-confidence (except for any disclosure consented to above) with a view to contacting you solely in respect of future surveys, consultations and engagement.

Should you no longer wish the Authority to store your personal details, please advise us by sending a request to remove your contact details to the email address above.

Anonymous submissions

Please note any submissions made anonymously will be disregarded for the purposes of this Report.

Annex I

Working draft of Exploitation Regulations and Standard Contract Terms

Working structure for the Exploitation regulations

Title

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- Section IV Previous contracts with the Authority
- Section V Attachments

Annex II Feasibility Study

Annex III Mining Plan

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Annex V Emergency Response and Contingency Plan

Annex VI Exploitation Contract and Schedules

Annex VII Standard Clauses for Exploitation Contract

Annex VIII Schedule of Contract violations and monetary penalties

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Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention"), the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind,⁷ the Exploration and Exploitation of which shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts. The objective of this set of Regulations is to provide for the exploitation of the Resources of the Area.

Part I

Introduction

Draft Regulation 1

Use of terms and scope

1. Terms used in the Convention shall have the same meaning in these Regulations.
2. In accordance with the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Agreement"), the provisions of the Agreement and Part XI of the Convention shall be interpreted and applied together as a single instrument. These Regulations and references in these Regulations to the Convention are to be interpreted and applied accordingly.
3. For the purposes of these Regulations:

[“Definitions”: a list of defined terms can be found at Schedule 1 to this working draft. The content and wording of the terms defined is considered indicative at this stage of drafting. Definitions will evolve as both regulatory content evolves and / or a common approach toward terms based on internationally accepted definitions is established].

4. These Regulations shall not in any way affect the freedom of scientific research, pursuant to article 87 of the Convention, or the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of the Convention. Nothing in these Regulations shall be construed in such a way as to restrict the exercise by States of the freedom of the high seas as reflected in article 87 of the Convention.
5. These Regulations may be supplemented by further rules, regulations and procedures, in particular on the protection and preservation of the Marine Environment.
6. These Regulations are subject to the provisions of the Convention and the Agreement and other rules of international law not incompatible with the Convention.

⁷ Consideration should be given to the use / adoption of “Common heritage of humankind” in the context of the Area to reflect the evolution in language adopted since 1982.

Part II

Applications for approval of Plans of Work for Exploitation in the form of Contracts

Section 1

Form of Applications

Draft Regulation 2

Qualified applicants

1. Subject to the provisions of the Convention, the following may apply to the Authority for approval of Plans of Work:
 - (a) The Enterprise,⁸ on its own behalf or in a joint arrangement;
 - (b) States parties, State enterprises or natural or juridical persons which possess the nationality of States or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements of these Regulations.
2. Each application shall be submitted by:
 - (a) In the case of a State, by the authority designated for that purpose by it;
 - (b) In the case of an entity, by a designated representative or the authority designated for that purpose by the sponsoring State or States; and
 - (c) In the case of the Enterprise, by its competent authority.
3. Each application by a State enterprise or one of the entities referred to in paragraph 1(b) shall also contain:
 - (a) Sufficient information to determine the nationality of the Applicant or the identity of the State or States by which, or by whose nationals, the Applicant is effectively controlled; and
 - (b) The principal place of business or domicile and, if applicable, place of registration of the Applicant.
4. Each application submitted by a partnership or consortium of entities shall contain the information required by these Regulations in respect of each member of the partnership or consortium.

Draft Regulation 3

Certificate of sponsorship

1. Each application by a State enterprise or one of the entities referred to in regulation 2(1)(b) shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by whose nationals it is effectively controlled. If the Applicant has more than one nationality, as in the case of a partnership or consortium of entities from more than one State, each State involved shall issue a certificate of sponsorship.
2. Where an Applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship.

⁸ The exact nature, role and operationalization of the Enterprise in connection with exploitation activities remains for consideration and reflection in a future draft of these regulations.

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:
 - (a) The name of the Applicant;
 - (b) The name of the sponsoring State;
 - (c) A statement that the Applicant is:
 - i. A national of the sponsoring State; or
 - ii. Subject to the effective control of the sponsoring State or its nationals;
 - (d) A statement by the sponsoring State that it sponsors the Applicant;
 - (e) The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention;
 - (f) A declaration that the sponsoring State assumes responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4(4) of Annex III to the Convention.
4. States or entities in a joint arrangement with the Enterprise shall also comply with this regulation.

Draft Regulation 4

Form of Applications and Information to accompany a Plan of Work for Exploitation

1. Each application for approval of a Plan of Work shall be in the form prescribed in Annex I to these Regulations, shall be addressed to the Secretary-General, and shall conform to the requirements of these Regulations.
2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:
 - (a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its Contracts with the Authority;
 - (b) Accept control by the Authority of activities in the Area, as authorized by the Convention;
 - (c) Provide the Authority with a written assurance that its obligations under the Contract will be fulfilled in good faith; and
 - (d) Comply with the national laws, regulations and administrative measures of the sponsoring State made pursuant to Articles 139, 153(4) and Article 4(4) of Annex III of the Convention.
3. Each applicant shall also provide a written undertaking that it will (i) not engage in any unfair economic practices⁹ and (ii) a written statement that it has not accepted nor will accept any subsidies other than those permitted under the agreements referred to in Section 6(1)(b) of the Annex to the Agreement and that it will, at the earliest available opportunity, make known to the [Council / Secretary-General] any practice that has contravened or is likely to be in contravention of Section 6(1)(b) of the Annex to the Agreement.
4. An application shall also be accompanied by the following documents:¹⁰

⁹ Will require a definition based on a Section 6 context.

¹⁰ As contemplated by the draft legal framework issued in July 2015, a number of guidelines will need drafting to guide the preparation and / or evaluation of the respective documents to be submitted.

- (a) A Feasibility Study prepared in accordance with Annex II to these Regulations;
 - (b) An Environmental and Social Impact Statement prepared in accordance with the Environmental Regulations;¹¹
 - (c) A Mining Plan prepared and based on the Feasibility Study and in accordance with Annex III to these Regulations;
 - (d) A Financing Plan prepared and based on the Feasibility Study and in accordance with Annex IV to these Regulations;
 - (e) An Emergency Response and Contingency Plan prepared in accordance with Annex V to these Regulations and the Environmental Regulations;
 - (f) A Training Plan;
 - (g) An Environmental Management and Monitoring Plan prepared in accordance with the Environmental Regulations; and
 - (h) A Closure Plan prepared in accordance with the Environmental Regulations.
5. The Commission may permit the delivery and submission of the Environmental Management and Monitoring Plan and Closure Plan at a date later to that of the original application.
6. Where an application proposes multiple non-contiguous Mining Areas, the Commission may require separate documents under paragraphs 4(b), (g) and (h) above for each Mining Area.¹²

Section 2

Fee for applications

Draft Regulation 5

Fee for applications

1. Each Applicant shall pay a fee for processing an application for approval of a Plan of Work.¹³
2. The fee will be a [fixed amount] expressed in United States dollars or its equivalent in a freely convertible currency, to be paid in full at the time of the submission of the Application.
3. The amount of the application fee will be determined by a decision of the Council, and reviewed on a regular basis by the Council in order to ensure that it covers the administrative costs incurred by the Authority in processing an application.
4. If the administrative costs incurred by the Authority in processing an application are less than the fixed amount, the Authority shall refund the difference to the Applicant. If the administrative costs incurred by the Authority in processing an application are more than the fixed amount, the Applicant shall pay the difference to the Authority, provided that any additional amount to be paid by Applicant shall not exceed 10 per cent of the fixed fee referred to in paragraph 2.

¹¹ The EIS will also reflect matters relating to human health, safety and maritime security.

¹² The delivery of a single plan of work (and thus a single exploitation contract) and the option for separate documents where mining areas are not contiguous is preferable from an administrative perspective. However, this will require further consideration including the criteria under which separate documents would be requested.

¹³ The fee structure for the processing of a plan of work for exploitation will be more complicated than that under the exploration application process given a need for a public participation process and potential for expert review(s) of documents provided.

5. Taking into account any criteria established for this purpose by the Finance Committee, the Secretary-General shall determine the amount of such differences as indicated in paragraph 2, and notify the Applicant of its amount. The notification shall include a statement of the expenditure incurred by the Authority.
6. The amount due must be paid by the Applicant or reimbursed by the Authority within 3 months of the signing of the Contract referred to in regulation 13.
7. The Authority is not obliged to carry out any action in respect of an application until the prescribed fee(s) has been paid.

Section 3

Processing of applications

Draft Regulation 6

Receipt, acknowledgement and safe custody of applications

The Secretary-General shall:

- (a) Acknowledge in writing within 30 Days receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;
- (b) Place the application together with the attachments and annexes thereto in safe custody and ensure the confidentiality of all confidential data and information contained in the application; and
- (c) Notify the members of the Authority of receipt of such application and circulate to them information of a general nature which is not confidential regarding the Application; and
- (d) Notify the members of the Commission of receipt of such application. The Commission shall consider such application at its next meeting provided that the notification and information under paragraph (c) has been circulated at least 30 Days prior to the commencement of that meeting of the Commission.

Section 4

Consideration of applications by the Commission

Draft Regulation 7

General

1. The Commission shall examine applications in the order in which they are received.
2. The Commission shall consider applications expeditiously and shall submit its report and recommendations to the Council at the first possible opportunity, taking into account the schedule of meetings of the Authority.
3. The Commission may, prior to issuing any recommendations to the Council under these Regulations to approve or not approve a Plan of Work, request additional information, including advice from an Appropriately Qualified Expert, on any aspect of the Plan of Work.
4. In discharging its duties, the Commission shall apply the Rules of the Authority in a uniform and non-discriminatory manner.

Draft Regulation 8
Assessment of Applicants

1. The Commission shall determine if the Applicant:
 - (a) Is a qualified applicant;
 - (b) Has given the undertakings and assurances specified in regulation 4(2) and (3);
 - (c) Has satisfactorily discharged its obligations in relation to any previous contract with the Authority; and
 - (d) Has the financial and technical capability to carry out the Plan of Work and to meet all obligations under any exploitation contract.
2. In considering the financial capability of an Applicant the Commission must be satisfied that the Applicant will be capable of committing or raising sufficient financial resources to cover the estimated costs of the proposed Exploitation Activities and all other associated costs of complying with the terms and conditions of any exploitation contract, including the payment of any applicable fees or other financial payments and charges in relation to the Exploitation Activities, the estimated costs of implementing the Closure Plan and continued monitoring and management of the Marine Environment.
3. In considering the technical capability of an Applicant the Commission must be satisfied that the Applicant:
 - (a) Has the necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and where applicable, adequately supervised personnel;
 - (b) Has adopted internationally recognized quality control and management standards;
 - (c) Has the necessary Risk Assessment and Risk Management systems in place to effectively implement the proposed Plan of Work in accordance with Good Industry Practice and these Regulations, including systems to meet health, safety and environmental requirements for the activities proposed in the Plan of Work; and
 - (d) Has protection and indemnity insurance cover, including environmental liability cover, as required in accordance with these Regulations.
4. The Commission shall determine if the proposed Plan of Work:
 - (a) Optimizes the recovery and extraction of the Minerals;
 - (b) Reflects the economic life of the Exploitation project, taking into account all relevant factors including the depletion of the ore, the useful life of Exploitation equipment and processing facilities, commercial viability and a reasonable time period for preparation including the construction of mining vessels, Installations, Exploitation-related equipment and of any vessels, equipment or facilities to be used for the handling, processing or transportation of the Minerals recovered from the Mining Area;
 - (c) Provides for effective protection of the Marine Environment through the application of best environmental practices and a precautionary approach [including, but not restricted to, the impact on biodiversity, the protection and conservation of the Natural Resources of the Area, the protection of vulnerable marine ecosystems and cumulative effects of the Exploitation Activities through an Environmental Management and Monitoring Plan and Environmental Management Systems and Closure Plan];

- (d) Provides for the effective protection of human health and safety;
 - (e) Provides for Exploitation Activities to be carried out with reasonable regard for other activities in the Marine Environment, including navigation, laying of submarine cables and pipelines, fishing and scientific research; and
 - (f) Includes an Emergency Response and Contingency Plan in accordance with Good Industry Practice.
- 5. The Commission shall consider the extent to which the proposed Plan of Work is consistent with:
 - (a) The policies set out in Article 150 of the Convention;
 - (b) The production policy of the Authority prepared in accordance with section 6 of the Agreement; and
 - (c) Any other relevant policies established by the Assembly.
- 6. The Commission shall determine whether appropriate public review and consultation has been undertaken, in accordance with the Environmental Regulations, and must take into account relevant submissions received as a result.
- 7. If the Commission finds that the Application does not comply with these Regulations, it shall notify the Applicant in writing, through the Secretary-General, indicating its reasons. The Applicant may, within 45 Days of such notification, modify and re-submit its Application.

Draft Regulation 9

Amendments to a proposed Plan of Work for Exploitation

- 1. At any stage prior to making its recommendation to the Council, the Commission may request the Applicant to amend or modify its Application or may propose specific amendments for consideration by the Applicant where such amendments are considered reasonably necessary to bring the Plan of Work into conformity with the applicable standards adopted by the Authority.
- 2. The Applicant must respond within 60 Days following receipt of such proposal from the Commission, agreeing to the proposal, rejecting the proposal, or making an alternative proposal for the Commission's consideration.
- 3. The Commission shall, in accordance with its guidelines, agree key performance criteria, measures, indicators and thresholds with an Applicant against which to measure the production and environmental performance of any approved Plan of Work, including those relevant for the purposes of the reviews contemplated by regulation 19. Such agreed criteria, measures, indicators and thresholds shall be incorporated in the Plan of Work.

Draft Regulation 10

Performance guarantee

- 1. The Commission may recommend to the Council that as part of the terms and conditions for the approval of a Plan of Work, that the Applicant deposit a Financial Guarantee or Security in respect of the performance of its obligations, undertakings or conditions in a Plan of Work or Contract and at a time to be agreed with the Applicant but no later than the commencement date of Exploitation Activities.

2. The Commission shall make recommendations to the Council as to the form and the amount or value of the performance guarantee following consultation with the Applicant.¹⁴
3. Any Financial Guarantee or Security required under this regulation, and approved by the Council as part of a Plan of Work may be in addition to any Financial Guarantee or Security required as part of any terms and conditions attaching to the approval of the Environmental Plans under the Environmental Regulations.
4. Where any Financial Guarantee or Security is deposited as part of the terms and conditions for a Plan of Work, the Authority shall hold such Financial Guarantee or Security in accordance with its policies and procedures, which shall provide for:
 - (a) The repayment or release of any Financial Guarantee or Security upon compliance by the Contractor of its obligations that are the subject of the Financial Guarantee or Security; or
 - (b) The forfeiture of any Financial Guarantee or Security where the Contractor fails to comply with such obligations.
5. Any requirement for any Financial Guarantee or Security under this regulation shall be applied in a uniform and non-discriminatory manner.

Draft Regulation 11

Commission's recommendation for the approval of a Plan of Work

1. If the Commission is satisfied that the Applicant meets the criteria listed in regulation 8(1) and that the proposed Plan of Work, including any amendments or modifications thereto, meets the criteria listed in regulation 8(4), it shall recommend approval of the Plan of Work to the Council.
2. The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in:
 - (a) A plan of work for Exploration approved by the Council for the same resource category;
 - (b) A plan of work approved by the Council for exploration for or exploitation of other resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved plan of work for other resources;
 - (c) An area disapproved for Exploitation by the Council, in cases where substantial evidence indicates the risk of serious harm to the Marine Environment;
 - (d) An area otherwise designated by the Council as an area in respect of which no Exploitation Activities shall occur; and
 - (e) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these Regulations.
3. The Commission shall not recommend the approval of a Plan of Work if it determines that:
 - (a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the resource category covered by the Plan of Work;

¹⁴ Guidelines will be required to determine the criteria for any performance guarantee including parameters as to the quantum of the guarantee, the form of the guarantee and conditions under which a guarantee will be held, used and returned. Terms and conditions of any guarantee will be scheduled to a contract.

- (b) Another qualified entity has a preference and a priority over the area covered by the Plan of Work in respect of the same resource category.
4. If the Commission is not satisfied that the Applicant meets the criteria listed in regulation 8(1) and that the proposed Plan of Work, including any amendments or modifications thereto, meets the criteria listed in regulation 8(4), it and accordingly is of the view that it should not recommend approval of the Plan of Work, it shall so inform the Applicant and provide the Applicant with a further opportunity to make representations within 60 Days. The Commission shall consider any such representations made by the Applicant at its next available meeting in preparing its report and recommendations to the Council.¹⁵

Section 5

Consideration of an Application by the Council

Draft Regulation 12

Consideration and approval of plans of work for Exploitation by the Council

The Council shall consider the reports and recommendations of the Commission relating to approval of Plans of Work in accordance with paragraphs 11 and 12 of section 3 of the Annex to the Agreement.

¹⁵ This begs the question as to the point at which a dispute may arise between the Authority and an applicant / prospective contractor and the appropriate forum for its settlement. Where a dispute is of a technical nature, determination by an Appropriately Qualified Expert or a panel of experts may be desirable. See ISA discussion paper *Dispute Resolution Considerations Arising Under the Proposed New Exploitation Regulations*, February 2016 (<https://www.isa.org.jm/files/documents/EN/Pubs/DPs/DP1.pdf>).

Part III

Exploitation Contracts

Draft Regulation 13

The Contract

1. After a Plan of Work has been approved by the Council, it shall be prepared by the Secretariat in the form of an Exploitation Contract between the Authority and the Applicant as prescribed in Annex VI to these Regulations. Each Exploitation Contract shall incorporate the Standard Clauses set out in Annex VII to these Regulations.
2. The Exploitation Contract shall be signed by the Secretary-General on behalf of the Authority and by the Applicant. The Secretary-General shall notify all members of the Authority in writing of the conclusion of each contract.
3. The Exploitation Contract and its Schedules is a public document and will be made available for publication on the Authority's website, save for any Confidential Information as defined under regulation 46 which shall be edited or redacted prior to any public disclosure.

Draft Regulation 14

Term of Exploitation Contracts

1. An Exploitation Contract shall be granted for an initial period not exceeding [20¹⁶] years or such shorter period as applicable to the expected economic life of the Exploitation Activities of the resource category set out in the Mining Plan. So long as:
 - (a) The resource category is recoverable annually in commercial quantities from the Contract Area;
 - (b) The Contractor has complied in all material respects with the Rules of the Authority;
 - (c) The Contractor is not in material default of the Exploitation Contract; and
 - (d) The Exploitation Contract has not been sooner terminated in accordance with its terms,then, a Contractor shall have the option to renew the Exploitation Contract for periods of not more than 10 years each and upon such terms and conditions that the Authority and the Contractor shall agree to reflect then-existing and foreseeable conditions. The Exploitation Contract shall remain in effect during the period in which the Authority and the Contractor are negotiating the terms of any such renewal.
2. An application to renew an Exploitation Contract shall be made in writing to the Secretary-General by a Contractor no later than one year before the expiration of the initial period or renewal period, as the case may be, of the Exploitation Contract:
 - (a) Be made in accordance with any guidelines prescribed by the Authority;
 - (b) State the duration of the renewal sought (up to 10 years);
 - (c) State the reasons and period for which renewal is required in accordance with this regulation;

¹⁶ This is considered indicative at this stage until a better understanding of business models and operations is achieved.

- (d) Be accompanied by a report of an Appropriately Qualified Expert verifying the extent of compliance with and suggested modifications to the Environmental Management and Monitoring Plan in accordance with the Environmental Regulations;
 - (e) Include an updated Mining Plan and / or Plan of Work and such other information as reasonably required by the Authority; and
 - (f) Be accompanied by the applicable fee for processing an Exploitation Contract renewal under regulation 53.
- 3. Unless otherwise indicated by the sponsoring State or States at the time of making the application for renewal, sponsorship shall be deemed to continue throughout the extension period and the sponsoring State or States shall continue to assume responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4 (4) of Annex III to the Convention.
- 4. Any renewal of an Exploitation Contract shall be effected by the execution by the Secretary-General and the duly authorized representative of the Contractor of an agreement in the form set out in Annex [X] to these Regulations. The terms and conditions applicable to the Exploitation Contract during the period of renewal shall be the terms and conditions in force as at the date of the extension, as amended under this regulation.

Draft Regulation 15

Termination of sponsorship

- 1. Each Contractor shall have the required sponsorship throughout the period of the Exploitation Contract.
- 2. If a State terminates its sponsorship it shall promptly notify the Secretary-General in writing. The sponsoring State should also inform the Secretary-General of the reasons for terminating its sponsorship. Termination of sponsorship shall take effect 6 months after the date of receipt of the notification by the Secretary-General, unless the notification specifies a later date.
- 3. In the event of termination of sponsorship the Contractor shall, within the period referred to in paragraph 2, obtain another sponsor. Such sponsor shall submit a certificate of sponsorship in accordance with regulation 3. Failure to obtain a sponsor within the required period shall result in the termination of the Exploitation Contract.
- 4. A sponsoring State shall not be discharged by reason of the termination of its sponsorship from any obligations accrued while it was a sponsoring State, nor shall such termination affect any legal rights and obligations created during such sponsorship.
- 5. The Secretary-General shall notify the members of the Authority of the termination or change of sponsorship.

Draft Regulation 16

Use of Exploitation Contract¹⁷ as security

1. The Contractor may, with the prior written consent of the Authority, which is not to be unreasonably withheld or delayed, mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under [an approved Plan of Work or] an Exploitation Contract for the purpose of raising financing to effect its obligations under an Exploitation Contract.
2. As a condition to receiving consent under this regulation, the Authority shall request evidence that the mortgagee shall agree upon foreclosure to undertake Exploitation Activities in accordance with the requirements of the Exploitation Contract and these Regulations, and transfer the mortgaged property only to a transferee that commits to, and has the financial and technical capability in accordance with regulation 8(2) and (3) to conduct Exploitation Activities in accordance with the requirements of Exploitation Contract and these Regulations including the requirement of a certificate of sponsorship in accordance with regulation 3.
3. In seeking consent under this regulation, a Contractor shall disclose to the Authority (as part of the Financing Plan, if known at the time the Financing Plan is submitted), the terms and conditions of any such encumbrance in paragraph 1 above and its potential impact on the Exploitation Activities under the Exploitation Contract in the event of any default by the Contractor.
4. The Authority may, in accordance with Good Industry Practice and where applicable, set a maximum ratio of a Contractor's debt to equity.
5. The Authority shall not be obliged to provide any funds or issue any guarantees or otherwise become liable directly or indirectly in the financing of the Contractors' obligations under a Exploitation Contract. The Contractor shall be responsible for raising all of the financing necessary to implement the Plan of Work.
6. The Authority may enter into any agreements and provide formal documents as any lenders reasonably require and shall record any such encumbrance, including its terms and conditions, in the Seabed Mining Register.

Draft Regulation 17

Transfer of rights and obligations

1. The rights and obligations of a Contractor under an Exploitation Contract may be transferred in whole or in part only with the consent of the Authority in accordance with these Regulations.
2. The Authority shall require the transferee to provide an unconditional undertaking to assume all obligations assigned by the Contractor.
3. An application for consent to transfer shall be made to the Secretary-General.
4. The Commission shall consider the application for consent to transfer at its next available meeting and shall consider whether:

¹⁷ This regulation requires further consideration and discussion and a policy decision as to its suitability (and relevance) given the complexities that may arise. An understanding of how, where relevant and applicable, the potential terms and conditions of any encumbrance could impact Exploitation Activities is needed and the relationship between this regulation 16 and regulation 17 relating to a transfer of rights and obligations (specifically provided for by Article 20, Annex III of the Convention).

- (a) The transferee has the financial capability and technical capability to carry out Exploitation Activities under the Exploitation Contract;
 - (b) The transferee undertakes and is likely to comply with the terms and conditions of, and give proper effect to, the Exploitation Contract;
 - (c) The transferee is a fit and proper person to take over the Exploitation Contract and to engage in Exploitation in the Area;
 - (d) [That in all material respects, the assessment criteria under regulation 8 remain fulfilled;]
 - (e) That the transferee has or will have prior to the date of transfer a certificate of sponsorship in accordance with regulation 3; and
 - (f) That the transfer does not permit the transferee to monopolize the conduct of activities in the Area with regard to the resource category covered by the Plan of Work.
- 5. [Where the Exploitation Contract is subject to a mortgage or charge registered in the Seabed Mining Registry, the Commission shall not recommend a consent to the transfer unless it has seen evidence of consent to the transfer from that mortgagor or chargeholder].
- 6. Where the Commission is satisfied in accordance with paragraph 4, it shall recommend approval of the application for consent to the Council.
- 7. Nothing in this regulation restricts the right of the Council to require a transferee to assume or to provide a Financial Guarantee or Security to secure its compliance under an Exploitation Contract.
- 8. The Council shall not unreasonably withhold consent to the transfer if it is satisfied that the proposed transferee is in all respects a qualified Applicant in accordance with the Regulations and assumes all of the obligations of the Contractor.
- 9. The Contractor or transferee shall provide the Authority with any such information as the Authority, in its reasonable discretion, requests in respect of an application for consent under this regulation.
- 10. A transfer is validly effected only upon:
 - (a) Payment of the prescribed transfer fee pursuant to regulation; and
 - (b) Record by the Authority of the transfer in the Seabed Mining Registry.
- 11. Where an application for consent to transfer is not approved by the Council, no assignment or transfer of the rights and obligations under the Exploitation Contract shall be effective.
- 12. Upon effective transfer under this regulation, the terms, undertakings and conditions of an Exploitation Contract shall inure to the benefit of and be binding upon a party's transferees.

Part IV

Review and modification of a Plan of Work for Exploitation

Draft Regulation 18

Modification of a Plan of Work for Exploitation by a Contractor

1. A Contractor shall not be permitted to modify the Plan of Work annexed to an Exploitation Contract save for, and upon written notification to the Authority¹⁸, any minor or administrative changes to activities as may be necessary and prudent in accordance with Good Industry Practice.
2. Any proposed modification to the Plan of Work not being a minor or administrative change under paragraph (1) above shall be deemed a material change, and shall require the prior written approval of the Authority before such material change is implemented in accordance with the relevant provisions of the Environmental Regulations and these Regulations.
3. For the purpose of this regulation, the Commission shall establish guidelines for the determination of the nature and the scale or extent of a material change to a Plan of Work and in respect of which any application procedures need to be followed, including any relevant matters under the Environmental Regulations.

Draft Regulation 19

Review of activities under a Plan of Work for Exploitation

1. An Exploitation Contract shall provide for a review of activities under a Plan of Work. Such a review shall be undertaken by the Secretary-General and the Contractor and shall discuss any proposed modification(s) to the Plan of Work as may be necessary or desirable in the light of any changes in circumstances that may have occurred or experience and knowledge gained by the Contractor or the Authority in the period since the commencement of the Exploitation Contract or prior review, as the case may be.
2. A review of activities under paragraph 1 shall be at intervals of not greater than five years, save that specific plans comprising a Plan of Work may require more frequent review periods in the light of experience and knowledge gained. Review intervals shall be agreed between an Applicant and the Commission and recorded in Schedule 11 to the Exploitation Contract.
3. A review of activities shall be undertaken in accordance with the guidelines on procedures and information for a review and any specific terms of a review agreed at the time of the Application.
4. The Secretary-General shall report on each review to the Council. Where any review results in a material change to a Plan of Work, the Secretary-General shall ensure that such material change is approved by the Authority in accordance with regulation 18.

¹⁸ As a general observation, a number of regulations make a generic reference to “the Authority”. In due course, the specific organ or functional unit (e.g. a technical division within the mining directorate / secretariat) will need to be assigned appropriate and clear responsibility under say the Seabed Mining Directorate regulations with, where applicable, a relevant delegated authority from the Council / Assembly.

5. Nothing in this regulation shall preclude the Secretary-General or the Contractor from making a request to initiate discussions regarding any matter connected with the Exploitation Activities at more frequent intervals than agreed under paragraph (1).

Part V

Financial terms of an Exploitation Contract

Note: This Part V reflects a first draft of regulatory provisions to provide for administration / fixed fees and royalty liability together with administration and management related matters. Further work will be undertaken in connection with the formulation and precise mechanics of a payment mechanism, including a royalty calculation (base, rate etc.). Equally, this Part V will also reflect, in due course, other potential fees and payment obligations e.g. environmental fees, trust fund contributions etc. as these concepts and the payment mechanism itself are developed further, including environmental policy, objectives and approaches and the relevant economic and financial tools to deliver these. Additionally, consideration will also be given toward reflecting financial payment obligations as standard contract terms in place of / in addition to their inclusion in this Part V.

Section 1

General

Draft regulation 20

Equality of treatment

The Authority shall apply the provisions of this Part V in a uniform and non-discriminatory manner and shall ensure equality of financial treatment and comparable financial obligations for contractors.

Section 2

Annual fees

Draft regulation 21

Annual contract administration fee

1. A Contractor shall pay to the Authority from the date of signature of an Exploitation Contract and at the time of submission of the annual report, an Annual Contract Administration fee as determined by the Council from time to time to reflect the costs actually and reasonably incurred by the Authority in the administration and supervision of an Exploitation Contract.
2. The amount of the Annual Contract Administration Fee will be determined by a decision of the Council, and reviewed on a regular basis by the Council.

Draft regulation 22

Annual fixed fee

1. A Contractor shall pay to the Authority an Annual Fixed Fee from the date of commencement of Commercial Production.
2. The Annual Fixed Fee shall be computed by multiplying the total size of the [Contract Area] in square kilometers identified in an Exploitation Contract by an annual rate per

square kilometer denominated in United States dollars.¹⁹ The Council shall establish such annual rate for each Calendar Year.²⁰

3. The Annual Fixed Fee shall become due and payable to the Authority within 30 Days of the commencement of each Calendar Year at the rate prescribed by the Council under paragraph (2) above, save that a pro-rated Annual Fixed Fee shall, where the date of commencement of Commercial Production occurs during a Calendar Year, become due and payable to the Authority within 30 Days of such date of commencement.
4. The Annual Fixed Fee may be credited against any royalty payable under regulation 23 for the relevant Calendar Year. In any Calendar Year, a Contractor shall be liable for an amount being the greater of the Annual Fixed Fee, or such pro-rated amount, or the Royalty payable.

Section 3

Liability to Royalty

Draft regulation 23

Contractor shall pay Royalty

1. A Contractor shall calculate and pay to the Authority a Royalty in respect of all Minerals recovered under an Exploitation Contract and sold or removed without sale from the Mining Area from the date of commencement of Commercial Production and in accordance with this Part V.
2. Nothing in paragraph (1) above shall affect the liability of a Contractor to provide a Royalty Return and to make payment of any Royalty liability in respect of any Minerals sold or removed without sale from the Mining Area following the expiration of an Exploitation Contract.

Draft regulation 24

Rate of Royalty and Royalty base

1. A Contractor shall calculate a Royalty for each Reporting Period in accordance with paragraph 2.
2. The Royalty shall be calculated as follows: [*subject to further elaboration at future payment regime workshop(s)*].

Draft regulation 25

Opinion on liability to Royalty

1. A Contractor may apply to the Secretary-General requesting an opinion of the Authority on any matter relating to the method of calculation and liability for the payment of a Royalty or other payment under this Part V.

¹⁹ This is one option for the calculation of an annual fixed fee contemplated by the 1994 Implementing Agreement (Section 8(1)(d)). The methodology for its calculation (and other options) will be considered at a subsequent payment regime workshop.

²⁰ It would be preferable if the annual rate is adjusted by reference to a relevant price index or parameters which the Council must take into consideration.

2. The Secretary-General shall consider any such request under paragraph (1) above and shall give a written opinion²¹ to the Contractor accordingly.
3. Any liability by that Contractor under this Part V shall be determined in a manner consistent with the written opinion of the Secretary-General.

Section 4

Returns, payments and refunds

Draft regulation 26

Reporting Period

The reporting period for the purposes of this Part V is a Calendar Year.

Draft regulation 27

Royalty Returns

1. A Contractor shall submit to the Authority a half-year Royalty Return produced in accordance with regulation 28 and not later than 90 Days after the end of the calendar half year in which the date of commencement of Commercial Production occurs and thereafter not later than 90 Days after the end of each subsequent calendar half year for the duration of the Exploitation Contract.
2. All returns to the Authority shall be submitted in the format prescribed by the Authority and shall be signed by a Contractor's duly authorized representative.
3. A Contractor shall notify the Secretary-General promptly of any error in calculation or mistake of fact in connection with a Royalty Return.
4. In connection with any joint venture arrangement with the Enterprise, one Royalty Return shall be submitted by the joint venture.

Draft regulation 28

Information to be submitted

1. Each Royalty Return shall include the following minimum information for the Reporting Period:
 - (a) The quantity in wet metric tonnes of [resource / mineral ore] recovered from the Mining Area;
 - (b) The quantity and value in dry metric tonnes of the [resource / mineral ore] Shipped from the Mining Area;
 - (c) The value and the basis of the valuation of the Minerals sold or removed without sale from the Mining Area, as verified by an Appropriately Qualified Expert and supported by a chemical analysis of the ore by a certified laboratory;
 - (d) Details of all contracts and sale or exchange agreements relating to the mineral ore removed from the Mining Area.
 - (e) A calculation of the Royalty Payable for the Reporting Period in accordance with regulation 24 including any adjustment made to the prior Reporting Period and a declaration signed by a duly authorized representative of the Contractor that the Royalty Return is correct.

²¹ The legal nature and status of an "opinion" remains for consideration.

2. In respect of a final Royalty Return for the final Reporting Period ending on the date of expiry, surrender or termination of the Exploitation Contract, the Contractor shall provide:
 - (a) A final calculation of the Royalty payable in accordance with regulation 24;
 - (b) Details of any refund or overpayment of Royalty claimed;
 - (c) The quantity and value of all closing stocks of the [resource / mineral ore] in the Mining Area.
3. Within 90 Days of the end of a Calendar Year, the Contractor shall provide to the Authority a statement by an auditor or certified independent accountant that the Royalty calculation for that Calendar Year:
 - (a) Is based is based on proper accounts and records properly kept and is in agreement with those accounts and records; and
 - (b) Complies with these regulations and is correct.
4. The Authority may by written notice to a Contractor, reasonably request any other information to be included in a Royalty Return and the Contractor shall comply with any such reasonable request.

Draft regulation 29

Payment of Royalty

1. A Contractor shall pay the Royalty due for a Reporting Period within 90 Days following the end of that Reporting Period.
2. Payments to the Authority may be made in United States dollars or other foreign currency which is freely convertible.
3. All payments made to the Authority shall be made gross and shall be free of any deductions, transmission fees, levies or other charges.²²
4. The Council may approve the payment of any Royalty due under this Part V by way of installments where special circumstances exist justifying such payment by installments.

Draft regulation 30

Overpayment of Royalty

1. Where a Royalty Return due for a Reporting Period shows any overpayment of royalties by a Contractor, that Contractor may apply to the Authority to request a refund of any such overpayment. Where no such request is received by the Authority within 90 Days of the due date of submission of the relevant Royalty Return, the Authority shall carry forward any overpayment and apply it against a future liability under this Part V.
2. Where any final Royalty Return shows an amount to be refunded, the Authority shall refund such amount provided it is satisfied that such refund is properly due. The Authority may request such additional information or confirmation, as it considers reasonably necessary to determine that such refund is correct and due to a Contractor.

²² It is thought that payments made to the Authority in accordance with the Convention should be made free of deductions, in particular withholding taxes in accordance with a domestic law. However, this will likely depend on the nature of the payment made and its treatment under domestic law. As noted by one Member State it is not possible to provide a definitive answer at this stage; indeed, specific domestic legislation may be required to provide for gross payments.

Section 5

Records, inspection and audit

Draft regulation 31

Proper books and records to be kept

1. A Contractor shall keep and maintain, at a place agreed between the Contractor and the Secretary-General, complete and accurate Records relating to the minerals recovered and to verify and support all returns or any other accounting or financial reports required by the Authority in relation to the Exploitation Contract.
2. The Contractor shall prepare such records in conformity with IFRS that verify in connection with each Mining Area *inter alia*:
 - (a) Details of the quantity and grade of the minerals recovered from each Mining Area;
 - (b) Details of sales, shipments, transfers, exchanges and other disposals of the minerals from the Mining Area, including the time, destination, value and basis of valuation and quantity and grade of each sale, shipment, transfer, exchange or other disposal;
 - (c) Details of all Eligible Capital Expenditure by category of expenditure incurred in each Mining Area; and
 - (d) Details of all revenues and operating costs.
3. A Contractor shall supply and file such Records at such times as may be required by the Authority under these Regulations.
4. A Contractor shall maintain all Records and make such Records available for inspection and audit under regulation 32.

Draft regulation 32

Audit and Inspection by the Authority

1. The Authority shall have the right to audit the Contractor's Records in accordance with this regulation.
2. Any such audit shall be undertaken at the Authority's sole cost and shall be performed by and through a technical and competent Duly Authorized Representative of the Authority, including an independent professionally qualified auditor.
3. Any Duly Authorized Representative of the Authority shall conduct any inspection or audit of the Contractor's Records in a manner that will result in the minimum amount of inconvenience to a Contractor.
4. In connection with an inspection under regulation 54 a Duly Authorized Representative of the Authority may in connection with a liability to a Royalty payment:
 - (a) Inspect the mining and onboard processing facility with a view to verifying the accuracy of equipment measuring the quantity of mineral ore sold or removed without sale from the Mining Area;
 - (b) Inspect any documents available onboard any mining vessel or installation of the kind mentioned in regulation 54;
 - (c) Require any duly authorized representative to answer any questions in connection with the inspection; and

- (d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the inspection and to provide a Contractor with a list of such copies or extracts.

Draft regulation 33

Appointment of auditor

1. Any Duly Authorized Representative of the Secretary-General, including any certified independent accountant appointed by the Secretary-General, shall have access, for purposes of audit and examination, to any books, documents, papers, records and data of the Contractor which are necessary and directly pertinent to verify compliance with this Part V.
2. The Contractor shall make available to the Duly Authorized Representative of the Secretary-General such financial records and information contemplated by paragraph (1) above as reasonably required by the Secretary-General to determine compliance with this Part V.
3. Member States shall, to the best of their abilities, co-operate with and assist the Secretary-General and any Duly Authorized Representative of the Secretary-General, in the carrying out of any audit under this regulation and facilitate access to, in accordance with the national law of that Member State, the books and records of a Contractor by a duly appointed accountant or Duly Appointed Representative of the Authority and to assist in the exchange of information relevant to a Contractor's obligations under this Part V.

Draft regulation 34

Assessment by the Authority

1. Where the Secretary-General is satisfied following any audit under this Part V or otherwise becomes aware that any Royalty Return is, in respect of any material particular, not accurate and correct or that any amounts stated are not reasonable, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances including the report of an auditor.
2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request together with any further information the Contractor requires to the Secretary-General to take into consideration.
3. The Secretary-General may, within 60 Days of the expiry of the period prescribed by paragraph (2) above, and after giving due consideration to any information submitted under paragraph (2) above or where no such information is submitted, make an assessment of any additional royalty liability that the Secretary-General considers ought to be levied.
4. A Contractor may lodge a written objection to any assessment issued under paragraph (3) above together with any written representations to the Secretary-General within 60 Days of the date of such assessment.
5. Within 30 Days of the receipt of any written objection under paragraph (4) above, the Secretary-General shall consider such objection and any representations made by a

Contractor and make a final assessment of any additional royalty liability, together with any interest and penalty imposed under this Part V.

6. A Contractor shall pay any liability by the date stated on such final assessment, subject to the Contractor's to exhaust any judicial remedies available to it under Part X to these Regulations.
7. The Secretary-General shall submit a report to the Council detailing any assessments issued under this regulation together with the reasons and information to substantiate any liability levied by a final assessment.

Draft regulation 35

Confidential information

1. The Secretary-General shall keep confidential all Information provided to the Authority in the course of an inspection or audit in accordance with regulations 46 and 47.
2. Notwithstanding paragraph (1) above, all payments made by the Contractor to the Authority under these Regulations, including payments under Part V of these Regulations shall be deemed non-confidential. All payments made to the Authority by Contractors shall be published by the Contractor on their website or other publicly accessible forum, and all payments received by the Authority from Contractors shall be published by the Authority on its website.

Section 6

Anti-avoidance measures

Draft regulation 36

General anti-avoidance rule

Where the Authority in its reasonable opinion considers that a Contractor has entered into any scheme, arrangement or understanding or undertakes any steps which, directly or indirectly:

- (a) Results in the avoidance, postponement or reduction of a liability for payment of a Royalty under this Part V;
- (b) Has not been carried out for *bona fide* commercial purposes; and
- (c) Has been carried out solely or mainly for the purposes of avoidance, postponement or reduction of a liability for payment of a royalty,

then the Authority shall determine the liability for the Royalty as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with regulation 34.

Draft regulation 37

Arm's length transactions

1. Where applicable and for the purposes of this Part V, all transactions shall be valued using an arm's length value.
2. Where the Authority is satisfied that any transaction or contract entered into by a Contractor, being a transaction or contract relevant to the calculation of any amounts due

and payable to the Authority under this Part V, has not been entered into at Arm's Length, the Authority may, after consultation with a Contractor, adjust a value to an Arm's Length Value for this purposes of this Part V.

3. For the purposes of paragraph 2 above, the Authority shall provide the Contractor with written notice of any proposed adjustment. The Contractor shall be afforded the opportunity of making written representations to the Authority within 60 Days of the date of such written notice.
4. In determining any Arm's Length Value, the Authority may seek the advice of Appropriately Qualified Experts.

Section 7

Interest and penalties

Draft regulation 38

Interest on unpaid Royalty

Where any Royalty or other amount levied under this Part V remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding at an annual rate calculated by adding [5]% to the Special Drawing Rights interest rate prevailing on the date the amount became due and payable.

Draft regulation 39

Penalty in respect of any under declaration or underpayment

Where any under declaration or underpayment of a Royalty liability is the result of an attempt to avoid the payment of a royalty under these regulations, a Contractor may be liable to a penalty not exceeding twice the amount of any under declaration or underpayment or [10 000] United States dollars, whichever is the greater, together with interest imposed under regulation 38.

Draft regulation 40

Penalty in respect of any failure to deliver or furnish a royalty return

A Contractor who fails to deliver or furnish a Royalty Return required by these Regulations to be delivered or furnished, may be liable to a penalty not exceeding [10 000] United States dollars plus a daily penalty of [1 000] United States dollars from the date of a notification of such failure by the Secretary-General.

Draft regulation 41

Penalty in respect of false royalty returns and information

A Contractor who makes or delivers a Royalty Return or any books, records and information required by or under these Regulations that is false in a material particular, may be liable to a penalty not exceeding [10 000] United States dollars.

Draft regulation 42

Recovery from performance guarantee

The Authority may, on written notice to a Contractor, recover and deduct any amounts outstanding under this Part V from any performance guarantee deposited with the Authority under regulation 10.

Section 8

Suspension or termination of Contract in respect of unpaid royalty

Draft regulation 43

Suspension or termination of Contract in respect of unpaid royalty

Where a Royalty or Annual Fixed Fee levied under this Part V remains unpaid in respect of an Exploitation Contract for 6 months or more from the date upon which the amount became due and payable, the Authority may suspend or terminate that Exploitation Contract in accordance with the terms of the Exploitation Contract.

Section 9

Disputes regarding Royalty calculations and payments

Draft regulation 44

Disputes regarding Royalty calculations and payments

Either the Authority or the Contractor may submit any dispute arising out of or in connection with the interpretation of this Part V or the calculation and payment of any amount under this Part V for consideration by an Appropriately Qualified Expert or panel of experts in accordance with regulation 57(3), unless both parties agree to settle the dispute by other means, in accordance with article 188, paragraph 2 of the Convention.

Section 10

Review of payment mechanism

Draft regulation 45

Review of payment mechanism

The payment mechanism under this Part V shall be reviewed in accordance with regulation 59(5).

Part VI

Information gathering and handling

Draft Regulation 46

Confidentiality of information²³

1. The Exploitation Contract, its schedules and annexes, as may be amended from time to time in accordance with these Regulations, and the documents and Information required to be submitted under regulation 4(4) is a public document which the Authority shall publish on its website, provided that Confidential Information shall be redacted prior to any such publication.
2. "Confidential Information"²⁴ shall mean:
 - (a) Information, including (i) industrial secrets, proprietary data or other Information that has commercial value and which, if disclosed, would [significantly] prejudice the legitimate commercial interests of a Contractor or offer a competitor a [significant] competitive advantage; and (ii) that of a private nature relating to individuals;
 - (b) Information that has been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;
 - (c) Information designated as or deemed to be Confidential Information by the Convention, including personnel matters, health records of individual employees or other documents in which employees have a reasonable expectation of privacy and other matters that involve the privacy of individuals;
 - (d) Information designated as Confidential Information at the time it was disclosed to the Authority, provided that such designation is deemed to be well-founded on the basis that there would be substantial risk of serious and unfair economic prejudice if the data and information were to be released;
 - (e) Other Information deemed to be Confidential Information under the applicable law of the Exploitation Contract.
3. There shall be a presumption that any Information regarding the Exploitation Contract, its schedules and annexes or the activities taken under the Exploitation Contract is public, other than Confidential Information.
4. The term "Confidential information" does not mean or include Information that:
 - (a) Is generally known or publicly available from other sources;
 - (b) Has been previously made available by the owner to others without an obligation concerning its confidentiality;
 - (c) Is already in the possession of the Authority with no obligation concerning its confidentiality;

²³ The basis for the drafting of this regulation is section 30 of the *Model Mine Development Agreement* and the ISA discussion paper on *Data and Information Management Considerations Arising Under the Proposed New Exploitation Regulations*, February 2016. (<http://www.isa.org.jm/files/documents/EN/Pubs/DPs/DP2.pdf>). Its content should also be considered in the light of stakeholder submissions in respect of "confidentiality" and transparency.

²⁴ "Confidential Information" will be included as a defined term at regulation 1 once the overall mechanism and language has been agreed.

- (d) Is reasonably required by the Authority in connection with an Incident where disclosure is required to protect the Marine Environment and / or human health and safety;
 - (e) Information necessary for the formulation by the Authority of rules, regulations and procedures concerning protection and preservation of the marine environment and safety, other than proprietary equipment design data;²⁵
 - (f) Is Environmental Information;
 - (g) Is an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);
- or where:
- (h) The Contractor to which the Information relates has given prior written consent to its disclosure;
 - (i) The area to which the Information relates is no longer covered by an Exploitation Contract;
 - (j) Following the expiration of a period of [5] years, Confidential Information shall no longer be deemed to be such unless the Contractor that submitted it can demonstrate to the satisfaction of the Secretary-General that it continues to satisfy the definition of Confidential Information under this regulation.
5. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with regulation 47 and shall not be disclosed to any third party without the express prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, save that:
- (a) Confidential Information may be used by the Secretary-General and staff of the Authority's Secretariat, as authorized by the Secretary-General, and by members of the Commission as necessary for and relevant to the effective exercise of their powers and functions; and
 - (b) Confidential Information submitted to the Authority by the Contractor under a previous contract for Exploration relating to any part of the Contract Area, shall be subject to this regulation.
6. In connection with this regulation, a Contractor shall on transferring Information to the Authority designate by notice in writing to the Secretary-General the Information or any part of its as Confidential Information. If the Secretary-General objects to such designation within a period of 30 Days, the parties shall consult upon the nature of the Information and whether it constitutes Confidential Information under this regulation. Any dispute arising as to the nature of the Information shall be deemed a technical dispute and shall be referred by the parties for consideration by an Appropriately Qualified Expert or panel of experts in accordance with regulation 57(3).
7. All payments made by the Contractor to the Authority under these Regulations, including payments made pursuant to Part V of these Regulations shall be deemed non-confidential. All payments made to the Authority by Contractors shall be published by the Contractor on their website or other publicly accessible forum, and all payments received by the Authority from Contractors shall be published by the Authority on its website.

²⁵ This provision reflects the content of Annex III, Article 14(2) of the Convention.

Draft Regulation 47

Procedures to ensure confidentiality

The Secretary-General shall be responsible for maintaining the confidentiality of all Confidential Information in accordance with the Authority's policy and procedures relating to information management.

Draft Regulation 48

Information to be submitted on expiration of the Contract

1. The Contractor shall transfer to the Authority all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area in accordance with the provisions of this regulation.
2. Upon termination of an Exploitation Contract, the Contractor, if it has not already done so, shall submit the following data and information to the Secretary-General:
[**To be completed**].

Part VII

General Provisions

Draft Regulation 49

Notice and general procedures

1. For the purpose of this regulation:
 - (a) “communication” means any application, request, notice, report, consent, approval, waiver, direction or instruction required or made under these Regulations; and
 - (b) “designated representative” means the person so-named on behalf of a Contractor on the Seabed Mining Register.
2. Any communication must be made by the Secretary-General or by the designated representative of the Applicant or Contractor, as the case may be, in writing.
3. Service of any communication must be made:
 - (a) By hand, fax, registered mail or e-mail containing an authorized electronic signature,
 - (b) To the Secretary-General at the headquarters of the Authority or to the designated representative at the address stated on the seabed mining register, as the case may be.
4. The requirement to provide any information in writing under these Regulations is satisfied by the provision of the information in an electronic document containing a digital signature.
5. Delivery by hand is deemed to be effective when made. Delivery by fax is deemed to be effective when the “transmit confirmation report” confirming the transmission to the recipient’s published fax number is received by the transmitter. Delivery by registered airmail is deemed to be effective 21 Days after posting; and delivery by e-mail is deemed to be effective when the e-mail enters an information system designated or used by the addressee for the purpose of receiving documents of the type sent and is capable of being retrieved and processed by the addressee.
6. Notice to the designated representative of the Applicant or Contractor shall constitute effective notice to the Applicant or Contractor for all purposes under these Regulations, and the designated representative shall be the agent of the Applicant or Contractor for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.
7. Notice to the Secretary-General shall constitute effective notice to the Authority for all purposes under these Regulations, and the Secretary-General is the Authority’s agent for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

Draft Regulation 50

Recommendations for the guidance of Contractors

1. The Commission may from time to time issue Recommendations of a technical or administrative nature for the guidance of Contractors to assist in the implementation of the Rules of the Authority.

2. The full text of such Recommendations shall be reported to the Council. Should the Council find that a recommendation is inconsistent with the intent and purpose of these Regulations, it may request that the recommendation be modified or withdrawn.

Draft Regulation 51

Duty to cooperate and exchange of information

In matters relating to these Regulations:

- (a) Member States shall co-operate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;
- (b) The Authority shall develop, implement and promote effective and transparent communication, public information, and public participation procedures in accordance with Good Industry Practice.
- (c) Authority members and contractors shall cooperate with the Authority;
- (d) The Authority shall consult and co-operate with sponsoring States, flag States and competent international organizations, as appropriate, on measures to promote safety of life and property at sea and the protection of the Marine Environment; and
- (e) The Authority shall put in place appropriate measures with sponsoring States, flag States and competent international organizations relating to the exchange of information and data to facilitate compliance with and enforcement of generally accepted international rules and standards.

Draft Regulation 52

Rights of coastal States

1. Nothing in these Regulations shall affect the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.
2. Any coastal State which has grounds for believing that any activity in the Area by a Contractor is likely to cause serious harm or a threat of serious harm to the marine environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall provide the Contractor and its sponsoring State or States with a reasonable opportunity to examine the evidence, if any, provided by the coastal State as the basis for its belief. The Contractor and its sponsoring State or States may submit their observations thereon to the Secretary-General within a reasonable time.
3. If there are clear grounds for believing that serious harm to the marine environment is likely to occur, the Secretary-General shall act in accordance with regulation [emergency orders] and, if necessary, shall take immediate measures of a temporary nature as provided for in regulation [emergency orders].
4. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause serious harm to the marine environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such serious harm or pollution arising from incidents or activities in its exploration area does not spread beyond such area.

Draft regulation 53

Other applicable fees

1. A Contractor shall pay to the Authority the applicable processing fee in the amount for in Annex IX to these Regulations.
2. The amount of such processing fees will be determined by a decision of the Council, and reviewed on a regular basis by the Council in order to ensure that it covers the Authority's expected administrative costs of processing.
3. The fee will be a fixed amount expressed in United States dollars or its equivalent in a freely convertible currency, to be paid in full at the time of the submission of the relevant application or request for approval.
4. The Authority is not obliged to carry out any action in respect of a relevant application or request for approval under these Regulations, until the prescribed fee has been paid.

Part VIII

Inspection

Draft Regulation 54 **Inspectorate²⁶**

1. The Authority shall establish appropriate mechanisms for establishing a staff of Inspectors who shall inspect activities in the Area to determine whether the provisions of Part XI of the Convention, the Agreement, the Rules of the Authority and the terms and conditions of any Exploitation Contract with the Authority are being complied with.
2. The Contractor shall permit the Authority to send its Inspectors [and observers]²⁷ on board vessels and Installations, whether off-shore or on-shore, used by the Contractor to carry out Exploitation Activities under an Exploitation Contract to :
 - (a) Determine the Contractor's compliance with the provisions of Part XI of the Convention, the Agreement, the Rules of the Authority and the terms and conditions of its Exploitation Contract ;
 - (b) Monitor the effects of Exploitation Activities on the Marine Environment and human health and safety;
 - (c) Monitor the recovery on-board of Minerals, any other Natural Resources of the Area; and
 - (d) Monitor all other aspects of a Contractors' operations as required by the Authority in its administration and management of activities in the Area.
3. The Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, the name of the Inspectors and any activities the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from personnel of the Contractor.
4. Such Inspectors shall have the authority to inspect any vessel or Installation, including its log, personnel, equipment, records, facilities, and all other recorded data, samples, and any relevant documents or items which are necessary to monitor the Contractor's compliance.
5. The Contractor, its agents and employees shall assist the Inspectors in the performance of their duties and shall:
 - (a) Accept and facilitate prompt and safe boarding and disembarkation of vessels and Installations by Inspectors;
 - (b) Cooperate with and assist in the inspection of any vessel or Installation conducted pursuant to these Regulations and the [Seabed Directorate Regulations];
 - (c) Provide access to all relevant areas, items and personnel on vessels and Installations at all reasonable times;
 - (d) Provide access to books, documents, papers and records which are necessary and directly pertinent to verify the expenditures referred to in the Plan of Work

²⁶ It is proposed that an Inspectorate mechanism and function will be established under separate "Seabed Directorate Regulations" including the appropriate powers, functions and accountability of an inspectorate and its inspectors.

²⁷ Given the remoteness of activities in the Area, a permanent observer mechanism may be preferable / in addition to inspectors given logistical arrangements in getting Inspectors to and from mining locations.

- and necessary to determine compliance with the financial payments due under the Exploitation Contract and these Regulations;
- (e) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties; and
provide reasonable facilities, including, where appropriate, food and accommodation, to Inspectors.
6. Inspectors shall avoid interference with the safe and normal operations of the Contractor, and shall act in accordance with these Regulations and the Authority's policy and procedures relating to health and safety and information management.
7. Acts of violence, intimidation, abuse against or the wilful obstruction of an Inspector by any person, or the failure by a Contractor to comply with this regulation, shall be reported to the sponsoring State and the flag State of any vessel or installation concerned, for consideration of institution of proceedings under national law.

Part IX

Enforcement and penalties

Draft Regulation 55

Compliance notice

1. At any time, if it appears to the Authority that a Contractor is in breach of the provisions of Part XI of the Convention, the Agreement, the Rules of the Authority or the terms and conditions of its Exploitation Contract it may direct the Secretary-General to issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.
2. A compliance notice shall:
 - (a) Describe the alleged breach and the factual basis for it;
 - (b) Require the Contractor to take remedial action or other such steps as the Authority considers reasonably appropriate to ensure compliance within a specified time period; and
 - (c) In respect of a violation specified in Annex VIII to these Regulations, impose the applicable monetary penalty.
3. The Authority may not execute [save in the case of emergency orders under Article 162(2))(w) of the Convention] a decision involving monetary penalties until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to Part XI, section 5, of the Convention.
4. For the purposes of Article 18, Annex III of the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.

Draft Regulation 56

Power to take remedial action

1. Where a Contractor fails to take action required under regulation 55, the Authority may carry out any remedial works or take such measures, as it considers reasonably necessary to prevent or mitigate the effects or potential effects of a Contractor's failure in complying with the terms and conditions of an Exploitation Contract.
2. If the Authority takes remedial action or measures under paragraph 1, the reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority by the person or persons whose failure to comply with the compliance notice led to that action.

Part X Settlement of disputes²⁸

Draft regulation 57

Administrative review mechanism

1. Any Contractor, who reasonably considers that in the performance of functions or duties under these Regulations, any Duly Authorized Representative (s) of the Authority has acted in a manner inconsistent with or in contravention of the Rules of the Authority, may apply for an administrative review of any decision made or action taken on behalf of the Authority against a Contractor.
2. Any request for an administrative review in relation to these Regulations shall be made to the Secretary-General who shall cause the matter to be investigated in accordance with the Authority's administrative review procedures.
3. Where the Secretary-General or the Contractor reasonably considers that the subject matter of the review includes a matter of a technical nature, the matter may be referred to a mutually agreed Appropriately Qualified Expert or panel of experts for resolution to advise the reviewer on that technical matter. The costs of any such determination shall be borne equally by the Authority and the Contractor.
4. Nothing in this regulation shall restrict the Authority's or the Contractor's recourse to the settlement of any dispute in accordance with regulation 58.

Draft Regulation 58

Settlement of disputes

1. Disputes concerning the interpretation or application of these Regulations and an Exploitation Contract shall be settled in accordance with Part XI, section 5, of the Convention.
2. In accordance with article 21 (2) of Annex III to the Convention, any final decision rendered by a court or tribunal having jurisdiction under the Convention relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention affected thereby.

²⁸ To be revised / considered in the light of ISA discussion paper *Dispute Resolution Considerations Arising Under the Proposed New Exploitation Regulations*, February 2016 and further stakeholder deliberation.

Part XI

Review of the Authority's Regulations

Draft Regulation 59

Review of the Authority's Regulations

1. Five years following the approval of these Regulations by the Assembly, or at any time thereafter, the Council shall undertake a review of the manner in which the Regulations have operated in practice.
2. If, in the light of improved knowledge or technology, it becomes apparent that the Regulations are not adequate, any State party, the Legal and Technical Commission or any contractor through its sponsoring State may at any time request the Council to consider, at its next ordinary session, revisions to these Regulations.
3. In the light of the review, the Council may adopt and apply provisionally, pending approval by the Assembly, amendments to the provisions of these Regulations, taking into account the recommendations of the Legal and Technical Commission or other subordinate organs concerned. Any such amendments shall be without prejudice to the rights conferred on any contractor with the Authority under the provisions of an exploitation contract entered into pursuant to these Regulations in force at the time of any such amendment.
4. In the event that any provisions of these Regulations are amended, the contractor and the Authority may revise the Exploitation Contract in accordance with section 39 of Annex VII.
5. Notwithstanding the review period contemplated by paragraph (1) above, the Council may review the system of payments adopted under Part V to these Regulations [following the expiration of [x] years of the approval of these Regulations].²⁹

²⁹ This paragraph will require additional consideration not least its potential, if any, to impact any financial terms of an exploitation contract during the initial period as a payment mechanism evolves.

Annexures

Annex I

Application for approval of a Plan of Work to obtain an Exploitation Contract

Section I Information concerning the Applicant

1. Name of Applicant:
2. Street address of Applicant:
3. Postal address (if different from above):
4. Telephone number:
5. Fax number:
6. E-mail address:
7. Name of Applicant's designated representative:
8. Street address of Applicant's designated representative (if different from above):
9. Postal address (if different from above):
10. Telephone number:
11. Fax number:
12. E-mail address:
13. If the Applicant is a juridical person:
 - a. Identify Applicant's place of registration;
 - b. Identify Applicant's principal place of business/domicile;
 - c. Attach a copy of Applicant's certificate of registration.
14. Identify the sponsoring State or States.
15. In respect of each sponsoring State, provide the date of deposit of its instrument of ratification of, or accession or succession to, the United Nations Convention on the Law of the Sea of 10 December 1982 and the date of its consent to be bound by the Agreement relating to the Implementation of Part XI of the Convention.
16. Attach a certificate of sponsorship issued by the sponsoring State.

Section II Financial information

17. Attach sufficient information to enable the Council to determine whether the Applicant is financially capable of carrying out the proposed Plan of Work and of fulfilling its financial obligations to the Authority:
 - (a) If the application is made by the Enterprise, attach certification by its competent authority that the Enterprise has the necessary financial Resources to meet the estimated costs of the proposed Plan of Work;
 - (b) If the application is made by a State or a State enterprise, attach a statement by the State or the sponsoring State certifying that the Applicant has the necessary financial Resources to meet the estimated costs of the proposed Plan of Work;
 - (c) If the application is made by an entity, attach copies of the Applicant's audited financial statements, including balance sheets and income statements and cash flow statements, for the most recent three years in conformity with IFRS and certified by a duly qualified firm of public accountants; and

- i. if the Applicant is a newly organized entity and a certified balance sheet is not available, a pro forma balance sheet certified by an appropriate official of the Applicant;
 - ii. if the Applicant is a subsidiary of another entity, copies of such financial statements of that entity and a statement from that entity in conformity with IFRS and certified by a duly qualified firm of public accountants that the Applicant will have the financial resources to carry out the Plan of Work;
 - iii. if the Applicant is controlled by a State or a State enterprise, a statement from the State or State enterprise certifying that the Applicant will have the financial resources to carry out the Plan of Work.
18. Subject to regulation 31, where an Applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, its application shall include the amount of such borrowing, the repayment period and the interest rate together with the terms and conditions of any security, charge, mortgage or pledge made or provided, or intended to be made or provided or imposed by any financial institution in respect of such borrowing.
19. Details of any financial guarantee or security proposed or to be provided by the Applicant in accordance with these Regulations or the Environmental Regulations.

Section III Undertakings

20. Attach a written undertaking that the Applicant will:
 - (a) Accept as enforceable and comply with the applicable obligations created by the provisions of the Convention and the rules, regulations and procedures of the Authority, the decisions of the relevant organs of the Authority and the terms of its contracts with the Authority;
 - (b) Accept control by the Authority of activities in the Area as authorized by the Convention;
 - (c) Provide the Authority with a written assurance that its obligations under the Exploitation Contract will be fulfilled in good faith; and
 - (d) Not engage in any unfair economic practices and has not accepted nor will accept any subsidies other than those permitted under the agreements referred to in Annex, Section 6(1)(b) of the Agreement and will, at the earliest available opportunity, make known to the Secretary-General any practice that has contravened or is likely to be in contravention of Annex, Section 6(1)(b) of the Agreement; and

Section IV Previous contracts with the Authority

21. Where the Applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium, has previously been awarded any contract with the Authority, the application shall include:
 - (a) The date of the previous contract or contracts;
 - (b) The dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or contracts; and

- (c) The date of termination of the contract or contracts, if applicable.

Section V Attachments

- 22. List all the attachments and annexes to this Application (all data and information should be submitted in hard copy and in a digital format specified by the Authority).

Annex II

Feasibility Study

1. A Feasibility Study must:
 - (a) be prepared on the basis of sound engineering and economic principles in accordance with good industry practice;
 - (b) provide appropriate and sufficient information and data to assess the commercial and economic viability of the proposed Exploitation Activities;
 - (c) be accompanied by the report of an Appropriately Qualified Expert, including a mining engineer, verifying its contents; and
 - (d) reflect the minimum data and information required in this Annex II below and adhere to any guidelines issued by the Commission under these regulations.
 - (e) Content of Feasibility Study:
 - A. **Executive Summary**
 - a. Location and project description
 - b. Geology and Mineral Resources
 - c. Mineral Resources
 - I. Proven and probable reserves
 - II. Production schedule
 - III. Mine operating costs: summary
 - IV. Mine capital cost summary
 - V. Metallurgy and processing
 - VI. Project economics
 - VII. Other relevant data
 - VIII. Comments by independent reviewer
 - B. **Area description and location**
 - a. Co-ordinates
 - b. Size
 - C. **Geological settings**
 - D. **Exploration activities**
 - E. **Data acquisition**
 - F. **Data verification**
 - G. **Adjacent areas**
 - H. **Mineral resource and reserve estimates**
 - a. An estimate, together with confidence levels of mineable reserves in accordance with the Reporting standard of the International Seabed Authority for mineral exploration results assessments, mineral resources and mineral reserves together with a comprehensive report of an independent expert including details of and validation of the grade and quality of the proven, probable ore reserves and an evaluation of inferred Resources;
 - I. **Mining methods, technology and design**
 - a. Sequential mining plan
 - b. Details of the equipment and methods expected to be used in carrying out the proposed Plan of Work including the results of tests

- conducted and other relevant information about the characteristics of such technology
 - I. Production support vessel
 - II. Seafloor production tools
 - III. Lifting and de-watering systems
- c. Details of technology to be deployed for remote supervision of the Exploitation Activities
- J. **Development plan and schedule (Pre-Commercial Production)**
 - a. Details of activities to be undertaken prior to the commencement of Commercial Production (the development plan)
 - b. The estimated date of commencement of Commercial Production
- K. **Production plan and schedule (Post Commercial Production)**
 - a. A sequential production plan for / by Mining Area(s) demonstrating the optimum recovery of the Resources
 - b. A detailed production plan, showing *an anticipated production schedule which shall include the estimated maximum amounts of Minerals that would be produced per year under the Plan of Work,*³⁰ by Mining Area, where applicable.
- L. **Tailings and waste disposal**
 - a. Resource management and conservation: a waste management plan
 - b. Plans for the disposal of tailings from the ore processing and of waste rock and materials from Exploitation Activities in the Area
 - c. De-watering plan
- M. **Proposed surface, subsurface and seabed infrastructure**
- N. **Transportation and Downstream processing**
 - a. A description of the transportation,
 - b. An initial processing plan and description of the marketing of the metals within and downstream of the Area, including expected recovery rates of ore and mineral products. A description of the technology process to be used in each case, with the results of any laboratory or other tests designed to identify technologically appropriate methods for processing the ore or ores involved
- O. **Decommissioning and closure**
- P. **Human Resources: management, operations and administration**
 - a. details of the Applicant's previous experience, knowledge, skills, technical qualifications and expertise relevant to the proposed Plan of Work, including an organization chart and qualifications of key personnel
 - b. Details of any sub-contractors or agents to be used by the Contractor and the terms and conditions of engagement of such sub-contractors or agents
- Q. **Risk Assessment and management**
 - a. Operational
 - b. Environmental

³⁰ Wording in italics from Annex, section 6(1)(e) of the Agreement.

- c. Market
 - d. [Details of hazards identified and relevant hazard classification system(s) based on International Recognized Standards]
- R. **Emergency response**
 - a. Details of the Applicant's financial and technical capability to respond to any Incident or activity which causes serious harm to the Marine Environment
 - b. [Details of the Applicant's emergency response plan]
- S. **Environment**
 - a. details of the Applicant's environmental management system(s) and applicable standards adopted
 - b. Management and monitoring plans and implementation
- T. **Mine Closure Plan**
 - a. Objectives and plan
 - b. Risk Assessment
 - c. Financial provision
 - d. Post closure maintenance and monitoring
 - e. Completion criteria
- U. **Data, information and specimen storage**
- V. **Business case: Economic and financial analysis of mine models [including cash flows and sensitivity analyses]**
 - a. Detailed estimates, under various economic and financial scenarios, of the economic life of the Mining Area(s)
 - b. Production estimates
 - c. Revenue estimates
 - d. Development cost estimates
 - e. Capital expenditure estimates
 - f. Operating cost estimates
 - g. [Tailings disposal cost estimates]
 - h. Onboard processing cost estimates
 - i. Environmental management, monitoring and mitigation cost estimates
 - j. Marine research cost estimates
 - k. Insurance costs by category (and deductibles)
 - l. Training and social corporate governance cost estimates
 - m. Downstream processing, marketing and other cost estimates
 - n. Waste management costs
 - o. De-commissioning and closure costs
 - p. Payments to the Authority
 - q. Payments to other bodies, including fees and other fiscal obligations
 - r. Accounting methods and standards
 - s. Sourcing of project Resources and equipment
 - t. Other material factors, inputs and assumptions
 - u. [all cost estimates to be accurate to within fifteen percent]
- W. **Financing**

- a. Details of the Applicants financial Resources or proposed mechanisms to finance the Exploitation Activities
 - b. Terms and conditions of any third party financing and funding
 - c. Restrictions
- X. Performance guarantees and environmental bonds**
- Y. Insurance**
 - a. Details of proposed marine insurance policies by category including environmental liability insurance
 - b. Insurance providers, deductibles and details of re-insurance arrangements
- Z. International marketing analysis and plans**
 - a. Market study for the [Minerals / metals] to be produced in the Mining Area
- AA. Trade and other agreements**
 - a. Details of sales agreements, including forward sales agreements, entered into and proposed including main terms and conditions
- BB. Host country and Sponsoring State requirements**
- CC. Consultations held / Socio-economic considerations**
- DD. Proposed training and social corporate governance**
- EE. Compliance with international and national laws**
 - a. Regulatory compliance
 - b. Regulatory compliance record
 - I. The environmental record of the Applicant, including the result of environmental audits and reports
 - c. Details of other permits required for Exploitation Activities
- FF. Operational health and safety**
 - a. Details of the Applicant's health and safety management system and applicable standards adopted
 - b. Training
- GG. Sub-Contractors**
 - a. Details of sub-Contractors to be used for Exploitation Activities
- HH. Conclusions**
- II. Annexures**
 - a. Qualified and competent persons reports, certification and verification
 - b. Tables
 - c. Figures / diagrams

Annex III

Mining Plan

1. The details of the mineral resource to which the application relates with regard to the type of mineral or Minerals to be exploited, its locality, abundance, geology and mineral content;
2. The boundaries of the Proposed Mining Area(s) and proposed Contract Area under application by attaching a chart (on a scale and projection specified by the Authority) and a list of geographical coordinates (in accordance with the World Geodetic System WGS 84).
3. Sequential Mining plan including applicable timeframes and scheduling of development and Exploitation phases of the proposed Exploitation Activities;
4. Technically and economically justified estimate of the period required for the Exploitation of the resource category to which the application relates;
5. Expenditure schedules;
6. Mining methods;
7. Production estimates: A detailed production plan, showing *an anticipated production schedule which shall include the estimated maximum amounts of Minerals that would be produced per year under the Plan of Work,*³¹ by Mining Area, where applicable
8. Performance guarantees;
9. Training;
10. Downstream processing and marketing (metal recovery);
11. Waste management;
12. Trade considerations;
13. Personnel and staffing
14. Data and specimen storage;
15. Corporate social responsibility.

³¹ Wording in italics from Annex, section 6(1)(e) of the Agreement.

Annex IV

Financing Plan

A Financing Plan must:

- (a) Adhere to any guidelines issued by the Commission under these Regulations;
- (b) Include such provisions as the Applicant may determine consistent with its commercial requirements;
- (c) Reflect the funding of the proposed financial commitments of the Feasibility Study including the Expenditure Conditions; and
- (d) Demonstrate how the application intends to raise the finance necessary to implement the Financing Plan.
- (e) *[need to prescribe content more fully]*.

Annex V

Emergency Response and Contingency Plan

An Emergency Response and Contingency Plan must:

- (a) adhere to any guidelines issued by the Commission under these Regulations and the Environmental Regulations; and
- (b) provide an effective plan of action for the Applicant's efficient response to Incidents, including processes by which the Applicant will work in close co-operation with the Authority, affected or potentially affected coastal States, other competent international organizations and, where applicable, emergency response organizations.

Annex VI

Exploitation Contract and Schedules

THIS CONTRACT made the ... day of ... between the INTERNATIONAL SEABED AUTHORITY represented by its SECRETARY-GENERAL (hereinafter referred to as “the Authority”) and ... represented by ... (hereinafter referred to as “the Contractor”) WITNESSETH as follows:

A. Incorporation of clauses

The standard clauses set out in Annex VII to the Regulations on Exploitation for Mineral Resources in the Area shall be incorporated herein and shall have effect as if herein set out at length.

B. Contract Area

For the purposes of this Contract, the “Contract Area” means that part of the Area allocated to the Contractor for Exploitation Activities, defined by the coordinates listed in schedule 1 hereto.

C. Grant of rights

In consideration of:

- (a) their mutual interest in the conduct of Exploitation Activities in the Contract Area pursuant to the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement relating to the Implementation of Part XI of the Convention,
- (b) the responsibility of the Authority to organize and control activities in the Area, particularly with a view to administering the Resources of the Area, in accordance with the legal regime established in Part XI of the Convention and the Agreement and Part XII of the Convention, respectively, and
- (c) the interest and financial commitment of the Contractor in conducting activities in the Contract Area and the mutual covenants made herein,

the Authority hereby grants to the Contractor the exclusive right to exploit **[mineral category]** solely in the Contract Area in accordance with the terms and conditions of this Contract.

D. Entry into force and Contract term

This Contract shall enter into force on signature by both parties and, subject to the standard clauses, shall remain in force for an initial period of [x] years thereafter unless the Contract is sooner terminated, provided that this Contract may be renewed in accordance with the Regulations.

E. Entire agreement

This Contract expresses the entire agreement between the parties, and no oral understanding or prior writing shall modify the terms hereof.

F. Languages

This Contract will be provided and executed in the [] and English languages and both texts are valid.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective parties, have signed this Contract at ..., this ... day of

The Schedules

Schedule 1

[Coordinates and illustrative chart of the Contract Area and Mining Areas].

Schedule 2

[Coordinates and illustrative chart of the environmental impact area(s) together with the impact reference areas, preservation reference areas and sampling stations approved in accordance with the Environmental Regulations].

Schedule 3

[The approved Mining Plan].

Schedule 4

[The approved Financing Plan].

Schedule 5

[The approved Emergency Response and Contingency Plan]

Schedule 6

[The approved Environmental Management and Monitoring Plan].

Schedule 7

[The approved initial Closure Plan].

Schedule 8

[The approved Training Plan].

Schedule 9

[Terms and conditions agreed between the Authority and the Contractor during the Application approval process].

Schedule 10

[Where applicable under regulation 10, the form of any Performance Guarantee and Security and its related terms and conditions].

Schedule 11

[Agreed review dates for individual plans together with any specific terms attaching to a review]

Schedule 12

[To the extent that any documentation is not available at the point of signing the Contract and a timeframe for submission has been agreed with the Authority, this should be reflected here with deadline dates].

Annex VII

Standard Clauses for Exploitation Contract

Section 1

Definitions

1.1 In the following clauses:

(a) “Regulations” means the Regulations on Exploitation for Mineral Resources in the Area, adopted by the Authority.

(b) “Environmental Regulations” means the Regulations on Exploration and Exploitation for Mineral Resources in the Area (Environmental Matters).

(c) “Production tests” means those tests conducted by the Contractor during the development phase of Exploitation to assess the capacity of the mining equipment, as set out in the Mining Plan.

1.2 Terms and phrases defined in the Regulations shall have the same meaning in these Standard Clauses.

1.3 In accordance with the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, its provisions and Part XI of the Convention are to be interpreted and applied together as a single instrument; this Contract and references in this Contract to the Convention are to be interpreted and applied accordingly.

1.4 This Contract includes the Schedules to this Contract, which shall be an integral part hereof.

Section 2

Undertakings

2.1 The Contractor and the Authority shall comply with the Regulations and the Environmental Regulations, the rules, regulations and procedures of the Authority and the decisions of the relevant organs of the Authority.

2.2 It is a [fundamental] term of this Contract that the Contractor will implement, in accordance with Good Industry Practice, the:

- (a) Mining Plan;
- (b) Financing Plan;
- (c) Emergency Response and Contingency Plan;
- (d) Training Plan;
- (e) Environmental Management and Monitoring Plan;
- (f) Closure Plan; and
- (g) Health, safety and maritime security plan,

(collectively, the “Plan of Work”)

that are appended as Schedules to this Contract, as may be amended from time to time in accordance with the Regulations.

2.3 The Contractor agrees to:

(a) Accept control by the Authority of activities in the Area as authorized by the Convention;

(b) Fulfil its obligations under this Contract in good faith;

- (c) Observe any Recommendations which may be issued from time to time by the Legal and Technical Commission;
- (d) Comply with the requirements of any inspection under in accordance with the Rules of the Authority;
- (e) Comply with the requirements of the Authority in connection with a review of activities under this Contract in accordance with the Regulations and Schedule 11 to this Contract;
- (f) Carry out its obligations under this Contract with:
 - i. due diligence, efficiency and economy;
 - ii. due regard to the impact of its activities on the Marine Environment; and
 - iii. reasonable regard for other activities in the Marine Environment.
- (g) Comply with any Compliance Notice issued pursuant to regulation 55;
- (h) Meet or exceed the minimum expenditure commitments specified in the Mining Plan;
- (i) Maintain at its expense, comprehensive insurance in accordance with section 8 hereof with respect to the Exploitation Activities, and provide copies or access to relevant certificates and whole policies upon the Authority's request;
- (j) Pay all fees required or amounts falling due to the Authority under the Regulations;
- (k) Make payments due to the Authority in accordance with Part V of the Regulations;
- (l) Submit annual reports to the Authority in accordance with the requirements of section 19; and
- (m) [other].

2.4 The Authority undertakes to fulfil in good faith its powers and functions under the Convention and the Agreement in accordance with article 157 of the Convention.

2.5 The Contractor undertakes that it will not engage in any unfair economic practices and has not accepted nor will accept any subsidies other than those permitted under the agreements referred to in Annex, Section 6(1)(b) of the Agreement and will, at the earliest available opportunity, make known to the Secretary-General any practice that has contravened or is likely to be in contravention of Annex, Section 6(1)(b) of the Agreement.

Section 3

Security of tenure and exclusivity

3.2 The Contractor shall have security of tenure and this Contract shall not be suspended, terminated or revised except in accordance with section 39.

3.3 The Contractor shall have the exclusive right under this Contract to exploit the resource category and to conduct Exploitation Activities within the Contract Area in accordance with the Rules of the Authority.

3.4 The Authority undertakes not to grant any rights to another person to explore for or exploit the same resource category in the Contract Area for the duration of this Contract.

3.5 The Authority reserves the right to enter into contracts with third parties with respect to Resources other than resource category specified in this Contract but shall endeavour to ensure

that no other entity operates in the Contract Area for a different category of Resources in a manner that might unreasonably interfere with the Exploitation Activities of the Contractor.

Section 4

Legal title to Minerals

4.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Resources in compliance with this Contract at the point of extraction from the Contract Area.

4.2 This Contract shall not create, nor be deemed to confer, any interest or right on the Contractor in or over any other part of the Area and its Resources other than those rights expressly granted in this Contract.

Section 5

Reasonable regard for other activities in the Marine Environment

The Contractor shall carry out Exploitation Activities under this Contract with reasonable regard for other activities in the Marine Environment in accordance with Article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any generally accepted international rules and standards established by competent international organizations.

Section 6

Diligent operations

The Contractor shall, in accordance with this Contract:

- (a) Conduct Exploitation Activities with due diligence, efficiency and the avoidance of unnecessary waste in the Contract Area;
- (b) Adhere to every aspect of the Plan of Work;
- (c) Provide sufficient training, supervision and resources to its employees, agents, officers, associates and sub-contractors to ensure compliance with the obligations of the Contractor;
- (d) Exercise proactive due diligence to safeguard the health, safety and welfare of persons employed or engaged in Exploitation Activities;
- (e) Ensure the effective protection of the Marine Environment from harmful activities and monitor the impact of the Exploitation Activities and ensure that they do not cause serious harm to the Marine Environment;
- (f) Implement the environmental management of the Exploitation Activities, including relevant mitigation and prevention measures;
- (g) Ensure the protection of submarine cables or pipelines in the Contract Area.

Section 7

Avoiding Incidents

7.1 The Contractor shall not, without obtaining the prior written consent of the Authority, proceed or continue with Exploitation Activities if the Contractor is aware of evidence that proceeding or continuing makes it reasonably foreseeable that an Incident would occur.

7.2 The Contractor shall at all times during the conduct of Exploitation Activities be prepared to implement the Emergency Procedures and Contingency Plan in accordance with Good Industry Practice and any reasonable requirements of the Authority.

Section 8

Insurance

8.1 The Contractor shall maintain in full force, and, where applicable effect and cause its sub-contractors to maintain, appropriate insurance policies, with internationally recognized and financially sound carriers, on such terms and in such amounts in accordance with generally accepted international maritime practice and as is consistent with Good Industry Practice, sufficient to cover claims made during:

- (a) The duration of this Contract; and
- (b) [In respect of environmental liability insurance for a period of [5] years following the expiration of this Contract].

8.2 Should the Authority become aware that a Contractor has failed to comply with paragraph 8.1 above, purchase and maintain in full force and effect any and all insurances required under this Contract or whose insurances are inadequate with regard to Good Industry Practice, the Authority may purchase and maintain such insurance and all reasonable amounts being incurred by the Authority shall be reimbursed by the Contractor or deducted from the performance guarantee provided under the Regulations.

8.3 The obligation under this Contract to maintain appropriate insurance policies shall be deemed a fundamental term of this Contract.

8.4 The Contractor shall not materially modify or terminate any insurance policy without the prior consent of the Authority, whose consent shall not be unreasonably withheld.

8.5 The Contractor shall in its annual report provide the Authority with evidence of the existence of such insurance including the amount of any deductibles and self-insurance together with the details and amount of any claims made or amounts recovered from insurers during the period.

Section 9

Other permits and notifications

9.1 The Contractor shall during the term of this Contract maintain the currency of any applicable permits, licences, approvals, certificates and clearances not issued by the Authority but required lawfully and safely to conduct Exploitation Activities in the Area.

9.2 The Contractor shall ensure that it provides any and all notifications required by applicable international organizations and other agencies and bodies to conduct Exploitation Activities in the Area in accordance with their requirements.

9.3 The Contractor shall notify the Authority promptly where any permits, licences, approvals, certificates and clearances connected with activities in the Area are withdrawn or suspended.

Section 10

Development obligations

10.1 The Contractor shall, on the entry into force of this Contract,³² use all commercially reasonable methods to incur the capital expenditures and to commence, continue and complete construction of vessels, equipment and Installations in accordance with the Mining Plan, together with the conduct of the necessary Production Tests, including capacity tests, agreed to and in the period of time stipulated in the Mining Plan.

10.2 The Contractor shall, where required by the Authority, provide a quarterly report setting out the progress of the development obligations including capital expenditures made against the Expenditure Conditions in the Mining Plan.

10.3 The Contractor shall where required in this Contract, provide to the Authority a certificate signed by a senior official prior to the commencement of Commercial Production, stating that the Contractor has complied in all material respects with the development obligations including the Expenditure Conditions specified in the Mining Plan.

Section 11

Commercial Production

11.1 The Contractor shall, once Commercial Production is achieved, maintain Commercial Production throughout the duration of this Contract and in accordance with the Mining Plan, to the best of the Contractor's ability.

11.2 During Commercial Production the Contractor must use all commercially reasonable efforts to optimize recovery of the Minerals and to produce and market Minerals removed from the Mining Area at the recovery rates contemplated by the Mining Plan.

Section 12

Production rate

12.1 The Contractor shall notify promptly the Authority if the production rate falls below the production parameters reflected in the Mining Plan.

12.2 Where the Authority receives such notification or otherwise becomes aware of any failure by the Contractor to recover the Resource at the approved production rate, the Authority, following consultation with the Contractor, may require the Contractor to deliver a plan of corrective measures to improve its production rate in accordance with Good Industry Practice.

12.3 Where the Authority and Contractor are unable to agree a plan of corrective measures, the Authority shall commission a technical study by an Appropriately Qualified Expert to assess a fair production rate taking account of the production rate in the approved Mining Plan, the technical and economic constraints at the time and the prevailing market conditions, as reasonably foreseeable.

12.4 The Contractor shall be afforded the opportunity to make representations to the Authority on the findings of the Appropriately Qualified Expert before any notice to take corrective measures is issued by the Authority.

³² Article 17(2)(c), Annex III to the Convention does stipulate: "The Authority shall establish a maximum time interval, after the exploration stage is completed and the exploitation stage begins, to achieve commercial production."

12.5 Following the receipt of any notice under paragraph 12.4, should the Contractor continue to fail within a reasonable period to achieve an independently assessed and fair production rate, the Authority may take such steps as provided under these Regulations to revise the terms of this Contract in accordance with the Regulations or to suspend or terminate this Contract in accordance with section 31 hereof, as the case may be, subject to the Contractor's right to the judicial remedies available under the Convention and the Regulations.

Section 13

Temporary suspension in production

13.1 The Council may at the request of the Contractor, and upon receipt of the recommendations of the [Commission], authorise a temporary reduction in the production rate³³ or in the temporary suspension of the scheduled production specified in the Mining Plan due to prevailing economic conditions or other circumstances beyond the reasonable control of the Contractor. The duration of any authorized temporary reduction or suspension shall be a reasonable period not exceeding [1] year and subject to review at any time.

13.2 The Contractor shall remain responsible for performing all environmental management obligations during any temporary suspension in accordance with the Environmental Management and Monitoring Plan, Closure Plan and Environmental Regulations.

13.3 Nothing in this regulation shall restrict the Contractor from making a temporary reduction in the production rate or a temporary suspension of Exploitation Activities where such reduction or suspension is in response to an Incident and for the protection of the Marine Environment or of human health and safety.

Section 14

Avoidance of unnecessary waste in respect of the Resources of the Area

14.1 A Contractor shall avoid unnecessary waste of the Resources of the Area in accordance with Article 150(b) of the Convention, and [the approved waste management plan contained in the Mining Plan of the Contractor].

14.2 A Contractor shall ensure that the processing, treatment and refining of ore, whether by the Contractor or a third party, shall optimise the recovery of the metals, subject to any reasonable economic and technical constraints and in accordance with Good Industry Practice.

14.3 The Authority may request from a Contractor such data, information and reports it considers necessary in its reasonable opinion to satisfy itself there is an optimum recovery of the metals under this Contract.

14.4 Members of the Authority shall, to the best of their abilities, assist the Authority with the provision of data or information in connection with this regulation where such processing, treatment and refining of ore occurs under their jurisdiction and control.

³³ Parameters / thresholds will need to be established for this. Under regulation 17 a Contractor will be permitted to make operational changes which are "minor" in nature.

[Section XX

Environmental management, monitoring and reporting

[In addition to an undertaking to deliver the Environmental plans under section 2, following the development of the Environmental Regulations, specific contractual terms need to be inserted reflecting standard environmental obligations].

Section 15

Use of sub-Contractors and third parties.

15.1 No Contractor may sub-contract any part of its obligations under this Contract unless the sub-contract contains appropriate terms and conditions to ensure that the performance of the sub-contract will reflect and uphold the same standards and requirements of this Contract between the Contractor and the Authority, as is relevant.

15.2 The Contractor shall ensure the adequacy of its systems and procedures for the supervision and management of its sub-Contractors and third parties in accordance with Good Industry Practice.

15.3 Nothing in this section shall exempt the Contractor from any and all obligations under this Contract and the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under this Contract in the event that it sub-contracts any aspect of the performance of those obligations to a third party.

Section 16

Safety, labour and health standards

16.1 The Contractor shall ensure at all material times that:

(a) All vessels, Installations, structures, equipment and other devices operating and engaged in Exploitation Activities are in good repair, in a safe and sound condition and adequately manned; and

(b) That all ships operating and engaged in Exploitation Activities shall have a class designation and shall remain in that class for the duration of this Contract

16.2 The Contractor shall ensure compliance with the generally accepted international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, and the prevention of collisions and any such relevant rules, regulations and procedures as may be adopted by the Authority from time to time relating to safety at sea.

16.3 Specifically, Contractors shall:

(a) Only use vessels flagged to a registry of a State that has signed and implemented into national law the *[key IMO Conventions: to list]*;

(b) Comply with the relevant national laws relating to vessels standards and crew safety of their flag-State, in the case of ships or their sponsoring State in the case of Installations; and

(c) Comply with the national laws of its sponsoring State in relation to any matters that fall outside of flag-State jurisdiction, such as worker rights for non-crew members, and human health and safety that pertains to the mining process rather than the ship operation.

16.4 The Contractor shall provide copies of valid certificates required under relevant international shipping conventions to the Authority upon request.

Section 17

Training Plan

17.1 The Contractor shall conduct and carry out the training of personnel of the Authority and developing States in accordance with the approved Training Plan commitment at schedule 8 to this Contract, these Regulations and any training guidelines issued by the Authority.

17.2 The Contractor, the Authority and sponsoring State or States may from time to time as necessary revise and develop the Training Plan by mutual agreement taking into account the shortage of any skills and requirements of the industry in the undertaking of activities in the Area and the training guidelines issued by the Authority.

17.3 Any mutually agreed modification of or amendment to the Training Plan shall become part of schedule 8 to this Contract.

Section 18

Training of personnel

The Contractor must train its employees and other personnel engaged in Exploitation Activities under this Contract as is necessary to ensure adequate knowledge of and adherence to the requirements of the Rules of the Authority.

Section 19

Annual reporting requirements

19.1 The Contractor shall within 90 Days of the end of each calendar year submit an annual report to the Secretary-General, in such format as may be prescribed from time to time by the Commission, covering its activities in the Contract Area and reporting on compliance with the terms and conditions of this Contract and Plan of Work.

19.2 In particular an annual report must contain detailed information on:

(a) The Exploitation work carried out during the calendar year, including maps, charts and graphs illustrating the work that has been done and the results obtained, reported against the approved plan of work and agreed performance criteria and indicators;

(b) The quantity and quality of the Resources recovered during the period and the volume of Minerals and metals produced, marketed and sold during the calendar year, reported against the Mining Plan;

(c) The equipment used to carry out the Exploitation work and in operation at the end of the period;

(d) The results of any new Exploration activities in the Contract Area, including updated data and information of the grade and quality of resources and reserves identified in accordance with the Reporting standard of the International Seabed Authority for mineral exploration results assessments, mineral resources and mineral reserves;

(e) An annual financial report in conformity with IFRS and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, being capital expenditures and operating costs of the Contractor in carrying out the programme of

activities during the Contractor's accounting year in respect of the Contract Area together with an annual statement of the computation of payments paid or payable to the Authority, reported against the Financing Plan;

(f) Training carried out, reported against the training programme contained in the plan of work;

(g) The actual results obtained from environmental monitoring programmes, including observations, measurements, evaluations and analysis of environmental parameters reported against, where applicable, any environmental criteria, thresholds and indicators agreed as part of the approval of the Environmental Plans under the Environmental Regulations; the actual costs of such compliance with the Environmental Management and Monitoring Plan and results of the independent environmental audit;

(h) A statement by a senior official of the Contractor that all Risk Management systems and procedures have been followed and remain in place, together with an exceptions report and the results of any verification and audit undertaken internally or by Appropriately Qualified Experts;

(i) A health and safety report including details of any accidents or Incidents arising during the period and actions taken against the Contractor's health and safety procedures;

(j) The details of the security measures taken by the Contractor in maintaining the law, order and security of the Exploitation Activities;

(k) Details of any changes made in connection with sub-Contractors or other third parties;

(l) The results of any social contributions or investments made together with details of any indications of significant social impacts arising during the period and the Contractor's response thereto;

(m) An updated Closure Plan, where applicable.

(n) A statement by a senior official that the Contractor's Financing Plan is adequate for the following period;

(o) Evidence that appropriate insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period;

(p) Details of any proposed and reasonably foreseeable adjustments to the activities for the following calendar year and the reasons for such adjustments together with an operational report for the following calendar year. *[Need to consider this in the light of any material changes and the need for approval / modification of the Plan of Work / Contract].*

19.3 The Contractor shall also submit such additional information to supplement the reports referred to in this regulation as the Secretary-General may from time to time reasonably require for the performance of the Authority's functions.

Section 20

Human remains and objects and sites of an archaeological or historical nature

The Contractor shall immediately notify the Secretary-General in writing of any finding in the Contract Area of any human remains of an archaeological or historical nature, or any object or site of a similar nature and its location, including the preservation and protection measures taken. The Secretary-General shall transmit such information to the Director-General of the United Nations Educational, Scientific and Cultural Organization and any other competent

international organization. Following the finding of any such human remains, object or site in the Contract Area, and in order to avoid disturbing such human remains, object or site, no further exploration or exploitation shall take place, within a reasonable radius, until such time as the Council decides otherwise after taking account of the views of the Director-General of the United Nations Educational, Scientific and Cultural Organization or any other competent international organization.

Section 21

Responsibility and liability

21.1 Responsibility and liability of the sponsoring State, the Contractor and the Authority in relation to Exploitation of the Area is in accordance with the Convention.

21.2 The Contractor shall be liable for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, including the costs of reasonable measures to prevent or limit damage to the Marine Environment, account being taken of any contributory acts or omissions by the Authority or third parties.

21.3 A Contractor has liability for any damage arising out of wrongful acts in the conduct of its operations, including in relation to damage that arises after the completion of the Exploitation Activities or Contract term.

21.4 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any wrongful acts or omissions of the Contractor and its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract.

21.5 The Authority shall be liable for the actual amount of any damage caused to the Contractor arising out of its wrongful acts in the exercise of its powers and functions, including violations under article 168 (2) of the Convention, account being taken of contributory acts or omissions by the Contractor, its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract, or third parties.

21.6 The Authority shall indemnify the Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, against all claims and liabilities of any third party arising out of any wrongful acts or omissions in the exercise of its powers and functions hereunder, including violations under article 168 (2) of the Convention.

Section 22

Books, records and samples

22.1 A Contractor must keep a complete and proper set of books, accounts and financial records, consistent with IFRS, which must include information that fully discloses actual and direct expenditures for Exploitation, including capital expenditures and operating costs and such other information as will facilitate an effective audit of the Contractor's expenditures and costs.

22.2 A Contractor must maintain such maps, geological, mining and mineral analysis reports, production records, processing records, records of sales or use of Minerals,

environmental data, archives and samples and any other data, information and samples connected with the Exploitation Activities in accordance with the Authority's data and information management policy.

22.3 A Contractor shall keep, in good condition, a representative portion of samples and cores of the resource category obtained in the course of Exploitation until the termination of this Contract.

22.4 The Authority may request the Contractor in writing to deliver to it for analysis a portion of any such sample and cores obtained during the course of Exploitation.

22.5 A Contractor shall permit full access by the Authority to the data, information and samples at any time and by the Authority's Duly Appointed Representative(s).

Section 23

Notice of violation

The Contractor shall notify the Authority in writing of any violation by the Contractor of an obligation under this Contract, within 2 Days of becoming aware of the violation.

Section 24

Response to Incidents

24.1 The Contractor shall, upon becoming aware of an Incident:

- (a) Notify the Authority immediately;
- (b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;
- (c) Respond promptly to any instructions received from the Authority; and
- (d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident.

24.2 The Authority shall report any Contractor that fails to comply with paragraph 1 above to its sponsoring State or flag State for consideration of institution of legal proceedings under national law.

Section 25

Other notifiable events

[Need to reflect here in due course other notifiable events which could include for example, if Commercial Production falls below average targets, casualties, the achievement of milestones, expected changes to / in the Financing Plan / financial capability].

Section 26

False and misleading statements

Any Contractor who, in purported compliance with a requirement under this Contract, knowingly or recklessly provides the Authority with information that is false or misleading in a material particular, shall receive a warning from the Authority for the purpose of Annex III, Article 18 of the Convention, and may be liable to a monetary penalty under that Article and the Regulations.

Section 27

Prevention of Corruption

27.1 The Contractor shall not make any gift or reward to any officials, agents or employees of the Authority, including the Authority's Duly Authorized Representatives, to induce or reward such persons for any acts undertaken in accordance with their duties under these Regulations.

27.2 The Contractor acknowledges and agrees that it is subject to the anti-bribery and anti-corruption provisions of Applicable Law and of the jurisdictions in which the Contractor is a national or by whose nationals it is effectively controlled or of the jurisdiction in which the Contractor is organized or conducts business, and shall conduct its activities under this Contract in accordance with its obligations under such anti-bribery and anti-corruption laws.

Section 28

Force majeure

28.1 The Contractor shall not be liable for an unavoidable delay or failure to perform [any of its obligations / the Exploitation Activities] under this Contract due to force majeure, provided the Contractor has taken all reasonable steps to overcome the delay or obstacle to performance. For the purposes of this regulation, force majeure shall mean an event or condition that the Contractor could not reasonably be expected to prevent or control; provided that the event or condition was not caused by Contractor action, negligence or by a failure to observe Good Industry Practice.

28.2 The Contractor shall give written notice to the Authority of the occurrence of an event of force majeure as soon as reasonably possible after its occurrence (specifying the nature of the event or circumstance, what is required to remedy the event or circumstance and if a remedy is possible, the estimated time to cure or overcome the event or circumstance, and the obligations that cannot be properly or timely performed on account of the event or circumstance) and similarly give notice to the Authority of the restoration of normal conditions.

28.3 The Contractor shall, upon request to the Secretary-General, be granted a time extension equal to the period by which performance was delayed hereunder by force majeure and the term of this Contract shall be extended accordingly.

Section 29

Renunciation of rights

The Contractor, by prior written notice to the Authority, shall have the right at any time to renounce without penalty the whole or part of its rights in the Contract Area, provided that the Contractor shall remain liable for all obligations and liabilities accrued prior to the date of such renunciation in respect of the whole or part of the Contract Area renounced. Such obligations shall include, inter alia, the payment of any sums outstanding to the Authority, obligations under the Environmental Management and Monitoring Plan and Closure Plan in accordance with the Environmental Regulations, and any terms and conditions of this Contract.

Section 30

Termination of sponsorship

30.1 If the nationality or control of the Contractor changes or the Contractor's sponsoring State, as defined in the Regulations, terminates its sponsorship, the Contractor shall promptly notify the Authority forthwith.

30.2 In either such event, if the Contractor does not obtain another sponsor meeting the requirements prescribed in the Regulations which submits to the Authority a certificate of sponsorship for the Contractor in the prescribed form within the time specified in the Regulations, this Contract shall terminate forthwith.

Section 31

Suspension and termination of Contract and penalties

31.1 The Council may suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if any of the following events should occur:

(a) If, in spite of written warnings by the Authority, the Contractor has conducted its activities in such a way as to result in serious persistent and wilful violations of the fundamental terms of this Contract, Part XI of the Convention, the Agreement and the rules, regulations and procedures of the Authority;

(b) If the Contractor has failed to comply with a final binding decision of the dispute settlement body applicable to it;

(c) If the Contractor [or any person standing as surety or financial guarantor to the Contractor] becomes insolvent or commits an act of bankruptcy or enters into any agreement for composition with its creditors or goes into liquidation or receivership, whether compulsory or voluntary, or petitions or applies to any tribunal for the appointment of a receiver or a trustee or receiver for itself or commences any proceedings relating to itself under any bankruptcy, insolvency or readjustment of debt law, whether now or hereafter in effect, other than for the purpose of reconstruction;

(d) If a Contractor is not recovering Minerals in commercial quantities at the end of [5 / 10] years from the expected date of Commercial Production, save where the Contractor is able to demonstrate to the Council's satisfaction good cause, which may include force majeure, adverse economic conditions, unavoidable delays in construction, major unanticipated vessel repairs and environmental factors, or other circumstances beyond the reasonable control of the Contractor that prevented the Contractor from achieving Commercial Production.

31.2 The Council may, without prejudice to section 28, after consultation with the Contractor, suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if the Contractor is prevented from performing its obligations under this Contract by reason of an event or condition of force majeure, as described in section 28, which has persisted for a continuous period exceeding two years, despite the Contractor having taken all reasonable measures to overcome its inability to perform and comply with the terms and conditions of this Contract with minimum delay.

31.3 Any suspension or termination shall be by notice, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate this Contract in accordance with

Part XI, section 5, of the Convention, in which case this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, section 5, of the Convention.

31.4 If the Contractor takes such action, this Contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, section 5, of the Convention.

31.5 If the Council has suspended this Contract, the Council may by notice require the Contractor to resume its operations and comply with the terms and conditions of this Contract, not later than 60 Days after such notice.

31.6 In the case of any violation of this Contract not covered by section 31.1(a), or in lieu of suspension or termination under section 30.1, the Council may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation and in accordance with the Regulations.

Section 32

Obligations on Suspension or following Expiration, Surrender or Termination of a Contract

32.1 In the event of termination, expiration or surrender of this Contract, the Contractor shall:

(a) Comply with the Closure Plan, continue to perform the required environmental management of the Contract Area as set forth in the Environmental Management and Monitoring Plan and the final Closure Plan and for the period agreed in the Closure Plan.

- (b) Continue to comply with relevant provisions of these Regulations, including:
- (i) Maintain and keep in place all insurance required under these Regulations;
 - (ii) Pay any fee, royalty, penalty or other money on any other account owing to the Authority on or before the date of suspension or termination; and
 - (iii) [other].

(c) Remove all Installations, plant, equipment and materials in the Contract Area; and

(d) Make the area safe so as not to constitute a danger to persons, shipping or to the Marine Environment to the reasonable satisfaction of the Authority.

32.2 Where the Contractor fails to undertake the obligations listed in section 32.1 within a reasonable period, the Authority may take necessary steps to effect such removal and make safe the area, at the expense of the Contractor. Such expense, if any, shall be deducted from the Financial Guarantee and Security held by the Authority.

32.3 The Contractor shall retain legal title to the Minerals recovered from the Contract Area before the effective termination date. Legal title to all Resources *in situ* in the Contract Area at the date of termination shall remain vested in the Authority.

Section 33

Transfer of rights and obligations

33.1 The rights and obligations of the Contractor under this Contract may be transferred in whole or in part only with the consent of the Authority and in accordance with the Regulations.

33.2 The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant in accordance with the Regulations and assumes all of the obligations of the Contractor and if the transfer does not confer to the transferee a plan of work, the approval of which would be forbidden by article 6, paragraph 3 (c), of Annex III to the Convention.

33.3 The terms, undertakings and conditions of this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 34

Change of control

34.1 Where there is a change of control of the Contractor, or there is a change of control in any entity providing a Financial Guarantee or Security on behalf of a Contractor, the Contractor shall notify the Authority within 90 Days of such change of control together with details of the change of control.

34.2 The Authority may treat a change of control as a transfer of rights and obligations in accordance with the requirements of the Regulations.

34.3 Where the Authority is not satisfied that, following a change of control, the Contractor will continue to be able to meet its obligations under this Contract, the Authority may seek to:

- (a) Modify this Contract in accordance with the Regulations; or
- (b) Suspend or terminate this Contract in accordance with the section 31.

Section 35

Other resource categories

35.1 The Contractor shall notify the Authority if it finds Resources in the Area other than the resource category to which this Contract relates, within 30 Days of its find.

35.2 The prospecting, exploration for and exploitation of such finds must be the subject of a separate application to the Authority in accordance with the Rules of the Authority.

Section 36

Confidentiality

Information transferred to the Authority in accordance with this Contract shall be treated as Confidential Information in accordance with the provisions of the Regulations.

Section 37

Disclaimer

Neither the Contractor nor any affiliated company or subcontractor shall in any manner claim or suggest, whether expressly or by implication, that the Authority or any official thereof has, or has expressed, any opinion with respect to the Mineral resource in the Contract Area and

a statement to that effect shall not be included in or endorsed on any prospectus, notice, circular, advertisement, press release or similar document issued by the Contractor, any affiliated company or any subcontractor that refers directly or indirectly to this contract. For the purposes of this section, an “affiliated company” means any person, firm or company or State-owned entity controlling, controlled by, or under common control with, the Contractor.

Section 38

No waiver

No waiver by either party of any rights pursuant to a breach of the terms and conditions of this Contract to be performed by the other party shall be construed as a waiver by the party of any succeeding breach of the same or any other term or condition to be performed by the other party.

Section 39

Modification of terms and conditions of this Contract

39.1 When circumstances have arisen or are likely to arise after this Contract has commenced, which in the opinion of the Authority or the Contractor, would render this Contract inequitable or make it impracticable or impossible to achieve the objectives set out in this Contract or in Part XI of the Convention, the parties shall enter into negotiations to revise it accordingly.

39.2 This Contract may also be revised by agreement between the Contractor and the Authority, including where revision is necessary or desirable to reflect any rules, regulations and procedures adopted by the Authority subsequent to the entry into force of this Contract.

39.3 This Contract may be revised only:

- (a) With the consent of the Contractor and the Authority, and
- (b) By an appropriate instrument signed by the duly authorized representatives of the parties.

39.4 Subject to the confidentiality requirements of the Regulations, the Authority shall publish information about any revision to the terms and conditions of this Contract.

Section 40

National law

Nothing in this Contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject by reason of effective control, incorporation or otherwise including the laws of a sponsoring State, flag State, or host country.

Section 41

Applicable law

41.1 This Contract shall be governed by the terms of this Contract, the rules, regulations and procedures of the Authority, Part XI of the Convention, the Agreement and other rules of international law not incompatible with the Convention.

41.2 The Contractor, its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract shall observe the applicable law referred to in section 41.1 hereof and shall not engage in any transaction, directly or indirectly, prohibited by the applicable law.

35.3 Nothing contained in this Contract shall be deemed an exemption from the necessity of applying for and obtaining any permit or authority that may be required for any activities under this Contract.

Section 42
Interpretation

The division of this Contract into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

Section 43
Disputes

Any dispute between the parties concerning the interpretation or application of this Contract shall be settled in accordance with Part X of the Regulations.

Annex VIII

Schedule of Contract violations and monetary penalties

[To be drafted].

Annex IX

Schedule of other applicable fees

Applicable fee	Prescribed amount (US\$)
Application fee for the renewal of an Exploitation Contract	[]
Application fee for the transfer of an interest in a contract or approved plan of work	[]
Application fee for the use of a contract or approved plan of work as security	[]
Application fee for a temporary suspension in Commercial Production	[]
Application fee in respect of a material change to a Plan of Work	[]
[Other]	

Schedule 1

Use of terms and scope – Definitions

“Affiliate” means an entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Contractor. For purposes of this definition, “control” means ownership of greater than 50% of the share capital of a company and/or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by Contract or otherwise.

“Annual Contract Administration Fee” means an amount payable to the Authority under a Contract in accordance with regulation 21.

“Annual Fixed Fee” means an amount payable to the Authority under a Contract in accordance with regulation 22.

“Applicant” means any entity under regulation 2 applying for the approval of a Plan of Work.

“Application” means an application for approval for a Plan of Work, made in accordance with these Regulations.

“Appropriately Qualified Expert(s)” means an individual or firm with demonstrable expertise of Good Industry Practice in the relevant subject matter who is not affiliated with the Authority, an Applicant for a Plan of Work, or sponsoring State or Contractor, as the case may be.

“Approval Date” means the date on which the Council approves a Plan of Work.

“Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction [as defined under the Convention].

“Arm’s length” means in relation to any contracts or transactions entered into in connection with activities in the Area, contracts and transactions entered into freely by independent parties that are not related parties.

“Arm’s length value” means in connection with any transaction, the value that a willing buyer and will seller, who are not related parties, would agree is fair in the circumstances.

“Authority” means the International Seabed Authority established under Article 156 of the Convention.

“Block” means an area comprised in each Proposed Mining Area and which is delineated on the reference map attached to the Plan of Work].³⁴

Calendar year means a period of 12 months ending with 31 December.

“Change of Control” has the meaning given to it in regulation [].

“Closure Plan” means a plan required to be produced and submitted to the Authority by an Applicant under regulation 4 as part of its Application.

³⁴ Whether the concept of a “block” will be adopted or is applicable to Mining Areas is for discussion. A number of Pacific Island States have adopted this concept in their DSM legislation

“Commercial Production” means production where an operator engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information gathering, analysis or the testing of equipment or plant.

“Commission” means the Legal and Technical Commission of the Authority.

“Confidential information” shall have the meaning assigned to that term by regulation 46.

“Contract Area” means the area delineated in Schedule 1 of an Exploitation Contract.

“Contractor” means an entity under regulation 2 holding an Exploitation Contract and, where the context applies, shall include its employees, sub-contractors, agents and all persons engaged in working or acting for them in the conduct of its operations under an Exploitation Contract.

“Convention” means the United Nations Convention on the Law of the Sea.

“Council” means the principal organ of the Authority established under Article 158 of the Convention.

“Day” means calendar day.

“Duly Authorized Representative” means any person duly authorized by the Secretary-General to exercise powers or functions of the Authority under the rules, regulations and procedures of the Authority.

“Effect” includes any positive or negative effect, any temporary or permanent effect, any past, present or future effect, any cumulative effect that arises over time or in combination with other effects, any potential effect of high probability and any potential effect of low probability that has a high potential impact.

[Eligible Capital Expenditure means an amount of actual capital expenditure expended by the Contractor and directly related to the setting up and bringing the exploitation operation into production.]³⁵

“Emergency Response and Contingency Plan means a plan required to be produced and submitted to the Authority by an Applicant under regulation 4 as part of its Application.

“Environmental [and Social] Impact Statement” means a statement prescribed by and approved in accordance with the Environmental Regulations and submitted to the Authority by an Applicant under regulation 4 as part of its Application.

“Environmental Information” means any Information relating to the protection and preservation of the Marine Environment, in particular those from environmental assessment, management and monitoring programmes and includes any Information on:

- (a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, and the interaction among these elements;
- (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies,

³⁵ This definition is presented as it could provide a trigger point for the review / revision of a payment mechanism rather than a time-based trigger.

[regulations], plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;
(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.³⁶

“Environmental Management and Monitoring Plan” means a plan prescribed by and approved in accordance with the Environmental Regulations and submitted to the Authority by an Applicant under regulation 4 as part of its Application.

“Environmental Plans” means the Environmental [and Social] Impact Statement, the Environmental Management and Monitoring Plan and Closure Plan approved in accordance with the Environmental Regulations.

“Environmental Regulations” means the Regulations on Exploration and Exploitation for Mineral Resources in the Area (Environmental Matters).

“Expenditure Conditions” means commitments specified in a Plan of Work for the expenditure of money on or in connection with Exploitation Activities to be carried out.

“Exploitation” and **“Exploitation Activities”**, as applicable, means the recovery for commercial purposes of the Resources in the Area and the extraction of minerals therefrom, including the construction and operation of mining, processing and transportation systems, for the production and marketing of metals and all other activities, including Exploration in the Contract Area and other steps preparatory to Commercial Production, as well as the decommissioning and closure of operations, necessary or expedient to carry out a Contractor’s rights and obligations under a Contract.

“Exploration” means the searching for [deposits of] Resources in the Contract Area [with exclusive rights], the analysis of such Resources, the use and testing of recovery systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that shall be taken into account in Exploitation.

“Exploration Regulations” means the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area and the Regulations on Prospecting and Exploration for Cobalt-Rich Ferromanganese Crusts in the Area, as the case may be and as replaced or amended by the Council from time to time.

“Feasibility Study” means a report required to be produced and submitted to the Authority by an Applicant under regulation 4 as part of its Application.

“Financial Guarantee or Security” means any insurance, bank guarantee, trust fund, cash, parent company guarantee, [State guarantee] or other such instrument or combination of instruments required by the Authority from a Contractor under these Regulations.

³⁶ This definition (paragraph’s (a)-(c)) has been taken directly from Article 2(3) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998.

“Financing Plan” means a plan required to be produced and submitted to the Authority by an Applicant under regulation 4 as part of its Application.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and includes but is not limited to the guidance provided, as applicable, by the IFC Performance Standards, by the International Organization for Standardization standards, the International Marine Minerals Society, the performance requirements under these Regulations, the Recommendations made from time to time under these Regulations by the Commission and other International Recognized Standards, adopted, endorsed or issued by the Authority from time to time.

“IFRS” means International Financial Reporting Standards being a set of accounting standards developed by the International Accounting Standards Board.

“Incident” means a situation where activities in the Area result in:

1. a marine Incident or a marine casualty as defined in the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);
2. serious harm to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such serious harm to the Marine Environment is a reasonably foreseeable consequence of the situation;
3. [damage to a submarine cable or pipeline].

“IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Social and Environmental Sustainability.

“Information” means all information, data or knowledge supplied or transferred to the Authority in any format whatsoever.

“Inspector” means a person appointed by the Authority as an Inspector in relation to and in accordance with these Regulations.

“Installation” means any offshore installation, artificial structure, floating platform, equipment or device used, or intended to be used, in or on the seabed or adjacent water column for the purpose of the Exploitation Activities, [but excluding vessels??].

“International Recognized Standards” means a standard adopted by an international [regional or national]³⁷ standards organization and made available to the public.

“Marine Environment” includes the physical, chemical, geological and biological *and genetic* components, conditions and factors which interact and determine the productivity, state, condition and quality *and connectivity* of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof.

“Minerals” means Resources that have been recovered from the Area.

³⁷ “Internationally-accepted” standards are preferred. But also need to consider regional or country standards which maybe equivalent to, based on or have a higher level of standard.

“Mining Area” means that part or parts of the Contract Area allocated to a Contractor for Exploitation, defined by the coordinates contained in the Exploitation Contract.

“Mining Plan” means a plan required to be produced and submitted to the Authority by an Applicant under regulation 4 as part of its Application.

“Natural Resources of the Area” means the living and non-living resources of the Area.

“Plan of Work” means a Plan of Work for Exploitation in the Area being collectively all and any plan or other document setting out the activities for the conduct of the Exploitation, which form part of, or is proposed to be part of, an Exploitation Contract.

[Point of sale means the first auditable point at which the sale of minerals removed from the Mining Area by a Contractor is made or occurs].³⁸

Point of valuation means the first point at which the minerals removed from the Mining Area are transferred to a transportation vessel for shipping from the Area.³⁹

“Proposed Mining Area” means that area(s) in the Area and delineated in a Plan of Work submitted by an Applicant for approval by the Authority.

“Public Notice” when given by the Authority, means any notice published digitally at www.isa.org.jm.

“Rate of royalty” means [*an ad valorem royalty in respect of a sales value or deemed sales value of mineral ore sold or removed without sale*] from the Mining Area as prescribed by the Council in accordance with regulation [].

“Records” means all financial, commercial and technical books, accounts, statements, records, documents, papers, data and information connected with and arising from the Exploitation Activities and required under these Regulations.

“Recommendations” means the recommendations for the guidance of Contractors issued by the Commission from time to time.

“Reporting period” means the period of time prescribed by regulation 26.

“Reserved Area” means any part of the Area designated by the Authority as a Reserved Area in accordance with Annex III, Article 8 of the Convention.

“Resources” means all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including, but not limited to (i) polymetallic nodules being any deposit or accretion of nodules, on or just below the surface of the deep seabed, which contain metals such as manganese, nickel, cobalt and copper; (ii) polymetallic sulphides being hydrothermally formed deposits of sulphides and accompanying mineral resources in the Area which contain concentrations of metals such as, copper, lead, zinc, gold and silver and (iii) cobalt crusts being cobalt-rich ferromanganese hydroxide/oxide deposits formed from direct precipitation of Minerals from seawater onto hard substrates containing concentrations

³⁸ The point of sale could be relevant at a future date (in connection with the imposition of say an *ad valorem* royalty based on an invoice price).

³⁹ In view of there being no clearly identifiable auditable point of sale at this stage, a point of valuation is key to determining the point at which the mineral ore is valued for the purposes of a royalty payable under Part V.

of metals such as cobalt, titanium, nickel, platinum, molybdenum, tellurium, cerium, other metallic and rare earth elements.

“Risk” means the combination of the probability of an event and the possible consequences of that event.

“Risk Assessment” means the systematic assessment of Incidents and other operational risks using internationally accepted standards of Risk Assessment as adapted for Exploitation Activities.

“Risk Management” means the effective management of risk using internationally recognised standards of Risk Management and associated systems, as adapted for Exploitation Activities, to avoid, mitigate and manage Incidents and operational risks.

“Royalty” means the royalty payable to the Authority in respect of the minerals and provided for under regulation 23.

“Royalty Return” means any interim, annual or final royalty return required under Part V of these Regulations.

“Rules of the Authority” the Convention, the Agreement, the contract, these Regulations and other rules, regulations and procedures of the Authority as may be adopted from time to time.

“Safety Zone” means a zone designated in accordance with Article 147(2)(c) of the Convention being an area within a distance of [500] metres from any mining support vessel or Installation engaged in Exploitation Activities.

“Seabed Mining Registry” means the mineral rights and dealings online registry established and maintained by the Authority in accordance with the [Seabed Directorate Regulations].

“Standard Clauses” means the standard terms and conditions of an Exploitation Contract set out in Annex VII to these Regulations being those standard terms and conditions in effect at the date of entry into force of the Exploitation Contract.

“States Parties” means States who are party to the Convention.

