

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name of Working Group:

President

2. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

3. Please indicate the relevant provision to which the textual proposal refers.

Annex 10

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

3.2 The Contractor shall implement this contract in good faith and shall in particular implement the Plan of Work in accordance with Good Industry Practice and [Best Environmental Practices](#). For the avoidance of doubt, the Plan of Work includes:

3.3 The Contractor shall, in addition:

- (a) Comply with the regulations, as well as other Rules of the Authority and [Standards](#), as amended from time to time, and the decisions of the relevant organs of the Authority;

4.1 The Contractor is hereby granted the exclusive right under this Contract to Explore for and Exploit the resource category specified in this Contract and to conduct Exploitation activities within the Contract Area in accordance with the terms of this Contract. The Contractor shall have security of tenure and this Contract shall not be suspended, terminated or revised except in accordance with the terms set out herein.

~~4.2 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.~~

~~4.3 The Authority reserves the right to enter into contracts with third parties with respect to Resources other than the resource category specified in this Contract but shall ensure that no other entity operates in the Contract Area for a different category of Resources in a manner that might interfere with the Exploitation activities of the Contractor.~~

5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof [onto the Contractor’s mining vessel or installation \[and receipt by the Authority of the required payment for those Minerals\]](#), in compliance with this Contract.

6.2bis The Contractor shall apply due diligence in selecting its suppliers, and shall be responsible to ensure the adequacy of goods and services it procures, in accordance with Good Industry Practice.

7.1 In accordance with the ‘polluter pays’ principle’ The Contractor shall be liable to the Authority 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 and limit damage to the Marine Environment,~~ [arising out of its wrongful acts], account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage ~~[caused by the Contractor]~~ [arising out of the Contractors wrongful acts] regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term.

For the purposes of this clause, ‘wrongful act or omission;’ means any act or omission attributable to the Contractor that results in damage, irrespective of bad intention or negligence.

Recoverable damages under this clause include: costs of reasonable measures to prevent and limit damage to the Marine Environment, lost revenue, reinstatement, pay-out in lieu of actual reinstatement, and/or measures to compensate for pure ecological loss and harm to the living resources of the Area.

9.1 The Contractor may renew this Contract in accordance with regulation 20 ~~for periods not more than 10 years each, on the following conditions:~~

- ~~(a) — The resource category is recoverable annually in commercial [and profitable] quantities from the Contract Area;~~
- ~~(b) — The Contractor is in compliance with the terms of this Contract and the Rules of the Authority, including rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;~~
- ~~(c) — This Contract has not been terminated earlier; and~~
- ~~(d) — The Contractor has paid the applicable fee in the amount specified in appendix II to the regulations.~~

~~9.2 — To renew this Contract, the Contractor shall notify the Secretary General no later than one year before the expiration of the initial period or renewal period, as the case may be, of this Contract.~~

~~9.3 — The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract [shall be] [may be] renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.~~

12.1 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) Regulation 103 applies 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;~~

~~(f) In relation to a decision to terminate the Contract, where the Contract or Commercial Production have been suspended for any reason [outside of the Contractor’s control] continuously for more than 5 years.~~

14.1 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, ~~including payment of the fee as set out in appendix II to the regulations.~~

~~14.2 ——— 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 (3) (e) of annex III to the Convention.~~

5. Please indicate the rationale for the proposal. [150-word limit]

For para 3.3, if ‘Rules of the Authority’ is defined to include ‘Standards’ by amendment to the defined term in the Schedule to the Regulations then this proposed insertion of ‘and Standards’ can be removed here. But it is important that the Regulations are drafted one way or another to require compliance by Contractors with Standards, and to make non-compliance a breach of contract enabling regulatory action under DR103.

For para. 4.2 and 4.3, these provisions may be better incorporated into the Regulations, rather than as terms of an individual contract. Particularly as the subject-matter affects a third party: the one applying for exploration or exploitation - which will not be a party to the contract that will contain this term. Indeed, clause 4.2 is already covered by DR15(2)(a) and DR18(2); and clause 4.3 is covered by DR15(2)(b) and DR18(3). Deletion from this Annex will avoid unnecessary repetition, and the possibility of conflicting provisions.

For 6.2bis, it is highly likely that Contractors will deliver their Plan of Work via engagement of multiple subcontractors and suppliers with which the ISA will have no direct contractual relationship. It is therefore essential to ensure the rules contained in the Regulations are applied to all parties involved, and to make the Contractors accountable for the activities of those third parties they appoint. Several respondents to the 2020 stakeholder consultation on the draft Standards and Guidelines for Environmental Management Systems (e.g. Australia, Belgium, Chile, Portugal, Trinidad and Tobago, IASS, The Pew Charitable Trusts: copies here) raised this concern. This further clause 6.2bis is therefore proposed to bolster the existing clauses in this regard. These points could also sit in the body of the Regulations, in place of or in addition to a contract term.

As a general point for section 7 - Important points relating to Contractor liability raised at the ISA remain unresolved (see, e.g. [June 2019 submission by the African Group](#)). Contractor liability for harm to the environment is not dealt with in the Regulations at all, while this section of the standard contract terms repeats UNCLOS Article 22 Annex III without elaborating the meanings of key terms like ‘damage’ and ‘wrongful acts and omissions.’ Nor do the Regulations cover how third parties can claim for damage caused by Contractors. If these crucial points are left to the discretion of individual sponsoring States without harmonisation by the ISA, inconsistent treatment and ‘sponsor-shopping’ will be the likely result. The Council may be well-advised to call upon the Secretariat and Commission to propose more particularized and detailed text on these points in the Regulations. The Council may also want to consider a formal invitation to sponsoring States to share relevant information on the recourse available in their national legal systems for prompt and adequate compensation for harm that may arise from their sponsored Contractor’s activities. In the meantime, the amendments proposed in 7.1 could strengthen the ISA’s liability regime, which reflect that in an infant industry, where the unforeseen can be assumed, a causation-based standard – as opposed to a fault-based standard – would seem to be the prudent choice. A causation-based standard also incentivizes risk reduction, a particularly important consideration in a context where harm may be irreversible.

For section 9, it appears these provisions overlap (and potentially conflicts with) DR20. These need to be reconciled. Renewals could be better addressed in DR20, and cross-referenced here. To avoid duplication and inconsistency, and to promote accountability, transparency, and consistency, any such overlap should be resolved in favour of the Regulations.

For section 11, termination of sponsorship should be covered in the Regulations and deleted here. We can have supplied language for such a proposed regulation to the ICE informal working group.

For 12.1, we note that suspension and termination of contact and monetary penalties is also covered in DR103. There are numerous proposals for amendment to DR103, and if those are adopted, then there will be conflict between the Regulations and the contract, unless additional amendments are made here. It is not clear why the same points would need to be covered in both Regulations and individual contracts. Instead, points covered under DR103 should be cross-referred here.

14.2 repeats and potentially conflicts with DR23 and should be deleted to avoid confusion.