

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29<sup>TH</sup> 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](mailto:council@isa.org.jm).*

**1. Name of Working Group:**

President's Text

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

Federal Republic of Germany

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

DR Annex X

**Red text** is in original draft; **blue text** indicates Germany's textual proposals

**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.**

**Annex X [President's Text]**

**Standard clauses for exploitation contract**

**Section 1  
Definitions**

In the following clauses:

(a) "Regulations" means the regulations on exploitation of mineral resources in the Area, adopted by the Authority; and

~~—(b)— "Contract Area" means that part of the Area allocated to the Contractor for Exploitation, defined by the coordinates listed in schedule 1 hereto.~~

**Section 3  
Undertakings**

...

3.2 The Contractor shall implement this contract in good faith and shall in particular implement the Plan of Work in accordance with [Regulation 18bis. 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;

...

#### **Section 4** **Security of tenure and exclusivity**

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 ~~{Exploration and}~~ 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 ~~{and the Regulations}~~. ~~{Any impacts from activities in the Area carried out under an Exploitation Contract must be strictly limited to the Contractor area.}~~

...

#### **Section 7** **Responsibility and liability**

7.1 ~~{In accordance with the 'polluter pays' principle,}~~ ~~t~~The Contractor shall be strictly 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 ~~{or omissions}~~], 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 [arising out of the Contractors wrongful acts ~~{or omissions}~~] regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term. ~~{For the purpose of clauses 7.1 and 7.2, 'wrongful acts or omissions', means any unlawful act or omission attributable to the Contractor that results in damage not anticipated and approved in the Plan of Work, 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 third-party economic loss, as well as pure ecological loss and harm to the living resources of the Area.}~~ ~~{For the avoidance of doubt, strict liability in this context applies the polluter pays principle, and means, it is not necessary to prove that a contractor intended to commit or was reckless as to committing a wrongful act or omission, it is necessary only to demonstrate unpermitted damage or harm arose as a result of a contractor's wrongful act for the contractor to be held liable for that damage or harm.}~~

...

#### **Section 9** **Renewal**

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.~~

## **Section 11**

### **Termination of sponsorship**

~~11.1 If the nationality or control of the Contractor changes or the Contractor's Sponsoring State or States, as defined in the regulations, terminates its sponsorship, the Contractor shall promptly notify the Authority, and in any event within 90 Days following such changes or termination.~~

~~11.2 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 12**

### **Suspension and termination of Contract and penalties**

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:

...

(e) If the Contractor has not made bona fide efforts to achieve or sustain Commercial Production and is not recovering Minerals in commercial quantities at the end of five 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, ~~[good faith efforts to comply with the environmental obligations imposed by the Authority,]~~ or other circumstances beyond the reasonable control of the Contractor that prevented the Contractor from achieving Commercial Production.

## **Section 14**

### **Transfer of rights and obligations**

~~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) (c) of annex III to the Convention.~~

~~14.3—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.~~

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

- Section 1: The term Contract Area is already defined in the Schedule. The definition for the term Regulations could equally be moved to the Schedule for consistency.
- Section 3.2: Given these obligations are now captured in DR 18bis, a cross-reference will suffice and will avoid inconsistencies.
- Section 3.3: If the definition of “Rules of the Authority” includes Standards, there is no need to mention them separately.
- Section 4: Germany supports all suggested changes to section 4. It is critical to limit impacts of mining activities to the contract area to ensure other contractors are not negatively impacted, which could render their baseline or monitoring programmes ineffective and could lead to costly litigation.
- Section 7: Germany strongly supports the proposed amendments, which clarify responsibilities.
- Section 9: Germany supports the suggested deletions as DR 20 sufficiently covers the matter.
- Section 11: Section 11 can be deleted and matters dealt under it be fully set out in the regulations instead. For example, DRs 21 and 24 already set out the rules and procedures that will apply in the event of a change of control or termination of sponsorship and this section 11 will cause unnecessary inconsistency or overlap with those relevant regulations.
- Section 12: Suspension arises in different scenarios throughout the Regulations (e.g. DRs 4(10), 21, 28, 29, 29bis, 80, 99), though the terminology about what is suspended varies (e.g. suspension of ‘operations’, ‘activities’, ‘production’, ‘contract’). Termination is addressed in DR 18 ter. Suspension and termination of contract and monetary penalties are also covered in DR103, with numerous pending amendment proposals. This has created conflict between the regulations and provisions here, which will only increase with further adoption of the pending amendments. This conflict exists for both process (e.g. DR80, DR103, and Annex X all provide slightly different decision-making criteria and processes, for a suspension for breach of contract) as well as for substance (e.g. Annex X section 12 contains circumstances in which suspension may be triggered by the Council such as provision of false information, failure to recover sufficient minerals etc), which are not mirrored by operational provisions in the Regulations. This means the Council has not been given the necessary powers in some instances to give effect to the contractual terms. It is not clear why the same points would need to be covered in both Regulations and individual contracts. Instead, points covered under DR103 (and now 18ter and 29bis) should be cross-referred here, and triggers included in Section 12 need to be reflected in the Regulations (e.g. in DR103). Similarly, once the new regulation 18 ter on termination is settled, the wording in this section 12 relating to termination can be amended or deleted to avoid duplication and inconsistency.
- Section 14 is duplicative of DR 23 and may best be deleted to avoid conflicting rules.