

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON  
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,  
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

**Black font, red font, and grey text-boxes** are replicated from the Draft Regulations text.

**Blue font** represents commentary or edits proposed by The Pew Charitable Trusts.

## **Annex IX**

### **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 X to the Regulations on exploitation of 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, 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 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 rights and 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 Explore for and Exploit [specified Resource category] in the Contract Area in accordance with the terms and conditions of this **C**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 language[s] [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 to the Exploitation Contract**

#### **Schedule 1**

Coordinates and illustrative chart of the Contract Area and proposed Mining Area(s).

#### **Schedule 1 bis**

[Certificate of sponsorship]

#### **Schedule 2**

The Mining Workplan.

#### **Schedule 3**

The Financing Plan.

#### **Schedule 4**

The Emergency Response and Contingency Plan.

#### **Schedule 5**

The Health and Safety Plan and the Maritime Security Plan.

#### **Schedule 6**

The Environmental Management and Monitoring Plan.

#### **Schedule 7**

The Closure Plan.

#### **Schedule 8**

The Training Plan.

#### **Schedule 9**

Conditions, amendments and modifications agreed between the Commission and the Contractor, and approved by the Council, during the application approval process.

#### **Schedule 10**

Where applicable under Regulation 26, the form of any Environmental Performance Guarantee, and its related terms and conditions.

#### **Schedule 11**

Details of insurance policies taken out or to be taken out under Regulation 36.

## Schedule 12

Agreed review dates for individual plans, together with any specific terms attaching to a review, where applicable.

## Schedule 13

To the extent that any documentation is not available at the point of signing the Contract, and a time frame for submission has been agreed with the Commission, this should be reflected here, together with, where applicable, deadline dates.

## Schedule 14

### The Parent Company Liability Statement

In Part VII of this Consolidated text, it is stated that the Contract will contain (a) a **statement of the currency** in which the royalty will be paid, and (b) a statement of the **address at which the Contractor's books and records** will be kept. We do not see these provisions included currently in any of the Annexes. We suggest they be added. One of Annex IX, Annex X or Annex III would seem a pertinent location.

As a drafting point, in **Section C**, clause b) we suggest either “rights and responsibilities” or “right and responsibility” (either both plural, or both singular). We also note that the main ‘consideration’ for the Contractor will be payment of royalties and fees, and wonder if that should be explicitly mentioned in Section C?

In relation to **Section D**, we suggest to delete the wording ‘subject to the standard clauses’ as these clauses should not unilaterally amend the term of the Contract. We also query the proposal that two different language contracts can simultaneously both be valid if there are contradictions. Imprecision of translation or errors between two different language versions seem likely, and it would seem in the ISA's interests to include a prevailing language clause, explicitly stating which language version of the contract shall be authoritative in the case of discrepancy.

Regarding **Schedule 10**, we suggest the deletion of the wording ‘*where applicable*’. An Environmental Performance Guarantee would always be required (see draft Regulation 26 ).

Regarding **Schedule 11**, we suggest removal of the text “*or to be taken out*” (in relation to insurance). Draft regulation 36 specifies that insurance policies must be proposed at the time of applying for approval of a Plan of Work and be in effect from the start date of the Exploitation Contract. Consequently, by the time the contract is finalized and signed, insurance should be in effect and thus can be attached as Schedule 11. Relatedly, we again note ongoing uncertainty and gaps in the Council's conception of insurance, and suggest that the **composite set of insurance requirements, including all relevant details, be discussed and agreed upon by the Council as a priority**.

We query **Schedule 13**. It suggests that some of the plans and other documents required as schedules to the Contract can be delayed or absent, and the Contract is still signed. We consider this is drafted too widely and could enable a Contract to be signed by the ISA that (a) does not contain sufficient binding commitments to regulate the Contractor's activities, or (b) leaves significant uncertainty as to the Contractor's proposed activities, whilst permitting them. We strongly suggest deleting this. If the applicant does not have ready the requisite paperwork for the contract, the signature of the contract should be deferred until those documents are complete and submitted.

Regarding **Schedule 14**, we support the inclusion of a Parent Company Liability Statement.

Based on the suggestion of the UCH IWG, we suggest a **Schedule 15: Underwater Cultural Heritage Management Plan**.