September 2025

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 X

Standard clauses for Exploitation Contract

As a general point, we note that Annex X contains significant duplication of the Regulations. We prefer that mandatory obligations for Contractor (and other parties) are covered in the Regulations rather than a Contract, for a number of reasons, including that the Regulations:

- are non-negotiable, predictable and published.
- may be amended by the ISA over time unilaterally, whereas amendment to a Contract requires Contractor consent.
- bind the sponsoring State and any other relevant States, where the Contract binds only the ISA and the Contractor.
- have been more intensively scrutinized and negotiated by Council than this Annex X, which has barely been discussed to date.

In our view, the main purpose of the Contract is to specify the project-specific requirements and commitments, which are found in the Plan of Work i.e. the plans scheduled to the Contract. Many of the other terms and conditions in this Part X are superfluous, and should be deleted and streamlined in the core regulations.

~~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 2
Interpretation

2.1 Terms and phrases defined in the regulations have the same meaning in these standard clauses.

2.2 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, 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.

Clause 2.2 reflects a sensible approach of treating the 1994 Agreement and the Convention together as single instrument. This approach does not seem to be taken consistently in the Regulations, where instead the Convention

and the Agreement are referred to separately. We suggest to apply this approach set out here in Annex X to the rest of the Regulations, for the sake of consistency and also to avoid inadvertent references to the Convention that omit the 1994 Agreement.

Section 3
Undertakings

3.1 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.

3.2 The Contractor shall implement this C~~c~~ontract 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:

(a) The Mining Workplan;

(b) The Financing Plan;

(c) The Emergency Response and Contingency Plan;

(d) The Training Plan;

(e) The Environmental Management and Monitoring Plan;

(f) The Closure Plan; and

(g) The Health and Safety Plan and Maritime Security Plan, that are appended as schedules to this Contract, as the same may be amended from time to time in accordance with the regulations.

3.3 The Contractor shall, in addition:

(a) Comply with the regulations, as well as other r~~R~~ules, regulations and procedures of the Authority, as amended from time to time, and the decisions of the relevant organs of the Authority;

(b) Accept control by the Authority of activities in the Area for the purpose of securing compliance under this Contract as authorized by the Convention;

(c) Pay all fees and royalties required or amounts falling due to the Authority under the regulations, including all payments due to the Authority in accordance with Part VII of the regulations; and

(d) Carry out its obligations under this Contract with due diligence, including compliance with the rules, regulations and procedures of ~~adopted by~~ the Authority to ensure effective P~~p~~rotection for the Marine Environment, and exercise reasonable regard for other activities in the Marine Environment.

Regarding **clause 3.2**, we support the reference to 18bis to avoid repeating (and possibly omitting) obligations here. If the Council decides to add an Underwater Cultural Heritage Plan as a required part of the plan of work, then it will need to be added here. A place-holder may avoid this being overlooked.

Regarding **clause 3.3**, these undertakings are similar to, but do not completely align with those required from an applicant at application stage (DR7(2)). We are unsure if this is intentional, or whether it has happened inadvertently through DR7 being discussed and amended, separately from this Annex X? Indeed despite the crucial importance of the contract terms in an Exploitation Contract, we recall that the Council – save for one brief discussion in November 2023 - has barely considered Annex X in its negotiations.

We note there are various other commitments that appear to be required from Contractors in the body of the Regulations in contractual form, but are not replicated in clause 3.3 of Annex X e.g. the undertaking to follow emergency instructions issued by the SG in the event of an Incident (DR33) or the acknowledgement that the

Contractor is subject to, and will comply with, anti-bribery and anti-corruption laws of the sponsoring State (DR40). We suggest these be added here, and a wholesale review of the regulations is conducted to ensure there are no other contractual obligations sign-posted in the regulations but omitted from the standard contract terms.

In relation to the drafting of **clause 3.3(a),** our understanding is that Standards, as legally binding instruments approved by Council, should be included in the scope of 'rules, regulations and procedures'. In previous drafts 'Rules of the Authority' was used in the regulations and was a defined term that included Standards, which was clear. But this has been wholesale replaced by reference instead to 'rules, regulations and procedures', which is not defined and leaves room for ambiguity and dispute about what is included. If the use of defined term 'Rules of the Authority' is not re-inserted (which is our preference) then 'Standards' should be reinserted here.

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.]~~

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.

4.4 If the Authority receives an application for an Exploitation Contract in an area that overlaps with the Contract Area, the Authority shall notify the Contractor of the existence of that application within 30 Days of receiving that application.

Clauses 4.2, 4.3 and 4.4 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 we recall that clause 4.2 is already covered by DR15(2)(b); and clause 4.3 is covered by DR15(2)(b) and DR18(3)Alt, so we query why the duplication here? Deletion from this Annex will avoid unnecessary repetition, and the possibility of conflicting provisions.

Section 5
Legal title to Minerals

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.

5.2 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.

Clause 5.1 reflects UNCLOS Annex III Article 1, but neither elucidates nor repeats it exactly (the requirement that the recovery must take place in accordance with the Convention is omitted). We consider it is important here that the ISA identifies very precisely when the ownership of minerals passes from humankind to the Contractor.

The amendment, now struck-through, had suggested that title should pass upon the ISA receiving the payment pertaining to those minerals, and not only upon physical retrieval. This seems like an important safeguard for the ISA to discuss further. If a Contractor owns the minerals before paying the ISA for them, the Council will need to be sure

the Regulations contain sufficient provision to guarantee payment (and provide recourse for non-payment). Consideration should also be given to capturing in the Regulations payment to the ISA, or ISA retention of ownership, for any minerals that are recovered prior to commencement of Commercial Production (as in that stage, royalties are not payable). We are not sure this is currently covered.

Section 6
Use of subcontractors and third parties

6.1 No Contractor may subcontract any part of its obligations under this Contract unless the subcontract contains appropriate terms and conditions to ensure that the performance of the subcontract will reflect and uphold the same standards and requirements of this Contract between the Contractor and the Authority.

6.2 The Contractor shall ensure the adequacy of its systems and procedures for the supervision and management of its subcontractors and any work that is further subcontracted, in accordance with Good Industry Practice.

~~[6. 2.bis. 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].~~

6.3 Nothing in this section shall relieve the Contractor of any obligation or liability 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 subcontracts any aspect of the performance of those obligations.

We object to deletion of clause 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. This concern has been previously raised by several delegations (e.g. Australia, Belgium, Chile, Costa Rica, Portugal, Trinidad and Tobago - in written responses to the 2020 stakeholder consultation on draft Standards and Guidelines). We cannot see any reason why the Council would want to absolve Contractors of due diligence responsibilities in their choice of suppliers.

Section 7
Responsibility and liability

7.1 [In accordance with the 'polluter pays' principle,] the Contractor shall be liable to the Authority for the actual amount of all environmental damage caused by Contractor activities that were not foreseen in the Plan of Work or that arise from a breach of any conditions of approval, including arising out of activities of the Contractor~~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~~ [~~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.~~

7.2 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any environmental damage caused by Contractor activities that were not foreseen in the Plan of Work or that arise from a breach of any conditions of approval, including arising from activities of the Contractor. ~~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.~~

7.3 The Authority shall be liable to the Contractor 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.

7.4 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.

Regarding **Clause 7.1**, we strongly support the intent behind much of the text that has now been stricken in this version. We consider hugely important for the ISA to be establishing a fit-for-purpose liability regime. For an industry in its infancy, where the unforeseen can be assumed, a causation-based standard (or strict liability)– 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. We consider that this is well-achieved by the proposed explanation of 'wrongful acts and omissions' in this clause 7.1. Indeed we wonder if the deletion has been made in error because our notes show only two delegations commenting on this clause previously, and those were drafting comments proposing merely to move the definition of 'wrongful acts or omissions' either to the Schedule (Russia) or to section 1 of Annex X (Argentina), not to delete it.

We also note that that the proposed deletions in clauses 7.1 and 7.2 appear to limit the Contractor's liability to only environmental harm, not e.g. economic loss or harm to persons or property arising from the Contractor's activities. We strongly disagree with such amendment. Article 139 of UNCLOS establishes a Contractor's liability for all damage.

Generally, we find that the draft regulations continue to be vague and incomplete on contractor liability and who is liable for unpermitted damage – including critical issues like who can sue whom in the event of damage, on what grounds, for what types of damage, who adjudicates this, and what remedies are available to them. While insurance requirements and the Environmental Compensation Fund are referenced in the Regulations, the rules are not cohesive and fail to offer an integrated vision of how liability will be attributed and met. We would urge the Council to give this matter deeper focused attention as a cross-cutting issue.

For further information on this topic we recommend the *June 2019 submission by the African Group* and a paper prepared by a Legal Liability Working Group set up by the ISA Secretariat, the Commonwealth Secretariat and the Centre for International Governance Innovation: *Mackenzie, R (2019) 'Liability for Environmental Harm from Deep Seabed Mining Activities: Defining Environmental Damage'*

Section 8
Force Majeure

8.1 The Contractor shall not be liable for an unavoidable delay or failure to perform any of its obligations 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 Contract, 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.

8.2 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 written notice to the Authority of the Restoration of normal conditions.

8.3 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.

This **clause 8** should be re-visited to check for consistency, once the text of the regulations (and particularly DRs 28 and 29) have been settled. It may be preferable in fact to delete clause 8 and to ensure that *force majeure* issues are fully dealt with in the Regulations instead. There is otherwise a risk of overlap, and inconsistency, between the requirements placed on Contractors in the Regulations and in the Contract.

We already have concerns with consistency, as drafted. For example, DR29 gives the LTC and the Council the power to determine whether or not the force majeure reason provided is reasonable, and then to decide whether to permit a suspension or reduction of activities, whereas DR28 (and clause 8) appears to leave this entirely to the Contractor's own discretion. The notification processes required by clause 8 differ from those of DR28 and DR29. Section 8.3 also envisages an extension to the contract term in force majeure circumstances (without referring to the procedure by which this would be obtained), which is not envisaged in DRs 28 or 29. Indeed the Regulations' provisions for contract term renewal (DR20) do not cross-refer to Section 8 of Annex X, nor address directly a force majeure situation. DR20 also imposes a specific limit on a time extension that may be granted, which does not appear consistent with section 8.3 either.

It seems that the Council needs to give this more consideration, both to identify what the substantive policy objective is, and then to incorporate that in an accurate and integrated manner throughout the regulations.

Section 9
Extension~~Renewal~~

9.1 The Contractor may extent~~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.~~

We support these changes as the provision previously overlapped and conflicted with DR20. It would be more accurate however to use the following formulation "*The Contractor may apply to extend...*" as DR20 enables an application, but does not guarantee an extension nor leave it to the Contractor's discretion (as may be implied from '*The Contractor may extend... ')*

Section 10
Renunciation of rights

10.1 The Contractor, by prior written notice to the Authority, may 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, and obligations under the Environmental Management and Monitoring Plan and Closure Plan.

Section 11
Termination of sponsorship

[Omitted]

We agree with this omission. 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, so duplicating them here is not necessary.

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:

(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, within a reasonable period, to comply with a final binding decision of the dispute settlement body applicable to it;

(c) If the Contractor knowingly, recklessly or negligently provides the Authority with information that is false or misleading;

(d) If the Contractor or any person standing as surety or financial guarantor to the Contractor pursuant to Regulation 26 of the Regulations 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; or

(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.

12.2 The Council may, without prejudice to Section 8, 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 8, which has persisted for a continuous period exceeding 2 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.

12.3 Any suspension or termination shall be by written notice to the Contractor, 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 written 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 such a 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.

[12.4 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.]

12.5 If the Council has suspended this Contract, the Council may by written 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 written notice.

12.6 In the case of any violation of this Contract not covered under Section 12.1 (a), or in lieu of suspension or termination under Section 12, the Council may impose upon the Contractor monetary penalties proportionate to the seriousness of the violation.

12.7 Subject to Section 13, the Contractor shall cease operations upon the termination of this Contract.

12.8 Termination of this Contract for any reason (including the passage of time), in whole or in part, shall be without prejudice to rights and obligations expressed in this Contract to survive termination, or to rights and obligations accrued thereunder prior to termination, including performance under a Closure Plan, and all provisions of this Contract reasonably necessary for the full enjoyment and enforcement of those rights and obligations shall survive termination for the period so necessary.

Clause 12 is problematic, as it conflicts with the body of the regulations. Suspension arises in different scenarios throughout the Regulations (e.g. DRs 4(10), 21, 28, 29, 80, 99, 103), (though the terminology about what is suspended varies e.g. suspension of 'operations', 'activities', 'production', 'contract' - which we suggest should be addressed and harmonised). DRs 18 ter. and 103 cover termination. Clause 12 does not appear to reflect accurately the circumstances in which suspension and/or termination can be triggered according to these regulations. We note as well that the regulations remain in flux with numerous proposals to be discussed. There is consequently inconsistency between the regulations and clause 12, which will only increase with further adoption of pending amendments. This conflict exists for both process (decision-making criteria and procedure) as well as for substance (e.g. triggers for suspension or termination by the Council). In some cases Annex X sets terms that the Council does not have the necessary powers in the regulations to give effect to.

It is not clear to us why the same points would need to be covered in both Regulations and individual contracts. Instead we suggest that points covered under DRs 18ter, 29bis and 103 should be cross-referred here, and any additional triggers included in Section 12 currently should be relocated to the Regulations (e.g. in DR103).

Section 13

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

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

(a) Comply with the F~~f~~inal Closure Plan, and the Environmental Management and Monitoring Plan and continue to perform the required environmental management of the Contract Area as set forth in the F~~f~~inal Closure Plan and for the period established in the F~~f~~inal Closure Plan;

(b) Continue to comply with relevant provisions of the regulations, including:

(i) Maintaining and keeping in place all insurance required under the regulations;

(ii) Paying 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) (iii) Complying with any obligation to meet any liability under Section 8;

(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 result in adverse impacts, or a reasonable likelihood of such impacts, to] the Marine Environment.

13.2 Where the Contractor fails to undertake the obligations listed in Section 13.1 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 Environmental Performance Guarantee held by the Authority.

13.3 Upon termination of this Contract, any rights of the Contractor under the Plan of Work and in respect of the Contract Area also terminate.

Similar to Section 12 (and our general comment at the beginning of Annex X), it would seem to us that these clauses would be better left to the Regulations, especially since they seek to apply after a contract has terminated or expired, so including them in that contract would appear to lack legal force.

Section 14
Transfer of rights and obligations

[Omitted]

We agree with this omission as the general contract clause that requires compliance with the regulations is sufficient to capture the relevant points regarding a transfer of rights.

Section 15

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 16
Modification of terms and conditions of this Contract

16.1 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.

16.2 This Contract may be revised by agreement between the Contractor and the Authority.

16.3 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.

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

This clause 16 is another provision that needs to be aligned to check for consistency and to avoid conflict with the Regulations, specifically DR57 (Modification of a Plan of Work).

It is unclear to us whether clause 16.1 seeks to restrict the circumstances in which modification to a contract can occur (i.e. where it becomes 'inequitable, impracticable or impossible'). If so, this is incompatible with the Regulations, which include different scenarios in which a Plan of Work (which is part of the Contract) can or even must be amended e.g. the Mining Workplan may need to be amended upon receipt of the Feasibility Study, the Closure Plan may need to be amended nearer the end of the production period, any part of the Plan of Work may be modified after the prescribed performance review processes under DR58, or in light of new information, or in light of new Standards etc. Some Plans even include requirements for regular review and update within them e.g. the Health and Safety Plan and the Maritime Security Plan.

Section 17
Applicable law

17.1 This Contract is governed by the terms of this Contract, the r~~R~~ules, regulations and procedures of the Authority and other rules of international law not incompatible with the Convention.

17.2 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 17.1 hereof and shall not engage in any transaction, directly or indirectly, prohibited by the applicable law.

17.3 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.

17.4 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 18
Disputes

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

Section 19
Notice

Any notice provided to or from one party to another pursuant to this Contract shall be provided in accordance with the notice provision set out at Regulation 91 of the Regulations.

Section 20
Schedules

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