



# REGULATIONS ON PROSPECTING AND EXPLORATION FOR POLYMETALLIC NODULES IN THE AREA

## Preamble

In accordance with the United Nations Convention on the Law of the Sea (“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, 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 first set of Regulations is to provide for prospecting and exploration for polymetallic nodules.

## PART I - INTRODUCTION

### 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 United Nations Convention on the Law of the Sea of 10 December 1982 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:
  - (a) “exploitation” means the recovery for commercial purposes of polymetallic nodules 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;
  - (b) “exploration” means searching for deposits of polymetallic nodules in the Area with exclusive rights, the analysis of such deposits, the testing of collecting 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 must be taken into account in exploitation;
  - (c) “marine environment” includes the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof;
  - (d) “polymetallic nodules” means one of the resources of the Area consisting of any deposit or accretion of nodules, on or just below the surface of the deep seabed, which contain manganese, nickel, cobalt and copper;

(e) "prospecting" means the search for deposits of polymetallic nodules in the Area, including estimation of the composition, sizes and distributions of polymetallic nodule deposits and their economic values, without any exclusive rights;

(f) "serious harm to the marine environment" means any effect from activities in the Area on the marine environment which represents a significant adverse change in the marine environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices.

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. These Regulations shall be subject to the provisions of the Convention and the Agreement and other rules of international law not incompatible with the Convention.

## PART II - PROSPECTING

### Regulation 2

#### Prospecting

1. Prospecting shall be conducted in accordance with the Convention and these Regulations and may commence only after the prospector has been informed by the Secretary-General that its notification has been recorded pursuant to regulation 4, paragraph 2.

2. Prospecting shall not be undertaken if substantial evidence indicates the risk of serious harm to the marine environment.

3. Prospecting shall not be undertaken in an area covered by an approved plan of work for exploration for polymetallic nodules or in a reserved area; nor may there be prospecting in an area which the Council has disapproved for exploitation because of the risk of serious harm to the marine environment.

4. Prospecting shall not confer on the prospector any rights with respect to resources. A prospector may, however, recover a reasonable quantity of minerals, being the quantity necessary for testing, and not for commercial use.

5. There shall be no time limit on prospecting except that prospecting in a particular area shall cease upon written notification to the prospector by the Secretary-General that a plan of work for exploration has been approved with regard to that area.

6. Prospecting may be conducted simultaneously by more than one prospector in the same area or areas.

### Regulation 3

#### Notification of prospecting

1. A proposed prospector shall notify the Authority of its intention to engage in prospecting.

2. Each notification of prospecting shall be in the form prescribed in Annex 1 to these Regulations, addressed to the Secretary-General, and shall conform to the requirements of these Regulations.

3. Each notification shall be submitted:

- (a) in the case of a State, by the authority designated for that purpose by it;
- (b) in the case of an entity, by its designated representative; and
- (c) in the case of the Enterprise, by its competent authority.

4. Each notification shall be in one of the languages of the Authority and shall contain:

- (a) the name, nationality and address of the proposed prospector and its designated representative;
- (b) the coordinates of the broad area or areas within which prospecting is to be conducted, in accordance with the most recent generally accepted international standard used by the Authority;
- (c) a general description of the prospecting programme, including the proposed date of commencement and its approximate duration;
- (d) a satisfactory written undertaking that the proposed prospector will:
  - (i) comply with the Convention and the relevant rules, regulations and procedures of the Authority concerning:
    - a. cooperation in the training programmes in connection with marine scientific research and transfer of technology referred to in articles 143 and 144 of the Convention; and
    - b. protection and preservation of the marine environment; and
  - (ii) accept verification by the Authority of compliance therewith.

#### Regulation 4

##### Consideration of notifications

1. The Secretary-General shall acknowledge in writing receipt of each notification submitted under regulation 3, specifying the date of receipt.

2. The Secretary-General shall review and act on the notification within 45 days of its receipt. If the notification conforms with the requirements of the Convention and these Regulations, the Secretary-General shall record the particulars of the notification in a register maintained for that purpose and shall inform the prospector in writing that the notification has been so recorded.

3. The Secretary-General shall, within 45 days of receipt of the notification, inform the proposed prospector in writing if the notification includes any part of an area included in an approved plan of work for exploration or exploitation of any category of resources, or any part of a reserved area, or any part of an area which has been disapproved by the Council for exploitation because of the risk of serious harm to the marine environment, or if the written undertaking is not satisfactory, and shall provide the proposed prospector with a written statement of reasons. In such cases, the proposed prospector may, within 90 days, submit an amended notification. The Secretary-General shall, within 45 days, review and act upon such amended notification.

4. A prospector shall inform the Secretary-General in writing of any change in the information contained in the notification.

5. The Secretary-General shall not release any particulars contained in the notification except with the written consent of the prospector. The Secretary-General shall, however, from time to time inform all members of the Authority of the identity of prospectors and the general areas in which prospecting is being conducted.

#### Regulation 5

##### Annual report

1. A prospector shall, within 90 days of the end of each calendar year, submit a report to the Authority on the status of prospecting. Such reports shall be submitted by the Secretary-General to the Legal and Technical Commission. Each such report shall contain:

- (a) a general description of the status of prospecting and of the results obtained; and
- (b) information on compliance with the undertakings referred to in regulation 3, paragraph (4)(d).

2. If the prospector intends to claim expenditures for prospecting as part of the development costs incurred prior to the commencement of commercial production, the prospector shall submit an annual statement, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct expenditures incurred by the prospector in carrying out prospecting.

#### Regulation 6

##### Confidentiality of data and information from prospecting contained in the annual report

1. The Secretary-General shall ensure the confidentiality of all data and information contained in the reports submitted under regulation 5 in accordance with the provisions of regulations 35 and 36.

2. The Secretary-General may, at any time, with the consent of the prospector concerned, release data and information relating to prospecting in an area in respect of which a notification has been submitted. If the Secretary-General determines that the prospector no longer exists or cannot be located, the Secretary-General may release such data and information.

#### Regulation 7

##### Notification of incidents causing serious harm to the marine environment

A prospector shall immediately notify the Secretary-General in writing, using the most effective means, of any incident arising from prospecting which causes serious harm to the marine environment. Upon receipt of such notification the Secretary-General shall act in a manner consistent with regulation 32.

#### Regulation 8

##### Objects of an archaeological or historical nature

A prospector shall immediately notify the Secretary-General in writing of any finding in the Area of an object of an archaeological or historical nature and its location. The Secretary-General shall transmit

such information to the Director-General of the United Nations Educational, Scientific and Cultural Organization.

### PART III - APPLICATIONS FOR APPROVAL OF PLANS OF WORK FOR EXPLORATION IN THE FORM OF CONTRACTS

#### SECTION 1. GENERAL PROVISIONS

##### Regulation 9

##### General

Subject to the provisions of the Convention, the following may apply to the Authority for approval of plans of work for exploration:

- (a) the Enterprise, 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 Parties 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.<sup>1</sup>

#### SECTION 2. CONTENT OF APPLICATIONS

##### Regulation 10

##### Form of applications

1. Each application for approval of a plan of work for exploration shall be in the form prescribed in Annex 2 to these Regulations, shall be addressed to the Secretary-General, and shall conform to the requirements of these Regulations.<sup>2</sup>
2. Each application shall be submitted:
  - (a) in the case of a State Party, by the authority designated for that purpose by it;
  - (b) in the case of an entity, by its 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.

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<sup>1</sup> A request by a registered pioneer investor for approval of a plan of work for exploration under paragraph 6(a)(ii) of section 1 of the annex to the Agreement shall be submitted within 36 months of the entry into force of the Convention.

<sup>2</sup> A request by a registered pioneer investor for approval of a plan of work for exploration under paragraph 6(a)(ii) of section 1 of the annex to the Agreement shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfilment of obligations under the registered pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a). The registered pioneer investor shall, where such information has not already been provided, update the information, using, as far as possible, the provisions of regulation 18 as a guide, and submit its programme of activities for the immediate future, including a general assessment of the potential environmental impacts of the proposed activities.

3. Each application by a state enterprise or one of the entities referred to in subparagraph (b) of regulation 9 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 required information in respect of each member of the partnership or consortium.

### Regulation 11

#### Certificate of sponsorship

1. Each application by a state enterprise or one of the entities referred to in subparagraph (b) of regulation 9 shall be accompanied by a certificate of sponsorship issued by the State of which it is a national or by which or by whose nationals it is effectively controlled.<sup>3</sup> 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 the applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State involved shall issue a certificate of sponsorship.

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 article 139, article 153, paragraph 4, and Annex III, article 4, paragraph 4, of the Convention.

4. States or entities in a joint arrangement with the Enterprise shall also comply with this regulation.

### Regulation 12

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<sup>3</sup> In the case of a request by a registered pioneer investor for approval of a plan of work for exploration, the certifying State or States at the time of registration or their successors shall be deemed to be the sponsoring State or States provided such State or States are States Parties to the Convention or are provisional members of the Authority at the time of the request.

### Financial and technical capabilities

1. Each application for approval of a plan of work for exploration shall contain specific and sufficient information to enable the Council to determine whether the applicant is financially and technically capable of carrying out the proposed plan of work for exploration and of fulfilling its financial obligations to the Authority.<sup>4</sup>
2. An application for approval of a plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1(a)(ii) or (iii), other than a registered pioneer investor, which has already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work for exploration if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US\$ 30 million in research and exploration activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of the area referred to in the plan of work for exploration.
3. An application for approval of a plan of work for exploration by the Enterprise shall include a statement by its competent authority certifying that the Enterprise has the necessary financial resources to meet the estimated costs of the proposed plan of work for exploration.
4. An application for approval of a plan of work for exploration by a State or a state enterprise, other than a registered pioneer investor or an entity referred to in resolution II, paragraph 1(a)(ii) or (iii), shall include 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 for exploration.
5. An application for approval of a plan of work for exploration by an entity, other than a registered pioneer investor or an entity referred to in resolution II, paragraph 1(a)(ii) or (iii), shall include copies of its audited financial statements, including balance sheets and profit-and-loss statements, for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants; and
  - (a) if the applicant is a newly organised entity and a certified balance sheet is not available, a pro forma balance sheet certified by an appropriate official of the applicant;
  - (b) 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 internationally accepted accounting principles 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 for exploration;
  - (c) 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 for exploration.
6. Where an applicant referred to in paragraph 5 intends to finance the proposed plan of work for exploration by borrowings, its application shall include the amount of such borrowings, the repayment period and the interest rate.
7. Except as provided for in paragraph 2, all applications shall include:
  - (a) a general description of the applicant's previous experience, knowledge, skills, technical qualifications and expertise relevant to the proposed plan of work for exploration;

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<sup>4</sup> A registered pioneer investor requesting approval of a plan of work for exploration under paragraph 6(a)(ii) of section 1 of the annex to the Agreement shall be considered to have satisfied the financial and technical qualifications necessary for approval of a plan of work.

(b) a general description of the equipment and methods expected to be used in carrying out the proposed plan of work for exploration and other relevant non-proprietary information about the characteristics of such technology; and

(c) a general description of the applicant's financial and technical capability to respond to any incident or activity which causes serious harm to the marine environment.

8. Where the applicant is a partnership or consortium of entities in a joint arrangement, each member of the partnership or consortium shall provide the information required by this regulation.

### Regulation 13

#### Previous contracts with the Authority

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.

### Regulation 14

#### Undertakings

Each applicant, including the Enterprise, shall, as part of its application for approval of a plan of work for exploration, 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 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; and
- (c) provide the Authority with a written assurance that its obligations under the contract will be fulfilled in good faith.<sup>5</sup>

### Regulation 15

#### Total area covered by the application

Each application for approval of a plan of work for exploration shall define the boundaries of the area under application by a list of coordinates in accordance with the most recent generally accepted international standard used by the Authority. Applications other than those under regulation 17 shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations. The applicant shall indicate the coordinates

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<sup>5</sup> Such undertaking shall also be provided by a registered pioneer investor requesting approval of a plan of work for exploration under paragraph 6(a)(ii) of section 1 of the annex to the Agreement.



dividing the area into two parts of equal estimated commercial value. The area to be allocated to the applicant shall be subject to the provisions of regulation 25.

#### Regulation 16

##### Data and information to be submitted before the designation of a reserved area

1. Each application shall contain sufficient data and information, as prescribed in Section II of Annex 2 to these Regulations, with respect to the area under application to enable the Council, on the recommendation of the Legal and Technical Commission, to designate a reserved area based on the estimated commercial value of each part. Such data and information shall consist of data available to the applicant with respect to both parts of the area under application, including the data used to determine their commercial value.
2. The Council, on the basis of the data and information submitted by the applicant pursuant to Section II of Annex 2 to these Regulations, if found satisfactory, and taking into account the recommendation of the Legal and Technical Commission, shall designate the part of the area under application which is to be a reserved area. The area so designated shall become a reserved area as soon as the plan of work for exploration for the non-reserved area is approved and the contract is signed. If the Council determines that additional information, consistent with these Regulations and Annex 2, is needed to designate the reserved area, it shall refer the matter back to the Commission for further consideration, specifying the additional information required.
3. Once the plan of work for exploration is approved and a contract has been issued, the data and information transferred to the Authority by the applicant in respect of the reserved area may be disclosed by the Authority in accordance with article 14, paragraph 3, of Annex III to the Convention.

#### Regulation 17

##### Applications for approval of plans of work with respect to a reserved area

1. Any State which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by any other developing State, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work for exploration with respect to a reserved area. The Secretary-General shall forward such notification to the Enterprise, which shall inform the Secretary-General in writing within six months whether or not it intends to carry out activities in that area. If the Enterprise intends to carry out activities in that area, it shall, pursuant to paragraph 4, also inform in writing the contractor whose application for approval of a plan of work for exploration originally included that area.
2. An application for approval of a plan of work for exploration in respect of a reserved area may be submitted at any time after such an area becomes available following a decision by the Enterprise that it does not intend to carry out activities in that area or where the Enterprise has not, within six months of the notification by the Secretary-General, either taken a decision on whether it intends to carry out activities in that area or notified the Secretary-General in writing that it is engaged in discussions regarding a potential joint venture. In the latter instance, the Enterprise shall have one year from the date of such notification in which to decide whether to conduct activities in that area.
3. If the Enterprise or a developing State or one of the entities referred to in paragraph 1 does not submit an application for approval of a plan of work for exploration for activities in a reserved area within 15 years of the commencement by the Enterprise of its functions independent of the Secretariat of the Authority or within 15 years of the date on which that area is reserved for the Authority, whichever is the later, the contractor whose application for approval of a plan of work for exploration originally included that area shall be entitled to apply for a plan of work for exploration for that area provided it offers in good faith to include the Enterprise as a joint-venture partner.

4. A contractor has the right of first refusal to enter into a joint venture arrangement with the Enterprise for exploration of the area which was included in its application for approval of a plan of work for exploration and which was designated by the Council as a reserved area.

### Regulation 18

#### Data and information to be submitted for approval of the plan of work for exploration<sup>6</sup>

After the Council has designated the reserved area, the applicant, if it has not already done so, shall submit, with a view to receiving approval of the plan of work for exploration in the form of a contract, the following information:

(a) a general description and a schedule of the proposed exploration programme, including the programme of activities for the immediate five-year period, such as studies to be undertaken in respect of the environmental, technical, economic and other appropriate factors that must be taken into account in exploration;

(b) a description of the programme for oceanographic and environmental baseline studies in accordance with these Regulations and any environmental rules, regulations and procedures established by the Authority that would enable an assessment of the potential environmental impact of the proposed exploration activities, taking into account any recommendations issued by the Legal and Technical Commission;

(c) a preliminary assessment of the possible impact of the proposed exploration activities on the marine environment;

(d) a description of proposed measures for the prevention, reduction and control of pollution and other hazards, as well as possible impacts, to the marine environment;

(e) data necessary for the Council to make the determination it is required to make in accordance with regulation 12, paragraph 1; and

(f) a schedule of anticipated yearly expenditures in respect of the programme of activities for the immediate five-year period.

## SECTION 3. FEES

### Regulation 19

#### Fee for applications

1. The fee for processing applications for approval of a plan of work for exploration shall be US\$ 250,000 or its equivalent in a freely convertible currency. The fee shall be paid to the Authority by the applicant at the time of submitting an application.<sup>7</sup>

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<sup>6</sup> In the case of a request by a registered pioneer investor for approval of a plan of work for exploration under paragraph 6(a)(ii) of section 1 of the annex to the Agreement, this Regulation shall be implemented in the light of regulation 10.

<sup>7</sup> In the case of a registered pioneer investor requesting approval for a plan of work for exploration under paragraph 6(a)(ii) of section 1 of the annex to the Agreement, the fee of US\$ 250,000 paid pursuant to resolution II, paragraph 7(a), shall be deemed to be the fee referred to under paragraph 1 relating to the exploration phase.

2. The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative costs incurred by the Authority in processing the application.
3. If the administrative costs incurred by the Authority in processing the application are less than the fixed amount, the Authority shall refund the difference to the applicant.

## SECTION 4. PROCESSING OF APPLICATIONS

### Regulation 20

#### Receipt, acknowledgement and safe custody of applications

1. The Secretary-General shall:
  - (a) acknowledge in writing receipt of every application for approval of a plan of work for exploration 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 the receipt of such application and circulate to them information of a general nature which is not confidential regarding the application.

### Regulation 21

#### Consideration by the Legal and Technical Commission<sup>8</sup>

1. Upon receipt of an application for approval of a plan of work for exploration, the Secretary-General shall notify the members of the Legal and Technical Commission and place consideration of the application as an item on the agenda for the next meeting of the Commission.
2. The Commission shall examine applications in the order in which they are received.
3. The Commission shall determine if the applicant:

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<sup>8</sup> In the case of a request by a registered pioneer investor for approval of a plan of work for exploration under paragraph 6(a)(ii) of section 1 of the annex to the Agreement, the Secretary-General shall ascertain whether:

- (a) the documents, reports and other data submitted to the Preparatory Commission both before and after registration are available;
- (b) the certificate of compliance, consisting of a factual report describing the status of fulfilment of obligations under the registered pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a), has been produced;
- (c) the registered pioneer investor has updated the information provided in the documents, reports and other data submitted to the Preparatory Commission both before and after registration and has submitted its programme of activities for the immediate future, including a general assessment of the potential environmental impacts of the proposed activities; and
- (d) the registered pioneer investor has given the undertakings and assurances specified in regulation 14.

If the Secretary-General informs the Commission that the provisions of (a), (b), (c) and (d) have been satisfied by a registered pioneer investor, the Commission shall recommend approval of the plan of work.

- (a) has complied with the provisions of these Regulations;
- (b) has given the undertakings and assurances specified in regulation 14;
- (c) possesses the financial and technical capability to carry out the proposed plan of work for exploration; and
- (d) has satisfactorily discharged its obligations in relation to any previous contract with the Authority.

4. The Commission shall, in accordance with the requirements set forth in these Regulations and its procedures, determine whether the proposed plan of work for exploration will:

- (a) provide for effective protection of human health and safety;
- (b) provide for effective protection and preservation of the marine environment;
- (c) ensure that installations are not established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity.

5. If the Commission makes the determinations specified in paragraph 3 and determines that the proposed plan of work for exploration meets the requirements of paragraph 4, the Commission shall recommend approval of the plan of work for exploration to the Council.

6. The Commission shall not recommend approval of the plan of work for exploration if part or all of the area covered by the proposed plan of work for exploration is included in:

- (a) a plan of work for exploration approved by the Council for polymetallic nodules; or
- (b) a plan of work approved by the Council for exploration for or exploitation of other resources if such proposed plan of work for exploration for polymetallic nodules might cause undue interference with activities under such an approved plan of work for such other resources; or
- (c) an area disapproved for exploitation by the Council in cases where substantial evidence indicates the risk of serious harm to the marine environment; or
- (d) if the proposed plan of work for exploration has been submitted or sponsored by a State that already holds:
  - (i) plans of work for exploration and exploitation or exploitation only in non-reserved areas that, together with either part of the area covered by the application, exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;
  - (ii) plans of work for exploration and exploitation or exploitation only in non-reserved areas which, taken together, constitute 2 per cent of that part of the Area which is not reserved or disapproved for exploitation pursuant to article 162, paragraph (2)(x), of the Convention.

7. Except in the case of applications by the Enterprise, on its own behalf or in a joint venture, and applications under regulation 17, the Commission shall not recommend approval of the plan of work for exploration if part or all of the area covered by the proposed plan of work for exploration is included in a reserved area or an area designated by the Council to be a reserved area.

8. If the Commission finds that an application does not comply with these Regulations, it shall notify the applicant in writing, through the Secretary-General, indicating the reasons. The applicant may, within 45 days of such notification, amend its application. If the Commission after further consideration is of the view that it should not recommend approval of the plan of work for exploration, it shall so inform the applicant and provide the applicant with a further opportunity to make representations within 30 days of such information. The Commission shall consider any such representations made by the applicant in preparing its report and recommendation to the Council.

9. In considering a proposed plan of work for exploration, the Commission shall have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI and Annex III of the Convention and the Agreement.

10. The Commission shall consider applications expeditiously and shall submit its report and recommendations to the Council on the designation of the areas and on the plan of work for exploration at the first possible opportunity, taking into account the schedule of meetings of the Authority.

11. In discharging its duties, the Commission shall apply these Regulations and the rules, regulations and procedures of the Authority in a uniform and non-discriminatory manner.

#### Regulation 22

##### Consideration and approval of plans of work for exploration by the Council<sup>9</sup>

The Council shall consider the reports and recommendations of the Commission relating to approval of plans of work for exploration in accordance with paragraphs 11 and 12 of section 3 of the annex to the Agreement.

### PART IV - CONTRACTS FOR EXPLORATION

#### Regulation 23

##### The contract

1. After a plan of work for exploration has been approved by the Council, it shall be prepared in the form of a contract between the Authority and the applicant as prescribed in Annex 3 to these Regulations. Each contract shall incorporate the standard clauses set out in Annex 4 in effect at the date of entry into force of the contract.

2. The 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. In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in paragraph 6(a)(i) of section 1 of the annex to the Agreement shall include arrangements that shall be similar to and no less favourable than those agreed with any registered pioneer investor. If any of the States or entities or any components of such entities referred to in paragraph 6(a)(i) of section 1 of the annex to the Agreement are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the

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<sup>9</sup> In the case of a request by a registered pioneer investor for approval of a plan of work for exploration under paragraph 6(a)(ii) of section 1 of the Agreement, once the Commission recommends approval of the plan of work and submits its recommendation to the Council, the plan of work shall be considered approved by the Council in accordance with paragraph 6(a)(ii) of section 1 of the annex to the Agreement.

rights and obligations assumed by the registered pioneer investors provided that such arrangements do not affect or prejudice the interests of the Authority.

#### Regulation 24

##### Rights of the contractor

1. The contractor shall have the exclusive right to explore an area covered by a plan of work for exploration in respect of polymetallic nodules. The Authority shall ensure that no other entity operates in the same area for resources other than polymetallic nodules in a manner that might interfere with the operations of the contractor.
2. A contractor who has an approved plan of work for exploration only shall have a preference and a priority among applicants submitting plans of work for exploitation of the same area and resources. Such preference or priority may be withdrawn by the Council if the contractor has failed to comply with the requirements of its approved plan of work for exploration within the time period specified in a written notice or notices from the Council to the contractor indicating which requirements have not been complied with by the contractor. The time period specified in any such notice shall not be unreasonable. The contractor shall be accorded a reasonable opportunity to be heard before the withdrawal of such preference or priority becomes final. The Council shall provide the reasons for its proposed withdrawal of preference or priority and shall consider any contractor's response. The decision of the Council shall take account of that response and shall be based on substantial evidence.
3. A withdrawal of preference or priority shall not become effective 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.

#### Regulation 25

##### Size of area and relinquishment

1. The total area allocated to the contractor under the contract shall not exceed 150,000 square kilometres. The contractor shall relinquish portions of the area allocated to it to revert to the Area, in accordance with the following schedule:
  - (a) 20 per cent of the area allocated by the end of the third year from the date of the contract;
  - (b) an additional 10 per cent of the area allocated by the end of the fifth year from the date of the contract; and
  - (c) an additional 20 per cent of the area allocated or such larger amount as would exceed the exploitation area decided upon by the Authority, after eight years from the date of the contract,provided that a contractor shall not be required to relinquish any portion of such area when the total area allocated to it does not exceed 75,000 square kilometres.
2. In the case of a registered pioneer investor, the contract shall take into account the schedule of relinquishment, where applicable, in accordance with the terms of its registration as a registered pioneer investor.
3. The Council may, at the request of the contractor, and on the recommendation of the Commission, in exceptional circumstances, defer the schedule of relinquishment. Such exceptional circumstances shall be determined by the Council and shall include, inter alia, consideration of prevailing economic circumstances or other unforeseen exceptional circumstances arising in connection with the operational activities of the Contractor.

## Regulation 26

### Duration of contracts

1. A plan of work for exploration shall be approved for a period of 15 years. Upon expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so, has obtained an extension for the plan of work for exploration or decides to renounce its rights in the area covered by the plan of work for exploration.
2. Not later than six months before the expiration of a plan of work for exploration, a contractor may apply for extensions for the plan of work for exploration for periods of not more than five years each. Such extensions shall be approved by the Council, on the recommendation of the Commission, if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

## Regulation 27

### Training

1. Pursuant to article 15 of Annex III to the Convention, each contract shall include as a schedule a practical programme for the training of personnel of the Authority and developing States and drawn up by the contractor in cooperation with the Authority and the sponsoring State or States. Training programmes shall focus on training in the conduct of exploration, and shall provide for full participation by such personnel in all activities covered by the contract. Such training programmes may be revised and developed from time to time as necessary by mutual agreement.
2. In the case of a registered pioneer investor, the contract shall take into account the training provided in accordance with the terms of its registration as a registered pioneer investor.

## Regulation 28

### Periodic review of the implementation of the plan of work for exploration

1. The contractor and the Secretary-General shall jointly undertake a periodic review of the implementation of the plan of work for exploration at intervals of five years. The Secretary-General may request the contractor to submit such additional data and information as may be necessary for the purposes of the review.
2. In the light of the review, the contractor shall indicate its programme of activities for the following five-year period, making such adjustments to its previous programme of activities as are necessary.
3. The Secretary-General shall report on the review to the Commission and to the Council. The Secretary-General shall indicate in the report whether any observations transmitted to him by States Parties to the Convention concerning the manner in which the contractor has discharged its obligations under these Regulations relating to the protection and preservation of the marine environment were taken into account in the review.

## Regulation 29

### Termination of sponsorship

1. Each contractor shall have the required sponsorship throughout the period of the 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 six 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 11. Failure to obtain a sponsor within the required period shall result in the termination of the 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.

### Regulation 30

#### Responsibility and liability

Responsibility and liability of the contractor and of the Authority shall be in accordance with the Convention. The contractor shall continue to have responsibility for any damage arising out of wrongful acts in the conduct of its operations, in particular damage to the marine environment, after the completion of the exploration phase.

## PART V - PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

### Regulation 31

#### Protection and preservation of the marine environment

1. The Authority shall, in accordance with the Convention and the Agreement, establish and keep under periodic review environmental rules, regulations and procedures to ensure effective protection for the marine environment from harmful effects which may arise from activities in the Area.

2. In order to ensure effective protection for the marine environment from harmful effects which may arise from activities in the Area, the Authority and sponsoring States shall apply a precautionary approach, as reflected in Principle 15 of the Rio Declaration,<sup>10</sup> to such activities. The Legal and Technical Commission shall make recommendations to the Council on the implementation of this paragraph.

3. Pursuant to article 145 of the Convention and paragraph 2 of this regulation, each contractor shall take necessary measures to prevent, reduce and control pollution and other hazards to the marine environment arising from its activities in the Area as far as reasonably possible using the best technology available to it.

4. Each contract shall require the contractor to gather environmental baseline data and to establish environmental baselines, taking into account any recommendations issued by the Legal and Technical Commission pursuant to regulation 38, against which to assess the likely effects of its programme of

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<sup>10</sup> Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1991 (United Nations publication, Sales No. E.91.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, Annex I.



activities under the plan of work for exploration on the marine environment and a programme to monitor and report on such effects. The recommendations issued by the Commission may, inter alia, list those exploration activities which may be considered to have no potential for causing harmful effects on the marine environment. The contractor shall cooperate with the Authority and the sponsoring State or States in the establishment and implementation of such monitoring programme.

5. The contractor shall report annually in writing to the Secretary-General on the implementation and results of the monitoring programme referred to in paragraph 4 and shall submit data and information, taking into account any recommendations issued by the Commission pursuant to regulation 38. The Secretary-General shall transmit such reports to the Commission for its consideration pursuant to article 165 of the Convention.

6. Contractors, sponsoring States and other interested States or entities shall cooperate with the Authority in the establishment and implementation of programmes for monitoring and evaluating the impacts of deep seabed mining on the marine environment.

7. If the Contractor applies for exploitation rights, it shall propose areas to be set aside and used exclusively as impact reference zones and preservation reference zones. "Impact reference zones" means areas to be used for assessing the effect of each contractor's activities in the Area on the marine environment and which are representative of the environmental characteristics of the Area. "Preservation reference zones" means areas in which no mining shall occur to ensure representative and stable biota of the seabed in order to assess any changes in the flora and fauna of the marine environment.

#### Regulation 32

##### Emergency orders

1. When the Secretary-General has been notified by a contractor or otherwise becomes aware of an incident resulting from or caused by a contractor's activities in the Area that has caused, or is likely to cause, serious harm to the marine environment, the Secretary-General shall issue a general notification of the incident, shall notify in writing the contractor and the sponsoring State or States, and shall report immediately to the Legal and Technical Commission and to the Council. A copy of the report shall be circulated to all members of the Authority, to competent international organizations and to concerned subregional, regional and global organizations and bodies. The Secretary-General shall monitor developments with respect to all such incidents and shall report on them as appropriate to the Commission and to the Council.

2. Pending any action by the Council, the Secretary-General shall take such immediate measures of a temporary nature as are practical and reasonable in the circumstances to prevent, contain and minimize serious harm to the marine environment. Such temporary measures shall remain in effect for no longer than 90 days, or until the Council decides what measures, if any, to take pursuant to paragraph 5 of this regulation, whichever is the earlier.

3. After having received the report of the Secretary-General, the Commission shall determine, based on the evidence provided to it and taking into account the measures already taken by the contractor, which measures are necessary to respond effectively to the incident in order to prevent, contain and minimize the serious harm, and shall make its recommendations to the Council.

4. The Council shall consider the recommendations of the Commission.

5. The Council, taking into account the recommendations of the Commission and any information provided by the Contractor, may issue emergency orders, which may include orders for the suspension or adjustment of operations, as may be reasonably necessary to prevent, contain and minimize serious harm to the marine environment arising out of activities in the Area.

6. If a contractor does not promptly comply with an emergency order to prevent serious harm to the marine environment arising out of its activities in the Area, the Council shall take by itself or through arrangements with others on its behalf, such practical measures as are necessary to prevent, contain and minimize any such serious harm to the marine environment.

7. In order to enable the Council, when necessary, to take immediately the practical measures to prevent, contain and minimize serious harm to the marine environment referred to in paragraph 6, the contractor, prior to the commencement of testing of collecting systems and processing operations, will provide the Council with a guarantee of its financial and technical capability to comply promptly with emergency orders or to assure that the Council can take such emergency measures. If the contractor does not provide the Council with such a guarantee, the sponsoring State or States shall, in response to a request by the Secretary-General and pursuant to articles 139 and 235 of the Convention, take necessary measures to ensure that the contractor provides such a guarantee or shall take measures to ensure that assistance is provided to the Authority in the discharge of its responsibilities under paragraph 6.<sup>11</sup>

### Regulation 33

#### 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 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 32 and, if necessary, shall take immediate measures of a temporary nature as provided for in paragraph 2 of regulation 32.

### Regulation 34

#### Objects of an archaeological or historical nature

The contractor shall immediately notify the Secretary-General in writing of any finding in the exploration area of an object of an archaeological or historical nature and its location. The Secretary-General shall transmit such information to the Director-General of the United Nations Educational, Scientific and Cultural Organization. Following the finding of any such object of an archaeological or historical nature in the exploration area, the contractor shall take all reasonable measures to avoid disturbing such object.

## PART VI - CONFIDENTIALITY

### Regulation 35

#### Proprietary data and information and confidentiality

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<sup>11</sup> See ISBA/6/C/12 (Decision of the Council relating to the regulations on prospecting and exploration for polymetallic nodules in the Area).

1. Data and information submitted or transferred to the Authority or to any person participating in any activity or programme of the Authority pursuant to these Regulations or a contract issued under these Regulations, and designated by the contractor, in consultation with the Secretary-General, as being of a confidential nature, shall be considered confidential unless it is data and information which:

- (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; or
- (c) is already in the possession of the Authority with no obligation concerning its confidentiality.

2. Confidential data and information may only be used by the Secretary-General and staff of the Secretariat, as authorized by the Secretary-General, and by the members of the Legal and Technical Commission as necessary for and relevant to the effective exercise of their powers and functions. The Secretary-General shall authorize access to such data and information only for limited use in connection with the functions and duties of the staff of the Secretariat and the functions and duties of the Legal and Technical Commission.

3. Ten years after the date of submission of confidential data and information to the Authority or the expiration of the contract for exploration, whichever is the later, and every five years thereafter, the Secretary-General and the contractor shall review such data and information to determine whether they should remain confidential. Such data and information shall remain confidential if the contractor establishes that there would be a substantial risk of serious and unfair economic prejudice if the data and information were to be released. No such data and information shall be released 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. If, at any time following the expiration of the contract for exploration, the contractor enters into a contract for exploitation in respect of any part of the exploration area, confidential data and information relating to that part of the area shall remain confidential in accordance with the contract for exploitation.

5. The contractor may at any time waive confidentiality of data and information.

### Regulation 36

#### Procedures to ensure confidentiality

1. The Secretary-General shall be responsible for maintaining the confidentiality of all confidential data and information and shall not, except with the prior written consent of the contractor, release such data and information to any person external to the Authority. To ensure the confidentiality of such data and information, the Secretary-General shall establish procedures, consistent with the provisions of the Convention, governing the handling of confidential information by members of the Secretariat, members of the Legal and Technical Commission and any other person participating in any activity or programme of the Authority. Such procedures shall include:

- (a) maintenance of confidential data and information in secure facilities and development of security procedures to prevent unauthorized access to or removal of such data and information;
- (b) development and maintenance of a classification, log and inventory system of all written data and information received, including its type and source and routing from the time of receipt until final disposition.

2. A person who is authorized pursuant to these Regulations to have access to confidential data and information shall not disclose such data and information except as permitted under the Convention and these Regulations. The Secretary-General shall require any person who is authorized to have access to confidential data and information to make a written declaration witnessed by the Secretary-General or his or her authorized representative to the effect that the person so authorized:

(a) acknowledges his or her legal obligation under the Convention and these Regulations with respect to the non-disclosure of confidential data and information;

(b) agrees to comply with the applicable regulations and procedures established to ensure the confidentiality of such data and information.

3. The Legal and Technical Commission shall protect the confidentiality of confidential data and information submitted to it pursuant to these Regulations or a contract issued under these Regulations. In accordance with the provisions of article 163, paragraph 8, of the Convention, members of the Commission shall not disclose, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with Annex III, article 14, of the Convention, or any other confidential information coming to their knowledge by reason of their duties for the Authority.

4. The Secretary-General and staff of the Authority shall not disclose, even after the termination of their functions with the Authority, any industrial secret, proprietary data which are transferred to the Authority in accordance with Annex III, article 14, of the Convention, or any other confidential information coming to their knowledge by reason of their employment with the Authority.

5. Taking into account the responsibility and liability of the Authority pursuant to Annex III, article 22, of the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any confidential data and information and who is in breach of the obligations relating to confidentiality contained in the Convention and these Regulations.

## PART VII – GENERAL PROCEDURES

### Regulation 37

#### Notice and general procedures

1. Any application, request, notice, report, consent, approval, waiver, direction or instruction hereunder shall be made by the Secretary-General or by the designated representative of the prospector, applicant or contractor, as the case may be, in writing. Service shall be by hand, or by telex, facsimile or registered airmail to the Secretary-General at the headquarters of the Authority or to the designated representative.

2. Delivery by hand shall be effective when made. Delivery by telex shall be deemed to be effective on the business day following the day when the “answer back” appears on the sender’s telex machine. Delivery by facsimile shall be effective when the “transmit confirmation report” confirming the transmission to the recipient’s published facsimile number is received by the transmitter. Delivery by registered airmail shall be deemed to be effective 21 days after posting.

3. Notice to the designated representative of the prospector, applicant or contractor shall constitute effective notice to the prospector, applicant or contractor for all purposes under these Regulations, and the designated representative shall be the agent of the prospector, applicant or contractor for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

4. Notice to the Secretary-General shall constitute effective notice to the Authority for all purposes under these Regulations, and the Secretary-General shall be the Authority's agent for the service of process or notification in any proceeding of any court or tribunal having jurisdiction.

### Regulation 38

#### Recommendations for the guidance of contractors

1. The Legal and Technical Commission may from time to time issue recommendations of a technical or administrative nature for the guidance of contractors to assist them in the implementation of the rules, regulations and procedures 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.

## PART VIII – SETTLEMENT OF DISPUTES

### Regulation 39

#### Disputes

1. Disputes concerning the interpretation or application of these Regulations shall be settled in accordance with Part XI, section 5, of the Convention.
2. 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 each State Party to the Convention.

## PART IX - RESOURCES OTHER THAN POLYMETALLIC NODULES

### Regulation 40

#### Resources other than polymetallic nodules

If a prospector or contractor finds resources in the Area other than polymetallic nodules, the prospecting and exploration for and exploitation of such resources shall be subject to the rules, regulations and procedures of the Authority relating to such resources in accordance with the Convention and the Agreement.