

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 30TH SESSION:
COUNCIL - PARTS I**

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

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

Republic of Nauru

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

Annex X

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

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]]~~ 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]]~~ 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].~~ [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 wrongful 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.~~

Section 9

ExtensionRenewal

ExtensionRenewal

9.1 The Contractor may ~~extentrenew~~ extend ~~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. for periods not more than 10 years each, on the following conditions:~~

~~(a) The resource category is recoverable annually in commercial 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 renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.~~

Section 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: [...]

~~(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

(d bis) If 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, and the Contractor is unable to find a suitable replacement for that person within a reasonable period of time; or

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

The revised text in section 7.1 is too broad and could expose contractors to liability for a range of inappropriate claims that arise from actions that are entirely lawful and allowed under the regulations. We consider that the previous text should be retained which limits liability to “wrongful” or “unlawful” acts.

The indemnity contained in paragraph 7.2 of Annex X is too broad and could expose contractors to liability for a range of inappropriate claims that arise from actions that are entirely lawful and allowed under the regulations. We suggest that such an indemnity be limited to “wrongful” or “unlawful” acts.

The contract is the primary document establishing the legal relationship between a contractor and the Authority and it should clearly specify how it may be renewed. This will improve the certainty and clarity for the contractor and Authority. As such, the previous contents of Section 9 should largely be retained but with the right for the contractor to renew the contract for a maximum period of 10 years.

Section 12.1 of Annex X should be amended to ensure that the contractor is provided an opportunity to find a new surety or guarantor if the initial security provider becomes insolvent.
