

**(c) Written Statement of the Republic of Nauru, with annex:
- Sponsorship Agreement, Nauru Ocean Resources Inc., United Nickel Inc., The Republic of Nauru**

Statement by the Republic of Nauru regarding the questions submitted to the Seabed Disputes Chamber for an advisory opinion on the responsibilities and obligations of States sponsoring entities with respect to activities in the international seabed area

I. Introduction

1. The United Nations Convention on the Law of the Sea ("UNCLOS") sets out the principles under which activities in the Area shall be carried out for the benefit of mankind as a whole.

2. Importantly, activities in the Area shall be carried out "taking into particular consideration the interests and needs of developing States" (Article 140(1)). Furthermore, "the effective participation of developing States in activities in the Area shall be promoted" (Article 148).

3. Drawing on these principles, the Republic of Nauru ("Nauru") has the honour to present the following statement regarding the questions submitted to the Seabed Disputes Chamber by the International Seabed Authority ("ISA") for an advisory opinion.

4. As presented below, to satisfy these aforementioned UNCLOS principles, and to ensure developing States are not precluded from participating in activities in the Area, it is necessary that the responsibilities and obligations of sponsoring States be:

- (a) realistic and attainable, taking into account the special needs of developing States, particularly their financial and technical capacities or lack thereof; and
- (b) interpreted and defined with sufficient clarity to assist developing States determine accurately what their responsibilities are and efficiently allocate the necessary resources to fulfil these obligations.

5. Whilst a mechanism exists through which the ISA can distribute to developing States a portion of the royalties received from future mineral production in the Area, this cannot substitute for the significant benefits a developing State will obtain by carrying out activities in the Area in their own right. These benefits would include: employment; training; capacity building; technology transfer; foreign investment; increased tax revenue; and national self determination. It is for this reason that the architects of UNCLOS established a parallel system under which Reserved Areas were set aside for the conduct of activities by the Enterprise and developing States.

6. Realistically, however, most developing States do not possess the financial and technical capacities to explore and develop deep sea polymetallic nodule resources, a reality evidenced by the fact that until recently no developing State had applied for an exploration contract in the Reserved Area.

7. For most developing States, the only means of participating in and directly benefiting from the activities in the Area is to partner with private sector enterprise and attract foreign investment. Of course, this still presents a challenge as it is not easy to identify entities in the private sector

currently willing to risk significant financial resources to carry out large scale polymetallic nodule exploration and pioneer the first mining operation in an unproven industry. That said, once the first mine can be proven this will help 'de-risk' the industry and encourage other private sector entities to invest in the Area and partner with developing States.

8. Indeed, when the time comes to mine and process polymetallic nodules from the Area it is unlikely that one government or State will develop the resource in isolation. Rather, the majority of contractors (whether from developed or developing States) will most likely engage numerous private sector entities from within and outside their respective national jurisdictions to build and execute the mining and processing operations.

9. Recognising this need to partner with the private sector, Nauru is currently sponsoring an application to the ISA for a polymetallic nodule exploration contract submitted by Nauru Ocean Resources Inc., a Nauruan incorporated entity with access to the finances and technical expertise necessary to explore and develop the polymetallic nodule resource.

10. Nauru is proud to be amongst the first developing States to sponsor such an application to explore for polymetallic nodules in the Reserved Area. However, given this will likely set an exciting precedent it is important that the rules and regulations are understood by all States from the outset, so that those States following this example can clearly identify their obligations and undertake meaningful risk assessments. In this regard, it has become evident that in addition to finding an appropriate private sector partner, developing States currently face another potential hurdle hindering their participation in the Area; the apparent uncertainty surrounding the interpretation and application of the UNCLOS provisions pertaining to sponsoring State responsibility and liability.

11. If a developing State cannot ascertain the precise measures it must take to fulfil its sponsorship responsibilities, or if those responsibilities are beyond its capacities, it would not be prudent for that State to commence activities in the Area.

12. Therefore, for developing States to effectively participate in activities in the Area, it is necessary that their sponsorship responsibilities and obligations be realistic and attainable, and are interpreted and defined with sufficient certainty.

13. Regarding this issue, it is clear that a distinction must be made between the obligations a State has in its sponsorship role under UNCLOS, and the Contractor's obligations which are set out in the Contractor's exploration/exploitation contract with the ISA.

14. It is essential that all Contractors are subject to the same high industry standards and comprehensive obligations to comply with the ISA's rules and regulations, which will in turn promote the protection of the marine environment and the safety of those operating in the Area.

15. However, regarding State sponsorship responsibility, which is a distinct and separate issue, consideration must be given to the Individual States' financial and technical capacities to regulate the activities of Contractors in the international seabed area. While developing States have no

Intention of evading responsibility; the regulatory regime governing the Area should not prejudice these States due to their degree of economic or scientific development.

16. On the contrary, developing States, particularly those least developed and lacking in natural resources, are the very States that are in most need of the benefits that will result from activities in the Area. To promote higher standards of living and conditions of economic progress in these States, the rules and regulations governing the Area, particularly those pertaining to sponsoring State responsibility, must not be interpreted and applied in such a way as to hinder and discourage developing State participation.

II. Specific Comments Regarding Question 1: *What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with the Convention, in particular Part XI, and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982?*

17. A high level issue raised by this question concerns whether the responsibility of sponsoring States under Part XI is limited to those activities that occur on the seafloor, or whether the State is responsible for *all* activities associated with the Contractor's exploration and mining operations in international waters, including offshore processing and ocean ore transportation. If responsibility does extend beyond the seafloor, how does sponsoring State responsibility and liability interact with Flag State responsibility and liability considering that the mining operation will likely involve the use of vessels registered in different Flag States and potentially under the management and control of nationals from other States? Will responsibility for those vessels lie with the sponsoring State, the Flag State or the State whose nationals control the vessel, or will there be joint liability?

18. Furthermore, Article 139(1), Article 153(4) and Annex III Article 4(4) stipulate that the sponsoring State has a responsibility to "ensure" that the Contractor complies with its obligations and that the activities in the Area are carried out in conformity with the Convention. The term "ensure" is commonly defined as to "make certain" or "guarantee", however, in reality it would be almost impossible for a State to absolutely *guarantee* the Contractor's compliance. Therefore, how should that term be interpreted to ensure proper compliance by a sponsoring State?

19. Finally, is there a different compliance threshold between the term "securing compliance" as adopted in Annex III Article 4(4), and the term "secure effective compliance" as adopted in Article 139(2)? Can the same meaning be attributed to both terms or does "secure effective compliance" denote a lower standard of responsibility than "securing compliance"? If these terms require the same compliance threshold, what exactly is required of a developing State attempting to fulfill its responsibility under Part XI? Additionally, how do these two terms operate in relation to the term

'ensure' as referenced above? Can all three terms be used interchangeably or does 'ensure' denote a higher standard of responsibility?

III. Specific Comments Regarding Question 2: *What is the extent of liability of a State Party for any failure to comply with the provisions of the Convention, in particular Part XI, and the 1994 Agreement, by an entity whom it has sponsored under Article 153, paragraph 2 (b), of the Convention?*

20. Article 139(2) states that "damage caused by the failure of a State Party or international organization to carry out its responsibilities under this Part shall entail liability". The State's responsibility is to secure the Contractor's effective compliance with the Convention; however, it seems unlikely that a State's failure to carry out this responsibility would be the actual 'cause' of any damage inflicted by the Contractor (if such damage were to occur). What is the nature of the causal link contemplated by Article 139(2) to impose liability on the sponsoring State? Does the State's failure to carry out its responsibility have to be a *direct* cause of the damage for the State to be liable, or does the failure by the State to ensure overall compliance in and of itself result in liability if damage does occur. Alternatively, is the State only liable if it can be proven that damage would not have resulted "but for" the State's failure to ensure compliance? Furthermore, does the degree of 'causality' affect the extent of State liability?

IV. Specific Comments Regarding Question 3: *What are the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the Convention, in particular Article 139 and Annex III, and the 1994 Agreement?*

21. Article 139(2), Article 153 and Annex III Article 4(4) essentially provide that the sponsoring State can be relieved of liability if it takes certain measures to secure the Contractor's effective compliance. However, whilst referring to this same requirement, each clause adopts different wording in describing the types of measures a State is required to take, including "all necessary and appropriate measures", "all measures necessary" and "measures which are...reasonably appropriate". Do these terms have the same meaning? If so, what is that meaning? If not, which term takes precedence?

22. Furthermore, who determines what appropriate and/or necessary measures are? Can this be determined subjectively by the sponsoring State itself, or is this to be determined by objective standards? If there is an objective test, what factors will be considered when determining whether necessary and appropriate measures have been taken? Should the measures be compliance based measures (for example active monitoring and auditing by the State) or enforcement based measures

(for example enacting legislation prescribing standards to be observed and penalties for breaching such standards), or a mixture of both?

23. The deep sea environment is a highly specialised field and it is unlikely that developing States (particularly landlocked developing States) will have the equivalent technical capacity to regulate deep sea mining as developed States. Therefore, we respectfully submit that it is important not to interpret these provisions in a way that directly or indirectly precludes developing States from participation in the Area. Rather, these provisions should be interpreted in such a way as to promote effective participation of developing States by taking into consideration their specific needs. Consequently, any objective standard or test should nevertheless take into account individual States' capacities.

24. Finally, Annex III Article 4 states that *"A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction."*

25. Does this provision require each sponsoring State to enact national legislation specifically dealing with deep sea mineral exploration and exploitation in the Area? If so, what laws, regulations and administrative measures must a developing State enact and/or implement to fulfil this obligation and avoid liability?

26. Enacting legislation to specifically regulate deep sea mining may prove to be too costly for some States, particularly some landlocked countries and those States that do not have an offshore industry or a mining and resource sector. For these States, specific deep sea mining legislation would have no other uses or applications. Moreover, it is foreseeable that many States may only have one Contractor operating in the Area (as is the situation with the States currently exploring in the Area). Enacting cumbersome legislation that is only going to apply to one entity within the State may not be practical or feasible, and could waste limited government resources. Rather, it is our respectful submission that a project agreement or other contractual arrangement may be a more efficient legal mechanism through which the State can regulate the Contractor's activities and ensure compliance.

27. Therefore, as an alternative to enacting specific legislation, would it be possible for a sponsoring State to satisfy Part XI by entering into a project agreement with the Contractor that is specifically tailored to regulate the Contractor's activities in the Area?

28. To provide an example of the form such an agreement might take, a summary of the sponsorship agreement drafted by Nauru and Nauru Ocean Resources Inc. is provided below, and the text of the draft agreement has been attached to this Statement as Appendix 1.

V. Sponsorship Agreement Summary

29. The Sponsorship Agreement has been specifically drafted to provide the State with the following powers and measures:

- (i) Preventative measures;
- (ii) Regulatory measures;
- (iii) Deterrents (Undertakings and Indemnities);
- (iv) Financial Undertakings, Insurances and Guarantees; and
- (v) Enforcement Measures.

30. It is our respectful submission that these measures could demonstrate that the State has taken "all necessary and appropriate measures" to secure the Contractor's effective compliance under Part XI, and would be a more efficient means of regulating activities in the Area than enacting national legislation. Guidance is sought on whether a Sponsorship Agreement that contains provisions such as those listed below would, in principle, satisfy the States' sponsorship obligations and relieve the State of liability under Part XI if carried out effectively.

Preventative Measures

31. Firstly, it is a condition of the Sponsorship Agreement that the Contractor must obtain approval from the State prior to commencing or carrying out any exploration or exploitation, as the case may be. This approval will only be granted if the Contractor satisfies certain conditions which attempt to verify that the Contractor is in the best position to comply with its international obligations.

32. To enable the State to carry out the required checks and balances and determine whether or not to grant such approval, the Contractor is required to submit all relevant information to the State pertaining to the proposed activities. Such information includes, but is not limited to: the approved Plan of Work and any conditions or limitations that have been imposed by the ISA or other relevant regulatory bodies; a description of the program for oceanographic and environmental studies to be undertaken; copies of all relevant insurance policies and undertakings as to the currency of each policy; a description of proposed measures for the prevention of serious safety incidents, serious pollution incidents and serious harm to the marine environment, and proposed measures for the

reduction and control of other pollution, other harm to the marine environment and other risks to safety at sea; project conformity plans specifying the procedures to predict, avoid, remedy and mitigate risks associated with the activities; and project contingency plans to respond effectively to potentially adverse incidents arising from the activities.

33. The State will assess this information and has the power under the Sponsorship Agreement to withhold approval of the proposed exploration and/or exploitation until it is satisfied that certain conditions have been met including, *inter alia*:

- (i) all relevant insurances required for the exploration and/or exploitation have been effected;
- (ii) an appropriate financial security has been provided;
- (iii) the Contractor has sufficient financial capacity to carry out the Plan of Work and the proposed contingency measures; and
- (iv) the Contractor is able to demonstrate that it has a valid ISA Contract for the activities contemplated in the Plan of Work, and has obtained all necessary authorizations and approvals from the relevant regulatory bodies to carry out said activities.

34. These measures are designed to enable the State to determine whether the Contractor will likely be able to comply with its international obligations. As these measures must be implemented prior to the commencement of any exploration and/or exploitation activities, they provide the State with an effective mechanism to identify and avoid potential risks that would otherwise increase the chances of non-compliance.

Regulatory Measures

35. The Sponsorship Agreement also provides the State with means of monitoring and regulating the activities of the Contractor once exploration and/or exploitation has commenced. These measures will assist the State identify any non-compliance and provide the State with the power to require the Contractor to remedy any such breaches. Importantly, the State is given the power to conduct an auditing program as well as an Environmental and Safety Performance Monitoring Program, the purposes of which are to, *inter alia*:

- (i) Verify the Contractor's compliance with and/or ability to comply with the Contractor's International obligations and the terms of the Sponsorship Agreement;
- (ii) Verify that the appropriate insurance policies are in place;
- (iii) Verify the Contractor's financial information and financial capacity;
- (iv) Verify whether any activities are causing or are likely to cause serious pollution incidents or serious harm to the marine environment;
- (v) Verify whether appropriate measures are being taken to reduce pollution and harm to the marine environment;
- (vi) Verify that only those activities which have been permitted and approved are being carried out;
- (vii) Verify whether the Contractor, the activities, project personnel, vessels, equipment and installations are in compliance with all of the Contractor's international obligations pertaining to safety at sea; and
- (viii) Verify whether the Contractor is protecting third parties' rights to legitimately use and operate in the Ocean in accordance with International Law.

36. To ensure the State can effectively carry out these two programs the Contractor must procure for the State (including any auditors or independent environmental or safety officers representing the State) free access to:

- (i) vessels and installations being used in the activities; and
- (ii) documents, data and equipment relating to the activities.

In addition, the Contractor must provide all reasonable assistance requested by the State to allow its officers or representatives to access, inspect, audit and monitor the relevant activities.

37. If such programs reveal that the Contractor must make changes to better comply with the Sponsorship Agreement or the Contractor's international obligations, the State or its representatives can make a recommendation to that effect, and the Contractor must promptly implement those recommendations to rectify any non-compliance.

38. In addition to these measures the Contractor is under an obligation to notify the State if there has been any non-compliance. Failure to provide such notification will trigger enforcement measures. Moreover, there is a continuing obligation on the Contractor to provide the State with full and timely disclosure of all material information that may impact the Contractor's compliance or

ability to comply (for example, any fact or circumstance or change in circumstances that arises which may prejudice any insurance policy).

39. As a further safeguard, the Contractor is required to submit to the State on a continuous basis a report detailing each aspect of the project and highlighting whether or not the Contractor is in compliance.

Deterrents – Undertakings and Indemnities

40. The Sponsorship Agreement contains onerous provisions imposed on the Contractor that operate to deter the Contractor from breaching its obligations under UNCLOS. These provisions take the form of undertakings as well as indemnities provided to the State, as summarized below.

Undertakings

41. Under the Sponsorship Agreement the Contractor is required to give legally binding undertakings regarding various aspects of the project. Should the Contractor breach any of these undertakings, depending upon the nature of the breach and any remedial action taken by the Contractor, the State has the right to impose monetary penalties as well as invoke enforcement measures including ordering suspension or termination of the activities. The gravity of the enforcement measures will compel the Contractor, in practical terms, to ensure that the undertakings are fulfilled and that the activities are carried out in accordance with its international obligations.

42. For example, the Contractor is firstly required to make a broad undertaking that it will comply with, and all activities carried out will be in compliance with, all of the Contractor's international obligations. The Contractor is then required to provide more specific undertakings including that it will:

- (i) obtain all necessary permits and authorisations and only carry out activities with due care and skill and in a manner that has been approved by the ISA or any applicable International Law;
- (ii) comply with, and all activities will be in compliance with, all of the Contractor's international obligations pertaining to the marine environment, including ensuring that no activities cause any serious harm to the marine environment or serious pollution incidents;

- (iii) comply with, and that all activities, vessels, equipment and installations will be in compliance with, all of the Contractor's international obligations pertaining to safety at sea, and that such vessels, installations and equipment will: have undergone all necessary inspections, surveys, tests and audits and have obtained all necessary certifications prior to use; be at all times kept and in good working order and safe operational condition; be repaired and maintained at all necessary times; and remain in a condition and are at all times operated in a manner that does not present an unreasonable threat of harm to the marine environment or safety at sea;
- (iv) comply with the Contractor's international obligations pertaining to the protection of third parties' rights to legitimately use and operate in the ocean in accordance with International Law; and
- (v) rehabilitate the marine environment in accordance with rehabilitation, aftercare, completion criteria and standards or any other remedial requirements under the Contractor's international obligations

Indemnities

43. The Sponsorship Agreement contains extensive provisions under which the Contractor agrees to indemnify the State against costs, damages and Claims or other Liabilities resulting from the project that the State may suffer in its sponsorship role. The indemnifications cover, for example, costs that may arise from a failure by the Contractor to: prevent serious harm to the marine environment; prevent safety incidents; prevent pollution incidents; pay fees, fines, royalties or other payments to the ISA or other regulatory bodies; observe the rights of other legitimate users of the ocean; meet the rehabilitation requirements; or comply with relevant International laws. The indemnities also cover claims or demands made by or liabilities owed to: regulatory bodies; other countries; persons or organizations that are juridically related to other countries; other ISA contractors; and/or Marine Scientific Researchers

44. Combined with the undertakings described above, these indemnities provide compelling reasons for the Contractor to comply with its international obligations or face significant financial penalties.

Financial Undertakings, Securities, Insurance and Guarantees

45. It is important that the Contractor maintains sufficient financial capacities to not only carry out the plan of work, but also to meet the potential costs of carrying out contingency or emergency measures and dealing with potential environmental harm and rehabilitation. The Sponsorship Agreement attempts to ensure that the Contractor is in the best financial position to deal with such issues by stipulating: financial capacity requirements; insurance requirements; financial security requirements; and requiring a deed of guarantee to be provided.

46. For example, for all years in which exploitation is being carried out the Contractor must satisfy certain financial capacity requirements (taking into account any and all financial securities, insurances and guarantees). Should a situation arise where the Contractor does not have sufficient financial capacity, the State may order suspension of the exploitation activities.

47. Furthermore, the Contractor is required to warrant that all applicable insurances required under the Contractor's International obligations, including all insurance pertaining to the marine environment, pollution and safety at sea, will be effected and maintained for the duration of the project. Indeed, it is a condition of the Sponsorship Agreement that no vessel, installation or equipment shall operate or be used unless a valid insurance policy is in force in respect of the said vessel, installation or equipment. Moreover, only those activities covered by the insurances effected and maintained in accordance with the Contractor's international obligations shall be carried out.

Enforcement Measures

48. Under the Sponsorship Agreement the State has the power to take enforcement measures should the Contractor fail to comply with its international obligations and/or the Sponsorship Agreement, particularly measures necessary to prevent serious safety and pollution incidents, and serious harm to the marine environment.

49. In the case where the Contractor has committed a minor breach of its obligations, the State can order the Contractor to promptly remedy such breach. However, in the case of a serious breach, or if an emergency exists or is likely to occur, the State has the power to require the immediate suspension of the relevant activities, provided that such suspension does not conflict with the Contractor's international obligations or an emergency order issued by the ISA, and would not result in a safety incident or serious harm to the marine environment. The suspended activities can only be resumed upon approval by the State along with the ISA's approval of such resumption.

50. The State also has the right to terminate sponsorship (and require the cessation of all activities) if there has been a significant material breach which has not been remedied by the Contractor within an appropriate timeframe.

51. These suspension and termination orders are in addition to the States power to impose monetary penalties for serious breaches of the Sponsorship Agreement and/or the Contractor's International obligations.

52. For a Contractor in commercial production, any suspension or termination of the activities will result in significant financial loss and potential liabilities to third parties (for example, failure to supply ore under off-take agreements). This is an outcome that the Contractor will likely attempt to avoid at all costs. As a result, providing the State with the ability to order such suspension and/or termination grants the State tremendous power to deter the Contractor from breaching its International obligations.

APPENDIX 1

Sponsorship Agreement

Nauru Ocean Resources Inc

United Nickel Inc

The Republic of Nauru

Sponsorship Agreement

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Sponsorship Agreement

Date	
Parties	<p>Nauru Ocean Resources Inc (No. T/2028) of 1st Level, Civic Centre, Aiwo District, Republic of Nauru, South Pacific (<i>"NORI"</i>)</p> <p>United Nickel Inc (BC0813631) of Suite 2500 700 West Georgia Street, Vancouver, British Columbia, Canada (<i>"UNI"</i>)</p> <p>The Republic of Nauru (<i>"the State"</i>)</p>

It is agreed as follows.

1. Term

- 1.1 This Agreement commences on the Commencement Date and continues for a term of 30 years (the "Initial Term"), unless terminated earlier pursuant to its terms.
- 1.2 The Parties may agree to extend the term of this Agreement for such period and on such terms as are agreed between the Parties.

2. Sponsorship of Exploration

- 2.1 The State agrees to Sponsor NORI in an application to the ISA for a Contract for Exploration covering an area of approximately 75,000 square kilometres in the International Seabed Area, and agrees, subject to any rights the State may have under this Agreement, to continue to Sponsor the Exploration for the Term of this Agreement.
- 2.2 The State agrees, subject to clause 8, to do all things reasonably necessary to give effect to its Sponsorship of the Exploration, including undertaking any communications with, and providing any necessary documentation to, the ISA or other Regulatory Body required in respect of the Sponsorship.

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3. Conditions for Commencement of Exploration

- 3.1 NORI and UNI agree that no Exploration will commence or be carried out in the Ocean unless the following Exploration Conditions have been satisfied and approval from the State has been obtained in accordance with clause 3.4:
- (a) all relevant insurances required for the Exploration under clause 22 have been effected, and the State has received undertakings by UNI as to the currency of each policy, as well as copies of all Significant Insurance Policies, in accordance with clause 22;
 - (b) NORI possesses a valid Contract for Exploration;
 - (c) all Activities contained in the Exploration Submission have been approved by the ISA or other Regulatory Body; and
 - (d) all relevant information has been provided in accordance with clause 3.2.
- 3.2 At least 90 days prior to commencing in the Ocean any Exploration NORI and UNI must Notify the State of their intention to commence Exploration and provide the State with an Exploration Submission detailing all material information, including without limitation:
- (a) all material information necessary for the State to assess whether the Exploration Conditions have been satisfied;
 - (b) copies of all material details and information pertaining to the Exploration provided by NORI to the ISA and/or other Regulatory Bodies, including without limitation:
 - (i) the approved Plan of Work;
 - (ii) a description of the program for oceanographic and environmental studies to be undertaken in accordance with NORI's International Obligations; and
 - (iii) a description of proposed measures for the prevention of Safety Incidents, Pollution Incidents and Serious Harm to the Marine Environment, and for the reduction and control of other pollution, other harm to the Marine Environment and other risks to Safety at Sea;
 - (c) copies of all material information pertaining to the Exploration provided by the ISA and/or other Regulatory Bodies to NORI or UNI, including without limitation all Authorizations, and the terms and conditions of said Authorizations;
 - (d) an undertaking from NORI and UNI that the proposed Exploration has been approved by the ISA; and
 - (e) a copy of the Project Conformity Plan and Contingency Plan pertaining to the Exploration.
- 3.3 Within 60 days of the State receiving the Exploration Submission the State shall:
- (a) assess the Exploration Submission and determine, acting reasonably, whether the Exploration Conditions have been satisfied; and
 - (b) either issue in writing to NORI or UNI:
 - (i) if all of the Exploration Conditions have been satisfied, an Exploration Approval Notice; or

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- (ii) if one or more of the Exploration Conditions have not been satisfied, an Exploration Disapproval Notice providing specific reasons for withholding approval in sufficient detail. The Exploration shall not commence if an Exploration Disapproval Notice has been issued in accordance with this clause 3.3.

3.4 The Exploration may only commence if:

- (a) the State has issued an Exploration Approval Notice;
- (b) the State fails to issue an Exploration Disapproval Notice in accordance with clause 3.3; or
- (c) an Exploration Disapproval Notice has been withdrawn under clause 3.5(c), or is deemed to have been withdrawn under clause 3.6.

3.5 In the event that:

- (a) NORI or UNI disagree with an Exploration Disapproval Notice; and/or
- (b) wish to address the reasons given by the State for withholding approval and provide any further documentation or representations.

NORI or UNI may give written Notice (and where desired provide any documentation or representations) to the State, which shall, within 30 days of receiving said Notice, re-assess the Exploration Submission, taking into account any and all extra documentation or representations provided, and Notify NORI and UNI that the State either:

- (c) withdraws the relevant Disapproval Notice; or
- (d) upholds the relevant Disapproval Notice, which the State may only do if one or more of the Exploration Conditions remain unfulfilled, or has strong grounds to doubt UNI's and NORI's ability to comply with NORI's International Obligations.

3.6 If the State fails to Notify NORI or UNI in accordance with the time period specified in clause 3.5, or if the State fails to demonstrate strong grounds for withholding approval under clause 3.5(d), the State will be deemed to have withdrawn the relevant Disapproval Notice.

4. Sponsorship of Exploitation

4.1 At least 6 months (but no more than 12 months) prior to submitting an official application for a Contract for Exploitation to the ISA, NORI and UNI must Notify the State of their intention to submit said application, and provide the State with an Exploitation application submission ("Exploitation Application Submission") detailing all material information pertaining to the proposed Exploitation, including without limitation:

- (a) all material information reasonably required by the State to make an informed decision under clause 4.2, including the amount and form of the Financial Security and Rehabilitation Financial Security proposed by NORI and UNI;
- (b) all material information required under clause 4.3(a) to (p) (inclusive) that is reasonably available at the time; and
- (c) a summary and detailed explanation of all International Laws and Sponsorship Obligations in existence at the time pertaining to the Project, particularly the Exploitation.

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- 4.2 Within 3 months of the State receiving the Exploitation Application Submission, the State shall assess the Exploitation Application Submission and elect, at its absolute discretion, to either:
- (a) withdraw Sponsorship, which the State may do, subject to clause 49 being satisfied, without cause or reason and by written Notice given to NORI or UNI within 3 months of the State receiving the Exploitation Application Submission. If the State Notifies NORI or UNI of its decision to withdraw Sponsorship in accordance with this clause, and subject to clause 49 being satisfied, this Agreement will terminate in accordance with clause 49.3; or
 - (b) continue with Sponsorship.
- 4.3 Any decision to continue with Sponsorship under clause 4.2(b), or any failure to Notify NORI or UNI of withdrawal of Sponsorship in accordance with the time period specified in clause 4.2(a) (in which case the State shall be deemed to have continued with Sponsorship) shall be taken as an agreement by the State to, subject to the State's rights under this Agreement:
- (a) Sponsor NORI in an application to the ISA for a Contract for Exploitation;
 - (b) continue to Sponsor the Exploitation for the Term of this Agreement; and
 - (c) do all things reasonably necessary to give effect to its Sponsorship of the Exploitation, including undertaking any communications with, and providing any necessary documentation to, the ISA or other Regulatory Body required in respect of the Sponsorship.
- 4.4 Notwithstanding clause 4.3, NORI and UNI agree that no Exploitation shall commence or be carried out unless the following Exploitation Conditions have been satisfied and Exploitation is permitted to commence pursuant to the terms contained in clause 4.7(a),(b), or (c):
- (a) all relevant insurances required under clause 22 have been effected, and the State has received undertakings by UNI as to the currency of each policy as well as copies of all Significant Insurance Policies in accordance with clause 22;
 - (b) the State has received:
 - (i) a Financial Security in accordance with clause 21; and
 - (ii) a Rehabilitation Financial Security in accordance with clause 36;
 - (c) NORI possesses a valid Contract for Exploitation;
 - (d) all Activities contained in the Exploitation Submission have been approved by the ISA and if necessary, other relevant Regulatory Bodies;
 - (e) all relevant information has been provided in accordance with clause 4.5; and
 - (f) the State has either elected to continue Sponsorship in accordance with clause 4.2(b), or has failed to notify NORI or UNI of withdrawal of Sponsorship within the time period specified in clause 4.2(a).
- 4.5 At least 6 months (but no more than 12 months) prior to commencing Exploitation, NORI and UNI must provide the State with an Exploitation submission ("Exploitation Submission") detailing all material information, including without limitation:
- (a) all material information necessary for the State to assess whether the Exploitation Conditions have been satisfied;

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- (b) copies of all material details and information pertaining to the Exploitation provided by NORI to the ISA and other Regulatory Bodies, including without limitation:
 - (i) the Exploitation Plan of Work;
 - (ii) the official application made by (or to be made by) NORI to the ISA for a Contract for Exploitation;
 - (iii) a description of the program for oceanographic and environmental monitoring programs to be executed during the Exploitation in accordance with NORI's International Obligations; and
 - (iv) a description of proposed measures for the prevention of Safety Incidents, Pollution Incidents and Serious Harm to the Marine Environment, and for the reduction and control of other pollution, other harm to the Marine Environment and other risks to Safety at Sea;
 - (c) copies of all material information pertaining to the Exploitation provided by the ISA and/or other Regulatory Bodies to NORI or UNI, including without limitation all Authorizations and the terms and conditions of said Authorizations,
 - (d) an undertaking from NORI and UNI that the Exploitation has been approved by the ISA and if necessary, other relevant Regulatory Bodies; and
 - (e) a copy of the Project Conformity Plan and Contingency Plan pertaining to the Exploitation.
- 4.6 Within 3 months of the State receiving the Exploitation Submission, the State shall:
- (a) assess the Exploitation Submission and determine (acting reasonably) whether the Exploitation Conditions have been satisfied; and
 - (b) either issue in writing to NORI or UNI:
 - (i) if all of the Exploitation Conditions have been satisfied, an Exploitation Approval Notice; or
 - (ii) if one or more of the Exploitation Conditions have not been satisfied, an Exploitation Disapproval Notice, providing specific reasons for withholding approval in sufficient detail. Exploitation shall not commence if an Exploitation Disapproval Notice has been issued in accordance with this clause 4.6.
- 4.7 Exploitation shall only commence if:
- (a) the State has issued an Exploitation Approval Notice;
 - (b) the State fails to issue an Exploitation Disapproval Notice in accordance with clause 4.6(b)(ii); or
 - (c) an Exploitation Disapproval Notice has been withdrawn under clause 4.8(c), or is deemed to have been withdrawn under clause 4.9.
- 4.8 In the event that:
- (a) NORI or UNI disagree with an Exploitation Disapproval Notice; and/or

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(b) wish to address the reasons given by the State for withholding approval and provide further documentation or representations,

NORI or UNI may give written Notice (and where desired provide any documentation or representations) to the State which shall, within 30 days of receiving said Notice, re-assess the Exploitation Submission taking into account any and all extra documentation or representations provided, and Notify NORI or UNI that the State either:

(c) withdraws the Exploitation Disapproval Notice; or

(d) upholds the Exploitation Disapproval Notice, which the State may only do if one or more of the Exploitation Conditions remain unfulfilled, or has strong grounds to doubt UNI's and NORI's ability to comply with NORI's International Obligations.

4.9 If the State fails to Notify NORI or UNI in accordance with the time period specified in clause 4.8, or if the State fails to demonstrate strong grounds for withholding approval under clause 4.8(d), the State will be deemed to have withdrawn the Exploitation Disapproval Notice.

5. Approvals

5.1 Notwithstanding anything contained in this Agreement, any Approval Notice or withdrawal of any Disapproval Notice is not an approval by the State:

(a) of NORI's and UNI's performance of their obligations under this Agreement or under NORI's International Obligations; or

(b) that any part of the Submissions or any of the Project Companies or Activities complies with this Agreement or NORI's International Obligations,

and shall not limit in any way the State's ability to exercise its rights or make any Claims under this Agreement or at Law.

5.2 In furtherance of clause 5.1 NORI and UNI agree that:

(a) any review or approval by the State (including by its advisers or nominees) of any material, documents or other information prepared or provided by NORI, UNI, a Liable Company or a Project Company under or in connection with this Agreement; and

(b) any inspection, audit, review, assessment or monitoring and any recommendations and orders given thereof, including without limitation in relation to:

(i) the ESPMP; and/or

(ii) any Audits,

will not:

(c) relieve NORI and UNI of their responsibilities for such material or document; or

(d) relieve NORI and UNI of their obligations or Liabilities under this Agreement,

and a failure by the State or any of its advisers or nominees to notify NORI or UNI of any defect in or concern:

(e) associated with any such material or document; or

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(f) following any such inspection, audit, review, assessment or monitoring,

will not relieve NORI or UNI of their obligations or Liabilities, or constitute a waiver of any of the State's rights, under this Agreement.

- 5.3 For the avoidance of doubt and without limitation the indemnities provided to the State under this Agreement are not prejudiced or affected by the fact that the Activities were in compliance with any approved Submission or other review, approval, inspection, audit, assessment, monitoring or recommendation by the State or any of its advisers or nominees.

6. International Law

- 6.1 To the extent of any conflict between this Agreement and International Law, the latter shall take precedence, and both Parties agree that NORI and UNI shall be relieved of their responsibilities under this Agreement to the extent that they conflict with their responsibilities at International Law.

7. Conflicting International Law

- 7.1 If compliance with an obligation under this Agreement would result in NORI or UNI breaching any of NORI's International Obligations, NORI and UNI shall be relieved from complying with said obligation under this Agreement to the extent that, and for the period that, it causes NORI or UNI to be in breach of NORI's International Obligations. Any relief provided under this clause does not invalidate the remaining provisions of this Agreement nor affect the validity of that provision at a future date if said provision ceases to conflict with NORI's International Obligations.

8. State Obligations

- 8.1 Unless otherwise expressly stated in this Agreement: any act or omission by the State made in good faith and which the State is required to make pursuant to its Sponsorship Obligations will not entitle NORI or UNI to make any Claim against the State under this Agreement.

9. Exploration and Exploitation Payment

- 9.1 NORI and UNI will have the exclusive right to carry out the Works in the Licence Area for NORI's and UNI's sole enjoyment or that of their agents or nominees, and in exchange for Sponsorship, NORI and UNI will pay to the State an Exploration Payment and Exploitation Payment in accordance with Schedule 1, adjusted by any additions or deductions pursuant to the Agreement, including any and all additional monetary penalties owing to the State in accordance with Schedule 1 that have been incurred by NORI and UNI as a result of breaching this Agreement.

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10. Undertakings: General

10.1 NORI and UNI warrant that all Project Companies (while carrying out the Activities) will comply with, and all Activities carried out during the Term of this Agreement and any additional period in which the State may be deemed responsible or liable for the Activities will be in compliance with:

- (a) the terms and conditions of this Agreement; and
- (b) all of NORI's International Obligations,

and without limiting anything contained in clause 10.1 NORI and UNI warrant that:

- (c) all Project Companies will:
 - (i) obtain prior to carrying out any and all Activities;
 - (ii) maintain and comply with during all Activities; and
 - (iii) ensure that all Activities, as performed, are in compliance with all Authorizations required for said Activities, and shall:
 - (iv) only carry out Activities that are; and
 - (v) only carry out Activities in a manner that has been; permitted and approved by the ISA, a relevant Regulatory Body or an applicable International Law.

11. Undertakings: Marine Environment

11.1 NORI and UNI warrant that all Project Companies (while carrying out the Activities) will comply with, and all Activities will be in compliance with, all of NORI's International Obligations pertaining to the Marine Environment. In furtherance of the foregoing and without limiting the generality thereof, NORI and UNI shall ensure that no Activities cause any Serious Harm to the Marine Environment or Pollution Incidents.

12. Undertakings: Safety

12.1 NORI and UNI warrant that:

- (a) all Project Companies and Project Personnel (while carrying out the Activities) will comply with; and
- (b) all Activities, Vessels, Equipment and Installations will be in compliance with; all of NORI's International Obligations pertaining to Safety at Sea.

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13. Undertakings: Vessels, Installations, Technology and Equipment

13.1 NORI and UNI warrant that:

(a) all Technology and Equipment used in carrying out the Work for which the State is responsible and potentially liable in accordance with its Sponsorship Obligations; and

(b) all Mine Plans being implemented by a Project Company,

(collectively referred to as "Equipment, Technology and Mine Plans")

will be used and implemented in such a way as to satisfy all of NORI's International Obligations, including without limitation all Internationally Accepted Rules and Standards, particularly those pertaining to Safety at Sea and the protection and preservation of the Marine Environment.

13.2 NORI and UNI warrant that all necessary research and development will have been completed prior to the use and implementation of said Equipment, Technology and Mine Plans to satisfy the warranty in clause 13.1.

13.3 NORI and UNI warrant that for the duration of the Project all Vessels, Installations and Equipment:

(a) have undergone all necessary inspections, surveys, tests and audits, have obtained all necessary certifications prior to use and possess all valid certificates necessary for operation;

(b) are at all times kept in good working order and safe operational condition; and

(c) are repaired and maintained at all necessary times

in accordance with Good Industry Practice and NORI's International Obligations.

14. Undertakings: Use of the High Seas

14.1 NORI and UNI warrant that all Project Companies (while carrying out the Activities) will comply with, and all Activities will be in compliance with all of NORI's International Obligations pertaining to the protection of third parties' rights to legitimately use and operate in the Ocean, including without limitation the protection of:

(a) third parties' legitimate rights to fish, navigate and develop resources of the Ocean; and

(b) the legitimate rights of other private flag vessels and installations operating in the Ocean,

in accordance with International Law.

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15. Other Representations and Warranties

- 15.1 NORI and UNI warrant that for all times in which Activities are being carried out the Activities will be performed with due care and skill and to a standard consistent with International Law and the standards set out in this Agreement, and NORI and UNI acknowledge that the State has relied on the representations and warranties contained in this Agreement in entering into the Agreement.
- 15.2 NORI and UNI acknowledge and confirm that they did not rely upon any representation or warranties from the State in entering this Agreement, except for the State's warranty to temporarily continue to Sponsor NORI in accordance with clause 49 should clause 49 be invoked.

16. Compliance Report

- 16.1 NORI and UNI shall submit to the State, on a 6 monthly basis during Exploration, and on a quarterly basis during Exploitation, a completed Compliance Report for the period to date, and:
- (a) if all Project Companies, Liable Companies and Activities are in total compliance with this Agreement and NORI's International Obligations, a statement declaring total compliance with this Agreement and NORI's International Obligations, certified by NORI and UNI as giving a true and accurate account of said compliance; or
 - (b) If all Project Companies, Liable Companies and Activities are not in total compliance with this Agreement and NORI's International Obligations, a statement, certified by NORI and UNI as giving a true and accurate account of said non-compliance and declaring:
 - (i) all of the non-compliant events and Activities; and
 - (ii) total compliance with this Agreement and NORI's International Obligations otherwise.

17. Sponsorship Agreement Variation

- 17.1 If after the Commencement Date there is a:
- (a) change in NORI's International Obligations;
 - (b) change in International Law that is relevant to the Project; or
 - (c) change in Sponsorship Obligations,
- (collectively referred to in this clause 17 as a "Change")
- and either
- (d) the State is required under its Sponsorship Obligations to incorporate the Change into the Agreement;
 - (e) it is necessary for the Change to be incorporated into the Agreement to protect the State from Claims and/or Liabilities arising in connection to the Project; or
 - (f) the Change is inconsistent with the terms of this Agreement,

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- then, and notwithstanding the State's rights under clause 43, the State has the right, at its election, to request a Sponsorship Agreement Variation on the terms set out in this clause 17.
- 17.2 If a Sponsorship Agreement Variation is requested by the State, the Parties must work together to draft and incorporate an amendment to this Agreement that:
- (a) reflects the Change and:
 - (i) in the case of a change in NORI's International Obligations or a change in Sponsorship Obligations; provides the State with only that additional protection which is reasonably required as a result of the Change and is necessary to satisfy the Sponsorship Obligations; or
 - (ii) in the case of a change in International Law; provides only that which is needed to prevent the terms of this Agreement being inconsistent with the Change;
 - (b) limits to the fullest possible extent (while still achieving the objectives of 17.2(a) above):
 - (i) any amendment to this Agreement;
 - (ii) any additional obligation or burden on any Project Company or Liable Company;
 - (iii) any consequential effect on the ability of a Project Company to carry out the Works;
 - (iv) any additional costs to any Project Company or Liable Company; and
 - (v) any effect on the performance of any other obligations of NORI or UNI under this Agreement or any other Project Document; and
 - (c) does not obligate a Project Company to do anything the compliance of which would cause a Project Company to be in breach of NORI's International Obligations.
- 17.3 For the avoidance of doubt, the State is not liable for any additional costs incurred by a Project Company or Liable Company as a result of a Sponsorship Agreement Variation.
- 17.4 If the Sponsorship Agreement Variation renders it impossible or materially impracticable to comply with an obligation under this Agreement or other Project Document, NORI and UNI shall be relieved from complying with that obligation under this Agreement to the extent that the Sponsorship Agreement Variation causes NORI and UNI to be in breach of said obligation. Any relief provided under this clause does not invalidate the remaining provisions of this Agreement nor affect the validity of that provision at a future date if it ceases to conflict with the Sponsorship Agreement Variation.

18. Financial Capacity

- 18.1 During all years in which Exploitation is being carried out (including all periods in which installations are being built in the Ocean for which the State is responsible under its Sponsorship Obligations) NORI and UNI warrant that the Project Companies carrying out the Activities will be in a financial position that would be reasonably expected of an Entity carrying out said Activities (taking into account any and all insurances, guarantees and financial securities provided under this Agreement and/or to the ISA).

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19. Change in Control

- 19.1 To the extent NORI and UNI can reasonably influence a Change in Control, NORI and UNI shall not consent to and/or bring about a Change in Control that will have a significant adverse impact on the State's name and/or reputation or is materially adverse to the public interest in the State.

20. Guarantee

- 20.1 UNI must, prior to any Activities commencing in the Ocean, execute the Deed of Guarantee in Schedule 2.

20.2 If:

- (a) the Guarantor is subject to an Event of Insolvency; or
- (b) the Guarantor is no longer in a financial position that would be reasonably expected of such a Guarantor (taking into account any and all insurances, guarantees and financial securities provided under this Agreement and/or to the ISA),

the State may serve NORI or UNI a Notice in writing requiring that they, within 30 days, procure that a new guarantor (acceptable to the State acting reasonably) execute a guarantee on the terms as set out in Schedule 2 to replace the existing Guarantee.

21. Financial Security

- 21.1 NORI and UNI agree that Exploitation shall not occur until the State has been provided, in accordance with this clause 21 with an appropriate Financial Security in a form and for an amount that will be determined prior to Exploitation by the Parties acting reasonably and taking into account:

- (a) any and all financial securities already given by NORI and UNI to the ISA or other Regulatory Body pertaining to the Exploitation (if any);
- (b) the scale and nature of the Exploitation and any and all independent risk assessments made in regards to the Exploitation; and
- (c) whether or not a Project Company will be carrying out Extractive Metallurgy in the Ocean for which the State is responsible and potentially liable in accordance with its Sponsorship Obligations.

- 21.2 The Financial Security will require the relevant financial institution (and if a company guarantee is provided and/or assets pledged; the relevant company) to pay to the State on demand (as requested in writing by the State) any sum or sums owed to the State under this Agreement or Deed of Guarantee following the failure of the Liable Companies to meet in full any amount lawfully owed to the State under this Agreement or Deed of Guarantee (including without limitation under any indemnity in this Agreement or Deed of Guarantee) to a maximum sum of the value of the Financial Security in existence at the time, always providing that said sum or sums owed to the State have remained unpaid for 30 days after a Notice of demand has been given by the State to NORI or UNI, and at least 30 days

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have elapsed since the State Notified NORI or UNI in writing of its intention to have recourse to the Financial Security.

- 21.3 Where, pursuant to clause 21.2 the State has had lawful recourse to the Financial Security, NORI and UNI shall, prior to carrying out any further Activities, ensure that the Financial Security is immediately reinstated to the amount required under clause 21.1.
- 21.4 After the cessation of the Project, and on the date that the State no longer has any responsibilities or potential Liabilities connected with or that may result from the Project, the State will immediately, by written request to the relevant financial institution, terminate the Financial Security.
- 21.5 In the case that NORI and UNI suspend or defer all of the Activities for an extended period of time (for example, due to market conditions), then, provided:
- (a) all Activities cease; and
 - (b) the State no longer has any responsibilities or potential Liabilities connected with or that may result from the Project (whether from past Activities or Installations or Vessels that remain in the Ocean and for which the State is responsible and potentially liable for in accordance with its Sponsorship Obligations);

the State will immediately, by written request to the relevant financial institution, terminate the Financial Security.

- 21.6 Where the Financial Security has been terminated pursuant to clause 21.5, NORI and UNI shall, prior to recommencing any Exploitation, ensure that the Financial Security is immediately reinstated to the amount required under clause 21.1.
- 21.7 Any Party may request a variation of the Financial Security should there be a significant change in the scale and/or nature of the Exploitation, and the Parties shall meet within 30 days of such a request to negotiate in good faith a variation that more appropriately reflects said change.
- 21.8 This clause 21 survives termination or expiry of this Agreement up until the date that the State no longer has any responsibilities or potential Liabilities connected with or that may result from the Project.

22. Insurance

- 22.1 NORI and UNI warrant that all insurances required under NORI's International Obligations will be effected and maintained for the duration of the Project, including without limitation all necessary insurances pertaining to the Marine Environment, pollution, Safety at Sea and third party damage.

In furtherance of the foregoing and without limiting the generality thereof, NORI and UNI warrant that:

- (a) all Project Companies, Vessels, Installations, Equipment and all of the Activities will be covered:
 - (i) by all insurance policies; and
 - (ii) for amounts;
 - necessary to satisfy the requirements under NORI's International Obligations and Good Industry Practice; and

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- (b) no Vessel, Installation or Equipment will operate or be used and no Installation shall be constructed unless an appropriate and valid insurance policy is in force in respect of said Vessel, Installation or Equipment, as the case may be, as required under NORI's International Obligations and Good Industry Practice.
- 22.2 All Significant Insurance Policies shall be made with internationally recognized carriers who have a financial rating appropriate for the scale and nature of Activities being carried out, and must include the State on the policy as an insured party.
- 22.3 During and for the entire period in which Activities are being carried out and/or Vessels, Installations or Equipment are being used or operated, NORI and UNI will ensure that all relevant Project Companies will:
- (a) punctually pay all premiums, commissions, stamp duties, charges, taxes and other expenses necessary for effecting and maintaining in force each insurance policy required by this Agreement;
 - (b) diligently pursue all insurance claims in relation to the Project;
 - (c) not take any actions or make any omissions or permit anything to be done which may prejudice any insurance policy required by this Agreement;
 - (d) provide (promptly upon request or in any case within 21 days) any information requested by the State in relation to any insurance policy required by this Agreement, including without limitation copies of premium payment receipts and certificates of currency in respect of each insurance policy;
 - (e) comply at all times with the terms and conditions of each insurance policy required by this Agreement; and
 - (f) use reasonable efforts to prevent any insurer from declining a claim.
- 22.4 All Significant Insurance Policies required under this Agreement must not have a deductible that is significantly greater than what is considered normal industry practice or what is normally required by insurers for that type of policy.
- 22.5 NORI and UNI agree that all relevant Project Companies will give or procure the delivery to the State of certified copies of all:
- (a) Significant Insurance Policies;
 - (b) renewal certificates pertaining to any Significant Insurance Policies; and
 - (c) endorsement slips pertaining to any Significant Insurance Policies,
- promptly after they are received from the insurer, subject to confidentiality constraints.
- 22.6 NORI and UNI must Notify the State immediately upon the occurrence of an event that would or may entitle NORI, UNI or any relevant Project Company to make a claim under any Significant Insurance Policy (other than a professional indemnity insurance policy), and promptly do anything necessary in respect of such a claim including, without limitation, notifying the insurer.
- 22.7 NORI and UNI will, and will ensure all relevant Project Companies do all things reasonably necessary and provide all documents, evidence and information necessary to enable the State to collect or recover

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any moneys due or to become due to the State in respect of any insurance policy required by this Agreement.

- 22.8 NORI, UNI and all relevant Project Companies will not cause or take steps to bring about the lapse, cancellation, material change or reduction of any Significant Insurance Policy required by this Agreement, unless said policy is being replaced by another policy that in all respects meets the requirements of this Agreement.
- 22.9 Without limiting their obligations under this Agreement, and subject to clause 22.8, NORI and UNI shall immediately Notify the State:
- (a) of any lapse, cancellation, material change or reduction of any Significant Insurance Policy required by this Agreement;
 - (b) of any material change affecting the financial capability of any insurer that has provided a Significant Insurance Policy required by this Agreement; and
 - (c) in the event that a risk covered by any of the Significant Insurance Policies required by this Agreement becomes an uninsurable risk.

and shall take all necessary steps to Remedy the occurrence of 22.9(a) to (c) (inclusive) above.

- 22.10 This clause 22 survives termination or expiry of this Agreement up until the date that the State no longer has any responsibilities or potential Liabilities connected with or that may result from the Project.

23. Indemnification

- 23.1 To the maximum extent permitted by Law, NORI and UNI indemnify and will keep indemnified the State from and against all costs, expenses, Losses, charges, demands, actions, damages and Claims or other Liabilities whatsoever that the State suffers, incurs, sustains or becomes liable for or may suffer, incur, sustain or become liable for, to the extent to which said costs, expenses, Losses, charges, demands, actions, damages and Claims or other Liabilities:
- (a) arise out of, as a consequence of or in connection with the Project; and
 - (b) would not have been incurred by the State had the State not Sponsored NORI and involved itself in the Project.
- 23.2 In furtherance of clause 23.1 and without limiting the generality thereof, NORI and UNI indemnify and will keep indemnified the State from and against all costs, expenses, Losses, charges, demands, actions, damages and Claims or other Liabilities whatsoever that the State suffers, incurs, sustains or becomes liable for or may suffer, incur, sustain or become liable for, to the extent to which they arise out of, as a consequence of or in connection with:
- (a) any act or omission by a Project Company while carrying out the Activities;
 - (b) any breach by a Project Company of NORI's International Obligations while carrying out the Activities, including without limitation, failure by a Project Company or failure of the Activities to, where relevant:
 - (i) prevent Serious Harm to the Marine Environment;

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- (ii) prevent Safety Incidents;
- (iii) prevent Pollution Incidents;
- (iv) pay fees, fines, costs, penalties, charges, royalties or other payments to the ISA or other Regulatory Bodies when said payments are due and payable;
- (v) observe the rights of other legitimate users of the Ocean;
- (vi) meet the Rehabilitation Requirements; and/or
- (vii) comply with relevant International Laws,
in accordance with NORI's International Obligations;
- (c) the State's Sponsorship of NORI; and/or
- (d) a breach by the State of its Sponsorship Obligations (subject to clause 23.10),

and includes without limitation:

- (f) any Claim or demand made by or Liability owed to the ISA that the State suffers, sustains, incurs or becomes liable for to the extent to which said Claim, demand or Liability arises out of, as a consequence of or in connection with the Project;
- (g) any Claim or demand made by or Liability owed to:
 - (i) any Regulatory Bodies;
 - (ii) other countries;
 - (iii) Entities or organizations that are juridically related to other countries;
 - (iv) other ISA Contractors; or
 - (v) Marine Scientific Researchers,
 that the State suffers, incurs, sustains or becomes liable for, or may suffer, incur, sustain or become liable for, to the extent to which said Claim, demand or Liability arises out of, as a consequence of or in connection with the Project;
- (h) any increases in or new amounts payable by the State to the ISA or other Regulatory Bodies, to the extent that said increases or new amounts are due to a breach of NORI's International Obligations by a Project Company or the Activities;
- (i) all Claims, demands or proceedings against the State made or instituted by any Project Personnel, including without limitation, any Claims for:
 - (i) injury to or ill health, sickness, or death of said Project Personnel; and/or
 - (ii) remuneration, accrued entitlements, termination entitlements, unfair dismissal claims or equal opportunity claims.

and for the avoidance of doubt NORI and UNI acknowledge and agree that the State has no obligation to meet any Liability arising on termination of employment of any Project Personnel (whether by way of an obligation to any Project Personnel directly or by way of compensation to NORI and UNI) and NORI and UNI release, waive, and forever discharge the State in relation to any such Liability and indemnify the State with respect to any Claims by Project

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Personnel arising out of or in connection with the termination of their employment, including arising from the expiry or termination of this Agreement; and

- (j) all Claims, demands or proceedings against the State made or instituted by any State Project Personnel for:

(i) injury to or ill health, sickness, or death of said State Project Personnel; and/or

(ii) Loss or destruction of or damage to property of State Project Personnel,

which is caused by or arises out of the ESPMP's or Audits, provided that NORI's and UNI's Liability to indemnify the State will be reduced proportionally to the extent that the State or the State Project Personnel acted wilfully or negligently to cause the Loss, destruction, damage, death or injury.

- 23.3 Furthermore, but subject to clause 23.10, NORI and UNI Indemnify the State for its reasonable legal costs in the event that the State is made a party to proceedings in respect of any Project Document, NORI's International Obligations or the Sponsorship Obligations, including without limitation, under article 190 of UNCLoS, provided:

- (a) that such proceedings have not been instituted by the State;
- (b) the State has given NORI and UNI (or their nominees) the chance to try the case; and
- (b) the State has, prior to incurring such costs, given NORI or UNI a Notice of and budget for said impending expenses, with NORI and UNI reserving the right to dispute said budget by referring the matter to the dispute resolution procedures set out in clause 52.

- 23.4 Unless expressly provided for in this Agreement, and subject to clause 23.10, the Liability of NORI and UNI under this Agreement is irrevocable, absolute, unconditional, and independent from the other obligations of the Parties, and will not be prejudiced or affected by any act, omission, matter, circumstance or thing (whether known to the State or not) that would otherwise operate in Law or in equity to reduce or release NORI and UNI from their Liability. In furtherance of the foregoing and without limiting the generality thereof, NORI's and UNI's Liability will not be affected or prejudiced by:

- (a) the Claim or Liability resulting from any act or thing that NORI or UNI are authorized or obliged to do under the Agreement or any other Project Document;
- (b) the State granting time, waiver or other indulgence to NORI, UNI or a Liable Company in respect of any of their obligations under the Agreement or other Project Document;
- (c) the State forbearing to enforce or neglecting to exercise any remedy or right it has against UNI or NORI;
- (d) any act, neglect, default, omission or mistake by the State (subject to clause 23.10);
- (e) any breach by the State of its Sponsorship Obligations. For the avoidance of doubt, and without limitation, NORI and UNI will be liable notwithstanding the amount claimed by the State relates to a penalty, Claim or Liability against, incurred or to be paid by the State resulting from the State failing in whole or in part to fulfil its Sponsorship Obligations (subject to clause 23.10);

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- (f) a Force Majeure event;
- (g) the release or discharge of any of NORI's or UNI's obligations or any security held for the performance of NORI's or UNI's obligations;
- (h) the Insolvency of NORI or UNI; or
- (l) any security or guarantee now or after the date of this Agreement held by the State for the payment of money or the performance of NORI or UNI.

23.5 Upon the State becoming aware:

- (a) of an actual or potential Claim against it; and/or
- (b) that it has or may incur a cost, expense, Loss, Liability or any damage, for which NORI or UNI have indemnified the State under this Agreement, or if:
 - (c) the State can make a Claim against NORI or UNI under the indemnifications in this Agreement; and
 - (d) the Claim relates to a Claim or Liability against the State made from or owed to a third party, including without limitation, a Claim made against the State by the ISA, any Regulatory Body, or another country,

the State must, subject to clause 23.6:

- (e) Notify NORI or UNI in writing of the alleged Claim or Liability as soon as is reasonably practicable after the State becomes aware of such Claim or Liability (but the State will be released from this obligation in clause 23.5(e) if a Project Company or Liabile Company is, or should in their position be aware of the Claim or Liability);
- (f) give NORI and UNI (and any of their nominees) at the time of Notification the option to conduct the defence of the Claim or Liability and make any appeals;
- (g) not pay out any amounts claimed against the State under said Claim or Liability until:
 - (i) NORI or UNI have been Notified in accordance with clause 23.5(e); and
 - (ii) in the event that NORI, UNI or any of their nominees have elected to defend the Claim or Liability; not pay out any amounts claimed against the State under said Claim or Liability until NORI or UNI have provided written approval, which they will do acting reasonably and in any case upon a Final Determination;
- (h) act in good faith to avoid prejudicing or adversely affecting any defence of the Claim that NORI and UNI may pursue; and
- (i) provide NORI and UNI (at NORI's and UNI's expense) with any assistance in conducting the defence of such Claim or Liability as may be requested in writing by NORI and UNI from time to time.

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23.6 Clause 23.5 does not apply where:

- (a) interlocutory proceedings are commenced against the State on an urgent basis;
- (b) there is insufficient time to Notify NORI or UNI to commence a defence of such proceedings on behalf of the State;
- (c) the State initially defends such proceedings; and
- (d) as soon as practicable after the commencement of the proceedings the State gives NORI and UNI (or any of their nominees) the option to conduct the defence of such proceedings.

23.7 If:

- (a) there is a material breach by the State of its obligations under clause 23.5;
- (b) the material breach has deprived NORI and UNI the opportunity to effectively conduct a defence of the Claim or Liability;
- (c) NORI and UNI can demonstrate beyond reasonable doubt that they would have been able to successfully:
 - (i) defend the Claim or Liability and absolve the State; or
 - (ii) have the Claim or Liability reduced for the State; and
- (d) NORI or UNI have compensated the State under an indemnity in this Agreement for said Claim or Liability,

NORI and UNI:

- (c) may reduce the Exploitation Payment by an amount and for such period that is equal to the sum of any amounts that NORI or UNI have paid to the State under an indemnity in this Agreement relating to said material breach that they can show, beyond reasonable doubt, would not have had to or been paid by the State to the third party had NORI and UNI (or any of their nominees) conducted the defence of the Claim or Liability; or
- (f) shall be relieved of paying to the State an Exploitation Payment for the next 20 years,

whichever is the least, and NORI and UNI agree that this remedy will be full satisfaction for the State's breach of clause 23.5, notwithstanding said remedy may be for an amount less than what NORI or UNI have paid to the State pursuant to an indemnity in this Agreement.

- 23.8 Each indemnity in this Agreement is a continuing obligation and survives termination, completion or expiry of this Agreement, until the date that the State no longer has any responsibilities or potential Liabilities for the Project under the Sponsorship Obligations.
- 23.9 NORI and UNI must pay, within 30 days of being served a written demand by the State, any amount they must lawfully pay under an indemnity in this Agreement, subject to the situation where NORI, UNI or any of their nominees are conducting a defence of the Claim or Liability on behalf of the State, in which case NORI and UNI are not obliged to make any payment to the State until a Final Determination is made.
- 23.10 Notwithstanding anything contained in this clause 23 or in any Project Document, NORI and UNI will not be liable for any costs, expenses, Losses, charges, demands, actions, damages or Claims or any other Liabilities that the State suffers, incurs, sustains or becomes liable for or may suffer, incur,

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sustain or become liable for, to the extent that they arise from a fraudulent, maliciously negligent or reckless act of the State (or a wilful act or omission made by the State in bad faith to NORI, UNI or a Project Company).

- 23.11 This clause 23 survives termination or expiry of this Agreement up until the date that the State no longer has any responsibilities or potential Liabilities connected with or that may result from the Project.

24. State Liability

- 24.1 Unless otherwise expressly stated in this Agreement or other Project Document, the State is not liable for any breach of this Agreement or any Project Document, or in tort or for any other common Law or statutory cause of action (to the extent permitted by law). In furtherance of the foregoing and without limiting the generality thereof, the State will not be liable, including by way of compensation to NORI or UNI, for any acts or omissions by the State, and NORI and UNI release, waive and forever discharge the State in relation to any such Liability. For the avoidance of doubt, and unless otherwise expressly stated in this Agreement or other Project Document, no act or omission by the State will to the extent permitted by Law:

- (a) lessen or otherwise affect:
 - (i) NORI's or UNI's obligations under this Agreement or at Law; or
 - (ii) the State's rights under this Agreement or at Law; or
- (b) entitle any Liable Companies or Project Companies to make any Claim against the State, including without limitation any Claim against the State:
 - (i) for Consequential Losses, and neither the State, nor its officers, employees or agents are liable for Consequential Losses even if the State, its officers, employees or agents are aware of the possibility of those Consequential Losses. For the avoidance of doubt, the State is not liable to NORI or UNI for any Consequential Loss (whether by way of an obligation to any Project Company or Liable Company or by way of compensation to NORI or UNI, including without limitation compensation for loss of profits or Liability to third parties sustained upon termination or expiration of this Agreement), and NORI and UNI release, waive, and forever discharge the State in relation to any such Liability and indemnify and hold the State harmless against all Consequential Loss of NORI, UNI or any Project Company; or
 - (ii) arising out of or in connection with termination of this Agreement by any Party, and NORI and UNI indemnify the State and shall keep the State indemnified and hold the State harmless against all costs, expenses, Losses, damages, Claims and Liabilities suffered, incurred or sustained by the State arising out of or in connection with said termination, including without limitation all Claims and liens in regard to moneys due and payable to Project Companies and their employees and all Claims and liens of Project Companies, Liable Companies, suppliers, purchasers and manufacturers for goods, labour or services provided in connection with the Project.

- 24.2 Notwithstanding anything contained in Clause 24.1, in the event that:

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- (a) the State has acted fraudulently, maliciously, recklessly or in bad faith to NORI, UNI or a Project Company;
- (b) there is a Material State Breach (except where the breach is of clause 49) and:
 - (i) NORI or UNI have served a written Notice of their intention to make a Claim under this Agreement ("NORI Claim Notice") on the State;
 - (ii) the NORI Claim Notice specifies the breach in respect of which the NORI Claim Notice is given and that NORI or UNI intend on making a Claim against the State if the breach is not remedied; and
 - (iii) the State has failed to rectify or overcome the effect of the Material State Breach within 60 days from the date it receives the NORI Claim Notice; or
- (c) the State has materially breached its warranty to maintain Sponsorship in accordance with clause 49 (or purports to materially breach said warranty) and:
 - (i) NORI or UNI have served a written Notice on the State of their intention to make a Claim for breach of clause 49; and
 - (ii) the State does not within 30 days of receiving said Notice officially affirm in writing its continued Sponsorship in compliance with clause 49.

the State shall be liable, subject to clause 24.3, for any costs, expenses, losses, charges, demands, actions, damages and Claims or other Liabilities whatsoever that NORI or UNI suffer, incur, sustain or become liable for or may suffer, incur, sustain or become liable for to the extent to which they arise out of, as a consequence of or in connection with the breaches referred to in clause 24.2(a) to (c) (inclusive) above, including without limitation, economic loss, Consequential Losses, damages to Project Companies, and the costs of finding a new sponsor and, to the maximum extent permitted by Law, the State indemnifies and will keep indemnified NORI and UNI from and against all costs, expenses, losses, charges, demands, actions, damages and Claims or other Liabilities whatsoever that NORI or UNI suffer, incur, sustain or become liable for or may suffer, incur, sustain or become liable for, to the extent to which they arise out of, as a consequence of or in connection with the breaches referred to in clause 24.2(a) to (c) (inclusive) above.

- 24.3 The State shall only be liable under clause 24.2 if NORI and UNI can show that they have taken all reasonable steps to reduce, mitigate, prevent or eliminate the damages and adverse effects of the relevant breach referred to in clause 24.2(a) to (c) (inclusive).
- 24.4 This clause 24 survives termination or expiry of this Agreement up until the date that the State no longer has any responsibilities or potential Liabilities connected with or that may result from the Project.

25. Notification, Data and Information to Assist the State in Its Role as Sponsor

- 25.1 For the Term of this Agreement, NORI and UNI shall provide the State with timely Notification and full and fair disclosure in writing of all material information pertaining to the Project (including providing the State with a copy and detailed explanation of all relevant data and/or documents (subject

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to confidentiality constraints)) that is either known, within the knowledge of or reasonably discoverable by a Liable Company or Project Company that a reasonable person would consider necessary for the State to fulfill its role as Sponsor (particularly information that may assist the State carry out its Sponsorship Obligations, protect itself from Liability, and ensure NORI's and UNI's compliance with this Agreement and NORI's International Obligations).

25.2 In furtherance of clause 25.1 and without limiting the generality thereof, NORI and UNI shall Notify the State and provide all relevant disclosure in writing in the event that:

- (a) there is either a material change in:
 - (i) NORI's International Obligations;
 - (ii) International Law, or
 - (iii) Sponsorship Obligations,
 where such a change is applicable to the Project and would be considered by a reasonable person to be relevant to the State in its role as Sponsor;
- (b) there is any effect or series of effects, or any event or series of events which a reasonable person would consider significantly adverse to, or likely to be significantly adverse to the financial capacity of a Liable Company;
- (c) there has been a breach of NORI's International Obligations by a Project Company and/or Activity;
- (d) NORI or UNI is notified by the ISA or other Regulatory Body that there is a breach, or an impending breach, of any of NORI's International Obligations;
- (e) any material complaint regarding NORI, UNI and/or the Activities is made by the ISA;
- (f) any fact or circumstance or change in circumstances has arisen which may prejudice any Significant Insurance Policy required by this Agreement; or
- (g) any fact or circumstance or change in circumstances has arisen which significantly changes the knowledge of or assumptions held about the impact of Polymetallic Nodule exploitation on the Marine Environment and its associated risks.

25.3 NORI and UNI shall, as soon as practicable, provide the State with a copy of all formal communication and information submitted by NORI to the ISA that a reasonable person would consider necessary for the State to fulfill its role as Sponsor (particularly information that may assist the State carry out its Sponsorship Obligations, protect itself from Liability, and ensure NORI's and UNI's compliance with this Agreement and NORI's International Obligations).

25.4 For the avoidance of doubt, if NORI or UNI are required to Notify the State in accordance with clause 25.2(a), they shall provide the State with an explanation and detailed summary of the change and its implications to the State as Sponsor, as well as copies of relevant documents and information relating to the change.

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26. Notification to NORI and UNI

26.1 Should the State receive material information or notices from the ISA or other Regulatory Body relating to:

- (a) the State's Sponsorship Obligations;
- (b) any Project Company; or
- (c) the Project,

it shall promptly inform NORI or UNI and provide a copy of such material information or notice, except to the extent that the State may be prevented by confidentiality obligations owed to the ISA or other Regulatory Body.

27. Audits and Access

27.1 Without limiting any other right the State has under this Agreement, NORI and UNI must permit the State, the State's nominees, or any person authorized by the State, to conduct a reasonable audit of any documents, records and information ("Audit") that may assist the State verify any and all Project Companies' and Liable Companies':

- (a) compliance with this Agreement;
- (b) compliance with NORI's International Obligations; and/or
- (c) ability to comply with 27.1(a) and (b).

The State has the right to carry out the Audit on an annual basis, however, should the State have reasonable grounds to believe that NORI or UNI are in Material Breach of this Agreement, the State may, at any time, carry out an Audit of the aspects of the Project that it suspects to be in breach.

27.2 Without limiting the generality of clause 27.1, such Audits may include, but need not be limited to, audits of:

- (a) documents, records and information relating to the Activities;
- (b) the insurance policies; and/or
- (c) financial information and records of the Liable Companies.

27.3 NORI and UNI shall ensure that all relevant books, records and documents in the possession of the relevant Project Companies and/or Liable Companies necessary to carry out the Audit are made available by said companies, and that everything reasonably required by the State to assist the State in exercising its rights under clause 27 is done.

27.4 NORI and UNI shall ensure that all Project Companies and Liable Companies provide the Auditors with disclosure of and access to any Confidential Information reasonably necessary to carry out the Audit, with NORI and UNI reserving the right to require any Auditor receiving said disclosure or access sign a confidentiality agreement in person that strictly limits the approved purpose of disclosure to that of assisting the State verify said Project Companies' and/or Liable Companies' compliance with, and ability to comply with, this Agreement and NORI's International Obligations. For the avoidance of doubt, where the Auditor is not an officer of the State, the State shall not be responsible for any breach

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of said confidentiality agreements by the Auditor, or any disclosure to a third party of Confidential Information by the Auditor, and NORI and UNI agree that they will not make any Claim against the State in relation to said disclosure.

- 27.5 If during or as a result of the Audit the State or an Auditor believes a Project Company or Liable Company must make changes to better comply with this Agreement or NORI's International Obligations, the State or the Auditor, as the case may be, may make an order or recommendation to that effect (either to NORI, UNI or directly to the relevant Project Company or Liable Company) and NORI and UNI must ensure that the relevant Project Company or Liable Company promptly implements said order or recommendation at their expense. Should NORI and UNI disagree with a recommendation the matter shall be referred to dispute resolution in accordance with clause 52.
- 27.6 If the change recommended under clause 27.5 renders it impossible or materially impracticable to comply with an obligation under this Agreement or other Project Document, NORI and UNI shall be relieved from complying with that obligation under this Agreement to the extent that the recommended change causes NORI and UNI to be in breach of said obligation. Any relief provided under this clause 27.6 does not invalidate the remaining provisions of this Agreement nor affect the validity of that provision at a future date if it ceases to conflict with the Sponsorship Agreement Variation.
- 27.7 This clause 27 survives termination, completion or expiry of this Agreement for 2 years.

28. Environmental and Safety Performance Monitoring Program

- 28.1 NORI and UNI agree that the State has the right to carry out an Environmental and Safety Performance Monitoring Program ("ESPMP") to, *inter alia*:
- (a) assist the State satisfy its Sponsorship Obligations;
 - (b) verify whether all Activities, Project Companies, Vessels, Installations and Equipment are in compliance with the terms and conditions of this Agreement and NORI's International Obligations;
 - (c) verify whether any Activities or Project Companies are causing or have caused Pollution Incidents or Serious Harm to the Marine Environment;
 - (d) verify that the Project Companies are:
 - (i) only carrying out Activities that are; and
 - (ii) only carrying out Activities in a manner that has been:
 - permitted and approved by the ISA, a relevant Regulatory Body or an applicable International Law;
 - (e) verify whether all Activities, Project Companies, Project Personnel, Vessels, Equipment and/or Installations are in compliance with all of NORI's International Obligations pertaining to Safety at Sea;
 - (f) verify whether all Equipment, Technology and Mine Plans are being used, implemented and maintained in accordance with this Agreement and NORI's International Obligations; and

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- (g) verify whether all Project Companies are complying with, and whether all Activities are in compliance with, NORI's International Obligations pertaining to the protection of third parties' rights to legitimately use and operate in the Ocean.

The State has the right to carry out the ESPMP on an annual basis during Exploitation, however, should the State have reasonable grounds to believe that NORI or UNI are in Material Breach of this Agreement, the State may, at any time, carry out an ESPMP of the aspects of the Project that it suspects to be in breach.

- 28.2 NORI and UNI must permit, and must ensure that all Project Companies permit, the State, the State's nominees, any person authorized by the State, or any independent environmental or safety officers engaged by the State or acting on the States behalf (collectively referred to in this clause 28 as "ESPMP Officers"), to conduct an ESPMP in accordance with this clause 28.
- 28.3 Subject to clause 30.2, NORI and UNI shall meet the reasonable costs and expenditures incurred in carrying out the ESPMP under clause 28, whether the ESPMP is carried out by the State or by independent environmental or safety officers engaged by the State or a Project Company.
- 28.4 To give effect to the State's rights under this clause 39, NORI and UNI shall ensure that all relevant Project Companies give the ESPMP Officers, together with any equipment the ESPMP Officers consider necessary, free access to:
- (a) any Vessel or Installation being used in the Activities; and
 - (b) relevant documents or equipment in the possession of a Project Company that relate to, or are used in connection with, the Activities or this Agreement,

except where such access is impracticable or would cause unreasonable interference with the Work, and provide the ESPMP Officers with:

- (c) all reasonable assistance requested by the ESPMP Officers to allow them to access, inspect, assess, audit and monitor the relevant Activities, including:
 - (i) prompt and safe boarding of Vessels and Installations;
 - (ii) all necessary cooperation and assistance with the ESPMP on Vessels and Installations;
 - (iii) access to relevant equipment, facilities and personnel on Vessels and Installations at reasonable times;
 - (iv) provision of reasonable accommodation and facilities, including, where appropriate, food and accommodation and means of adequate subsistence while on any Vessel or Installation; and
 - (v) safe disembarkation from Vessels and Installations; and
- (d) copies of any documents requested by the ESPMP Officers that are in the possession of a Project Company and are necessary to carry out the ESPMP (subject to clause 28.7),

and NORI and UNI shall ensure, subject to clause 28.7, that all Project Companies make available all relevant books, log books, records, documents, equipment and other property in their possession and do everything reasonably required by the ESPMP Officers to assist the State in exercising its rights under

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clause 28, including making available to the ESPMP Officers all other information that may be reasonably required by the ESPMP Officers, including where relevant:

- (e) relevant scientific data, including without limitation copies of the results and reports of all environmental testing and monitoring, as required;
- (f) the Plan of Work;
- (g) the Exploration Submission and/or Exploitation Submission;
- (h) environmental monitoring programs;
- (i) any and all material information submitted by NORI or UNI to the ISA or other Regulatory Body; and
- (j) Project Conformity Plans and Contingency Plans approved by the ISA or other Regulatory Body.

- 28.5 The State shall ensure that any ESPMP is carried out in such a manner and at such times so as to not unduly interfere with the performance of the Activities.
- 28.6 If at any time during the Term of this Agreement, the State does not have sufficient capacity to use its own officers and resources to carry out the ESPMP the State may request that NORI and UNI engage suitably qualified and independent safety and environmental officers (approved in writing by the State) to conduct the ESPMP on the State's behalf.
- 28.7 NORI and UNI shall ensure that all Project Companies provide the ESPMP Officers with disclosure of and access to any Confidential Information reasonably necessary to perform the ESPMP, with NORI and UNI reserving the right to require any ESPMP Officers receiving said disclosure or access sign a confidentiality agreement in person that strictly limits the approved purpose of disclosure to those purposes contemplated in this clause 28. For the avoidance of doubt, where the ESPMP Officer is not an officer of the State, the State shall not be responsible for any breach of said confidentiality agreements by the ESPMP Officer, or any disclosure to a third party of confidential information by the ESPMP Officer, and NORI and UNI agree that they will not make any Claim against the State in relation to said disclosure.
- 28.8 Without limiting any other right the State has under this Agreement; if during or as a result of the ESPMP the State or an ESPMP Officer believes a Project Company must make changes to better comply with this Agreement or NORI's International Obligations, the State or ESPMP Officer, as the case may be, may make an order or recommendation to that effect (either to NORI, UNI or directly to the relevant Project Company) and NORI and UNI must ensure that the relevant Project Company promptly implements said order or recommendation at their expense or that of the relevant Project Company. Should NORI and UNI disagree with a recommendation the matter shall be referred to dispute resolution in accordance with clause 52.
- 28.9 If the change recommended under clause 28.8 renders it impossible or materially impracticable to comply with an obligation under this Agreement or other Project Document, NORI and UNI shall be relieved from complying with that obligation under this Agreement to the extent that the recommended change causes NORI and UNI to be in breach of said obligation. Any relief provided under this clause does not invalidate the remaining provisions of this Agreement nor affect the validity of that provision at a future date if it ceases to conflict with the Sponsorship Agreement Variation.