



Permanent Mission of the Republic of Nauru
to the United Nations

NV10/76

The Permanent Mission of the Republic of Nauru to the United Nations presents its compliments to The Registrar of the International Tribunal for the Law of the Sea and has the honour to submit herewith the written 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 the activities in the international seabed area.

The Permanent Mission of the Republic of Nauru avails itself of this opportunity to renew to The Registrar of the International Tribunal for the Law of the Sea the assurances of its highest consideration.



New York, 5th August 2010

The Registrar
International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

Cc:
Secretariat of the International Seabed Authority
Fax:1-876-967-3011

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 fulfil 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

Nauru Ocean Resources Inc (No. T/2028) of 1st Level, Civic Centre, Aiwo District, Republic of Nauru, South Pacific

(“*NORI*”)

United Nickel Inc (BC0813631) of Suite 2500 700 West Georgia Street, Vancouver, British Columbia, Canada

(“*UNI*”)

The Republic of Nauru

(“*the State*”)

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.

Sponsorship Agreement

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

Sponsorship Agreement

- (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 4.5(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
- (i) 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 Liable 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:

- (e) 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 of 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;
 - (a) 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.

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29. Project Conformity and Contingency Plans

29.1 NORI and UNI shall, and shall ensure that all relevant Project Companies develop, establish, maintain, update and, where necessary, carry out:

- (a) Project conformity plans (“**Project Conformity Plans**”) specifying the procedures to predict, avoid, remedy and mitigate the risks:
 - (i) of not complying with NORI’s Internationals Obligations;
 - (ii) of causing Serious Harm to the Marine Environment;
 - (iii) of causing a Safety Incident; and
 - (iv) to the State in its role as Sponsor; and
- (b) contingency plans (“**Contingency Plans**”) to respond effectively to incidents arising from the Activities including:
 - (i) incidents likely to cause Serious Harm to the Marine Environment;
 - (ii) Pollution Incidents; and
 - (iii) Safety Incidents.

The Contingency Plans shall establish special procedures and provide for adequate and appropriate equipment to deal with said incidents and shall include, *inter alia*, arrangements for:

- (iv) the immediate raising of a general alarm in the area of the incident;
- (v) immediate Notification to the ISA or other Regulatory Bodies, as the situation deems necessary;
- (vi) the warning of ships which might be about to enter the immediate vicinity of the incident;
- (vii) a continuing flow of information to the ISA or other Regulatory Bodies relating to particulars of the contingency measures already taken and further actions required;
- (viii) the removal, as appropriate, of Polluting substances and/or hazards to Safety at Sea;
- (ix) as appropriate, containing and minimizing or repairing any Serious Harm to the Marine Environment;
- (x) the reduction and, so far as reasonably possible, prevention of Serious Harm to the Marine Environment, Pollution Incidents and/or Safety Incidents, as well as mitigation of such effects;
- (xi) as appropriate, cooperation with other persons and with the ISA or any other Regulatory Bodies to respond to an Emergency; and
- (xii) periodic Emergency response exercises.

29.2 Such Project Conformity Plans and Contingency Plans shall satisfy Good Industry Practice.

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30. Costs and Expenses

- 30.1 NORI and UNI must bear all of their own costs and expenses in connection with performing and complying with their obligations under this Agreement and other Project Documents.
- 30.2 Except as otherwise expressly provided in this Agreement, NORI and UNI must bear all of the net costs and expenses reasonably incurred by the State that represent an additional cost to what would normally be incurred by the State under its national budget, and that are reasonably necessary for the State to:
- (a) perform, administer and comply with its obligations under this Agreement;
 - (b) perform, administer and comply with its Sponsorship Obligations; and
 - (c) ensure compliance by NORI, UNI, the Project Companies and the Activities with this Agreement and NORI's International Obligations,
- and shall reimburse the State for these costs and expenses and all other Reimbursable Costs upon the State issuing NORI or UNI with an invoice in accordance with clause 30.3. For the avoidance of doubt, NORI and UNI are only required to reimburse the State for these costs and expenses and all other Reimbursable Costs provided that all reasonable measures are taken to minimise expenditure and provided the State has, prior to incurring such costs, provided NORI or UNI with a Notice of and budget for the 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.
- 30.3 Upon the State incurring any Reimbursable Costs, the State shall submit to NORI or UNI:
- (a) an itemised report showing the details of each Reimbursable Cost incurred by the State; and
 - (b) an invoice for the amount shown by the report as owing to the State.
- 30.4 Within 30 days of receiving an invoice from the State in accordance with clause 30.3, NORI and UNI shall pay the amount of the invoice to the State.
- 30.5 Should the State deem it necessary, NORI and UNI further agree, subject to clause 30.2, to pay the State's reasonable net costs to engage and maintain an independent law firm in Australia or New Zealand during Exploitation to advise the State on matters pertaining to this Agreement and the Sponsorship Obligations.
- 30.6 This clause 30 survives termination or expiry of this Agreement for 1 year.

31. Subcontractors

- 31.1 Subject to the provisions of clause 31, the State acknowledges and agrees that NORI and UNI may delegate to and/or contract with Subcontractors to undertake all or part of the Works.
- 31.2 NORI and UNI shall ensure that any subcontract to carry out all or part of the Works contains:
- (a) provisions compelling the Subcontractor to comply with all of NORI's International Obligations that are applicable to said Subcontractor and the Activities carried out by them;
 - (b) provisions which are in all respect consistent with the State's rights under this Agreement;

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- (c) provisions that ensure the Subcontractor complies with all applicable insurance requirements under clause 22; and
 - (d) provisions giving effect to the State's right to audit, inspect, access and monitor under clauses 27 and 28 of this Agreement.
- 31.3 Despite the provisions of this clause 31, and notwithstanding any subcontract or approval to subcontract any part of the Activities, NORI and UNI:
- (a) remain bound by their obligations under this Agreement to carry out the Activities in accordance with this Agreement and NORI's International Obligations, and will ensure that every Subcontractor complies with all of the obligations of NORI and UNI under this Agreement;
 - (b) warrant that the Activities shall at all times be carried out in accordance with this Agreement and NORI's International Obligations, whether the Activities are being carried out by NORI, UNI, and/or a Subcontractor; and
 - (c) are entirely responsible and will be vicariously liable to the State for all acts, neglects, omissions and defaults of any Subcontractor in carrying out the Activities, as if they were the acts, neglects, omissions and defaults of NORI and UNI, and whether or not they were made while under NORI's or UNI's direction, supervision or control.

32. Delegation, Administration and Management

- 32.1 The State may delegate its powers to administer, manage and enforce this Agreement or any Project Documents.
- 32.2 Any power delegated under this clause 32 may be:
- (a) revoked, changed, limited or delegated; and
 - (b) subject to such conditions as the State determines from time to time.
- 32.3 If the State delegates any power under this Agreement or any Project Documents, the State must give Notice of such delegation to NORI or UNI (including the identity and address of any person to whom such power is delegated). NORI and UNI are entitled to rely upon such Notice unless and until given Notice by the State of revocation of, or change to, that delegation by the State.
- 32.4 Any person to whom a power is delegated by the State has, to the extent of that delegation, full power and authority to act for and on behalf of and to bind the State under the Agreement or Project Documents, but only to the extent of compliance with the conditions of any lawfully delegated power.
- 32.5 Without limiting the rights or powers of the State under this clause 32, the State may, in accordance with the provisions of this clause 32, appoint a person or Entity as Project Director to administer and enforce this Agreement and manage parts or all of the Project on behalf of the State.
- 32.6 If at any time a delegate or the Project Director ceases to act for the State, the State must immediately appoint a substitute delegate or Project Director, or failing that, must reassume all powers under this Agreement, and NORI and UNI are entitled to use the last known address of the State for all Notifications and communications, unless otherwise Notified.

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33. Assignment

33.1 NORI and UNI warrant that no Assignment will occur unless expressly permitted under this Agreement or by the State in writing. This clause 33 survives termination of this Agreement for 20 years.

34. State Project Personnel

34.1 Notwithstanding anything contained in this Agreement:

- (a) State Project Personnel must follow all instructions and directions pertaining to Safety at Sea given to them from the captain and/or other relevant safety officers on board Vessels and Installations, and NORI and UNI are not liable (including under any indemnity in this Agreement) for injury, Loss or damage caused by a failure of State Project Personnel to follow said instructions and directions; and
- (b) NORI and UNI have the right to:
 - (i) request and receive from any State Project Personnel, prior to their involvement in any aspect of the Project offshore, all reasonable information (subject to privacy constraints) necessary to assess said personnel's suitability and qualifications for any relevant Vessel or Installation;
 - (ii) deny any State Project Personnel access to or remove any State Project Personnel from any aspect of the Project in the event that said State Project Personnel pose an unreasonable risk to Safety at Sea or do not possess the necessary safety qualifications or training required by International Law; and
 - (iii) order any State Project Personnel to undergo, if necessary, offshore safety training while on board Vessels or Installations,

always providing that NORI and UNI have fulfilled their obligation to provide offshore safety training to State Project Personnel as may be required from time to time for the State to effectively exercise its rights and fulfil its responsibilities under this Agreement and at International Law.

35. Rehabilitation

35.1 NORI and UNI agree that:

- (a) the Marine Environment within the Licence Area; and
- (b) if required under NORI's International Obligations, the Marine Environment outside of the Licence Area that has been affected by the Activities (if any),

will be rehabilitated in a way that satisfies all rehabilitation, aftercare, completion criteria and standards or any other remedial requirements under NORI's International Obligations ("**Rehabilitation Requirements**").

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36. Rehabilitation Financial Security

- 36.1 NORI and UNI agree that no Exploitation shall occur until the State has been provided, in accordance with this clause 36, with a rehabilitation financial security (“**Rehabilitation Financial Security**”) that is in an appropriate form and for an amount that reasonably reflects the costs of rehabilitating the Marine Environment from the anticipated affects of the first year of Exploitation in accordance with the Rehabilitation Requirements. However, NORI and UNI will be relieved from providing the Rehabilitation Financial Security to the extent that NORI and UNI have provided a rehabilitation bond or other financial security to the ISA or other Regulatory Body that is sufficient to cover said rehabilitation.
- 36.2 At the end of each year during Exploitation the Parties shall agree on the impact of the Exploitation on the Marine Environment to date, and make a determination of the estimated costs of rehabilitating the Marine Environment thus far affected to the level required under the Rehabilitation Requirements. If at any time the estimated costs of rehabilitating the Marine Environment thus far affected to a level required under the Rehabilitation Requirements exceeds the amount of the Rehabilitation Financial Security in existence at the time (taking into account any rehabilitation bond or other financial security provided to the ISA or other Regulatory Body to cover said rehabilitation), NORI and UNI agree that the Rehabilitation Financial Security will be immediately increased to an amount equal to or greater than the estimated costs of rehabilitating the part of the Marine Environment thus far affected to a level required under the Rehabilitation Requirements.
- 36.3 The Rehabilitation 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 following and related to the failure of the Liable Companies to meet in full the Rehabilitation Requirements required under clause 35, to a maximum aggregate sum of the value of the Rehabilitation 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 have elapsed since the State Notified NORI or UNI in writing of its intention to have recourse to the Rehabilitation Financial Security.
- 36.4 Reduction of the Rehabilitation Financial Security will only be made where:
- (a) successful progressive rehabilitation has been completed in a relevant area;
 - (b) the rehabilitation referred to in clause 36.4(a) has been certified by the ISA or other Regulatory Body as fulfilling the Rehabilitation Requirements for said area; and
 - (c) the estimated costs of rehabilitating the Marine Environment thus far affected to the level required under the Rehabilitation Requirements is less than the amount of the Rehabilitation Financial Security in existence at the time,
- and the reduction shall only be to the extent that the amount of the Rehabilitation Financial Security remains equal to the estimated costs of rehabilitating the Marine Environment thus far affected to the level required under the Rehabilitation Requirements.

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36.5 Upon:

- (a) the cessation of the Project; and
- (b) the Liable Companies satisfying all of the Rehabilitation Requirements required under clause 35,

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

36.6 This clause 36 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.

37. Training and Recruitment Programs

37.1 NORI and UNI agree to devise and carry out the training and recruitment programs contained in Schedule 4.

38. Employment

38.1 NORI and UNI shall ensure that, during Exploitation, preference is given to Nauruan Nationals for employment in the Project where said Nauruan Nationals possess skills and experience suitable to the relevant employment position, with NORI and UNI retaining the right to terminate the employment of any Nauruan National that is found to be grossly inept at performing their duties, guilty of serious misconduct in their employment role, or guilty of a criminal offence.

38.2 Furthermore, NORI and UNI shall ensure that all Nauruan Nationals employed in the Project are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they are, as a minimum, entitled under International Law and the rules, regulations and procedures of the ISA or other Regulatory Body (including the rules relating to protection against discrimination in employment, occupational health and safety, labour relations, social security, employment security and living conditions at the work site) and taking into account conventions and recommendations of the International Labour Organization and other competent international organizations.

39. Scientific and Technical Assistance

39.1 NORI and UNI shall devise programs of scientific, educational and technical assistance to promote and fund with the objective of increasing the State's capacity to:

- (a) monitor the Activities; and
- (b) protect and preserve the Marine Environment within the State's own EEZ.

Such measures shall include, *inter alia*:

- (c) training of Nauruan scientific and technical personnel in accordance with clause 37; and

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- (d) transfer to the State of relevant non-proprietary data, scientific knowledge and know-how derived from the Project which is relevant to:
 - (i) increasing the State's capacity to monitor the Activities;
 - (ii) increasing the State's capacity to protect and preserve the Marine Environment within the State's own EEZ; and
 - (iii) assisting the State with the formulation and elaboration of rules, standards and recommended practices and procedures for the protection and preservation of the Marine Environment within the States' own EEZ.

40. Confidentiality

- 40.1 Subject to clause 40.2, the State must not disclose to a third party Confidential Information.
- 40.2 The State is not obliged to keep confidential any information:
 - (a) which is required or permitted to be disclosed by this Agreement;
 - (b) which is being used and necessary for the purpose of communicating with the ISA or other Regulatory Body, or in fulfilling the State's Sponsorship Obligations;
 - (c) which is in the public domain through no default of the State;
 - (d) which is given to a Court in the course of proceedings to which the State is a party or to an agreed arbitrator;
 - (e) which is given in accordance with clause 39 and is being used for the purposes contemplated in clause 39;
 - (f) to which NORI has given prior written consent to disclose; or
 - (g) which is given to the State's legal advisers, consultants, officers, employees, Project Director or other nominees, provided:
 - (i) that such parties undertake to keep the information confidential; and
 - (ii) the disclosure is reasonably necessary in connection with the State exercising its rights or performing its obligations under this Agreement or performing its Sponsorship Obligations.
- 40.3 If the State becomes aware of a suspected or actual breach of this clause 40 by the State, the State will Notify NORI or UNI and take reasonable steps to prevent or stop the suspected or actual breach.
- 40.4 This clause 40 survives termination or expiry of this Agreement for 5 years.

41. Public Communications

- 41. NORI and UNI shall not make any public statements that could have a significant adverse affect on the State, its name or reputation, except if:
 - (a) required by law;

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- (b) required under a relevant stock exchange regulation; or
- (c) such information is in the public domain.

42. Exploitation Regulations

- 42.1 Without prejudicing any other rights the Parties have under this Agreement, particularly those rights under clause 17, the Parties shall work together to incorporate any additional amendments to this Agreement that are necessary as a result of the ISA adopting regulations for the exploitation of polymetallic nodules in the Area.

43. Adoption of and Compliance with National Legislation

- 43.1 In the event that the State is required to adopt national legislation in order to fulfil its Sponsorship Obligations, NORI and UNI shall:
- (a) provide assistance, if requested, to the State in drafting and adopting; and
 - (b) reimburse the State the reasonable costs of drafting and adopting (subject to clause 30.2), national laws, rules, regulations and procedures in Nauru necessary to implement and fulfil the States Sponsorship Obligations.
- 43.2 NORI and UNI agree to, and where relevant shall ensure that all Project Companies, comply with all applicable Nauruan Laws that are necessary for the State to fulfil its Sponsorship Obligations, and acknowledge that, subject to clause 43.3, they are not, nor is any Project Company, entitled to any compensation or extensions of time or relief from performance of their obligations under this Agreement as a result of any Change in Nauruan Law, provided such Change in Nauruan Law is necessary for the State to implement and fulfil its Sponsorship Obligations, and provided such Change in Nauruan Law is not deemed a Discriminatory Change in Nauruan Law.
- 43.3 If compliance with an obligation under this Agreement would result in NORI or UNI breaching any Nauruan Laws, NORI and UNI shall be relieved from complying with that obligation under this Agreement to the extent and for the period that it causes NORI and UNI to be in breach of said Nauruan Laws. 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 cause NORI and UNI to breach Nauruan Laws.

44. Default and State Default

- 44.1 A Default occurs if there is a breach of an obligation under any Project Document or NORI's International Obligations by a Project Company or Liable Company.
- 44.2 Without prejudice to any other right the State may have, under this Agreement or at Law, if a Default occurs the State may give NORI or UNI a Notice in writing ("**Default Notice**") stating that a Default has occurred and requiring NORI and UNI to Remedy the Default within a reasonable time, from the date of such Notice.

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- 44.3 Upon receipt of a Default Notice NORI and UNI must promptly commence, and continue to pursue with diligence, the remedy of the Default, and must, whenever requested by the State, advise progress of the Remedy.
- 44.4 A State Default occurs if:
- (a) a Discriminatory Change in Law has occurred and:
 - (i) the State has been served a written Notice in accordance with clause 58.1;
 - (ii) NORI and UNI have attempted to negotiate in good faith with the State in accordance with clause 58.2; and
 - (iii) the adverse effect of the Discriminatory Change in Law on the relevant Project Company has not been resolved in accordance with clause 58.2 within 30 days of NORI or UNI serving said Notice;
 - (b) the State materially breaches its obligation to maintain Sponsorship of the Exploration in accordance with clause 2.1 or maintain Sponsorship of the Exploitation in accordance with clause 4.3, and the State fails to affirm its Sponsorship in writing within 30 days of being Notified by NORI or UNI of said breach;
 - (c) the State breaches this Agreement or any other Project Document (to which it is a party) in a way that substantially frustrates or renders it impossible for NORI, UNI or another Project Company to perform their obligations or exercise their rights under this Agreement or any Project Document for a continuous period of 1 month, provided NORI or UNI have not caused or contributed to the State's breach;
 - (d) the State ceases to be a member of the ISA in circumstances that cause the ISA to terminate, revoke or suspend NORI's ISA Contract, or purport to terminate, revoke or suspend NORI's ISA Contract (always provided that ISA membership is at the time necessary for NORI to carry out the Project), and that said termination, revocation or suspension does not occur in the course of NORI or UNI obtaining a substitute ISA Contract or other licence, concession or Authorization in the same or similar Licence Area or part thereof);
 - (e) a fraudulent 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) has caused, or will likely cause, NORI, UNI or a Project Company to suffer Loss or damage;
 - (f) the State is classified by the United Nations and/or international community as a Sanctioned State or Military Dictatorship or similar label for a period of greater than 60 days;
 - (g) the State's human rights profile deteriorates significantly from the Commencement Date so as to materially damage the reputation of any Liable Company; or
 - (h) the State has failed to comply with a final binding decision pertaining to the Project of the dispute settlement body applicable to it.
- 44.5 If a State Default occurs NORI or UNI may give the State a Notice in writing ("**State Default Notice**") stating that a State Default has occurred and requiring the State to Remedy the Default within a reasonable time, from the date of such Notice.

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44.6 Upon receipt of a State Default Notice the State must promptly commence, and continue to pursue with diligence, the remedy of the State Default, and must, whenever requested by NORI or UNI, advise progress of the Remedy.

45. Temporary Suspension of Activities

45.1 In the event that:

- (a) an Emergency exists or is highly likely to occur; the State may demand the suspension of the portion of the Activities necessary to avoid or mitigate an Emergency for such period as is reasonably necessary.
- (b) a Project Company, in spite of written warnings by either the ISA or the State, has conducted its activities in such a way as to result in serious persistent and wilful violations of the fundamental terms of this Agreement, ISA Contract or NORI's International Obligations and:
 - (i) the State has served a written Notice of its intention to order suspension under this clause 45 ("State Suspension Notice") on NORI or UNI; and
 - (ii) the State Suspension Notice specifies in detail the reasons why the State Suspension Notice is given and that the State requires NORI and UNI to remedy the breach within 30 days of receipt of said Notice; or
- (c) there is a material breach of clause 18 or an Event of Insolvency occurs with respect to a Liable Company that has not been Remedied within 90 days,

the State may, subject to clause 45.4, and by written Notice to NORI or UNI:

- (d) in the case of 45.2(a) above, demand the suspension of the portion of the Activities necessary to avoid or mitigate an Emergency for such period as is reasonably necessary;
- (e) in the case of 45.2(b) above, demand the suspension of all the Activities (for such period as is reasonably necessary) on the day falling 30 days after the date NORI or UNI receive the State Suspension Notice, unless:
 - (i) in the case that the breach can be remedied; NORI and UNI rectify or overcome the effect of the breach in that period; or
 - (ii) in the case that the breach cannot be remedied (and does not involve a breach of clause 18 or an Event of Insolvency of a Liable Company), NORI and UNI have adequately compensated the State for the demonstrable damages incurred and/or to be incurred by the State as a result of the breach; or
- (f) in the case of 45.1(c) above, demand the suspension of all the Activities (for such period as is reasonably necessary) on the day falling 30 days after the date NORI or UNI receive the State Suspension Notice, unless:
 - (i) in the case of a breach of clause 18, the breach has been remedied; or
 - (ii) in the case of an Event of Insolvency, the Event of Insolvency has been remedied or a new guarantor (acceptable to the State acting reasonably) executes a guarantee on the terms as set out in Schedule 2 to replace the existing Guarantee.

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For the avoidance of doubt, suspension under this clause 45.1 will not prejudice or affect any other right the State may have under this Agreement or at Law.

45.2 Subject to clause 45.4, if suspension is ordered in accordance with clause 45.1:

- (a) NORI and UNI will ensure all Project Companies comply with the suspension orders and carry out said suspension orders in a way that does not cause or exacerbate a Safety Incident or Serious Harm to the Marine Environment;
- (b) the suspended Activities may only be resumed when NORI or UNI are provided with written direction from the State to resume said Activities (always provided said resumption is allowed under International Law), which the State shall give as soon as practicable if:
 - (i) in the case of an Emergency, the Emergency has ceased;
 - (ii) in the case that the breach can be remedied; NORI and UNI have rectified or overcome the effect of the breach;
 - (iii) in the case that the breach cannot be remedied (and did not involve a breach of clause 18 or an Event of Insolvency of a Liable Company), NORI and UNI have adequately compensated the State for the demonstrable damages incurred and/or to be incurred by the State as a result of the breach;
 - (iv) in the case of a breach of clause 18, the breach has been remedied; or
 - (v) in the case of an Event of Insolvency, the Event of Insolvency has been remedied or a new guarantor (acceptable to the State acting reasonably) executes a guarantee on the terms as set out in Schedule 2 to replace the existing Guarantee; and
- (c) NORI, UNI, and the relevant Project Companies will not be relieved of their other responsibilities and obligations under this Agreement, except to the extent that such responsibilities and obligations cannot be performed as a result of the suspension.

45.3 NORI and UNI shall ensure all Project Companies provide any necessary assistance to the State in the exercise of its rights under this clause 45.

45.4 Clause 45 operates only to the extent that it does not conflict with any of NORI's International Obligations, and NORI, UNI, and all Project Companies are only obliged to comply with the terms of clause 45 to the extent they do not conflict with NORI's International Obligations. For the avoidance of doubt, and without limitation, NORI and UNI must ensure all Project Companies promptly comply with any Emergency Orders issued by the ISA or other Regulatory Body.

46. NORI or UNI Material Breach Termination

46.1 NORI and UNI must promptly advise the State when they become aware of:

- (a) any event which, with the effluxion of time is likely to become a Material Breach; or
- (b) a Material Breach.

46.2 In the event of a Material Breach, and:

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- (a) the State has served a written Notice of its intention to terminate this Agreement under this clause 46 (“**State Termination Notice**”) on NORI or UNI; and
- (b) the State Termination Notice specifies in detail the Material Breach in respect of which the State Termination Notice is given and that the State requires NORI and UNI to remedy the breach within 60 days of receipt of said Notice,

this Agreement will terminate, without penalty to the State, on the day falling 60 days after the date NORI or UNI receive the State Termination Notice, unless:

- (c) in the case that the Material Breach can be remedied; NORI and UNI rectify or overcome the effect of the Material Breach in that period;
- (d) in the case that the Material Breach cannot be remedied, NORI and UNI have adequately compensated the State for the demonstrable damages incurred and/or to be incurred by the State as a result of the Material Breach; or
- (e) the State withdraws in writing the State Termination Notice.

46.3 Termination of this Agreement under clause 46 shall not in any way prejudice or affect the State’s rights to Claim and recover damages under this Agreement or at Law, or Claim and recover under any indemnities given to the State in this Agreement. This clause 46.3 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.

47. State Breach Termination

47.1 In the event of a Material State Breach, and:

- (a) NORI or UNI have served a written Notice of their intention to terminate this Agreement under this clause 47 (“**NORI Termination Notice**”) on the State; and
- (b) the NORI Termination Notice specifies the Material State Breach in respect of which the NORI Termination Notice is given, and that NORI or UNI require the State to remedy the breach within 60 days of receipt of said Notice,

NORI and UNI may make an order in accordance with clause 49.2 on the day falling 60 days after the date the State received the NORI Termination Notice, unless:

- (c) in the case that the Material State Breach can be remedied; rectify or overcome the effect of the Material State Breach in that period; or
- (d) in the case that the Material State Breach cannot be remedied (and the breach does not relate to clause 44.4(f) or (g)), adequately compensate NORI and UNI for the demonstrable damages incurred and/or to be incurred by them or a Project Company as a result of the Material State Breach.

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48. Termination With No Breach

48.1 In the event that NORI's ISA Contract:

- (a) is surrendered;
- (b) is revoked;
- (c) expires; or
- (d) is otherwise terminated,

in circumstances where NORI is not at fault with the ISA Contract and is acting in good faith towards the State (but not including circumstances where such expiry, surrender, revocation or termination occurs in the course of NORI applying for or obtaining a substitute ISA Contract or other licence, concession or Authorization in the same or similar Licence Area or part thereof with the State as a Sponsor), this Agreement shall terminate without penalty to any Party, subject to clause 48.2.

48.2 In the event that this Agreement is terminated pursuant to clause 48.1, NORI and UNI warrant that for a period of 20 years from the date of said termination neither NORI or UNI shall apply for any rights to explore for and/or exploit Polymetallic Nodules in the International Seabed Area unless the State has been offered the right to sponsor said exploration and exploitation on the same terms and conditions as contained in this Agreement and the State has been given 3 months from the date of the offer to accept said offer. For the avoidance of doubt this clause 48.2 only applies if the Agreement has been terminated under clause 48.1.

48.3 This clause 48.2 survives termination or expiry of this Agreement for 20 years.

49. Temporary Continuation of Sponsorship

49.1 The purpose of this clause 49 is to ensure that, should the circumstances in clause 49.2(a) or 49.2(b) arise:

- (a) NORI is given a reasonable opportunity to find another country to sponsor its activities; and
- (b) the Activities can continue without adverse disruption or damage to the Project Companies.

49.2 In the event that:

- (a) NORI or UNI have elected under clause 47.1 to make an order in accordance with this clause 49.2 upon the State failing to rectify the Material State Breach or provide adequate compensation within the time period specified in clause 47.1; or
- (b) the State has elected to withdraw Sponsorship pursuant to clause 4.2(a),

NORI and UNI may, at their election and by written Notification to the State, order the State to temporarily continue Sponsorship in accordance with this clause 49, and the State warrants that if NORI and UNI make such an order it will continue Sponsorship in accordance with this clause 49.

49.3 Upon NORI and UNI making an order under clause 49.2, this Agreement shall continue in full force until the first to occur of:

- (a) NORI or UNI terminating this Agreement by Notice in writing to the State;

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- (b) a replacement sponsor country has been obtained and officially approved by the ISA or other Regulatory Body; and
- (c) 1 year from the date that the State was Notified under clause 49.2 (however, should a replacement sponsor country not be officially approved by the ISA within that year this period will be extended to 2 years from the date that the State was Notified under clause 49.2, provided NORI and UNI have, and will continue to, make all reasonable efforts to secure and have approved a replacement sponsor country),

at which point this Agreement shall terminate without penalty to any Party.

49.4 During the temporary continuation period all terms and conditions of this Agreement shall remain in full force. For the avoidance of doubt and without limitation:

- (a) the State shall, subject to clause 8, do all things reasonably necessary to give effect to its continued Sponsorship of NORI, including undertaking any communications with, and providing any necessary documentation to, the ISA or other Regulatory Body required in respect of the Sponsorship;
- (b) all Activities may continue, always providing that the Project Companies and said Activities comply with the requirements under this Agreement and NORI's International Obligations. However, if the State has elected to withdraw sponsorship in accordance with clause 4.2(a), NORI and UNI agree that no Exploitation shall commence until a replacement sponsor country has been obtained and officially approved by the ISA or other Regulatory Body, and the State has no responsibility or liabilities for the Exploitation moving forward;
- (c) NORI and UNI must continue to perform all of their obligations under this Agreement; and
- (d) the State shall continue to receive an Exploration Payment or Exploitation Payment, as the case may be.

49.5 The State warrants that it agrees this clause 49 is reasonable, and acknowledges that NORI and UNI have entered into the Agreement relying upon the warranties contained in this clause 49, and that they may incur significant costs if this clause 49 is breached.

49.6 If the State breaches, or purports to breach this clause 49, and:

- (a) NORI or UNI have served a written Notice of their intention to claim damages for breach of this clause ("**NORI Claim Notice**") on the State; and
- (b) the State does not within 30 days of receiving the NORI Claim Notice affirm in writing its continued Sponsorship in compliance with this clause 49,

NORI and UNI may:

- (c) terminate this Agreement and make a claim against the State for any damages, losses or costs that are sustained from the State's breach of this clause 49; or
- (d) notwithstanding any contrary provision in this Agreement, but subject to being permitted by International Law, continue to carry out the Activities as if the State had not withdrawn Sponsorship.

Furthermore, and without limiting any other rights, remedies or actions NORI or UNI have in connection with a breach of clause 49, the State agrees that NORI and UNI are entitled to seek

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equitable relief (including specific performance) to restrain any actual or threatened breach of clause 49.

49.7 Upon termination pursuant to clause 49.3 or 49.6 NORI may make an Assignment of any and all rights under its ISA Contracts and Authorizations to any third party nominated in writing by NORI or UNI.

50. Consequences of Termination and Expiration of Term

50.1 Upon expiration of the Term of this Agreement, or if this Agreement is terminated in accordance with clause 46, 48.1 or 49.3(a) or (c):

- (a) all Activities must cease as soon as reasonably practicable, provided that in ceasing the Activities, any and all Activities shall be in compliance with the standards required under this Agreement and NORI's International Obligations, and all Vessels, Equipment and Installations for which the State is responsible and potentially liable for in accordance with its Sponsorship Obligations must be removed from the Licence Area as soon as reasonably practicable or transferred to another countries' sponsorship;
- (b) the State will be relieved from all of its obligations arising under this Agreement, except for the State's obligations under clause 23.5;
- (c) NORI and UNI will not be entitled to any payments in connection with termination, whether in contract, at common law or otherwise, unless expressly stated in this Agreement; and
- (d) the State will cease to have any rights or claim to:
 - (i) the Exploration Payment (other than in respect of any unpaid days which have accrued up until the date of termination);
 - (ii) the Exploitation Payment (other than in respect of any Commercial Production up until the date of termination); and
 - (iii) Reimbursable Costs (other than in respect of any Reimbursable Costs which have accrued up until the date of termination).

50.2 For the avoidance of doubt, if this Agreement is terminated in accordance with clause 49.3(b), NORI and UNI may only continue to carry out the Polymetallic Nodule exploration and/or exploitation activities in the International Seabed Area if:

- (a) said activities are being carried out under the sponsorship of another country that has:
 - (i) been officially approved by the ISA or other Regulatory Body; and
 - (ii) assumed responsibility for said activities in accordance with the requirements of the ISA or other Regulatory Body; and
- (b) the State will not be deemed responsible for and can not incur any Liability at International Law for said activities that occur after the date of termination.

50.3 This clause 50 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.

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51. Penalties Under State Legislation

- 51.1 Notwithstanding anything else contained in this Agreement, NORI and UNI shall not be liable to the State for any costs, damages or monies owed to the State under this Agreement to the extent that such costs, damages or payments have already been paid to the State by NORI or UNI under Nauruan Laws or another Project Document.
- 51.2 This clause 51 survives termination or expiry of this Agreement up until the date that NORI and UNI no longer have any responsibilities or potential Liabilities to the State.

52. Dispute Resolution

- 52.1 If a dispute between the State and NORI and/or UNI arises out of or in connection with this Agreement or the Project, either the State, NORI or UNI may give to the other disputing Party a Notice of dispute in writing adequately identifying the matters and the subject of the dispute together with detailed particulars of the dispute. Notwithstanding anything in this clause 52 the Parties may, by mutual agreement in writing, conduct dispute resolution in any other way or vary the following dispute resolution procedures as they see fit.
- 52.2 Within 20 days after service of a Notice of dispute, the Parties must meet at least once, to attempt to resolve the dispute.
- 52.3 If, within 20 days after service of a Notice of dispute, the dispute is not resolved, the chief executive officer of NORI and/or UNI and a relevant State Minister must meet within 20 days of expiry of that 20 day period and use their best endeavours, acting in good faith, to resolve the dispute (in whole or in part). If the dispute is resolved at the meeting referred to in this clause then any such resolution will be reduced to writing and will be contractually binding on the Parties.
- 52.4 If the dispute is not resolved within 40 days after service of a Notice of dispute, either Party may by Notice in writing given to the other Party refer the dispute to mediation in accordance with clause 52.5.
- 52.5 A mediator will be agreed between the Parties or, in the absence of agreement, mediation of the dispute must be conducted:
- (a) in accordance with the rules for mediation set by the British Columbia International Commercial Arbitration Centre;
 - (b) at the cost and expense of the Parties equally (except that each Party must pay its own advisers, consultants and legal fees and expenses, and for the avoidance of doubt this will not constitute a Reimbursable Cost); and
 - (c) if not earlier resolved, be continued for a period expiring on the date being 30 days after the nomination of the mediator.
- 52.6 Any dispute or difference arising out of or in connection with this Agreement that has not been resolved by mediation in accordance with clause 52.5 must be submitted to arbitration in accordance with, and subject to, UNCITRAL Arbitration Rules (unless the Parties to the dispute otherwise agree on another procedure for arbitration).

Sponsorship Agreement

52.7 Subject to any contrary provision in the UNCITRAL Arbitration Rules:

- (a) there must be one arbitrator;
- (b) the language of the arbitration must be English; and
- (c) the place of arbitration must be Australia.

52.8 Notwithstanding anything in this clause 52:

- (a) nothing will prejudice the right of a Party to seek urgent injunctive, interrogatory or declaratory relief from a court of competent jurisdiction; and
- (b) each Party must continue to perform its obligations under the Agreement.

53. Enforcement

53.1 Without limiting any of the State's rights under this Agreement, if the State is obligated to take specific measures in accordance with its Sponsorship Obligations to monitor, enforce and ensure NORI's and UNI's compliance with NORI's International Obligations, NORI and UNI shall do all that is reasonably necessary to facilitate such measures.

54. Interest

54.1 NORI and UNI must pay, on demand by the State, interest on all sums payable by NORI and UNI which are due and payable under the Agreement and remain unpaid, including in relation to any Reimbursable Costs, damages, indemnities, Exploration Payments and/or Exploitation Payments.

54.2 Any interest payable under this clause 54 accrues from day to day from the due date for payment to the date of accrual payment at the rate of 7% p.a. compounded daily.

55. Indexation

55.1 All dollar amounts in this Agreement, including the Schedules, are fixed for the first three years of this Agreement, and shall be adjusted (on a compounding basis) in each following year by the relevant factor in each following year that represents official inflation in the United States of America or 2%, whichever is the least.

Sponsorship Agreement

56. Relationship of Parties

56.1 Nothing in, or contemplated by, this Agreement will be construed or interpreted as constituting a relationship between:

- (a) the State and NORI;
- (b) the State and UNI; or
- (c) the State, NORI and UNI,

of partners, joint venturers, fiduciaries, or principal and agent, or similar relationship.

57. Governing Jurisdiction

57.1 This Agreement is governed by and will be construed according to the laws of British Columbia, Canada, and the Parties irrevocably submit to the jurisdiction of the courts of British Columbia, Canada.

58. Discriminatory Change in Law

58.1 If there has been a Discriminatory Change in Law and NORI or UNI reasonably consider that a Project Company has been adversely affected by the Discriminatory Change in Law, they may give the State a written Notice:

- (a) specifying that a Project Company has been adversely affected by the Discriminatory Change in Law; and
- (b) requiring the State to remedy the effects of the Discriminatory Change in Law.

58.2 Within 21 days of the Notice referred to in clause 58.1 being served the Parties shall negotiate in good faith with a view to effectively reinstating the rights and obligations of the Project Company that existed prior to the Discriminatory Change in Law (including alleviating any adverse affects on the Project Company resulting from the Discriminatory Change in Law).

58.3 The Parties agree that in any negotiations required by clause 58.2 they should have the flexibility to:

- (a) amend the Project Documents;
- (b) adjust the financial contributions of NORI and UNI to the State; and
- (c) take any other action they agree.

58.4 The State shall, as soon as reasonable, advise NORI and UNI of any material changes in Nauruan Law that may affect NORI, UNI and/or the Project.

59. Notices

59.1 Any notice, demand, consent or other communication (“**Notice**”) given or made under this Agreement:

- (a) must be in writing and signed by the Party or a person duly authorized by the Party;

Sponsorship Agreement

- (b) must be addressed and delivered to the intended recipient by hand or registered post at the address or fax number below or the address or fax number last Notified by the intended recipient to the sender after the date of this Agreement:

to: Nauru Ocean Resources Inc
P.O. Box 30 Aiwo District
Republic of Nauru, South Pacific
Attention: Chief Executive Officer

to: United Nickel Inc.
Suite 2500
700 West Georgia Street
Vancouver, British Columbia
V6Y 1B3 CANADA
Attention: Chief Executive Officer

to: Minister for Commerce, Industry and Resources
Government Offices, Yaren District
Republic of Nauru
Attention: Minister

- (c) will be taken to be duly given or made when delivered, received or left at the above number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

- 59.2 For the avoidance of doubt, any Notice given by the State to NORI will be deemed to have been given to UNI as well, and any Notice given by the State to UNI will be deemed to have also been given to NORI. The State need not provide the same Notice to both entities.

60. Entire Agreement

- 60.1 To the extent permitted by Law the terms and conditions referred to herein constitute the entire agreement between the Parties with respect to the Agreement. Any prior arrangements, agreements, discussions, representations or undertakings are superseded.
- 60.2 The Parties agree that the Original Agreement will be cancelled and deemed null and void upon execution of this Agreement.

Sponsorship Agreement

61. Amendment

61.1 No amendment or variation of this Agreement is valid or binding on a Party unless made in accordance with the provisions of this Agreement or otherwise made in writing and signed by all Parties.

62. Severance

62.1 Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

63. Further Assurances

63.1 Each Party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

64. No Limitation

64.1 Without limiting the generality of any other provision of this Agreement, any exercise by a Party of any rights under this Agreement will not relieve the other Party of any of their obligations under this Agreement.

65. Counterparts

65.1 This Agreement may be executed in several counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this Agreement and all together constitute the entire Agreement between the Parties.

66. Set-off

66.1 The State may deduct from money otherwise due to NORI or UNI:

- (a) any debt or other money due from NORI or UNI to the State; or
- (b) any Claim to money that the State may have against NORI or UNI whether for Reimbursable Costs, damages, Exploration Payments, Exploitation Payments or otherwise,

whether under this Agreement or otherwise at Law relating to the Project.

Sponsorship Agreement

67. States Rights

- 67.1 Nothing in this Agreement:
- (a) derogates in any way from the State's rights under; or
 - (b) relieves NORI, UNI or any other person in any way from any obligations they have under, or requirements imposed by,
- the Law.

68. Enurement

- 68.1 The provisions of this Agreement will enure for the benefit of and be binding upon the Parties and their respective successors and permitted substitutes and assigns.

69. No Waiver

- 69.1 Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Agreement by a Party will not in any way preclude or operate as a waiver of any further exercise or enforcement of that or any other right, power or remedy provided under this Agreement or by Law.
- 69.2 A waiver or consent given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- 69.3 No waiver by a Party of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

70. No Fetter

- 70.1 Nothing in this Agreement shall prejudice or affect the exercise by the State of any discretion or right it has under any Law or any other Project Document.

71. No Merger

- 71.1 None of the terms or conditions of this Agreement nor any act, matter or thing done under or by virtue of or in connection with this Agreement will operate as a merger of any of the rights and remedies of the Parties in or under this Agreement all of which will continue in full force and effect until the respective rights and obligations of the Parties under this Agreement have been fully performed and satisfied.

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72. State Remedies

72.1 The rights, powers and remedies provided to the State in this Agreement, are in addition to and do not, except to the extent expressly provided in this Agreement, exclude or limit, any right, power or remedy provided by Law.

73. Representations and Warranties

73.1 All representations and warranties provided by NORI and UNI in this Agreement survive the execution and delivery of this Agreement and the completion of transactions contemplated by it.

73.2 Each representation and warranty provided by NORI and UNI in this Agreement, and the warranty provided by the State under clause 49.2, are continuing representations and warranties and will be repeated on each day while any obligation under this Agreement remains outstanding, with reference to the facts and circumstances then subsisting.

74. Survival

74.1 The following clauses of this Agreement survive the expiry, completion or earlier termination, of this Agreement: 21, 22, 23, 24, 27, 31, 33, 35, 36, 40, 42.2, 46.3, 48.2, 50, 51, 54, 55, 57, and 59 to 77 (inclusive) for the period of time stated in said clauses, or if no time period is stated; until the date that the State no longer has any responsibilities or potential Liabilities connected with or that may result from the Project.

75. Interpretation

75.1 In this Agreement, the following rules of interpretation apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a word importing the singular includes the plural (and vice versa), and if a word or phrase is given a defined meaning any other part of speech or grammatical form of that word or phrase has a corresponding meaning (unless otherwise defined in this Agreement);
- (c) a reference to dollars and \$ is to United States currency;
- (d) all references to time and to dates are to Nauruan times and dates;
- (e) the word “including” or any other grammatical form of that word is not a word of limitation;
- (f) a reference to NORI’s International Obligations or Sponsorship Obligations includes those which are brought into force after the Commencement Date and includes consolidations, amendments, re-enactments and replacements;
- (g) an obligation or a Liability assumed by, or a right conferred on, 2 or more persons or Entities binds or benefits them jointly and severally;

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- (h) a reference to a Party includes the Party's executors, administrators, successors and permitted assigns, including persons or Entities taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (i) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (j) a reference to an International Law includes its delegated legislation, laws, rules, regulations and procedures, and includes consolidations, amendments, re-enactments and replacements thereof;
- (k) a reference to a Party, clause or Schedule, is reference to a Party, clause or Schedule of this Agreement, and a reference to this Agreement includes all Schedules to it; and
- (l) a reference to a "meeting" or any other grammatical form of that word includes a teleconference or videoconference.

76. Precedence

76.1 If there is any inconsistency or conflict between the provisions of any of the following documents, then, unless otherwise stated, the documents take precedence in the following descending order of priority:

- (a) Project Agreement Variations;
- (b) clauses 1 to 77 of this Agreement;
- (c) the Schedules;
- (d) any other Project Document.

77. Definitions

77.1 The following definitions apply unless the context requires otherwise.

Activities means any and all Exploration and Exploitation, as well as any other activities or omission that occur in the Ocean for which the State has a responsibility for and for which the State could be held liable in accordance with International Law due to its sponsorship of NORI.

Agreement means this agreement.

Approval Notice means;

- (a) each Exploration Approval Notice; and/or
- (b) each Exploitation Approval Notice.

Assignment means the assignment, novation or transfer of NORI's title under any or all ISA Contracts in whole or in part to another person or Entity.

Affiliate has the following meaning for the purposes of this Agreement: one Entity is affiliated with another Entity if:

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- (a) one of them is a Subsidiary of the other,
- (b) both of them are Subsidiaries of the same Entity, or
- (c) each of them is Controlled by the same Entity.

Audit has the meaning given to that term in clause 27.

Auditor means any Entity or personnel carrying out an Audit pursuant to clause 27, including:

- (a) the State;
- (b) the State's nominees; and
- (c) any other entities or personnel authorized by the State to carry out or assist in the Audit.

Authorization means any legally binding: licence; permit; consent; approval; determination; or contract from the ISA or other Regulatory Body or under any International Law which:

- (a) must be obtained or satisfied in order to carry out any of the Activities; or
- (b) has been issued to a Project Company in accordance with NORI's International Obligations, and includes but is not limited to Exploitation, Exploration and environmental licences and permits.

Change in Control of an Entity means where, at any time, any person or Entity, alone or together with any Affiliate or Affiliates, ceases to, or commences to, directly or indirectly have Control of the Entity.

Change in Nauruan Law means the coming into effect or implementation after the date of this Agreement, of, or a change to:

- (a) Nauruan Law or Legislation; or
- (b) Changes in the interpretation or application of Nauruan law or Legislation as a result of a Final Determination.

Claim includes any action, claim, demand or proceeding.

Commencement Date means the date of this Agreement.

Commercial Production shall be deemed to have occurred when Exploitation of Polymetallic Nodules yields a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information gathering, analysis or the testing of plant or equipment (and in any case shall be deemed to have occurred in any calendar year where there has been Recovery of greater than 500,000 Dry Tonnes of Polymetallic Nodules from the Licence Area in that calendar year).

Compliance Report means the report contained in Schedule 3.

Confidential Information means all trade secrets, techniques, processes, designs, intellectual property, know how and information of the Project Companies and Liable Companies and all information about the Project, which is not in the public domain (except if due to a breach of the Agreement or other obligation of confidentiality by the State) and have been made available to the State in connection with this Agreement or its Sponsorship Role.

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Consequential Loss means any special, incidental, indirect, exemplary, punitive or consequential loss or damage howsoever caused, arising out of or in connection with the Agreement and whether or not foreseeable or in the ordinary contemplation of the Parties at the date of the Agreement including without limitation loss of revenue, loss of profits, loss of contract, loss of production, loss of data, loss of goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating, loss or denial of opportunity, loss of anticipated savings, business interruption or increased or wasted overhead costs, or loss or damage which is not a natural or immediate consequence of the cause of action or which is suffered as a result of a Claim by a third party (whether by way of an obligation to any third party directly or by way of compensation to a Party, and including without limitation Claims by third parties resulting from a Project Company failing to perform an obligation (contractual or otherwise) to supply Polymetallic Nodule ore and/or products); or loss or damage which consists of a claim for personal injury or damage to property), whether in contract, tort, statute or otherwise.

Contingency Plan has the meaning given to that term in clause 29.

Contract for Exploitation means any contract or licence permitting NORI to Exploit Polymetallic Nodules in the International Seabed Area entered into between NORI and the ISA or NORI and another Regulatory Body.

Contract for Exploration means any contract or licence permitting NORI to Explore for Polymetallic Nodules in the International Seabed Area entered into between NORI and the ISA or NORI and another Regulatory Body.

Control means:

- (a) being in a position to cast, or control the casting of, more than 50% of the maximum numbers of votes that may be cast at a general meeting; or
- (b) having an interest in more than 50% of the securities, of an Entity (whether alone or together with any associate).

Controller means, in relation to a Change in Control, the person or Entity to whom control will pass.

Deed of Guarantee means the deed of guarantee in Schedule 2.

Default has the meaning given to that term in clause 44.1.

Default Notice has the meaning given to that term in clause 44.2.

Discriminatory Change in Nauruan Law means:

- (a) a Change in Nauruan Law the terms of which apply:
 - (i) adversely to the Project and not to similar projects; or
 - (ii) adversely to NORI and not to other persons or Entities in similar relationships with the State or carrying out similar projects; or
- (b) a Change in Nauruan Law that:
 - (i) materially changes the commercial intent of the Sponsorship arrangement or the Agreement; or

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- (ii) materially increases the quantum of benefits required to be given by NORI or UNI (whether economic or intangible) to the State in such a way as to materially change the intent contemplated under this Agreement (including without limitation changes to Nauruan Laws resulting in a materially adverse increase in NORI's tax burden).

Notwithstanding anything contained in this definition, a Discriminatory Change in Nauruan Law does not include a Change in Nauruan Law which is necessary for the State to fulfil its Sponsorship Obligations.

Disapproval Notice means:

- (a) each Exploration Disapproval Notice; and/or
- (b) each Exploitation Disapproval Notice.

Dry Tonne means 70% of the weight of 1000 kilograms of moist Polymetallic Nodules measured upon recovery to the surface of the Ocean.

EEZ means Exclusive Economic Zone as defined from time to time by the ISA, other applicable Regulatory Body with jurisdiction to determine such matters, or as determined through an agreement recognized by International Law.

Emergency means:

- (a) in the context of the Marine Environment, a circumstance where:
 - (i) the Activities have caused or pose a likely and immediate threat of causing Serious Harm to the Marine Environment; or
 - (ii) the Activities have caused or pose a likely and immediate threat of causing a Pollution Incident;
- (b) in the context of Safety at Sea; a circumstance where the Activities have caused or pose a likely and immediate threat of causing a Safety Incident; or
- (c) any other event or circumstance connected to or arising from the Activities that is classified by the ISA or other Regulatory Body as an emergency.

Emergency Orders means any orders given by the ISA or other Regulatory Body in relation to or connected with an emergency.

Entity includes a body corporate or unincorporate, a partnership, joint venture or a trust.

Environmental and Safety Performance Monitoring Program has the meaning given to that term in clause 28.

Equipment means any equipment, appliance, tool, mechanism, apparatus, device, fittings, instrument, gadget or other contraption and components thereof that is being used in the Activities and for which the State is responsible and potentially liable in accordance with its Sponsorship Obligations.

Equipment, Technology and Mine Plans has the meaning given to that term in clause 13.

ESPMP means Environmental and Safety Performance Monitoring Program.

Event of Insolvency means:

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- (a) a receiver, administrator or similar officer is appointed in respect of an Entity or all or substantially all of the assets of an Entity;
- (b) a liquidator or provisional liquidator is appointed in respect of an Entity;
- (c) a Entity is wound up, or any application (not withdrawn or dismissed within 60 days) is made to a court for an order, an order is made, or a resolution is passed, for the purpose of:
 - (i) appointing a receiver, administrator or similar officer referred to in paragraphs (a) or (b) of this definition;
 - (ii) proposing or implementing a scheme of arrangement in respect of an Entity; or
 - (iii) winding up or deregistering an Entity;
- (d) an Entity is, or admits in writing that it is, or is taken under any applicable law to be, insolvent or unable to pay its debts as and when they become due and payable; or
- (e) an act of bankruptcy is committed by an Entity.

Exploitation means the exploitation of Polymetallic Nodules in the Ocean for commercial purposes:

- (a) in the Licence Area;
- (b) pursuant to the Contract for Exploitation; and/or
- (c) pursuant to any other rights NORI may have at International Law to exploit Polymetallic Nodules in the International Seabed Area under the Sponsorship of the State,

and includes without limitation and with regards to the aforementioned exploitation:

- (d) the extraction, surface lifting, dewatering, treatment, processing and transportation of Polymetallic Nodules and all other work, operations and activities required thereof;
- (e) mobilization and demobilization of Vessels to and from the Licence Area;
- (f) transporting, constructing, installing, testing, commissioning, using, operating, maintaining and repairing Equipment and Installations;
- (g) transportation of supplies and materials;
- (h) loading and unloading of Polymetallic Nodules to and from any treatment and/or processing facility;
- (i) environmental monitoring and testing programs;
- (j) rehabilitation of the Licence Area; and
- (k) the provision and management of all labour required to execute the exploitation of Polymetallic Nodules from the Licence Area,

in the Ocean, as well as any other activity in the Ocean required to carry out the exploitation that:

- (l) NORI is permitted to carry out under the Contract for Exploitation or relevant Authorization relating to exploitation; and
- (m) would not breach any of NORI's International Obligations or cause the State to breach any of its Sponsorship Obligations.

Exploitation Application Submission has the meaning given to that term in clause 4.1.

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Exploitation Approval Notice means a written notice given by the State approving Exploitation.

Exploitation Conditions means those conditions set out in clause 4.4(a) to (f) (inclusive).

Exploitation Disapproval Notice means a written notice given by the State disapproving Exploitation.

Exploitation Payment has the meaning given to that term in clause 3 of Schedule 1.

Exploitation Submission has the meaning given to that term in clause 4.5.

Exploration means exploration in the Ocean for Polymetallic Nodules:

- (a) in the Licence Area;
- (b) pursuant to the Contract for Exploration; and/or
- (c) pursuant to any other rights NORI may have at International Law to explore for Polymetallic Nodules in the International Seabed Area under the Sponsorship of the State,

and includes with regard to the aforementioned exploration:

- (d) testing of collecting systems and equipment, treatment and processing facilities and transportation systems;
- (e) mobilization and demobilization of Vessels to and from the Licence Area;
- (f) dredging to collect Polymetallic Nodules;
- (g) testing of collection systems and other technology and equipment for use in Exploitation; and
- (h) environmental and technical studies,

in the Ocean, as well as any other activity and operation in the Ocean required to carry out the exploration that:

- (i) NORI is permitted to carry out under the Contract for Exploration or relevant Authorization relating to exploration; and
- (j) would not breach any of NORI's International Obligations or cause the State to breach any of its Sponsorship Obligations.

Exploration Approval Notice means a written notice given by the State approving Exploration.

Exploration Conditions means those conditions set out in clause 3.1(c) to (f) (inclusive).

Exploration Disapproval Notice means a written notice given by the State disapproving Exploration.

Exploration Payment has the meaning given to that term in clause 2 of Schedule 1.

Exploration Submission means the submission required under clause 3.2 detailing all relevant information about the proposed Exploration, including all information set out in clause 3.2(a) to (e) (inclusive).

Extractive Metallurgy means processing Polymetallic Nodules to extract metals on a commercial scale during Exploitation, and includes without limitation pyrometallurgy, hydrometallurgy, chemical reduction and electrolytic reduction, but does not include the initial treatment of Polymetallic Nodules such as sorting, washing, dewatering, crushing or grinding or similar treatment.

Final Determination means a decision of a court or of any agency having jurisdiction to resolve the dispute:

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- (a) from which no appeal can be taken and in respect of which no application for special leave to appeal can be made; or
- (b) in respect of which the relevant appeal or special leave application period has expired without an appeal being taken or an application for special leave to appeal being made.

Financial Security includes a guarantee, bond, letter of credit or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the State, as well as a trust fund, company bond, company guarantee and/or pledge of unencumbered and marketable company assets, or combination of the aforementioned instruments.

Force Majeure means any event or circumstance or combination of events or circumstances which:

- (a) is beyond the reasonable control of the Party affected by that event or circumstance or both;
- (b) causes or results in prevention of the performance by the affected Party of any of its obligations under the Agreement;
- (c) cannot be prevented, overcome or remedied by the exercise by the affected Party of a reasonable standard of care and diligence, or in the case of a Project Company avoided or mitigated executing its Project Conformity Plan or Contingency Plan; and
- (d) In the case of a Project Company, does not occur or arise (directly or indirectly) as a result of the action of a Project Company or Liable Company or inaction of a Project Company or Liable Company where that inaction constituted a failure by the Project Company or Liable Company to act in accordance with NORI's International Obligations or Good Industry Practice.

This might in certain circumstances include:

- (e) if NORI or UNI is the affected Party, a Discriminatory Change in Law;
- (f) a Sponsorship Agreement Variation that renders it impossible or impracticable to comply with an obligation under this Agreement or other Project Document;
- (g) a strike or industrial dispute which has as its result or intent a widespread application and/or affects the Work under the Agreement but which was not caused directly or indirectly by a Project Company or which is directed at or emanates from the employees of the Party seeking to claim force majeure;
- (h) negligence or breach by the other Party;
- (i) storm, flood, earthquake, cyclone, tempest, tornado, hurricane, lightning explosion, landslide, high seas inundation, tsunami or other natural phenomenon of an exceptional, inevitable and irresistible character, ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, insurrection, civil war, sabotage, act of a public enemy, hostile act of a foreign enemy, acts of terrorism, war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), riot, invasion, armed conflict, embargo, plague or other serious epidemics or acts of God; and/or
- (j) negligence or other wrongful act of any country or other authority for the maintenance of lights or other navigational aids in the exercise of that function.

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Good Industry Practice means the internationally recognized standards, procedures and practices of the mining, offshore and/or maritime industries, as the case may be, that is expected from prudent, responsible and competent Entities operating in those industries.

Guarantee means the guarantee and indemnity set out in the Deed of Guarantee.

Guarantor means any Entity (or Entities) that provide a Guarantee under the Deed of Guarantee from time to time.

IMO means the International Maritime Organization.

Installation means any structure, installation or artificial island in the Ocean used in or intended to be used in the Activities and for which the State is responsible and potentially liable for in accordance with its Sponsorship Obligations, including without limitation any artificial platform or station (whether fixed, floating, anchored, not anchored, semisubmersible or submersed and including any floating structure other than a Vessel), offshore treatment, crushing, grinding and/or processing facilities, seafloor pipelines and offshore Polymetallic Nodule loading and unloading facilities.

International Law means any legally binding:

- (a) acts and legislation (and all regulations and subordinate legislation made under those acts and legislation), Treaties and Conventions, ordinances, regulations, by-laws, orders, awards, proclamations and any other rules recognised by international law that are of the jurisdiction where Activities are being carried out or which regulate the Activities or which NORI and/or the Project Companies are legally required to comply or which confer a legal responsibility or obligation on the State with respect to Sponsorship, regardless of their origin or character (including without limitation those laws and rules established by customary international law, by a treaty or by a general principle applicable within the international legal order, or established under Treaties and Conventions, a judgment by the International Court of Justice, International Tribunal for the Law of the Sea or another tribunal, or from any other processes for creating legal obligations recognized by International Law);
- (b) rules, regulations, procedures, licences, consents, permits, approvals and requirements of the ISA or other Regulatory Body; and
- (c) Internationally Accepted Rules and Standards,

in existence now or that come into force after the Commencement Date, and including any changes or amendments to said International Laws and to the interpretation or application thereof, but does not include bilateral or multilateral agreements that Nauru has entered in bad faith to NORI or UNI.

International Seabed Area means all parts of the Ocean seabed not subject to national jurisdiction.

International Waters means all parts of the Ocean not subject to national jurisdiction.

Internationally Accepted Rules and Standards means any international laws, rules, standards and recommended practices that are applicable to the Project and that NORI, UNI or any Project Company are legally required to comply with under international law, and includes without limitation those legally binding laws, rules, standards or recommended practices adopted by the ISA or IMO as well as those legally binding international rules and standards regarding, as applicable:

- (a) dealing with Polymetallic Nodule ore, including without limitation:

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- (i) loading and unloading of Polymetallic Nodules from a surface Vessel and/or Installation to transport Vessels and to and from offshore processing and/or treatment facilities;
- (ii) offshore dewatering, treating, and/or processing of Polymetallic Nodules; and
- (iii) transport of Polymetallic Nodules;
- (b) Vessels, Installations and Equipment, including without limitation:
 - (i) the design and construction of Vessels, Installations and Equipment;
 - (ii) surveys, inspections and certification of Vessels, Installations and Equipment;
 - (iii) the operation of Vessels, Installations and Equipment; and
 - (iv) maintenance of Vessels, Installations and Equipment;
- (c) pollution, including without limitation:
 - (i) the carrying of, dealing with and discharging from Vessels, Installations and/or Equipment of harmful substances;
 - (ii) the disposal of any waste material resulting from any offshore processing and/or treatment facility;
 - (iii) preventing Pollution Incidents and reducing and controlling other pollution and hazards to the Marine Environment; and
 - (iv) minimization of the release of wastes or other effluents, toxic, harmful or noxious substances, especially those which are persistent, from or through the atmosphere or by dumping or discharge into the Marine Environment;
- (d) Safety at Sea;
- (e) the Marine Environment, including without limitation:
 - (i) the protection and preservation of the Marine Environment;
 - (ii) rehabilitation of the Marine Environment;
 - (iii) environmental impact assessment, monitoring and testing;
 - (iv) minimizing interference with the ecological balance of the Marine Environment and the harmful effects of such activities as dredging, mining, disposal of waste, dumping, construction and operation or maintenance of Installations, and other devices related to such activities;
 - (v) minimization of damage to the flora and fauna of the Marine Environment; and
 - (vi) protection and preservation of rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life, and the distribution, abundance and productivity of species;
- (f) record keeping, logbooks and documentation;
- (g) Emergencies; and

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- (h) employment, workplace relations, training, conditions of employment, occupational health and hygiene, occupational welfare and safety, and working hours.

ISA means the International Seabed Authority.

ISA Contract means any contract, licence, agreement or arrangement NORI may have with the ISA or other Regulatory Body for:

- (a) prospecting for Polymetallic Nodules;
- (b) Polymetallic Nodule Exploration;
- (c) Exploitation of Polymetallic Nodules; and/or
- (d) developing Polymetallic Nodules,

In the International Seabed Area, including the terms and conditions of said contract, licence, agreement or arrangement.

ISA Contractor means any person, country or organization that has rights to any area and/or resources (including without limitation Polymetallic Nodules, seafloor cobalt crusts, seafloor polymetallic sulphides and biological resources) in the International Seabed Area granted and recognized by the ISA.

Law means any statute, regulation, by-laws, or any other subordinate regulation of British Columbia, Canada, or any principles of law established by decisions of courts in British Columbia, Canada.

Liability includes any debt, obligation, cost, expense, loss, damage, compensation, charge or liability of any kind, actual, prospective or contingent and whether or not currently ascertainable and whether arising for breach of contract, in tort (including negligence), restitution, pursuant to statute, Law, equity, or at International Law.

Liable Companies means NORI, UNI and each Guarantor.

Licence Area means that part of the International Seabed Area, as may change from time to time, over which NORI has the right to Explore and/or Exploit Polymetallic Nodules under an ISA Contract or similar concession, licence or Authorization granted by the ISA or other Regulatory Body.

Legislation means:

- (a) any act of parliament in Nauru;
- (b) any subordinate legislation, rules, regulations or by-laws in Nauru; and
- (c) requirements in Nauru with which NORI is legally required to comply.

Loss means any damage, loss, cost, charge, expense, outgoing or payment (whether present, contingent, unascertained, immediate, future, indirect, incidental or otherwise).

Marine Environment means:

- (a) the natural and biological resources comprising any ecosystem within the Ocean, including the physical, chemical, geological and biological components (whether living or non-living);
- (b) conditions and factors which interact and determine the productivity, state, condition and quality of any marine ecosystem in the Ocean and the ecological patterns and processes that occur within said marine ecosystems; and

Sponsorship Agreement

- (c) the waters of the Oceans and the airspace above those waters, as well as the seabed and ocean floor and subsoil thereof.

Marine Scientific Researcher means any person, country or organization that has rights to conduct research in International Waters recognized by the ISA, other Regulatory Body or at International Law.

MARPOL means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by Nauru.

Material Breach means the occurrence of any of the following:

- (a) A material breach by NORI, UNI, Project Company or Liable Company of one or more of the following clauses: 3.1, 4.4, 9, 10.1(b), 10.1(c), 11, 12, 13, 14, 20, 21, 22, 23, 35, 36, 45, 46.1, or 48.2.
- (b) a material breach by NORI of an ISA Contract that has not been remedied within a reasonable time after Notice of the breach is received by NORI from either the ISA, other Regulatory Body or the State;
- (c) NORI, UNI, a Liable Company or Project Company have provided fraudulent or materially misleading information to the State, including without limitation, a misleading Compliance Report;
- (d) an Assignment occurs, except in the case where the Assignment is expressly permitted under the Agreement;
- (e) an Event of Insolvency occurs in respect of a Liable Company that has not been Remedied within 90 days;
- (f) an ISA Contract is suspended or terminated by the ISA or other Regulatory Body as a direct result of NORI failing to comply with the conditions of said ISA Contract;
- (g) A Project Company, in spite of written warnings by either the ISA or the State, has conducted its activities in such a way as to result in serious persistent and wilful violations of the fundamental terms of this Agreement, ISA Contract or NORI's International Obligations;
- (h) NORI or UNI have failed to comply with a final binding decision pertaining to the Project of the dispute settlement body applicable to it; or
- (i) NORI or UNI have caused serious and irreversible damage to the State's name and/or reputation.

Material State Breach means a State Default that has not been remedied within a reasonable time in accordance with clause 44.5.

Military Dictatorship means a government that exercises inhumane and significantly rigid and repressive controls over the social, economic and political life of its citizens.

Mine Plan means any plan, method, strategy, technique or approach to mining Polymetallic Nodules for which the State is responsible or potential liable for in accordance with its Sponsorship Obligations, in particular the method for:

- (a) Recovering Polymetallic Nodules from the Licence Area;

Sponsorship Agreement

- (b) minimizing the direct impact on the Marine Environment from said Recovery; and
- (c) minimizing all plumes associated with said Recovery.

National Waters means all parts of the Ocean within national jurisdiction.

Nauruan Law means:

- (a) Legislation in Nauru;
- (b) any other applicable statute, subordinate legislation, rules, regulations, by-laws or guidelines with which compliance is legally required in Nauru; and
- (c) common law or principles of equity in Nauru.

Nauruan National means a citizen of the Republic of Nauru.

Notice has the meaning given to that term in clause 59.

NORI means Nauru Ocean Resources Inc (No. T/2028) of 1st Level, Civic Centre, Aiwo District, Republic of Nauru, South Pacific.

NORI Claim Notice has the meaning given to that term in clause 49.6 or in clause 24.2, as the case may be.

NORI's International Obligations means any and all obligations NORI and/or any Project Company is legally required at international law to comply with while carrying out the Project, that are in existence now or that come into force after the Commencement Date (and including any changes or amendments to said obligations and to the interpretation or application thereof) under:

- (a) each ISA Contract;
- (b) all legally enforceable rules, regulations, procedures, guidelines and recommendations adopted by the ISA or other Regulatory Body;
- (c) all Authorizations;
- (d) all legally enforceable directions or orders issued by the ISA or other Regulatory Body;
- (e) all International Laws; and
- (f) UNCLOS and other Treaties and Conventions applicable to the Project;

and includes without limitation all obligations and responsibilities that NORI and UNI have the breach of which could result in Liability to the State at International Law, as well as all legally enforceable obligations and responsibilities that NORI and UNI have pertaining to ocean pollution, Safety at Sea and/or the Marine Environment.

NORI Termination Notice has the meaning given to that term in clause 47.1.

Ocean means the interconnected system of the Earth's oceanic waters (including the Atlantic, Pacific, Indian, Arctic, and Antarctic oceans), and includes the seabed and ocean floor and subsoil thereof, the superadjacent waters, and the atmosphere above the ocean.

Original Agreement means the agreement executed between NORI and the State on 6 March 2008.

Parties means the parties to this Agreement; NORI, UNI and the State.

Sponsorship Agreement

Plan of Work means the program for carrying out NORI's Exploration activities and/or Exploitation activities, as the case may be, approved by the ISA or other Regulatory Body.

Pollution Incident means any pollution arising from the Project that results in a serious breach of NORI's International Obligations.

Polymetallic Nodule means any mineral deposit in the Ocean that contains (in quantities greater than trace) at least one of the following elements, that is to say, manganese, nickel, cobalt, copper, phosphorus and molybdenum.

Project includes:

- (a) the Sponsorship of NORI by the State; and
- (b) the Activities.

Project Company means, with respect to the Project, any Entity carrying out any of the Activities and whose actions and/or omissions the State is responsible for at International Law due to the States' Sponsorship of NORI, and includes without limitation NORI and UNI.

Project Conformity Plan has the meaning given to that term in clause 28.

Project Director means the person or Entity the State may from time to time appoint in accordance with clause 32.5 to administer and enforce this Agreement and manage parts or all of the Project on behalf of the State.

Project Documents means:

- (a) this Agreement;
- (b) each Deed of Guarantee;
- (c) each Financial Security; and
- (d) each Rehabilitation Financial Security.

Project Personnel means any and all personnel engaged by a Project Company to execute the Project in the Ocean.

Recover means extracted and recovered from the seafloor.

Regulatory Body means any organization that has:

- (a) legal jurisdiction over the Activities;
- (b) rules and regulations to which NORI and the Project Companies are legally required to comply at International Law; and
- (d) the power to hold the State liable or responsible at International Law for the Project and its Activities.

Rehabilitation Requirements has the meaning given to that term in clause 35.

Rehabilitation Financial Security includes a guarantee, bond, letter of credit or indemnity by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the State, as well as a sinking fund, unit levy, trust fund, company bond, company guarantee and/or pledge of unencumbered and marketable company assets, or combination of the aforementioned instruments.

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Reimbursable Costs means:

- (a) those costs referred to in clause 30.2, 30.5, and 43.1; and
- (b) those reasonable net costs incurred by the State in carrying out the ESPMP and any Audits, that represent an additional cost to what would normally be incurred by the State under its internal expenditures, and for which the State has, prior to incurring such costs, provided NORI or UNI with a Notice of and budget for the 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.

Remedy means to remedy or redress the relevant occurrence or overcome its consequences so that there ceases to be any continuing detrimental effect of that potential or actual occurrence.

Safety at Sea means safety at sea and safety of life at sea, and includes, *inter alia*:

- (a) safe Vessel management and navigation;
- (b) collision prevention;
- (c) maintaining appropriate safety procedures and medical standards;
- (d) appropriate provision of safety equipment, first aid, rescue and fire fighting services;
- (e) protecting the safety, health and welfare of personnel used in the Works;
- (f) preventing injury to Project Personnel, State Project Personnel and all other personnel that may be affected by the Activities; and
- (g) taking measures to effectively deal with safety Emergencies.

Safety Incident means any event involving Safety at Sea that seriously breaches NORI's International Obligations.

Sanctioned State means a State that has been condemned by the United Nations and/or international community for continued violations of human rights and international humanitarian law, a State which constitutes a threat to international peace and security in the region, or a State which UNI or its Affiliates are prohibited from working in or with due to restrictions imposed by their national government/s.

Schedule means a schedule to this Agreement, and includes schedule 1 to 4 (inclusive).

Serious Harm to the Marine Environment means any serious harm to the Marine Environment caused by one or more Activities that:

- (e) constitutes a breach of NORI's International Obligations;
- (f) causes the State to breach any of its Sponsorship Obligations; or
- (g) exceeds the level of environmental harm permitted for said Activity or Activities by the ISA, other Regulatory Body or at International Law.

Significant Insurance Policy means any insurance policy required under this Agreement or NORI's International Obligations that covers a significant aspect of the Project which poses a relatively high risk (relative to other aspects of the Project) of causing Serious Harm to the Marine Environment, a significant Safety Incident or a significant Pollution Incident.

Sponsorship Agreement

Sponsor and **Sponsorship** mean sponsorship of NORI by the State as required by NORI to operate in the International Seabed Area, or as required under any ISA Contract.

Sponsorship Agreement Variation has the meaning given to that term in clause 17.

Sponsorship Obligations means any and all *bona fide* responsibilities and obligations the State has under UNCLOS and at International Law which it is legally required to comply with and that pertain to the Project, including its responsibility to ensure NORI's compliance with NORI's International Obligations.

State means the Republic of Nauru.

State Default has the meaning given to that term in clause 44.4.

State Default Notice has the meaning given to that term in clause 44.5.

State Project Personnel means any person engaged by the State to carry out the ESPMP or any Audit or similar function under the Project Documents.

State Termination Notice has the meaning given to that term in clause 46.2.

Subcontractor means any person or Entity who is subcontracted to carry out all or part of the Activities, whether by a Project Company, Liable Company or any other person, and includes without limitation any of the subcontractors' officers, employees, agents, contractors, or assignees, but excluding any person who is contracted by the State, ISA or other Regulatory Body. For the avoidance of doubt, this definition only includes those persons or Entities whom the State has a responsibility and is potentially liable for in accordance with its Sponsorship Obligations.

Submission means:

- (a) each Exploration Submission;
- (b) each Exploitation Application Submission; and/or
- (c) each Exploitation Submission.

Subsidiary has the following meaning for the purposes of this Agreement; an Entity is a subsidiary of another Entity if:

- (a) it is Controlled by:
 - (i) that other Entity;
 - (ii) that other Entity and one or more Entities Controlled by that other Entity; or
 - (iii) 2 or more entities Controlled by that other Entity, or
- (b) it is a subsidiary of a subsidiary of that other Entity.

Tax means any present or future tax, income tax, levy, impost, deduction, charge, duty, compulsory loan or withholding, levied or imposed by the State or a State government agency.

Technology means any technology, method or process used in the Activities for which the State is responsible and potentially liable in accordance with its Sponsorship Obligations.

Term means the Initial Term as provided for in clause 1.1 and any extension thereof in accordance with clause 1.2.

Sponsorship Agreement

Treaties and Conventions means any and all agreements, treaties, protocols or conventions under international law entered into by:

- (a) countries who are members of the United Nations or similar organization;
- (b) the United Nations; or
- (c) the International Seabed Authority or International Maritime Organization,

that are applicable to the Project and the State is legally required to comply with, and includes every amendment to, or revision of, any such instrument, being an amendment or revision to which the State is a party, and includes without limitation:

- (d) treaties and conventions pertaining to maritime safety, marine pollution, seafloor exploration and/or exploitation;
- (e) the International Convention for the Safety of Life at Sea, 1974;
- (f) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78);
- (g) the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, as modified by the Protocol of 1978 relating thereto;
- (h) the Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000; and
- (i) the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

UNI means United Nickel Inc (BC0813631) of Suite 2500 700 West Georgia Street, Vancouver, British Columbia, Canada.

UNCLOS means the United Nations Convention on the Law of the Sea of 10 December 1982; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by Nauru.

Vessel means any sea-going vessel and any seaborne craft of any type whatsoever used in the Activities and for which the State is responsible and potentially liable for in accordance with its Sponsorship Obligations.

Works means all work in the Ocean carried out in the performance of the Exploration and/or Exploitation.

Sponsorship Agreement

Signed as an agreement

For and on behalf of **Nauru Ocean Resources Inc.**

Name:

Dated: / /

Title:

For and on behalf of **United Nickel Inc.**

Name:

Dated: / /

Title:

For and on behalf of **The Republic of Nauru**

Name:

Dated: / /

Title:

Sponsorship Agreement

Schedule 1

Payment Mechanism

[Append]

Sponsorship Agreement

Schedule 2

Deed of Guarantee

Date	
Parties of (<i>Guarantor</i>). The Republic of Nauru (the <i>State</i>).
Recitals	
A	The State has relied on the undertakings given by the Guarantor in this Deed of Guarantee as a condition to entering into the Agreement with NORI and UNI, and in continuing Sponsorship, as the case may be.

It is agreed as follows.

1. Definitions

In this Schedule 2 Deed of Guarantee:

Guaranteed Obligations means any and all Liabilities and obligations of the Principal, and any indemnities and other amounts payable by the Principal to the State, whether absolute or contingent, due or to become due, now existing or hereafter incurred. In furtherance of the foregoing and without limiting the generality thereof, **Guaranteed Obligations** includes:

- (a) all money which is or becomes payable by or recoverable from the Principal under the Agreement;
- (b) all money in respect of which the Principal is now or at any time indebted or liable, or contingently indebted or liable, to the State under the Agreement;
- (c) due and prompt observance and performance of all covenants, obligations, terms and conditions on the part of the Principal to be performed or observed under or in connection with the Agreement; and

Sponsorship Agreement

- (d) payment of all money and damages which are or may become payable by or recoverable from the Principal in connection with or in consequence of any breach or repudiation of any of the obligations of the Principal under or in connection with the Agreement,

and is irrespective of whether the Principal is liable or obligated solely, or jointly, or jointly and severally with another person or Entity.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Guaranteed Obligations.

Parties means the parties to this Deed of Guarantee.

Principal means:

- (a) NORI, if this Deed is executed by UNI; or
(b) NORI and UNI, if this Deed is executed by a person or Entity other than UNI.

2. Interpretation

2.1 Any word, expression, reference or term used in this Deed which is defined in the Agreement and is not specifically defined in this Deed will, unless the context otherwise requires, have in this Deed the same meaning as in the Agreement.

2.2 Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning.
(b) reference to dollars and \$ is to United States currency.
(c) all references to time and to dates are to Nauruan times and dates.
(d) the word “including” or any other grammatical form of that word is not a word of limitation.
(e) a reference to Party includes the Party’s executors, administrators, successors, permitted substitutes and assigns, including persons or Entities taking by way of novation.
(f) a reference to a clause in this Schedule 2 is reference to a clause of this Schedule 2, unless otherwise expressly stated or the context requires otherwise.

3. Guarantee

3.1 The Guarantor irrevocably and unconditionally guarantees to the State:

- (a) the due and punctual performance by the Principal of all the Guaranteed Obligations; and
(b) the due and punctual payment in full of all the Guaranteed Money,

on the terms set forth in this Deed.

3.2 Without limiting the generality of clause 3.1:

Sponsorship Agreement

- (a) if the Principal fails to perform any of the Guaranteed Obligations in full, the Guarantor shall immediately on demand by the State cause the Principal to perform, where possible, said Guaranteed Obligations; and
 - (b) if the Principal does not pay the Guaranteed Money when due, the Guarantor must on demand by the State pay to the State the Guaranteed Money which is then due and unpaid.
- 3.3 This Guarantee and the obligations of the Guarantor hereunder shall terminate and be of no further force or effect (and the Guarantor shall have no further Liability hereunder) on and as of the date that the State no longer has any responsibilities or potential Liabilities connected with or that may result from the Project. Without limitation, this Guarantee is a continuing guarantee and indemnity for the whole of the Guaranteed Obligations and is not wholly or partially discharged (even if all of the Guaranteed Obligations that are presently owing are paid or fulfilled) as long as any of the Guaranteed Obligations are owing, payable or unfulfilled, are contingently owing or payable or may in the future become owing or payable, and until the Guaranteed Obligations have been fully paid and satisfied, the Guarantor will not be subrogated to the rights of the State.
- 3.4 The Guarantor, as a covenant separate and distinct from that contained in clause 3.1, irrevocably and unconditionally undertakes to indemnify the State and at all times keep the State indemnified against any Loss or damage suffered by the State arising by reason of:
 - (a) any failure by the Principal to perform the Guaranteed Obligations duly and punctually;
 - (b) the Liability of the Principal to pay or fulfil the Guaranteed Obligations to the State being unenforceable in whole or in part as a result of any lack of capacity, power or authority or any improper exercise of power or authority on the part of the Principal; or
 - (c) the Principal becoming Insolvent, including the amount of any Exploration Payment or Exploitation Payment which is void or voidable against any person, and the amount of any Exploration Payment or Exploitation Payment which does not accrue from the date of Insolvency or is not recoverable by reason of the Insolvency and which would otherwise have been recoverable from the Principal under the Guarantee in clause 3.1.
- 3.5 The Guarantor further agrees to pay any and all reasonable expenses (including, without limitation, all reasonable fees and disbursements of counsel) which may be paid or incurred by the State in enforcing any rights with respect to, or collecting, any or all of the Guaranteed Obligations and/or enforcing any rights with respect to, or collecting against, the Guarantor under this Guarantee.
- 3.6 The Guarantor will not be discharged, released or excused from this Deed by any arrangement made between the Principal and the Guarantor.
- 3.7 To the extent permitted by law, and unless otherwise expressly stated in a Project Document, the Liability and obligations of the Guarantor under this Deed are irrevocable, continuing, absolute, independent and unconditional and will not be prejudiced or affected by any act, omission, matter, circumstance or thing (other than the indefeasible payment in full of the Guaranteed Obligations) that would otherwise operate in Law or in equity to reduce or release the Guarantor from the Guarantor's Liability. In furtherance of the foregoing and without limiting the generality thereof, the Guarantor's Liability will not be prejudiced or affected by:
 - (a) the State granting time, waiver or other indulgence to the Guarantor or the Principal;

Sponsorship Agreement

- (b) the State forbearing to enforce or neglecting to exercise any remedy or right it has against the Guarantor or the Principal;
 - (c) any laches, acquiescence, or other act, neglect, default, omission, delay or mistake by the State;
 - (d) any breach by the State of its Sponsorship Obligations. For the avoidance of doubt, and without limitation, the Principal and Guarantor will be liable notwithstanding the amount claimed by the State relates to an expense, cost, penalty, Claim or Liability against, incurred or to be paid by the State resulting from or in relation to the State failing in whole or in part to fulfil its Sponsorship Obligations;
 - (e) a Force Majeure event;
 - (f) any variation of any Guaranteed Obligation or of the Agreement, made with or without the knowledge of the Guarantor;
 - (g) the release or discharge of any of the Guaranteed Obligations or the Agreement or any security held for the performance of any of the Guaranteed Obligations;
 - (h) the Insolvency of the Principal;
 - (i) any other or further security or guarantee held or taken by the State; or
 - (j) any security now or after the date of this Deed held by the State for the payment of money or the performance of obligations hereby guaranteed.
- 3.8 The State is not required to enforce any right, power or remedy under any security it may hold, before making any demand or claim on the Guarantor under this Deed.
- 3.9 Until the State has received 100 cents in the dollar in respect of the Guaranteed Obligations, the Guarantor agrees:
- (a) in the event of any administration in insolvency of the affairs of the Principal not, without the prior written consent of the State, to lodge any proof of debt or similar claim in respect of any debt or Liability by the Principal to the Guarantor on any account whatsoever nor to enforce any security held by the Guarantor in respect of the Principal but to hold in trust for the State any such debt or Liability and any rights of proof or other rights or benefits in respect thereof and any such security;
 - (b) if requested by the State, to lodge a proof of debt or similar claim in any such administration and enforce any such security as aforesaid and to execute and do all such documents and things as the State requires at any time to enable the State to have and receive the benefit of or arising from any such proof, claim or security; and
 - (c) not, at any time, to claim the benefit of or seek or require the transfer of any guarantee or security which is, at any time, held by the State in respect of the Guaranteed Obligations.

Sponsorship Agreement

4. Interest

- 4.1 The Guarantor must pay, on demand by the State, interest on all sums payable by the Guarantor which are due and payable under this Deed and remain unpaid.
- 4.2 Any interest payable under this clause 4 accrues from day to day from the due date for payment to the date of accrual payment, before or after judgment, at the rate of 7% per annum compounded daily.

5. Notices

- 5.1 Any notice, demand, consent or other communication (“**Notice**”) given or made under this Deed of Guarantee:
 - (a) must be in writing and signed by the Party or a person duly authorized by the Party;
 - (b) must be addressed and delivered to the intended recipient by hand or registered post at the address or fax number below or the address or fax number last Notified by the intended recipient to the sender after the date of this Agreement:

to: in the case of the Guarantor:

.....
.....
.....
.....

to: in the case of the State:

**Minister for Commerce, Industry and Resources
Government Offices, Yaren District
Republic of Nauru
Attention: Minister**

- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

Sponsorship Agreement

6. Governing Jurisdiction

- 6.1 This Deed of Guarantee is governed by and will be construed according to the laws of British Columbia, Canada, and the Parties irrevocably submit to the jurisdiction of the courts of British Columbia, Canada.

7. Guarantor Liability

- 7.1 Where the Guarantor consists of more than one legal person, each of those persons agree to be bound jointly and severally by this Deed of Guarantee and the State may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor.
- 7.2 Where similar deeds of guarantee have been given to the State by third parties, the Guarantor agrees to be bound jointly and severally with those third parties and that the State may choose to enforce this Deed of Guarantee without recourse to any other deeds.

Sponsorship Agreement

Executed as a Deed

For and on behalf of **The Republic of Nauru**

Name:

Dated: / /

Title:

In the presence of

Signature of Witness

Dated: / /

Name of Witness in full

For and on behalf of[Guarantor]

Signature of Director

Dated: / /

Name of Director in full

Signature of Secretary/other Director

Dated: / /

Name of Secretary/other Director in full

Sponsorship Agreement

Schedule 3 Compliance Report

[Append]

Sponsorship Agreement

Schedule 4

Training and Recruitment

1. Any word, expression, reference or term used in this Schedule 4 which is defined in the Agreement will have in this Schedule the same meaning as in the Agreement.
2. NORI and UNI shall devise and carry out the training and recruitment programs contained in this Schedule 4.

Table 1 Training during Exploration

Training Program	Objective	Details
Capacity Building: Marine Science	Increase the capacity of Nauruan Nationals to: (a) carry out the ESPMP, with the aim of positioning the State to carry out the ESPMP without the need for external assistance within 2 years of Exploitation commencing; and (b) preserve and protect Nauru's Marine Environment and monitor the activities occurring within Nauru's EEZ.	Suitably qualified Nauruan Nationals will be trained by independent environmental experts and organizations, with such training to include education, bursaries, scholarships to students and university or college fees, accommodation, airfares and conference fees to conferences and meetings, assistance with work experience and research, transfer of relevant scientific knowledge and know-how pertaining to the marine environment, and participation both on and offshore in the ESPMP's, on a scale proportionate to the scale of the Project at the time.
Pre-Employment Training and Staff Recruitment	Build and improve upon the capacity of Nauruan Nationals to participate in employment during Exploitation.	In the latter stages of Exploration NORI and UNI shall engage with and educate the communities in Nauru regarding employment opportunities during Exploitation. Following such engagement and education initial assessment programs in Nauru will be carried out to provide interested Nauruan Nationals and potential job applicants with feedback on their current skill levels and the training needed to maximize future employment opportunities in the Project.

Sponsorship Agreement

Table 2 Training and Recruitment Programs during Exploitation

Training Program	Objective	Details
<p>Continuation of Pre-Employment Training and Staff Recruitment</p>	<p>Continue to:</p> <p>(a) build and improve upon the capacity of Nauruan Nationals to participate in employment during Exploitation;</p> <p>(b) increase the representation of Nauruan Nationals in the Project's workforce; and</p> <p>(c) help build the skills base of Nauruan Nationals in the Project's workforce, expand their career options and increase their economic participation,</p> <p>on a scale proportionate to the scale of the Project at the time.</p>	<p>Continue to:</p> <p>(a) engage with and educate the communities in Nauru regarding employment opportunities in the Project;</p> <p>(b) carry out assessment programs in Nauru to provide interested Nauruan Nationals and potential job applicants with feedback on their current skill levels and the training needed to maximize future employment opportunities in the Project; and</p> <p>(c) assist Nauruan Nationals with vocational training and/or other necessary pre-employment training to build their skills base and become work-ready,</p> <p>on a scale proportionate to the scale of the Project at the time.</p>
<p>Traineeships</p>	<p>Provide accelerated training opportunities for Nauruan National job applicants who may not already possess all the requisite skills to work in the Project.</p>	<p>Traineeship programs shall be carried out across a range of trades and professions and on a scale proportionate to the scale of the Project at the time.</p> <p>Trainees will be closely monitored and evaluated and successful graduates will be assisted with developing their skills so that they will be ready for full-time employment.</p> <p>On successful completion of the program, trainees will be integrated into full time employment.</p>
<p>Career Planning, Professional Development and Development</p>	<p>Development of career paths for already experienced Nauruan National employees within the Project that will move them beyond operator and trades roles, and into other areas of the Project.</p>	<p>This program shall include, on a scale proportionate to the scale of the Project at the time:</p> <p>(a) monitored development plans, study assistance, development of technical capabilities, building of commercial</p>

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<p>of Sustainable Employment</p>	<p>Provide sustainable employment and skills development to Nauruan Nationals to ensure opportunities exist to further advance their career.</p>	<p>skills, leadership development, technical training and experience, development opportunities (e.g. rotations throughout the business);</p> <p>(b) providing scholarships to promote offshore mining and maritime related educational advancement, especially in the fields of mathematics and science; and</p> <p>(c) development of systems through which Nauruan Nationals can be coached and mentored as a means of capacity building.</p>
<p>Capacity Building: Marine Environmental Science</p>	<p>As per Table 1</p>	<p>As per Table 1</p>