BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION - Annex III

Basic conditions for a deep-sea mining contract will be the regulations of this Annex, supplemented by the particular rules, regulations, and procedures to be adopted by the Authority[1] and which are now under consideration by the Preparatory Commission[2]. In general, activities in the Area may be undertaken by the organ of the Authority, the Enterprise (see next chapter), or by others, who can be a state party or its nationals, including state enterprises an natural or Juridical persons[3]. Sponsorship of a state party is obligatory for the latter[4]. The basis for mining rights is a contract to be concluded between the Sea-Bed Authority and the applicant[5]. The Authority is to approve applications, provided that they are in accordance with the uniform and non-discriminatory requirements set forth in the regulations of the Authority and consistent with the Convention[6]. Each application is to indicate one or more areas which in total are sufficiently large to allow two mining operations[7]. Half of the indicated area is to be reserved for the Enterprise (or for developing states), it is the responsibility of the Authority to designate which within forty five (ninety) days[8]. When on the basis of such an application a contract has been concluded, the part for the Enterprise is known as a reserved area, and the contractor has exclusive rights for the other part[9]. The application is to be based on a plan of work[10], which must include the applicant's pledge[11] to (a) accept rules, regulations, and Authority decisions, (b) accept the control of the Authority[12], (c) fulfil the contract in good faith, and (d) comply with provisions for transfer of technology The financial terms of the contract are regulated and provide for application and minimum annual fees and a production charge (but negotiations over financial terms are not completely excluded)[13]. The contractor has the option of paying a flat-rate "socialist" production charge of 5% annually of commercial production for the first decade and 12% annually thereafter or a "capitalist" charge, described in great detail, based on a combination of a percentage of production and a share of net proceeds[14]. These two modes of contribution were established out of deference to the two economic systems of East and West A contractor's calculations should take two basic conditions into account (a) the mining site is to be of sufficient estimated value and of a size to satisfy the objective[15], and (b) the contractor is obligated to obtain a production authorization before he commences work[16]. A production authorization establishes a fixed amount of nickel which may be recovered from mining operations under the contract[17]. A general production ceiling is to be fixed annually[18], which is of importance when selection is made among applicants for a production authorization[19]. (General production ceiling less amount of production authorizations issued equals possible amount for new production authorizations.)

A transfer of technology to the Enterprise or to developing countries takes place only if required by the Authority, if the technology is used to carry out activities in the Area, and if such technology is not available on the open market, the contractor must then make the technology available on reasonable terms and conditions[20.] Training programmes may be established as contractual conditions or as regulations[21]. The contract may be suspended or terminated only if a contractor persistently and wilfully violates fundamental terms of the contract or ignores final dispute settlement decisions, and monetary penalties may be imposed instead[22]. Both the contractor and the Authority are liable for wrongful acts or omissions for which they are responsible[23].

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[1] AIII, Art. 17
[2] RI, Art. 5, Subpara. (g)
[3] Art. 153, Subpara. 2 (b); AIII, Art. 3, Para. 1
[4] AIII, Art. 4, Para. 1&3
[5] AIII, Art. 3, Para. 5
[6] Art. 153, Para.1; AIII, Art. 3, Para. 4; AIII, Art. 6, Para. 3
[7] AIII, Art. 8; AIII, Art. 17, Subpara. 2 (a)
[8] AIII, Art. 8 ; (Art.9, Para. 4)
[9] AIII, Art. 8-9; 16
[10] AIII, Art. Art. 3, Para. 3; AIII, Art. 6
[11] AIII, Art.4, Para.6
[12] e.g., AIII, Art. 17, Subpara. 1(b)(viii)
[13] AIII. Art. 13. Para. 1. 2-4
[14] AIII, Art. 13, Para. 5-6
[15] AIII, Art. 8; AIII, Art. 17, Subpara. 2(a)
[16] Art. 151, Subpara. 2 (a)
[17] Art. 151 Subpara. 2 (b)
[18] Art. 151, Para. 4-7
[19] AIII, Art. 7
[20] Art. 144; AIII, Art. 5
[21] AIII, Art. 15; AIII, Art. 17, Subpara.1(b)(xi)
[22] AIII, Art. 18
[23] AIII, Art. 22; Art. 139

AUTHORITY – CONTRACTOR

NB: For an interim period (Article 151 (3)) contracts must be conducted in accordance with a production authorization (Article 151 (2)) based on a production ceiling (Article 151 (2(d))) determined according to trends on the nickel market (Article 151 (4)) by applying the Production Policy as provided by the Convention (Article 151)

Subject Matter	Provisions of Convention	Basic Conditions of Annex III	Dispute Settlement Convention/Annex III
Power of Authority	157;160;153	Rules regulations and procedure to be issued by Authority (Article 17)	Not applicable in respect to discretionary power of Authority (Article 189)
Applicants Except Enterprise	Article 153 (2)	Application (Article 3 (1)) - plan of work (Art 6) undertakings (Art 4 Para 6), proposed area (Art 8) Qualification (Art 4 Para 1-3) financial/technical capability - sponsorship by state party Application fee (Art 13 Para 2) (US$500 000)	Dispute Chamber (Article 187(d))
Contract	Article 153 (3) Article 153 (6)	- Contract concluded between Authority and applicant (contractor) (Article 3 (5)) approved by Council (Article 162 (2(j)) - Joint venture with Enterprise (Article 11) - Suspension (serious persistent and wilful violations) (Article 18 (1)) - Revision (conduct inequitable impracticable impossible) (revisable only by consent) (Article 19) - Transfer of rights and obligations (Article 20) consent required	- In general Commercial arbitration (Article 188 (2) Article 187(c)(i)) - Dispute Chamber acts or omissions related to Area activities (Article 187(c)) and others (Article 187(f))
Reservation		Of the proposed area - One half reserved for Enterprise (Articles 8-9) - Contractor granted exclusive rights for one half (Article 16 Art 3(4c))	
Production Authorization	Article 151 (2)	Selection of Applicants (Article 7)	Disputes Chamber (Article 187(c)(ii))
Financial Terms		Minimum annual contribution US$1 million (Article 13 (3)) or production charge (Article 13 (4)) whichever is greater (Article 13 (3))	Commercial arbitration AIII (Article 13 (15))
Transfer of Technology	Article 144	Transfer of technology (Article 5) - Training program (Article 15)	AIII Article 5 (4) - In general Commercial terms and conditions commercial arbitration (Article 187 187(c)(i)
Liability	Articles 139 and 304	- Contractor and Authority (Article 22) - Authority for its staff (Article 168 (2))	Dispute Chamber (Article 187(e)) Liability of Authority
Monetary penalties		- Imposed by Authority proportionate to seriousness of violation (Article 18 (2))	Dispute Chamber AIII, Article 18 (3)