



## Seabed Minerals (Mining) Regulations 2020

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His Excellency, Tom Marsters

Queen's  
Representative

### Order in Executive Council

At Avarua, Rarotonga this

day of

2020

**Present:**

### His Excellency the Queen's Representative in Executive Council

Pursuant to section 178 of the Seabed Minerals Act 2019, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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## **Regulations**

- 1 Title**

These regulations are the Seabed Minerals (Mining) Regulations 2020.
- 2 Commencement**

These regulations come into force on [date].
- 3 Overview**
  - (1) These regulations impose requirements relating to seabed mining.
  - (2) In summary,—
    - (a) Part 1 sets out requirements in respect of applications for mining licences, the conduct of tender rounds, licence decision-making, and the grant of licences:
    - (b) Part 2 specifies conditions that must be complied with before mining can commence:
    - (c) Part 3 sets out obligations that must be complied with during mining:
    - (d) Part 4 includes provisions about standards and guidelines with respect to mining:
    - (e) Part 5 includes provisions about the review and modification of a mining work plan:
    - (f) Part 6 deals with the response and management of incidents and inquiries into incidents:
    - (g) Part 7 includes provisions about the grant of a licence renewal:
    - (h) Part 8 sets out obligations that must be complied with after a mining licence ends:

- (i) Part 9 covers the gathering and management of information:
  - (j) Part 10 sets out general provisions including service of documents:
  - (k) Part 11 includes procedural requirements for amending these regulations:
  - (l) the Schedules include further detailed requirements for applicants and licence holders and a model mining licence.
- (3) This regulation is only a guide to the general scheme and effect of these regulations.

#### **4 Interpretation**

- (1) In these regulations, unless the context otherwise requires,—

**Act** means the Seabed Minerals Act 2019

**applicable fee** means any application, annual, or other fee determined by the Authority under, or prescribed in, regulations made under the Act

**Authority representative** means the Commissioner and any officer, inspector, or other person lawfully performing functions of the Authority under the Act

**block**—

- (a) means any area of the seabed, identified as a block by co-ordinates on a map prepared by the Authority and situated wholly or partly in the Cook Islands or its exclusive economic zone; and

- (b) includes a cell

**cell** means a part of a block

**closing time** means the published date and time by which the Authority must receive applications in response to any invitation to apply

**closure plan** means a plan prepared in accordance with the environment regulations

**confidential information** means information that, under section 18 of the Act, must not be publicly disclosed

**contingency plan** means a contingency plan approved under section 20(4) of the Act

**contiguous** means a group of blocks forming a discrete area if the area formed by the blocks is continuous, however, two blocks that are joined at one point only do not form a continuous area

**day** means any day except—

- (a) a Saturday, a Sunday and official public holidays and observances; and
- (b) a day, or days in a period, during which Government offices are officially closed

**environment regulations** means regulations made under the Environment Act 2003

**exploration regulations** means the Seabed Minerals (Exploration) Regulations 2020

**environmental approval** means a project permit or consent issued in accordance with the Environment Act 2003 and regulations made under that Act

**environmental management plan** means a plan prepared in accordance with the environment regulations

**Equator Principles** means the risk management framework of that name adopted by financial institutions for determining, assessing, and managing environmental and social risks in projects, as updated from time to time

**feasibility study** means a comprehensive technical and economic study of the selected development option for the seabed minerals project that demonstrates at the time of reporting that extraction is reasonably justified (economically mineable)

**financial year** means the period beginning on 1 July in any year and ending with the close of 30 June in the following year

**financial guarantee** means the insurance, bank guarantee, trust fund cash, or other form of security acceptable to the Authority that a licence holder may be required to provide as a security deposit under section 101 of the Act and as a condition of the licence

**good industry practice** means, in relation to seabed mineral activities, acting in a manner that is technically competent and at a level of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar or parallel activity, industry or sector

**incident response and management plan** means a plan prepared in accordance with Schedule 5

**invitation to apply** means an invitation under section 44 of the Act for persons to apply for a mining licence

**licence holder** means the licensee whose name is entered in the register of titles as the person who holds the licence

**licensing panel** means the panel constituted under section 22 of the Act

**local engagement, training and business development plan** means a plan prepared in accordance with Schedule 6

**material change—**

- (a) means a change to the basis on which an original report, document or plan, including a mining work plan, was accepted or approved; and
- (b) includes changes that must be considered in the light of any applicable guidelines such as—
  - (i) physical modifications; or
  - (ii) the availability of new knowledge or technology; or
  - (iii) changes to operational management

**mining area** means the part or parts of the licensed area delineated in a mining work plan where the seabed minerals will be extracted from the seabed

**pre-feasibility study** means a comprehensive study of a range of options for the technical and economic viability of a seabed minerals project that has advanced to a stage where a preferred mining method is established and an effective method of mineral processing is determined

**project permit** means a permit granted under section 36 of the Environment Act 2003 and environment regulations

**register of titles** means a register maintained and updated by the Authority in accordance with sections 48(2) and 49 of the Act

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**Service** means the National Environment Service

**standard blocks** means blocks designated for release by the responsible Minister under section 42(1)(a) of the Act that are vacant

**Technical Advisory Group** means the Technical Advisory Group established by section 14 of the Marae Moana Act 2017

**tender blocks** means standard blocks that have been declared by the Authority as available for a tender round under section 44(2) of the Act

- (2) Terms used in these regulations that are defined in the Act have the same meaning as those in the Act.



## **Part 1**

### **Application for and grant of mining licence over blocks**

#### **Subpart 1—Content of application for mining licence over blocks**

##### **5 Applications for grant of mining licence over blocks**

An application for the grant of a mining licence over blocks may be made, in accordance with section 59(3) of the Act, by—

- (a) the holder of an exploration licence, to the extent that the application relates to the grant of a mining licence over 1 or more blocks in the exploration licence area; or
- (b) the holder of a retention right, to the extent that the application relates to those blocks covered by the retention right; or
- (c) any other person in response to an invitation from the Authority to apply for the grant of a mining licence over tender blocks or standard blocks.

##### **6 Applications for mining licence over blocks**

(1) An application for a mining licence under section 59 of the Act must—

- (a) be made in accordance with the requirements in Schedule 1, and any applicable guidelines issued by the Authority; and
- (b) specify the blocks covered; and
- (c) state the estimated period required for mining and include technical and economic evidence justifying that estimate; and
- (d) include evidence to show that, upon grant of a licence, the applicant will have—
  - (i) access to the financial resources necessary to carry out the commercial recovery programme set out in the applicant's mining work plan; and
  - (ii) the technical capability necessary to carry out the commercial recovery programme set out in the applicant's mining work plan; and
  - (iii) the capability and systems that are likely required to meet the health and safety and environmental requirements of Cook Islands enactments; and
  - (iv) the capability and resources necessary to implement the environmental management plan and closure plan, including the technical ability to mitigate environmental effects and, where feasible, rehabilitate or restore the marine environment; and
- (e) include information known to the applicant of other marine users in the operating area; and
- (f) include—
  - (i) a map of the proposed licensed area and mining areas; and
  - (ii) a map of the existing exploration licensed area or the area of blocks held under a retention and the proposed mining areas; and
  - (iii) a description of the geology of the seabed minerals; and

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- (iv) a map of the physical and geological characteristics, such as seabed topography, bathymetry and bottom currents; and
  - (v) a report that sets out the evidence for mineable seabed minerals that includes estimates of the mineable seabed mineral resource,—
    - (A) which may include inferred, indicated, and measured resources and probable and proved reserves; and
    - (B) which must be prepared in accordance with the Reporting standard of the International Seabed Authority for mineral exploration results assessments, mineral resources and mineral reserves (ISBA/21/LTC/15 at Annex V); and
  - (vi) maps showing the average density (abundance) and grade of the seabed minerals; and
  - (vii) mining pre-feasibility or feasibility studies, which include mine design, scheduling and production, seabed mineral recovery rates, and economic viability; and
  - (viii) an outline of any alternative mining areas that have been identified and considered, and why these options have not been pursued; and
  - (ix) a report on the project economics of the mining operation, including in particular, the financial viability, technical constraints, and proposed level of expenditure in relation to the scale and extent of the proposed mining operations; and
  - (x) a supporting financial model including a projection of the royalties and other amounts payable to the Crown; and
  - (xi) details of the point of valuation and valuation methodology for determining the liability for royalties in accordance with the Seabed Minerals (Royalties) Regulations 2013; and
- (g) include a statement as to whether the proposed mining operations are in accordance with good industry practice; and
- (h) be accompanied by—
  - (i) a mining work plan prepared in accordance with Schedule 2 including a risk management plan prepared in accordance with Schedule 3; and
  - (ii) a non-technical summary of the mining work plan; and
  - (iii) a financing plan prepared in accordance with Schedule 4; and
  - (iv) an application for a project permit, including an environmental impact assessment report, prepared in accordance with the environment regulations; and
  - (v) an incident response and management plan prepared in accordance with Schedule 5; and
  - (vi) an occupational health and safety plan; and
  - (vii) a local engagement, training and business development plan prepared in accordance with Schedule 6; and
  - (viii) the applicable fee.
- (2) The estimates prepared under subclause (1)(f)(v) must be accompanied by—
  - (a) documentation on input data, methodology, quality control, and validation of the resource; and

- (b) a spatial definition of the areas to which the figures in the estimates apply; and
  - (c) a statement of the criteria used to determine the estimates; and
  - (d) a statement of whether the estimates are made on the basis of a pre-feasibility or feasibility study, or on some other specified basis.
- (3) An applicant may include a statement on any other matter the applicant considers relevant to support the application.
- (4) If applicable, an application for a mining licence over tender blocks must also comply with the requirements of the relevant invitation to apply.
- (5) Where an application proposes multiple mining areas that are not contiguous mining areas, the Authority may require separate mining work plans for each mining area.

## **7 Mining areas covered by application**

- (1) The applicant must select the size and location of the proposed mining areas.
- (2) An application must define the boundaries of the proposed mining areas and blocks that they cover by submitting a shapefile in accordance with the applicable application guideline.
- (3) The proposed mining areas—
  - (a) must allow for the recovery of the seabed minerals in sufficient quantities to satisfy the applicant's estimated commercial production requirements over the initial term of the licence (not exceeding thirty (30) years) in an efficient, economical, and orderly manner,—
    - (i) with due regard for the protection and conservation of the marine environment; and
    - (ii) taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the mining work plan; and
  - (b) must be no larger than necessary to satisfy the applicant's estimated production requirements over the initial term of the licence.
- (4) The mining areas need not be contiguous areas, provided that each area must be worked efficiently, and the total proposed licensed area satisfies the requirements of subclause (3).

## **Subpart 2— Conduct of tender round in respect of tender blocks**

## **8 Notice of tender round and invitation to apply**

- (1) For the purposes of section 45 of the Act, the public announcement of a tender round for a mining licence in respect of tender blocks must specify—
  - (a) information identifying the tender blocks over which the licence may be granted; and
  - (b) the period within which applications may be made; and
  - (c) the procedure that will be followed to allocate the licence; and
  - (d) that the tender will be determined on the basis of the following criteria:
    - (i) the qualification criteria under section 64 of the Act;
    - (ii) whether the applicant is a fit and proper person under section 65 of the Act;

- (iii) the evaluation criteria set out in Schedule 9 and the relevant invitation to apply;
  - (iv) the nature and extent of the mining activity proposed to be carried out; and
- (e) where the applicant can obtain the relevant invitation to apply and purchase the relevant tender document package.
- (f) the applicable fees.
- (2) An invitation to apply for titles referred to in section 44(1) of the Act must comply with Schedule 8.

### Subpart 3—Opening, receipt, and acknowledgment of application for mining licence

#### **9 Opening of application by Authority**

- (1) Subject to subclause (2), the Authority must immediately open any application it receives for a mining licence.
- (2) The Authority must open all applications made in response to a tender round that were received by the closing time—
  - (a) promptly after the passing of the closing time for the tender; and
  - (b) in the presence of the Commissioner, or the Commissioner’s delegated representative.
- (3) The Authority must follow any procedures stated in the invitation to apply in relation to the opening and handling of applications received in response to a tender round that are received after the closing time.

#### **10 Receipt, acknowledgement, and safe custody of applications by Authority**

- (1) On the receipt of an application for a mining licence (whether delivered in hard copy form or electronically), the Authority must immediately make a written record of the date and time of receipt.
- (2) The Authority must give each applicant written acknowledgment of receipt specifying the date and time of receipt and within five (5) days after—
  - (a) the date it receives an application; or
  - (b) the closing date in the case of applications made over tender blocks.
- (3) The Authority must place the application in safe custody and ensure the confidentiality of all confidential information contained in the application in accordance with its procedures.

### Subpart 4—Further processing of application for mining licence by the Authority

#### **11 Authority must determine if application complete**

- (1) The Authority must determine whether an application complies with regulation 6.
- (2) That determination must be made within ten (10) days after—
  - (a) receiving an application; or
  - (b) the closing date of the tender round, if applicable.

- (3) A determination by the Authority that an application is complete does not affect a similar determination to be made by the National Environment Service on an application for a project permit under the environment regulations.

**12 Authority may request applicant to complete incomplete application**

- (1) If the Authority considers that an application does not comply with regulation 6, the Authority may, in writing, request further information from the applicant pursuant to section 63(2)(b) of the Act to complete the application.
- (2) An applicant must, within ten (10) days after receiving a request under subclause (1) provide the information requested.
- (3) Pursuant to section 63(2)(c) of the Act, the Authority must return an incomplete application without a decision or further processing of the application where the applicant fails to comply with subclause (2).

**13 Review of application by Authority**

- (1) This regulation applies if the Authority is satisfied that an application is complete.
- (2) The Authority must, within thirty (30) days after receiving the application or the closing date of any tender round as applicable, determine whether,—
  - (a) the qualification criteria in section 64 of the Act are met; and
  - (b) granting a licence would comply with section 69(1)(a) and (b) of the Act.
- (3) The Authority may,—
  - (a) extend the 30-day period by an additional period not exceeding thirty (30) days;
  - (b) seek advice from relevant Crown agencies or engage independent experts as necessary in order to make the determination under subclause (2).
- (4) The Authority must, within the 30-day period (or any extended period under subclause (3)(a)), prepare a report providing an overview and assessment of the application and the applicant against the—
  - (a) section 64 qualification criteria; and
  - (b) the section 69(1)(a) and (b) restrictions.
- (5) If the Authority determines that one or more of the qualification criteria are not met or granting a licence would contravene section 69(1)(a) or (b) of the Act, the Authority must decline to grant the licence or return the application under section 67(1) of the Act.
- (6) If the Authority determines that the qualification criteria are met and granting a licence would not contravene section 69(1)(a) or (b), the Authority must within ten (10) days of that determination, refer the application and the Authority's report to the licensing panel.

**14 Information to be considered by Authority**

- (1) This regulation applies when the Authority carries out functions under section 63(1) of the Act and regulation 13.
- (2) The Authority must consider—

- (a) the information contained in the application, and any amendments to the application:
- (b) any written information received in response to requests made by the Authority under section 63(2)(b):
- (c) any written advice or comments received from relevant Crown agencies, including the National Environment Service, or recommendations from the Committee relating directly to the application:
- (d) any expert report, analysis, or advice obtained or held by the Authority to inform the assessment of the application in accordance with the Act:
- (e) any written information that the Authority receives pursuant to section 63(2)(d) of the Act:
- (f) any relevant and verifiable information relating to the applicant, or its affiliate or associate that is publicly available.

**15 Amendment of applications during assessment**

- (1) An applicant may, subject to subclause (2), at any time before an application is considered by the licensing panel, amend an application—
  - (a) to correct any error, if the effect of the correction is minor; or
  - (b) to take account of any comments received from the public under regulation 17(1)(a)(iv) or from relevant Crown agencies.
- (2) The making of any amendment to an application submitted in response to a tender round is subject to the rules set out in the relevant invitation to apply.

Subpart 5—Licence decision-making: public consultation

**16 Licence decision-making: public notice of application**

- (1) Within ten (10) days after the date of the Authority’s determination under regulation 13(2), the Authority must, for the purposes of section 66(1)(b) of the Act—
  - (a) give public notice of the application under regulation 17; and
  - (b) serve a copy of the notice on—
    - (i) the responsible Minister for the Act:
    - (i) the Ministry responsible for Marine Resources:
    - (ii) the Ministry responsible for Finance and Economic Management:
    - (iii) the Ministry responsible for Transport:
    - (iv) the Service:
    - (v) the Marae Moana Council and the Technical Advisory Group:
    - (vi) the Committee:
    - (vii) other agencies or persons that the Commissioner considers has existing interests that may be affected by the application.
- (2) At the same time as it notifies the public under subclause (1), the Authority must, pursuant to section 66(1)(a) of the Act, consult with the Ministry responsible for Foreign Affairs and Immigration with a view to giving notice to any neighbouring State contemplated by that section.

**17 Public notice and comment**

For the purposes of section 66(1)(b) of the Act, to notify an application to the public, the Authority must—

- (a) publish on its website a notice that includes—
  - (i) the applicant's name and address; and
  - (ii) a map and description of the blocks applied for that are sufficient for the blocks to be identified; and
  - (iii) a summary of the application; and
  - (iv) a request that any person wishing to make comments regarding the application must make them in writing to an address specified by the Authority, and that the comments must be provided—
    - (A) in the approved form; and
    - (B) within thirty (30) days after the day on which the notice is published; and
- (b) publish a short summary of the notice, along with details of the Authority's website where the notice can be accessed, in one (1) or more newspapers circulating in the Cook Islands.

**18 Authority to advise applicant of comments received**

- (1) Within five (5) days after the closing date for comments under regulation 17(a)(iv), the Authority must forward to the applicant a list and copy of all the comments that it has received in relation to the public notice, including any written comments received from Crown agencies.
- (2) Following the review of any comments by the applicant, the applicant may within ten (10) days after receiving the list and comments, —
  - (a) provide the Authority with its written response to the comments; or
  - (b) notify the Authority that it wishes to amend its application in the light of the comments, and submit any amended application under section 15(1)(b) within a period agreed with the Authority.
- (3) The Authority may direct the applicant to—
  - (a) consult directly with the submitter; and
  - (b) advise the Authority of the outcome of that consultation.

**19 Review and consideration of comments by Authority**

- (1) Within twenty (20) days after the closing date for comments under regulation 17(a)(iv), the Authority must—
  - (a) review the information contained in any comments submitted following the public notice under regulation 17 and any response from the applicant under regulation 18(2);
  - (b) consider any information in response to a notice under section 66(1)(a) of the Act;
  - (c) update the Authority's report for the licensing panel in the light of any comments or information, and send any revised report to the licensing panel;
  - (d) consider any recommendations made by the Committee under section 37(2) of the Act.

- (2) The Authority may decide not to review any submission that the Authority considers on reasonable grounds is—
  - (a) frivolous, vexatious or repetitious; or
  - (b) is not relevant to the application.

**20 Consultation with National Environment Service**

- (1) The Authority must, pursuant to section 90(3) of the Act, consult with the Service during the period in which the Authority reviews an application under regulation 13.
- (2) An applicant may be invited by the Commissioner or the Director, National Environment Service to participate in the consultation.
- (3) Consultation may include the following subjects:
  - (a) the requirements of section 36A of the Environment Act 2003, including an application for a project permit; and
  - (b) the requirement for any specific conditions in the licence or project permit relating to the protection of the marine environment;
  - (c) any other matters relevant to the application.
- (4) The Authority must ensure that any comments or recommendations arising from consultation under this regulation are provided to the applicant and to the licensing panel at the same time as any revised report prepared by the Authority under regulation 19(1)(c).

**Subpart 6—Evaluation of application for mining licence by licensing panel**

**21 Matters to be taken into account by licensing panel**

In evaluating an application under sections 68 and 69 of the Act, and in deciding what recommendation to make to the responsible Minister under section 70(1) of the Act, the licensing panel must consider the following documents and information:

- (a) policy statements relating to the conduct of seabed mineral activities in the Cook Island's exclusive economic zone;
- (b) applicable Acts, regulations, rules, standards or procedures that are in force in the Cook Islands;
- (c) the application or any revised application;
- (d) the Authority's report or revised report;
- (e) any technical presentation made by the applicant to the licensing panel during the course of its evaluation;
- (f) advice, reports, or information sought by the Authority or licensing panel and received to verify, clarify or substantiate the information provided, methodology used, or conclusions drawn by an applicant;
- (g) the previous operating record of the applicant under a current or previous exploration or mining licence, and any environmental approval granted or issued by the Cook Islands Government or internationally;



- (h) information or advice received from Crown agencies, including any recommendations arising from consultations between the Authority and the Service under regulation 20:
- (i) a summary prepared by the Authority of the comments received under regulation 17(a)(iv) in response to the public notice, and any written response thereto by the applicant under regulation 18(2)(a):
- (j) information supplied by the applicant in response to any requests for further information by the Authority under section 63(2)(b) of the Act or the licensing panel under section 68(2) of the Act and regulation 22

**22 Request for further information by the licensing panel**

- (1) The licensing panel may request that an applicant provide further information relating to an application in accordance with section 68(2) of the Act.
- (2) A request must be made in writing to the applicant through the Authority and set out the panel's reasons for requesting further information.
- (3) An applicant who receives a request under this regulation must, within ten (10) days after the date of the request from the Authority, —
  - (a) provide the information; or
  - (b) agree a reasonable time with the Authority within which the information will be provided by the applicant; or
  - (c) refuse to provide the information and state the reasons for the refusal.

**23 Evaluation of applications by licensing panel**

- (1) The licensing panel must, in accordance with section 30 of the Act, establish its own procedures in writing for evaluating an application or applications based on advice received from the Authority.
- (2) For the purposes of section 68(1)(a) of the Act, the licensing panel must evaluate an application against the evaluation criteria in Schedule 9, taking account of the applicable evaluation guidelines,
- (3) In the case of two or more competing applications in response to a tender round, the licensing panel must also assess and rank the applications competitively as set out in the relevant invitation to apply.
- (4) The chair of the licensing panel must prepare a report giving the panel's reasons for its recommendation to the responsible Minister under section 70(1) of the Act and against the relevant evaluation criteria.
- (5) The chair may, as part of that report and where the panel recommend the grant of a mining licence, recommend any specific conditions that it considers appropriate to deal with any likely adverse effects of the regulated activity on the marine environment or other marine users for consideration by the Authority under section 72(2)(c) of the Act and regulation 27(2)(b).

**24 Licensing panel: Prescribed evaluation period**

The licensing panel must complete its duties under section 68 of the Act and make its recommendation to the responsible Minister under section 70(1) of the Act that the application be either granted or declined within eighty (80) days after the later of—

- (a) the date the panel receives a revised report from the Authority under regulation 19(1)(c); or

- (b) the receipt of information by the licensing panel under regulation 22.

Subpart 7—Licence decision-making: responsible Minister

**25 Time limits after responsible Minister receives recommendation from licensing panel**

- (1) This regulation applies when the responsible Minister receives a recommendation from the licensing panel under section 70(1) of the Act.
- (2) If the licensing panel recommends that the licence be declined, the responsible Minister must do so within ten (10) days after receiving the recommendation.
- (3) If the responsible Minister intends to follow a recommendation to grant a licence, the Minister must, within ten (10) days after receiving the recommendation, request the Authority to prepare the draft licence.
- (4) If the licensing panel recommends that a licence be granted and the responsible Minister disagrees with that recommendation, the Minister must refer the recommendation back to the panel within the (10) days after receiving the recommendation.

**26 Acceptance of provisional grant of licence over tender area blocks by preferred applicant**

- (1) This regulation applies where the responsible Minister intends, subject to the approval of Cabinet, to grant a licence in respect of tender blocks (a provisional grant).
- (2) The successful applicant under the tender round must provide written acceptance of the provisional grant to the Authority, within ten (10) days after being notified of the provisional grant of the licence
- (3) If the provisional grant is not accepted by the applicant in accordance with subclause (2), the responsible Minister (with the agreement of Cabinet) may grant the licence to an alternate applicant for the licence under the tender round.
- (4) In granting a licence under subclause (3), the responsible Minister must follow any procedures and apply any relevant criteria specified in the relevant invitation to apply.

Subpart 8—Preparation of draft licence for mining

**27 Draft licence**

- (1) Within twenty (20) days after the decision by the responsible Minister to grant a licence, the Authority must—
  - (a) prepare a draft licence in accordance with this regulation; and
  - (b) seek the responsible Minister’s approval on—
    - (i) the terms and conditions of the draft licence; and
    - (ii) the final mining work plan and other plans annexed to the draft licence; and
  - (c) provide the applicant with the approved draft licence.
- (2) A draft mining licence prepared by the Authority must—
  - (a) comply with section 72(1) and (2)(a) to (c) of the Act; and

- (b) be based on the model mining licence in Schedule 10 of these regulations.
- (3) The licence may include specific conditions in accordance with regulation 28.
- (4) Subclause (3) is subject to regulation 29 (Amendment of conditions of draft licence).

**28 Specific conditions of mining licence**

- (1) The Authority may include specific conditions in a draft mining licence—
  - (a) as a result of matters arising under section 72(2)(c) of the Act; or
  - (b) as considered necessary or expedient to promote compliance with the Act and its objectives taking account of—
    - (i) the recommendations received from the Service following consultation under regulation 18; and
    - (ii) any recommendations to the Authority by the licensing panel under regulation 23(5); and
    - (iii) the applicant's likely compliance with the licence terms; and
    - (iv) the applicant's technical and financial capability and capacity; and
    - (v) any project or area-specific requirements.
- (3) Specific conditions may be included for the purpose of requiring the licence holder to, for example,—
  - (a) take out a certain category of insurance; or
  - (b) carry out certain work in or in relation to the licensed area or adjacent areas during the term of the licence; or
  - (c) lodge a financial guarantee in the agreed form and amount under regulation 30; or
  - (d) keep specific information; or
  - (e) undertake specific studies or analysis; or
  - (f) undertake specific monitoring or reporting for a defined period; or
  - (g) give the Authority, on request, specified information; or
  - (h) take specific steps to consult with other marine users, including establishing safety zones; or
  - (i) implement specific measures relating to the safety, health and welfare of individuals engaged in mining; or
  - (j) implement specific measures relating to conserving seabed minerals and avoiding unnecessary waste; or
  - (k) undertake specific education and awareness programmes; or
  - (l) pay a specified penalty if the licence holder does not comply with a licence condition.

**29 Amendment of conditions of draft licence**

- (1) An applicant may request the responsible Minister to vary a condition in the draft licence determined by the Authority pursuant to regulation 28, provided that the applicant has reasonable grounds for making the request.
- (2) The request must be made within ten (10) days after the date of receipt of the draft licence under regulation 27(1)(c).

- (3) In considering any request under subclause (1), the responsible Minister must consider —
  - (a) the grounds for the request provided by the applicant; and
  - (b) the advice of the Authority and other relevant Crown agencies; and
  - (c) the precedent value of making such a variation; and
  - (d) the impact on the Authority’s ability to regulate effectively the regulated activity under the Act.
- (4) The responsible Minister must give the applicant written notice of a decision under this regulation within ten (10) days after the receipt of any request under subclause (1).

**30 Financial guarantee**

- (1) In determining the requirement for any security deposit under section 101 of the Act, the Authority must take into account the following factors:
  - (a) the nature, stage, scale and likely impact of the proposed activities under the applicant’s work plan on the marine environment or other marine users:
  - (b) the availability of relevant market instruments, such as insurance:
  - (c) the applicant’s capability and capacity to respond to incidents:
  - (d) the technical and economic feasibility of rectifying any damage that may be caused to the marine environment:
  - (e) any environmental bond required or provided as a condition of a project permit issued under the Environment Act 2003 and the environment regulations.
- (2) The terms and conditions relating to a financial guarantee, including the form, amount, use by the Authority, and conditions of discharge will form part of the specific conditions of a licence.
- (3) An applicant may, on reasonable grounds, request the responsible Minister to review a requirement to provide a financial guarantee or the amount of any proposed guarantee or any term and condition of the proposed guarantee in accordance with regulation 29.
- (4) Any financial guarantee must be held by the Ministry of Finance and Economic Management in accordance with its policy and procedures, and in the case of cash, held in a secured interest-bearing account.
- (5) Nothing in this regulation precludes the Authority from imposing a financial guarantee during the term of the licence or adjusting the amount of an original guarantee where there has been a material change in circumstances, including—
  - (a) a change in the financial capacity of the licensee; or
  - (b) a change in the scope, nature and magnitude of the activities under a work plan.
- (2) The application of this regulation is subject to the applicable guidelines issued by the Authority.

**Subpart 9—Licence decision-making: Cabinet**

**31 Time limit for approval of draft licence terms by Cabinet**

- (1) Subject to subclause (2), Cabinet must decide whether to approve the terms of the licence within ten (10) days after the date of referral of the draft licence by the responsible Minister.
- (2) The prescribed period in paragraph (1) may be extended by a further ten (10) days, where Cabinet seeks an opinion from the Crown Law Office under section 73(2) of the Act.

**32 Notification of licence decision to applicant**

For the purposes of section 74 of the Act, the Authority must provide and publish a written statement of reasons for the decision to grant or decline a licence application within five (5) days after the decision is made by the responsible Minister (with the agreement of Cabinet).

Subpart 10—Time limits for review of licence decision

**33 Review of licence decision**

- (1) For the purposes of section 75(1) of the Act, the prescribed time within which an applicant may apply to the responsible Minister for a review of a licence decision ends ten (10) days after the date on which the applicant is notified of the decision.
- (2) For the purposes of section 75(2)(a) of the Act, the prescribed period within which the responsible Minister must refer a request for review to the licensing panel is twenty (20) days after receiving the application for review.
- (3) For the purposes of section 75(2)(b) of the Act, the prescribed period within which the responsible Minister must affirm the decision or submit a new or amended recommendation to Cabinet is twenty (20) days after the Minister receives a recommendation from the licensing panel as a result of a referral under subclause (2).

Subpart 11—Prescribed periods under Part 1

**34 Duty to deal with applications promptly**

- (1) Cabinet, the responsible Minister, the Authority, the licensing panel, and other relevant Crown agencies must deal with any application for a mining licence as promptly as is reasonably practicable in the circumstances and within the prescribed periods under these regulations.
- (2) However, an application is not required to be dealt with within a prescribed period where exceptional circumstances exist because the nature, complexity, or volume of applications demand a longer period for review or determination than the relevant prescribed period.
- (3) If an application will not be dealt with within a prescribed period the Authority must inform applicants of the reasons that an extension of time is required and the date on which the relevant determination is expected.

Subpart 12—Signature, registration, and publication of licence

**35 Signing of licence**

- (1) Following Cabinet's approval of the licence terms, the licence may be signed on behalf of the Crown by the responsible Minister.
- (2) The designated representative must sign the licence on behalf of the applicant.
- (3) On signing the licence, the licence holder must pay the applicable fee for the grant of a mining licence.

**36 Licence to be entered in the register of titles**

The Authority must, within five (5) days after the last signature to the licence or payment of the applicable fee under regulation 35(3), whichever is the later, enter a copy of the mining licence in the register of titles.

**Part 2**

**Obligations prior to the commencement of mining under licence**

**Subpart 1—Conditions precedent for mining**

**37 Conditions precedent for mining**

A licence holder may commence mining only after—

- (a) the conditions of section 82(1) of the Act have been satisfied; and
- (b) any relevant conditions precedent contained in the licence or project permit have been fulfilled.

**Subpart 2—Pre-production requirements**

**38 Documents to be submitted prior to production**

- (1) At least twelve (12) months prior to the proposed commencement of production in the licensed area, the licence holder must provide to the Authority a final feasibility study.
- (2) The Authority must, within thirty (30) days of its receipt, examine the final feasibility study and determine whether any material change must be made to the mining work plan and financing plan.
- (3) If the Authority determines that a material change needs to be made, the licence holder must prepare and submit to the Authority a revised work plan and financing plan.
- (4) Within the period specified in subclause (2), the Authority must consult with the Service and the licence holder with regard to any modification required, if any, to the conditions of the project permit or terms of the relevant environmental management plan.
- (5) Subject to the fulfilment of other conditions under the licence or project permit, the licence holder may not commence production in the licensed area until either:
  - (a) the Authority has determined that no material change needs to be made to the mining work plan and financing plan; or
  - (b) if there is a material change to the plans, the revised plans have been approved in accordance with subclause (6).
- (6) The Authority must approve the revised mining work plan and financing plan, provided that—

- (a) the revised mining work plan is based on a final feasibility study, prepared or approved by a competent person; and
- (b) the feasibility study determines that mining remains economically viable; and
- (c) any revised financing plan remains compatible with the revised mining work plan.

### **Part 3**

## **Obligations relating to the conduct of mining under licence**

### **Subpart 1—General**

#### **39 Adherence to qualification and evaluation criteria during term of licence**

- (1) Pursuant to section 117(1)(b) of the Act, a licence holder must satisfy the qualification and evaluation criteria on a continuous basis for the term of the licence, and any renewal of the licence.
- (2) The licence holder must notify the Authority within forty-eight (48) hours after it becomes aware of any information or circumstance that could materially affect its ability to satisfy the qualification criteria.
- (3) A licence holder that fails to comply with subclause (2) commits an offence and is liable on conviction to a fine not exceeding \$500,000.

#### **40 Work practices under a mining work plan - general**

The licence holder, including any affiliate or associate of the holder, in carrying out mining in the licensed area in accordance with an approved mining work plan, must take practicable and necessary measures—

- (a) to ensure that the mining operations are carried out—
  - (i) with due diligence and efficiency and according to good industry practice and standards; and
  - (ii) in a manner consistent with the principles of ecologically sustainable use; and
  - (iii) in a way that minimises unnecessary waste; and
- (b) to maintain in good repair all equipment and installations in the work plan area; and
- (c) to provide sufficient training, supervision and resources to their employees, agents, officers, affiliates and associates to ensure compliance with the terms and conditions of the licence; and
- (d) to safeguard the health, safety and welfare of persons engaged in the regulated activity, including the adoption of a health and safety management system according to internationally recognised standards; and
- (e) to observe, in connection with labour standards, guidance provided by good industry practice and internationally recognised labour practices; and
- (f) to avoid, mitigate, or remedy adverse effects of the regulated activity on the marine environment in accordance with the accepted environmental management plan; and

- (g) to remove from the licensed area any structure, equipment, or other property that—
  - (i) belongs to the licence holder, or is under the licence holder's control; and
  - (ii) is not being used, or is not going to be used, in connection with the regulated activity.

**41 Adherence to conditions of project permit**

- (1) A licence holder must adhere to and conduct all regulated activity under the licence in accordance with the conditions of a project permit granted under the Environment Act 2003 and the environment regulations.
- (2) The conditions of a project permit are incorporated by reference into the terms and conditions of the licence.
- (3) A licence holder that fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding \$500,000.

**42 Obligations of associates and affiliates**

- (1) Any agreement or other arrangement between the licence holder and associates or affiliates engaged or to be engaged in all or part of the regulated activity must contain appropriate terms by which the associate or affiliate acknowledges the terms and conditions of the licence, to the extent applicable to the activities undertaken by the affiliate or associate.
- (2) A licence holder must ensure that all affiliates and associates—
  - (a) undertaking work and tasks authorised by the licence are made aware of the terms and conditions of the licence, and any subsequent revisions or amendments; and
  - (a) undertake their operations to ensure compliance with the terms and conditions, the Act and these regulations.
- (3) A licence holder who delegates, contracts, or otherwise arranges for work or tasks under the licence to be carried out by an affiliate, associate, or other third party is not discharged from the licence holder's obligations under the Act, these regulations, and the licence.
- (4) A licence holder must notify the Authority in writing of any proposed changes to the affiliates or associates that will carry on any regulated activity on behalf of the licence holder not less than thirty (30) days before the suggested date of the implementation of the proposed change. The Authority may at any time request that the licence holder provides it with further information to determine that the licence holder continues to satisfy the qualification criteria under section 64 of the Act.
- (5) A direction to a licence holder under section 112 of the Act extends to any affiliate or associate carrying on regulated activities for or on behalf of the licence holder, and the licence holder must give a copy of the direction to the affiliate or associate.
- (6) Nothing in this regulation precludes the Authority or an inspector from issuing a direction directly to any affiliate or associate under section 112 of the Act.
- (7) A licence holder that fails to comply with any of subclauses (1), (2) and (4) commits an offence and is liable on conviction to a fine not exceeding \$500,000.



**43 Regulated activity logbook**

- (1) A licence holder must, in respect of the regulated activity, keep a logbook on board any vessel in an electronic form in accordance with any applicable guidelines.
- (2) A copy of the logbook must be provided within forty-eight (48) hours after any request is made by the Authority.
- (3) The logbook must contain the following minimum information:
  - (a) the date of the activity undertaken, and the date recorded:
  - (b) a description of the type of activity and the methods used to undertake the activity:
  - (c) details of the person or persons undertaking the activity:
  - (d) the location (coordinates) of the activity:
  - (e) a general description of the area and marine environment encountered:
  - (f) a description of likely effects of the activity on the marine environment:
  - (g) details of any measures taken to avoid, mitigate, or remedy adverse effects on the marine environment:
  - (h) details of any encounters with other marine users.
- (4) A licence holder that fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

**44 Interference with other marine-based activities in the licensed area**

- (1) A licence holder must ensure that the regulated activity is not carried out in the licensed area or adjacent areas in a way that interferes with—
  - (a) navigation; or
  - (b) marine scientific research; or
  - (c) fishing or aquaculture; or
  - (d) submarine cables, including their laying or maintenance; or
  - (e) other regulated activity; or
  - (f) any marine-based activities that someone else is lawfully carrying out, to a greater extent than is necessary for—
    - (i) the reasonable exercise of the licence holder's rights under the licence; or
    - (ii) the performance of the licence holder's duties under the licence.
- (2) It is the responsibility of a licence holder to consult and cooperate with other marine users and relevant Crown agencies potentially affected by the regulated activity with a view to agreeing any necessary measures that will minimise any adverse impact to other marine users and to any unnecessary interference with the conduct of the regulated activity.
- (3) The Authority must provide administrative assistance to the licence holder and other marine users that is necessary to facilitate any consultation and cooperation between the licence holder, other users, relevant Crown agencies and, where applicable, the Technical Advisory Group.
- (4) A licence holder that fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding \$250,000.

Subpart 2—Matters relating to production

**45 Maintaining production**

- (1) Once mining production has commenced, a licence holder must—
  - (a) maintain production according to the approved mining work plan; and
  - (b) consistent with good industry practice, manage its operations to optimise the recovery of the seabed minerals at the rates contemplated by the approved mining work plan, or any approved modification thereto.
- (2) The licence holder must notify, in writing, the Authority if it—
  - (a) fails to comply with the mining work plan in any material respect, and include the reason for any such failure; or
  - (b) considers that it will not be able to comply with the mining work plan in any material respect in future, and include the reason for such inability to comply.
- (3) Following receipt of any notification under subclause (2), the Authority must undertake a joint review of the mining work plan under regulation 66.
- (4) This regulation is subject to regulations 46 and 47.

**46 Licence holder to reduce or suspend production to protect marine environment or human life**

- (1) A licence holder must temporarily reduce or suspend production to protect the marine environment or human life from serious harm or a risk of serious harm—
  - (a) when it receives a direction under section 112(1)(a)(ii) of the Act; or
  - (b) on the licence holder's own initiative.
- (2) The licence holder must, in the circumstances contemplated by subclause (1)(b), notify the Authority of a reduction or suspension of production within twenty-four (24) hours after production is reduced or suspended, and include details of the circumstances surrounding the reduction or suspension.
- (3) The licence holder must, subject to subclause (4), notify the Authority that it has recommenced or increased production levels within twenty-four (24) hours after the recommencement or production adjustment and must demonstrate to the Authority that the issue triggering the reduction or suspension has been addressed.
- (4) Where a reduction or suspension of production is the subject of a direction under section 112(1)(a)(ii) of the Act, the licence holder must comply with any conditions specified in the direction, including any conditions relating to the recommencement of production.
- (5) The Authority must notify and consult with relevant Crown agencies, including the Service, about any further action to be taken and good industry practices that are recommended to be implemented in response to the matter that necessitated reducing or suspending production.
- (6) To avoid doubt, a licence holder remains subject to the payment of all amounts due to the Crown under section 98 of the Act during the period of any reduction or suspension.

**47 Reduction or suspension in production due to market conditions**

- (1) Pursuant to section 83(2) of the Act, a licence holder may request authorisation from the Authority to temporarily reduce or suspend production.
- (2) A licence holder must make the request at least thirty (30) days before the proposed date that production will be reduced or suspended and must give its reasons for the proposed reduction or suspension.
- (3) If a licence holder holds an authorisation under section 83(2), the licence holder must make any request for a further authorisation before the current authorisation expires and must give its reasons for seeking a further reduction or suspension of production.
- (4) The Authority must authorise a temporary reduction or suspension of production if it is satisfied that there are good grounds for doing so, including where the prevailing economic conditions make production impracticable.
- (5) The Authority may approve the reduction or suspension for up to twelve (12) months in the first instance and for a further period not exceeding twelve (12) months where a licence holder requests authorisation under subclause (3).
- (6) The Authority must notify the responsible Minister and relevant Crown agencies where any request for reduction or suspension has been made and authorised.
- (7) The licence holder must notify the Authority that it has recommenced or increased production levels within twenty-four (24) hours after the recommencement or production adjustment and must demonstrate to the Authority that the issue triggering the reduction or suspension has been addressed.
- (8) The Authority must notify the responsible Minister and relevant Crown agencies that production has recommenced.
- (9) Where the licence holder suspends production for a period exceeding two (2) years, the Authority may take administrative action under section 116(2) of the Act.
- (10) To avoid doubt, a licence holder remains subject to the payment of all amounts due to the Crown under section 98 of the Act during the period of any reduction or suspension.

**48 Licence holder to implement closure plan on suspension in production**

- (1) If production is suspended, the licence holder must continue to monitor and manage the project area in accordance with the closure plan.
- (2) Where production is likely to be suspended for at least two (2) years, the licence holder must submit a final closure plan to the Service in accordance with the environment regulations.

**Subpart 3—Unapproved mining**

**49 Licence holder must restrict mining operations to mining area**

- (1) A licence holder must restrict its mining operations to the mining areas specified in the mining work plan.
- (2) All vessels and mining collectors must be fitted with an electronic monitoring system. The system must record, the date, time and position of all mining operations in addition to any other information recorded.

- (3) The detail and frequency of reporting must be in accordance with the applicable guidelines or as determined in the licence conditions.
- (4) Where the Authority becomes aware that extraction of seabed minerals has occurred or is occurring in unapproved mining areas, the Authority must take administrative action under section 116 of the Act.

#### Subpart 4—Risk of incidents and notifiable events

##### **50 Risk of incidents**

- (1) A licence holder must eliminate or minimise the risk of accidents, incidents, and other hazards to as low as reasonably practicable to the point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction, taking into account good industry practice, and pursuant to the licence holder's risk management plan.
- (2) The reasonable practicability of risk reduction measures must be kept under review by licence holders in the light of new knowledge, technology developments, and good industry practice.

##### **51 Notifiable events**

- (1) A licence holder must immediately notify the Authority if an event occurs that is listed in Schedule 7.
- (2) The licence holder must, as soon as reasonably practicable, but no later than twenty-four (24) hours after the licence holder becomes aware of any such event, —
  - (a) provide written notification to the Authority of the event, including a description of the event, the immediate response action taken (including, if appropriate, a statement regarding the implementation of the incident management plan) and any planned action; and
  - (b) record the notifiable events in an incidents register (which is a register that must be maintained on board a mining vessel to record any incidents or notifiable events under this regulation).
- (3) The Authority must consult with relevant Crown agencies as regards any administrative or other action to be taken.
- (4) The licence holder remains responsible for notifying all relevant regulatory authorities as appropriate, including applicable flag States.

#### Subpart 5—Matters relating to insurance

##### **52 Insurance**

- (1) The obligation to maintain insurance pursuant to clause 13 of schedule 2 to the Act is a material requirement of a licence.
- (2) If a licence holder fails to maintain the insurance required under the Act, the Authority must take administrative action under section 116(2) of the Act.
- (3) A licence holder must provide the Authority with copies of all applicable insurance policies for review by the Authority or an independent insurance expert appointed by the Authority.

- (4) The licence holder must not make any material change to or terminate any insurance policy related to its regulated activity without the prior consent of the Authority.
- (5) The licence holder must notify the Authority immediately if any insurer terminates a policy or modifies the terms of insurance.
- (6) The licence holder must notify the Authority immediately upon receipt of claims made under any insurance policy.
- (7) The licence holder must provide evidence of its insurance policies as part of its annual reporting process under regulation 56(2)(i).

## Subpart 6—Record keeping and reporting obligations

### **53 Keeping of records**

- (1) Pursuant to clause 9 of Schedule 2 to the Act, a licence holder must maintain accurate financial and accounting records.
- (2) The records must—
  - (i) be in a currency agreed upon by the Authority; and
  - (j) comply with applicable Cook Islands law; and
  - (k) support all fiscal returns or any other accounting reports required by the Authority and relevant Crown agencies in relation to the regulated activity.
- (3) The financial and accounting records must include information that fully discloses all revenues, actual and direct expenditures for the regulated activity, including—
  - (a) capital expenditure; and
  - (b) operating expenditure; and
  - (c) other information that will facilitate an effective audit of the licence holder's expenditures by the Authority and other Crown agencies.
- (4) A licence holder must keep, in the Cook Islands, complete, accurate, and up to date technical and commercial data and records of all regulated activity under the licence, including—
  - (a) mineral production:
  - (b) shipment:
  - (c) maps:
  - (d) geological, environmental, technical and other data:
  - (e) records and interpretations:
  - (f) mineral analyses:
  - (g) market statistics and reports:
  - (h) all other documents demonstrating compliance with the requirements of the Act, these regulations and any other applicable enactments.
- (5) A licence holder must supply and file technical and commercial information, reports, returns, and statements in accordance with the Act, these regulations, the conditions of the licence, and other applicable law.

- (6) Despite any penalty under another enactment, a licence holder that fails to comply with this regulation commits an offence and is liable on conviction to a fine not exceeding \$100,000.

**54 Collection, record, analysis and keeping of samples**

- (1) A licence holder may collect samples in quantities as are necessary for the conduct of its operations under the mining work plan and environmental monitoring programmes.
- (2) The Authority may, in accordance with regulation 65, set standards for collecting and classifying samples in order to ensure a consistent approach to data collection and analysis between licensed areas and between licence holders.
- (3) A licence holder must record the date, location and type of samples collected.
- (4) To the extent reasonably practicable, a licence holder must retain and preserve the integrity of a representative portion of samples of the licensed seabed minerals and biological samples, obtained in the course of exploration or mining.
- (5) Samples must be taken and maintained in a manner that—
  - (a) is in accordance with section 95(2) of the Act and this regulation; and
  - (b) takes into account any applicable guidelines issued by the Authority or the Service (and the guidelines must allow the licence holder to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party).
- (6) Upon request of the Authority, the licence holder must deliver to the Authority for analysis a portion of any geological samples obtained during the course of exploration or mining.
- (7) A licence holder must, subject to reasonable notice, permit full access by the Authority to the samples and the records relating to samples retained by the licence holder or third party.
- (8) The Authority may require that samples be analysed by a certified laboratory and that the laboratory provide a copy of the analysis to the Authority.
- (9) A licence holder that fails to comply with subclauses (5) to (7) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

**55 Data and information reporting**

- (1) A licence holder must make available a copy of all raw and processed environmental, biological, hydrographic, geological and geochemical data and information (including maps, tables and diagrams, videos, photographs, other digital media and studies, observations, measurements, evaluations, sample analyses, and results of environmental monitoring activities) collected or prepared under a work plan to the Authority and submit such data and information in accordance with the Authority's reporting requirements and data submission standards, where applicable.
- (2) The data and information contemplated by subclause (1) must be submitted to the Authority as soon as practicable during the course of each calendar year, taking account of the generally accepted time for the processing and analysis of the data and information.

**56 Annual report and data submission**

- (1) A licence holder must submit an annual report to the Authority and, if not already done, copies of data collected and processed under the mining work plan during the relevant calendar year.
- (2) Pursuant to clause 17(4) of Schedule 2 to the Act, an annual report must be submitted within three (3) months of the calendar year end and must include—
  - (a) a full report of the project and activities carried out during the year, including—
    - (i) where applicable, details of construction and commissioning works, including trial mining and production tests; and
    - (ii) details of any variance from the approved mining work plan; and
    - (iii) details of the equipment used to carry out the activities, and that is operating at the end of the period; and
    - (iv) details of mining production reported against the mining work plan, including—
      - (A) total volume and weight of material removed from the seabed; and
      - (B) total volume of material discharged from shipboard processing and returned to the seafloor, specifying depth and location of discharge; and
      - (C) total volume and weight of ore processed onboard to be sold as raw product or processed to saleable products, including details of the point of sale, port destination, and processing facility; and
      - (D) the quantity and quality of the seabed minerals recovered during the period and the weight and value of minerals and metal products extracted, marketed, and sold during the calendar year; and
    - (v) details of the quantity (weight) of seabed minerals removed for testing; and
    - (vi) a summary of the mining activities for the next calendar year, planned mining, and processing methods; and
    - (vii) the production levels estimated for the next calendar year; and
    - (viii) details of any proposed material modification to the mining work plan, and the reasons for any modification; and
    - (ix) appropriate maps and mine plans showing—
      - (A) the mining area mined in the period; and
      - (B) the mining area proposed to be mined in the following calendar year; and
    - (x) an up-to-date estimate of inferred, indicated, and measured resources and the proven and probable reserves by licensed block in accordance with the Authority’s reporting standard, including—
      - (A) a statement of the criteria used to determine the estimate and whether the estimate is made on the basis of a feasibility study; and
      - (B) a map of the estimate areas; and

- (xi) results of any exploration work undertaken during the period, and related expenditure; and
- (xii) details of any temporary suspension in production during the period, and the reasons for the suspension; and
- (xiii) details of associates and affiliates engaged in the regulated activity during the period, and any proposed changes; and
- (xiv) a budget for mining activities planned for the following year; and
- (xv) a list of all technical reports, including additional feasibility studies, environmental reports, and health and safety reports, generated during the year; and
- (b) details about how it executed and complied with the environmental management plan and implementation strategy, including—
  - (i) further baseline studies and assessment; and
  - (ii) the results obtained from environmental monitoring programmes (including observations, measurements, evaluations, and the analysis of environmental parameters) reported against, where applicable, the environmental performance objectives and outcomes, together with details of—
    - (A) any response actions implemented under the plan; and
    - (B) the costs of compliance with the plan; and
  - (iii) the results, conclusions, and recommendations from any audits, independent verification, and performance assessments undertaken during the period; and
- (c) details of any incidents or notifiable events arising during the period and actions taken in connection with the incident response and management plan; and
- (d) an annual financial report setting out the actual and direct mining expenditures (which are the capital expenditures and operating costs of the licensee in carrying out the programme of activities under the mining work plan during the licensee's accounting year in respect of the licensed area) prepared according to internationally accepted accounting principles and certified by a duly qualified firm of public accountants; and
- (e) an annual statement of the payments made or payable to the Crown, reported against the financing plan; and
- (f) details of compliance with health, labour, and safety standards; and
- (g) a report on the implementation of the local engagement, training and business development plan; and
- (h) a statement that all control measures, including risk management systems and procedures, have been followed and remain in place, together with a report on exceptions against the risk management plan; and
- (i) evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period; and



- (j) a statement that the licence holder's financing plan is adequate for the following period; and
  - (k) a statement that the licence holder has to the best of its knowledge and belief complied with the terms and conditions of the licence, the Act, and these regulations, including that it continues to satisfy the qualification and evaluation criteria under the Act; and
  - (l) a reconciliation of data and studies supplied to the Authority by the licence holder during the relevant calendar year and as part of the annual reporting process; and
  - (m) a non-technical summary of the licence holder's activities during the period for public disclosure on the Authority's website.
- (3) The licence holder must supply all information and data to the Authority in accordance with the applicable guidelines for annual reports and data submission standards issued by the Authority.
  - (4) The licence holder must pay to the Authority the applicable annual licence fee.
  - (5) Nothing in this regulation precludes the Authority from requesting more frequent progress reports in respect of the regulated activity under the licence.

### Subpart 7—Variation of licence terms and conditions

#### **57 Variation of licence and conditions**

- (1) The Authority may notify a licence holder that the Commissioner intends to review the conditions of a licence at any time—
  - (a) to ensure that the conditions are consistent with prescribed standards or guidelines issued after the grant of the licence; or
  - (b) to deal with any likely adverse effects on the marine environment, other marine users, or health and safety that arise and that—
    - (i) were not anticipated when the licence was granted; or
    - (ii) are of a scale or intensity that was not anticipated when the licence was granted; or
  - (c) if the information made available to the Authority and licensing panel by the applicant for the purposes of the application contained inaccuracies that materially influenced the decision made on the application and the effects of the exercise of the licence are such that it is necessary to apply more appropriate conditions; or
  - (d) if information becomes available to the Authority that was not available to the Authority or licensing panel when the licence was granted and the information shows that more appropriate conditions are necessary to deal with the effects of the exercise of the licence.
- (2) The notice must identify the conditions to be reviewed, give reasons for the review and may propose new conditions.
- (3) When reviewing the conditions of a licence, the Authority must—
  - (a) have regard to whether the activity allowed by the licence will continue to be viable after the proposed change of conditions; and
  - (b) may take into account the manner in which the seabed mineral activities have been undertaken under the licence.

- (4) The Commissioner must make recommendations to the responsible Minister for any proposed variation to the licence conditions for the responsible Minister's and Cabinet approval.

**58 Request for variation or suspension of conditions of licence by licence holder**

- (1) A licence holder may request the responsible Minister to vary, suspend, or cancel a licence condition (with the approval of Cabinet), provided that the applicant has reasonable grounds for making such request.
- (2) In considering any request under subclause (1), the responsible Minister must consider—
  - (a) the grounds for the request provided by the licence holder; and
  - (b) the advice from the Authority and any other Crown agencies.
- (3) The responsible Minister must make a decision on any request within ten (10) days after the receipt of any request under subclause (1).
- (4) If the responsible Minister (with the approval of Cabinet) varies, suspends or cancels a licence condition, the Authority must give the licence holder written notice that—
  - (a) specifies the conditions which have been varied, suspended or cancelled; and
  - (b) specifies any conditions to which the variation or suspension is subject.
- (5) The Authority must, within five (5) days after giving the licence holder notice under subclause (3), make an entry of the variation, suspension or exemption in the register of titles.

**Subpart 8—Training plan**

**59 Training plan**

- (1) A licence holder must conduct and carry out training of Cook Islanders in accordance with the approved local engagement, training and business development plan.
- (2) The licence holder and the Authority may, from time to time, revise and develop the training plan by mutual agreement, taking into account the shortage of any skills and skills requirements of the industry and the need to develop the capacity of Cook Islanders in the seabed minerals sector.
- (3) Any change to the local engagement, training and business development plan must be annexed to the licence.

**Subpart 9—Transfer of licence**

**60 Application for approval of transfer**

- (1) A transfer of a licence must not be registered by the Authority unless Cabinet has given its prior agreement to the transfer pursuant to section 102 of the Act and in accordance with this regulation.
- (2) A licence holder and transferee must apply jointly in writing to the Authority for the approval of the transfer.
- (3) The application must be accompanied by—
  - (a) a certified copy of the transfer document:

- (b) evidence of consent to the transfer from the beneficiary of an encumbrance, if any, recorded in the register of titles:
  - (c) a statement about—
    - (i) the technical qualifications of the transferee:
    - (ii) the financial resources of the transferee:
  - (d) a statement about the reasons for the transfer and activities to be conducted by the transferee for the remaining term of the licence:
  - (e) other information prescribed in Schedule 1 to these regulations to enable the Authority to determine sufficiently that the transferee meets the qualification criteria in section 64 of the Act:
  - (f) an undertaking that the transferee assumes all of the obligations of the transferor:
  - (g) the applicable fee.
- (4) The application may include a statement of any matter that the applicants wish the Authority and the Cabinet to take into account in deciding whether to agree to the transfer.
- (5) If the Authority requests further information pursuant to section 102(2)(d) of the Act, the transferor or transferee must, within ten (10) days after receiving a request provide the information requested.

**61 Decision-making on application for approval of transfer**

- (1) The Authority must, within thirty (30) days after the receipt of transfer application, determine whether the transferee meets the qualification criteria in section 64 of the Act.
- (2) If the Authority determines that the transferee meets the qualification criteria, the Authority must within five (5) days after making the determination refer the application and the Authority's recommendation to Cabinet, including any conditions that the Authority considers necessary or desirable for any approval.
- (3) If the Authority determines that the transferee does not meet one or more of the qualification criteria, the Authority must notify the responsible Minister within five (5) days after making the determination.
- (4) Within ten (10) days after the Authority refers the application under subclause (2), Cabinet must—
  - (a) agree to the transfer; or
  - (b) refuse to agree to the transfer.
- (5) If Cabinet agrees to the transfer, the Authority must endorse a copy of the transfer document and record the entry of the transfer in the register of titles within five (5) days after Cabinet's decision.
- (6) If Cabinet refuses to agree to the transfer, the Authority must make a note of that refusal in the register within five (5) days after Cabinet's decision.
- (7) The Authority must give an applicant written notice of Cabinet's decision within five (5) days of the decision being made.

**Subpart 10—Financing activities**

**62 Use of mining licence as security**

- (1) A licence holder must apply to the Authority for Cabinet's prior agreement to any mortgage or encumbrance (however described).
- (2) An application must include details of—
  - (a) the terms and conditions of any mortgage or encumbrance, including a copy of the relevant financing instrument; and
  - (b) the potential impact on the licence and the regulated activity if there is a default in performance or compliance by the licence holder with any financing instrument.
- (3) As a condition of referring the application to Cabinet the Authority must request that the licence holder provides evidence that the beneficiary of any encumbrance is required upon foreclosure —
  - (a) to undertake mining in accordance with the requirements of the Act, these regulations and the terms and conditions of the licence; or
  - (b) to transfer the mortgaged property only to a transferee that fulfils the requirements of the Act, and commits to operate in accordance with the terms and conditions of the licence.
- (4) Cabinet may require that the beneficiary of the encumbrance—
  - (a) subscribe to any internationally adopted standards for the extractive industries which are widely accepted, including the Equator Principles; or
  - (b) be properly regulated through a national financial conduct authority.
- (5) A licence holder must file with the register of titles a summary of any agreement that results or may result in a transfer or assignment of a mining licence, or all or part of an interest under a mining licence, including registration of any security, guarantee, mortgage, pledge, lien, charge or other encumbrance over all or part of a mining licence.
- (6) The licence holder is responsible for raising all of the financing necessary to implement the financing plan. The Authority is not obliged to provide any funds, issue any guarantees, or otherwise become liable directly or indirectly in the financing of the licence holder's obligations under a mining licence.
- (7) The Authority may provide administrative assistance with any financing arrangements by the timely grant of requisite approvals under section 102 of the Act, the signing of any formal documents that any lenders reasonably require, and the registration of any security in the register of titles.
- (8) Any restrictions on transfers of rights under a mining license also apply to transferees under mortgage foreclosure.
- (9) An application under subclause (1) must be accompanied by the applicable fee.

**63 Restrictions on advertisements, prospectuses and other notices**

- (1) No statement of the type described in subclause (2) may be made—
  - (a) in a prospectus, notice, circular, advertisement, press release or similar document issued by the licence holder, its associates or affiliates or with the express or implied permission of the licence holder; or
  - (b) in any other manner or through any other medium.

- (2) The type of statements are those that claim or suggest whether expressly or by implication, that the Authority has or has formed or expressed an opinion over the commercial viability of mining in the licensed area.

Subpart 11—Change of ownership, constitution or control of licence holder

**64 Notification of change by licence holder**

- (1) For the purposes of section 169(1) of the Act (relating to a change of ownership, constitution, control, or corporate organisation), a notification by the licence holder must—
- (a) be given as soon as possible, and where practicable before the change, but in any event not later than twenty (20) days after the effective date of the significant change; and
  - (b) be accompanied by—
    - (i) a copy of any agreement or other relevant document that specifies the change; and
    - (ii) full particulars of the new owners or controllers, including their beneficial owners; and
  - (c) include a statement—
    - (i) from the licence holder that it has the financial capability to comply with obligations under the licence; and
    - (ii) in the case of the change of control of a guarantor of any security deposit under section 101 of the Act, a statement from the guarantor that it has the financial capability to meet its obligations under a guarantee.
- (2) A licence holder must, if requested to do so by the Authority, provide to the Authority other information or documents relevant to the matters referred to in section 169(2) of the Act.
- (3) For the purposes of section 169(1) of the Act, significant change includes, when—
- (a) the licence holder is bought by or transferred to another person;
  - (b) there is a 50% or more change in the voting rights of the licence holder; or
  - (c) there is a change in any associate involved in the management of the applicant's business; or
  - (d) there is a change in control of a person (guarantor) providing a security deposit under section 101 of the Act.
- (4) The licence holder must pay the applicable fee for any change to the register of titles.

## **Part 4**

### **Standards and guidelines**

#### **65 Standards and guideline documents**

- (1) A licence holder may be required to adopt standards in accordance with these regulations or the terms and conditions of a licence.
- (2) Standards are legally binding on a licence holder, and may include—
  - (a) qualitative or quantitative standards; and
  - (b) methods for the collection, analysing, classifying, and reporting of information; and
  - (c) other technical standards.
- (3) Pursuant to section 11(e) of the Act, the Authority may also, from time to time, issue guidelines of a technical or administrative nature to help support the implementation of the Act, regulations, standards and terms and conditions under a licence.
- (4) Standards or guidelines may be incorporated by reference into these regulations or the terms and conditions of a licence and may include—
  - (a) standards or guidance documents of international, regional or national organisations, with or without modification; and
  - (b) standards or guidance documents of any State or regional jurisdiction, with or without modification; and
  - (c) standards or guidelines issued by the Authority.
- (5) Prior to issuing standards or technical guidelines, the Authority must—
  - (a) notify persons who are likely to be affected by the standard or technical guideline; and
  - (b) provide such persons reasonable opportunity to comment on the content of the proposed standard or technical guideline; and
  - (c) consult with recognised experts in the field on the content of the proposed standard or technical guideline; and
  - (d) consider the relevant guidelines or recommendations issued by the International Seabed Authority as representing internationally agreed standards and recommended practices and procedures in relation to seabed mineral activities.

## **Part 5**

### **Review and modification of work plan**

#### **66 Review of work plan**

- (1) A licence holder and the Authority must conduct a joint review of the mining work plan and the licence holder's performance under the work plan in accordance with section 87 of the Act, and at intervals specified in the licence.
- (2) The Authority may also review the activity under a work plan including where—
  - (a) there are any significant delays in the commencement of activities under a mining work plan including commissioning, construction, and mining production; or

- (b) there is, or is expected to be, a significant change in the production rates stipulated in the mining work plan; or
  - (c) there is a proposed material change to the mining work plan; or
  - (d) an incident has occurred; or
  - (e) a direction is issued by the Authority or an inspector under section 112 of the Act; or
  - (f) there is a change in ownership or access to financial resources which may impact the financial capability of a licence holder; or
  - (g) there are or are likely to be operational management changes, including changes to affiliates or associates engaged in the regulated activity; or
  - (h) a new or previously unforeseen significant environmental risk has been identified in the conduct of the regulated activity; or
  - (i) there are changes in good industry practice, best environmental practice, or best available technology and techniques.
- (3) The Authority may invite representatives from relevant Crown agencies, including the Service, to participate in the joint review.
  - (4) A review under section 87 must be conducted in accordance with the applicable guidelines.
  - (5) The Authority must report on the content and outcome of the reviews to the responsible Minister and relevant Crown agencies.

**67 Modification of work plan**

- (1) A licence holder must not modify the work plan without the prior written consent of the Authority, except for a minor modification that is necessary and prudent—
  - (a) to respond to temporary operating conditions according to good industry practice; or
  - (b) to make proactive operational changes to protect the marine environment or other users of the marine environment; or
  - (c) to safeguard the health and safety of persons engaged in the regulated activity.
- (2) The licence holder must report to the Authority any minor modification to a work plan within twenty-four (24) hours after making the modification.
- (3) If the Authority, on reasonable grounds, taking account of any applicable guidelines, considers that any minor modification reported under subclause (2) may constitute a material change to the work plan, it must request the licence holder to make an application under subclause (4).
- (4) If a licence holder proposes to modify a work plan, and such modification constitutes a material change (taking account of any applicable guidelines), the licence holder must make an application to the Authority to obtain the written consent of the Authority to the proposed modification.
- (5) An application to the Authority to vary a work plan made pursuant to subclause (4) must include—
  - (a) a full description of the modifications for which a revision of the work plan is being sought; and

- (b) a detailed description of how the proposed modifications are likely to impact the marine environment, other marine users and the health and safety of persons involved in the conduct of the regulated activity to which the variation relates; and
  - (c) how the variations will affect the financing of the regulated activity to which the variation relates; and
  - (d) any other impact the proposed modification is likely to have on the regulated activity; and
  - (e) any such other matters as the Authority may reasonably require.
- (6) Where a joint review under regulation 66 or application under subclause (4) leads to a material change in the work plan, the Authority must notify the responsible Minister and relevant Crown agencies within five (5) days after the change is approved.
- (7) The Authority must consult with the Service—
- (a) about any material change to a work plan; and
  - (b) as to whether any variation to the environmental management plan or conditions of the project permit is required.
- (8) In this regulation, **work plan** includes the other plans annexed to a licence.

## **Part 6**

### **Monitoring, inspections, and enforcement**

#### Subpart 1—Facilitation of the performance of the Authority's functions

##### **68 Notification to Authority of cruises**

A licence holder must—

- (a) notify the Authority of the proposed schedule for a cruise to be undertaken as part of the regulated activity at least twenty (20) days before the cruise commences; and
- (b) immediately advise the Authority if there is a change to the schedule of a cruise, within—
  - (i) seven (7) days prior to the departure; and
  - (ii) twenty-four (24) hours where a cruise is underway; and
- (c) keep the Authority notified of all entries and departures into and out of the Cook Islands, and any port arrivals and departures; and
- (d) ensure that all vessels engaged in the regulated activity—
  - (i) are fitted with, and maintain in operation, a vessel management system; and
  - (ii) transfer daily position reports to the Authority or its designated agency, while within Cook Islands jurisdiction.

##### **69 Transfer of Authority representatives**

- (1) A licence holder must, to the extent practicable, comply with any reasonable request of a representative of the Authority to be—

- (a) transferred to or from any vessel or facility used for the regulated activity, together with any necessary equipment; and



- (b) provided with the appropriate accommodation and subsistence while on board that vessel or facility.
- (2) An Authority representative may only make a request under subclause (1) for the purposes of carrying out the representative's functions under the Act and the regulations.

**70 Access to communication and navigation equipment**

- (1) A licence holder must, in respect of a vessel, installation, or facility, allow an Authority representative access to and use of all of the following:
  - (a) communication equipment and associated personnel, for the purpose of the reasonable transmission and receipt of messages:
  - (b) navigation equipment and associated personnel, when necessary to determine the location of the vessel, installation, or facility:
- (2) An Authority representative may only require access under subclause (1) for the purpose of performing the Authority representative's functions under the Act, or for personal communications that are reasonable in the circumstances.

**Subpart 2—Real-time data and monitoring**

**71 Electronic monitoring and data reporting systems**

- (1) A licence holder must, when conducting mining operations, gather and monitor real-time data using an independent, automatic, and continuous monitoring system capable of recording, storing, and transmitting data.
- (2) The licence holder must—
  - (a) transmit these data as they are gathered, except if there is an unforeseeable or unpreventable interruption in transmission; and
  - (b) have the technical capability and resources to monitor the data, using qualified personnel in accordance with a real-time monitoring plan, as provided in regulation 72.

**72 Requirement for real-time monitoring plan**

- (1) The licence holder must develop and implement a real-time monitoring plan.
- (2) The real-time monitoring plan must be made available to the Authority.
- (3) The plan must include the following—
  - (a) a description of the real-time monitoring capabilities, including the types of the data collected:
  - (b) a description of how the real-time monitoring data will be transmitted during operations, how the data will be labelled and monitored by qualified personnel, and how the data will be stored:
  - (c) a description of the procedures for providing the Authority access to the real-time monitoring system and data:
  - (d) details of the qualifications of the personnel monitoring the data:
  - (e) the procedures for, and methods of, communication between on-site operations and the monitoring personnel:
  - (f) details of the actions to be taken if any real-time monitoring capabilities are lost or communications between operational and monitoring personnel fail, and a protocol for responding to any significant or

prolonged interruption of monitoring capabilities or communications, including for notifying the Authority of any significant or prolonged interruptions.

- (4) The Authority and the licence holder must, for the purpose of subclause (3)(c),—
- (a) agree the relevant real-time monitoring data to be made available to or transmitted to the Authority for the purposes of monitoring compliance or collecting data under the Act, or in assisting relevant Crown agencies with the same; and
  - (b) determine the necessary security protocols to ensure there is no data compromise or breach of any access by or transfer of data to the Authority.

**73 Authority may issue guidelines on the requirements for real-time monitoring**

- (1) The Authority may issue guidelines in connection with the requirements for real-time monitoring systems, including data collection requirements, but excluding the specific technology to be adopted and used by a licence holder.
- (2) When adopting any system for real-time monitoring the licence holder must consider—
- (a) good industry practice; and
  - (b) existing safety and environmental management systems; and
  - (c) the levels of risk and complexity anticipated in the mining operations; and
  - (d) the effectiveness of the system to reduce risk and contribute to overall safety, consistent with regulations and the principle of as low as reasonably practicable, technological capability and economic feasibility; and
  - (e) the delivery of outcome and performance-based standards in an operations, safety and environmental context.

**Subpart 3—Inspections and inspectors**

**74 Inspections: general**

The Authority, in consultation with relevant Crown agencies, must establish appropriate mechanisms and procedures for the conduct of inspections under Part 7 of the Act, including matters relating to—

- (a) the relevant qualifications and experience of persons appointed as inspectors under section 21(3) of the Act; and
- (b) the supervision and direction of inspectors; and
- (c) a code of conduct for inspectors; and
- (d) the inspection programme and schedule based on a risk-based approach to compliance and enforcement; and
- (e) cooperation with relevant Crown agencies; and
- (f) the placing of observers on board vessels engaged in the regulated activity.

**75 Inspectors to report**

- (1) At the conclusion of an inspection, the inspector must prepare a report that includes the inspector's general findings and any recommendations for improvements in procedures or practices by the licence holder.
- (2) The inspector must send the report to the Authority, and the Authority must send a copy of the report for review and comment to—
  - (a) the licence holder; and
  - (b) the responsible Minister; and
  - (c) relevant Crown agencies.
- (3) The Authority must then take into account any directions issued under section 112 of the Act and determine whether further regulatory action is warranted, including under sections 115, 116 and 117 of the Act.

**Part 7**  
**Incidents and incident management**

Subpart 1—Responding to and management of incidents

**76 Avoiding and responding to incidents**

A licence holder must, —

- (a) not proceed or continue with the regulated activity if the licence holder is aware of evidence that proceeding or continuing makes it reasonably foreseeable that—
  - (i) an incident will occur; or
  - (ii) the regulated activity will result in a breach of the terms and conditions of the licence.
- (b) at all times during the conduct of the regulated activity maintain the currency and adequacy of, and be prepared to implement, the incident response and management plan that—
  - (i) has been approved in writing by the Authority and amended from time to time in accordance with the reasonable requirements of the Authority and good industry practice; and
  - (ii) is consistent with any relevant provision of the contingency plan:
- (c) ensure that any works or installations erected in the course of the regulated activity are of such sort, placed marked and buoyed, equipped and maintained so as to,—
  - (i) leave at all times safe and convenient channels for vessels; and
  - (ii) not constitute an obstacle to established international shipping routes; and
  - (iii) not cause a breach of the Act:
- (d) give notice of any proposed works or installations to the government entity responsible for any submarine cable, where the licence holder proposes to undertake any works or erect any installations within one nautical mile of any submarine cable, and with a view to, where applicable, concluding a crossing agreement or agreeing appropriate

measures with that owner to reduce the risk of damage to any submarine cable.

**77 Notification and responding to incidents**

- (1) A licence holder must, on becoming aware of an incident in relation to the regulated activity of the licence holder—
- (a) notify the Authority immediately by telephone, and within twenty-four (24) hours in writing; and
  - (b) implement immediately the approved incident response and management plan of the licence holder; and
  - (c) take other steps that are necessary in the circumstances to limit the adverse effects of the incident; and
  - (d) undertake promptly, and within any time frame stipulated, any instructions received from the Authority in consultation with affected Crown agencies under the contingency plan; and
  - (e) record the incident in an incidents register, which is a register to be maintained by the licence holder on board any vessel or installation used for the purposes of conducting the regulated activity.
- (2) Nothing in this regulation exempts the master or operator of a vessel to notify an accident or incident according to section 14 of the Maritime Transport Act 2008.
- (3) A person who breaches subclause (1) commits an offence and is liable on conviction—
- (a) in the case of an individual, to a fine not exceeding \$250,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$1,000,000.

**78 Authority to assist licence holders**

Pursuant to section 20(2) of the Act, the Authority must provide administrative assistance to a licence holder (or other marine users affected by the incident) that is expedient to facilitate the licence holder's efficient and effective response to an incident, consistent with the requirements of the contingency plan.

**79 Notification to affected persons**

- (1) On being notified by the licence holder or other person that an incident has occurred, the Authority must, as soon as practicable and within twenty-four (24) hours, notify—
- (a) any affected licence holder; and
  - (b) the responsible Minister; and
  - (c) the Ministry responsible for Transport; and
  - (d) the Service; and
  - (e) the Ministry responsible for Marine Resources and other affected Crown agencies; and
  - (f) the Committee; and
  - (g) other marine users directly affected or likely to be directly affected by the incident.
- (2) The notification under subclause (1) should, where practicable, set out—

- (a) details of the person who notified the Authority of the incident, and the date and time that the notification was received by the Authority; and
  - (b) a summary of the known facts surrounding the incident, including the location and any known or likely effects on the marine environment, human health and safety, other marine users or another State's interest; and
  - (c) the identity of the licence holder responsible for, or directly affected by, the incident; and
  - (d) any recommended action to be taken by each affected Crown agency under the contingency plan.
- (3) The Authority must notify the Ministry responsible for Foreign Affairs and Immigration if a notification under subclause (1) states that an incident has had, or is reasonably expected to have, substantial effects on persons or things under the jurisdiction of another State.

## Subpart 2—Inquiries into incidents

### **80 Inquiries into incidents**

- (1) Pursuant to section 20(3) of the Act, the Authority must initiate an inquiry into any incident with a view to—
- (a) establishing available facts and findings in respect of the incident; and
  - (b) acquiring information to be used for the future management of the effects of the incident; and
  - (c) avoiding, minimising and managing the future risk of incidents; and
  - (d) forming a view as to whether the licence holder or any other person should be investigated for breaches of an enactment or other legal obligation.
- (2) As part of any inquiry into an incident, the Authority must form a view on—
- (a) the facts and circumstances of the incident; and
  - (b) the actual, likely, or possible causes of and contributing factors to the incident; and
  - (c) the extent of any harm to the environment, any person, or any interest arising from the incident; and
  - (d) the actions taken in response to the incident and the effectiveness of those actions taken by any person to mitigate or remedy the harm caused by the incident; and
  - (e) potential future consequences of the incident, and options for preventing or minimising those consequences; and
  - (f) the implications of the incident for other regulated activities; and
  - (g) whether the occurrence or severity of the incident was contributed to by one (1) or more of the following:
    - (i) the licence holder, an employee, affiliate or an associate of the licence holder;
    - (ii) a Crown agency;
    - (iii) any other person; and

- (h) options for mitigating the risk of future incidents, whether or not of a similar nature to the incident that is the subject of the inquiry; and
  - (i) the adequacy of the contingency plan; and
  - (j) the adequacy, where applicable, of the incident response and management plan of the relevant licence holder.
- (3) After completing an inquiry, the Authority must—
  - (a) prepare a report setting out its findings, views and recommendations, if any, arising from the inquiry; and
  - (b) suggest any modification, including revised measures or procedures, to the contingency plan for approval by the responsible Minister under section 20(4) of the Act or the relevant incident response and management plan; and
  - (c) provide a copy of the report to the responsible Minister, the Committee and affected Crown agencies; and
  - (d) make available to the public the final report, including through publication on its website; and
  - (e) consider any action to be taken under sections 112, 115, 116 or 117 of the Act.
- (4) An inquiry must be conducted as soon as practicable after an incident.
- (5) The Authority may—
  - (a) conduct the inquiry itself or appoint a person to conduct it and make a report to the Authority; and
  - (b) invite any person contributing to or directly affected by the incident, representatives of affected Crown agencies and other persons having knowledge or facts of the incident to present information in the inquiry.

## **Part 8**

### **Application for and grant of renewal of mining licence**

#### **81 Application for renewal of mining licence**

- (1) An application for the renewal of mining licence under section 86 of the Act must be—
  - (a) made using the approved application form provided by the Authority and must be lodged with the Authority at least ninety (90) days before the expiry of the existing licence; and
  - (b) be accompanied by the applicable fee.
- (2) For the purposes of section 86(2) of the Act (prescribed information), the application must include details of—
  - (a) a proposed plan, showing the licensed mining area and blocks in question; and
  - (b) the period for which the renewal is required; and
  - (c) reasons why a renewal is sought, and information to demonstrate the requirements of section 86(6) of the Act are met; and
  - (d) a report describing the mining activities carried out by the applicant under the licence during its current term; and

- (e) details of any exploration carried out by the applicant; and
- (f) a report describing the extent of compliance with the requirements of the terms and conditions of the licence and the project permit, including compliance with the requirements of—
  - (i) the mining work plan; and
  - (ii) the environmental management plan; and
  - (iii) the occupational health and safety plan; and
  - (iv) the local engagement, training and business development plan; and
- (g) a report of any incidents, and the response and management of such incidents; and
- (h) the details and outcomes of any stakeholder consultation held; and
- (i) the activities that the applicant intends to carry out under the licence during the renewal term applied for; and
- (j) any proposed modification to the mining work plan and the local engagement, training and business development plan, for consideration and approval by the Authority; and
- (k) the amount of money that the applicant intends to spend on the activities during the renewal term applied for, and an updated financing plan; and
- (l) an estimate of the royalties and other amounts payable to the Crown during the proposed renewal term; and
- (m) where applicable, the blocks that the applicant nominates for surrender; and
- (n) any variation to an existing financial guarantee, extending such for the duration of the renewal or, alternatively, a new financial guarantee; and
- (o) any other information that the applicant thinks is relevant.

**82 Processing of application by Authority**

- (1) On receipt of an application for renewal under section 86(1) of the Act, the Authority must—
  - (a) acknowledge receipt of the application within five (5) days after its receipt; and
  - (b) review the application within twenty (20) days after acknowledgement of receipt of the application; and
  - (c) request any further information required from the applicant; and
  - (d) consult with relevant Crown agencies, including the Service, on matters relating to the licence holder's compliance under the mining licence or environmental approval, and any appropriate conditions for the renewal of the licence; and
  - (e) pursuant to section 86(9) of the Act, determine the appropriate conditions for renewal of the licence, including the proposed variation or adjustment to any existing financial guarantee; and
  - (f) determine whether the applicant continues to satisfy the qualification criteria under section 64 of the Act; and
  - (g) determine whether the applicant satisfies the requirements of section 86(6) of the Act.

- (2) For the purposes of section 86(6)(f) of the Act, the licence holder must be in compliance with—
- (a) the environmental management plan; and
  - (b) the conditions of the project permit; and
  - (c) the requirements of the Environment Act 2003 and the environment regulations; and
  - (d) occupational health and safety requirements.
- (3) Within ten (10) days after making the necessary determination under subclause (1), the Authority must recommend to the responsible Minister whether to grant a renewal of the mining licence under section 86(6) of the Act, and the conditions for any renewal.
- 83 Renewal decision-making by the responsible Minister and Cabinet**
- (1) Where the requirements of section 86(6) of the Act are met, including payment of the applicable fee, the responsible Minister may, subject to Cabinet’s approval, grant a renewal of the licence—
- (a) on the terms and conditions determined by the Authority; and
  - (b) for the renewal period in accordance with section 86(7) of the Act.
- (2) The Authority must, within five (5) days after the approval of Cabinet, record any renewal in the register of titles.
- 84 Renewal of environmental approval**
- A licence holder must make an application for the renewal of a project permit in accordance with the environment regulations.

## Part 9

### Obligations following expiration, surrender or termination of licence

- 85 Data and information to be submitted on expiration of the licence**
- (1) Within ninety (90) days of the expiration or termination of a licence, a licence holder must submit all data and information to the Authority (to the extent it has not previously been submitted) that is required for the effective exercise of the powers and functions of the Authority, including the following:
- (a) a final report detailing the activities undertaken under the mining work plan since the last reporting period under regulation 57:
  - (b) copies of geological, environmental, geochemical, and geophysical data (including raw and processed digital data) acquired by the licence holder in the course of carrying out activities under the work plan and environmental management plan and in respect of the licensed area:
  - (c) copies of all geological, environmental, geochemical geophysical, financial, economic, production and feasibility reports made by or for the licence holder:
  - (d) an up-to-date estimate of inferred, indicated, and measured resources and the proven and probable reserves by licensed block in the licensed area at the date of expiration or termination in accordance with the Authority’s reporting standard, including—



- (i) a statement of the criteria used to determine the estimate and whether the estimate is made on the basis of a feasibility study:
  - (ii) a map of the estimate areas:
- (e) a statement on how and where samples are archived and their availability to the Authority:
- (f) a list of any reports, analyses or results to be finalised by the licence holder and an estimated date by which the same will be submitted to the Authority:
- (g) any other document, information or samples relating to the licensed area as the Authority may reasonably direct.
- (2) The data and information referred to in this regulation must also be submitted to the Authority if, prior to the expiration of the licence, the licence holder renounces its rights or surrenders blocks in the mining area and the data and information relates to the surrendered blocks.

**86 Obligations following expiration, surrender or termination**

On the expiration, surrender, or termination of a mining licence, the licence holder must—

- (a) within three (3) months after the expiry or termination of the licence or other such period as determined by the Authority,—
  - (i) remove all unused property, equipment, and vessels; and
  - (ii) make the former licensed area safe to the reasonable satisfaction of the Authority; and
- (b) comply with the final closure plan, and continue to perform the required environmental management and post closure monitoring of the former licensed area, or part thereof, as set forth in the final closure plan and for the period established in the final closure plan; and
- (c) maintain and keep in place applicable insurance required under these regulations or the conditions of the licence or project permit; and
- (d) otherwise comply with the applicable laws of the Cook Islands, including the payment of any amounts set out in section 98 of the Act and owing to the Crown on or before the date of expiration, surrender or termination.

**Part 10**

**Information-gathering and management**

**87 Information management – protection of confidential information**

- (1) The Authority is responsible for maintaining the confidentiality of information received by the Authority and must not, except in accordance with sections 17 and 18 of the Act and these regulations, disclose or publish any information to any person external to the Authority.
- (2) The Authority must establish and maintain procedures governing the classification and handling of information by staff of the Authority, consultants engaged by the Authority, members of the licensing panel, and other persons participating in any activity or programme of the Authority or any person discharging a function under the Act.

- (3) The procedures must include—
  - (a) the storage and maintenance of information in secure facilities, the development of security procedures to prevent unauthorised access to or removal of information and the development of procedures to ensure the safe and secure dissemination of information; and
  - (b) the development and maintenance of a classification, log, and inventory system of all written information received, including its type and source and the routing from the time of receipt until final disposition; and
  - (c) the training of persons who have access to information and samples.
- (4) A person who is authorised under the Act and these regulations to access information must not disclose the information except as permitted under the Act and these regulations.
- (5) The Authority, pursuant to section 17(4) of the Act, must require any person who is authorised to access information to make a written declaration witnessed by the Commissioner or the Commissioner's authorised representative to the effect that the person authorised to access the information—
  - (a) acknowledges their legal obligation under section 18 of the Act and these regulations with respect to the non-disclosure of information; and
  - (b) agrees to comply with the applicable procedures established to ensure the confidentiality of such information; and
  - (c) agrees to use the data for the purpose for which it was disclosed or, if no purpose was stated, for the effective administration of the Act and to ensure the conduct of regulated activities consistent with enactments.
- (6) The licensing panel must protect the confidentiality of information submitted to it pursuant to the Act and these regulations, and must not disclose or use, even after the termination of their functions, any—
  - (a) trade secret or other commercially sensitive information which is transferred to the Authority or the panel; and
  - (b) other information coming to their knowledge by reason of their duties under section 68 of the Act.
- (7) The Commissioner and staff of the Authority must not disclose or use, even after the termination of their functions with the Authority, any—
  - (a) trade secret, or other commercially sensitive information transferred to the Authority; or
  - (b) other information coming to their knowledge by reason of their employment with the Authority.

**88 Information management – disclosure**

- (1) Pursuant to section 17(3)(a) of the Act, the Authority must make publicly available the following kinds of information—
  - (a) information that must be disclosed or published under Cook Islands law;
  - (b) environmental information.
- (2) Pursuant to section 17(3)(b) of the Act, the Authority must make publicly available information for either of the following purposes—

- (a) it must be disclosed to protect the marine environment, other marine users or human health and safety, including in connection with an incident; or
  - (b) it is necessary for the formulation by the Authority and relevant Crown agencies of policies, regulations, guidelines, and procedures concerning the protection of the marine environment and of human health and safety.
- (3) The Commissioner may prohibit or restrict the publication or communication of any information supplied to it, or obtained by it, in the course of proceedings, whether or not the information may be material to an application.
- (4) The Authority may provide a Crown agency with information that the Authority holds and that the Commissioner considers may assist the Authority or the agency in the performance or exercise of its functions, duties or powers under the Act or applicable law relating directly to the regulated activity.
- (5) A person or an agency that receives information provided under these regulations must not disclose the information to any other person.
- (6) Where any information submitted to the Authority is specified as confidential information pursuant to section 18(2) of the Act, the Authority must review the basis for the designation in accordance with section 18A of the Act.
- (7) If the Authority objects to a designation of information as confidential, the Authority must, within thirty (30) days after receiving the information, consult with the submitter about—
  - (b) the nature of the information; and
  - (a) whether the information constitutes confidential information pursuant to section 18(1) of the Act, taking account of the guidelines developed under section 18A of the Act and good regulatory practice.

**89 Disclosure of payments**

All payments made by the licence holder, or any of its affiliates or associates to the Authority or relevant Crown agencies in connection with the regulated activity under the Act, these regulations, and any other enactment of the Cook Islands is public information.

**Part 11**  
**General provisions**

Subpart 1—Applicable documents

**90 Documents to be in English language**

Any document that must be provided to the Authority under the Act or these regulations must be provided in the English language or be accompanied by a certified English translation.

Subpart 2—Service of documents

**91 Service of documents**

- (1) If a notice or other document is to be served by the Authority on a person for the purposes of the Act and these regulations, it may be served—

- (a) by—
    - (i) sending it to the electronic address or addresses specified in the licence; or
    - (ii) delivering it to the business or registered office of the licence holder in the Cook Islands as specified in the licence; and
  - (b) requesting confirmation of receipt of the notice or other document.
- (2) If a notice or other document is to be served on the Authority by a licence holder for the purposes of the Act and these regulations, it may be served—
- (a) by—
    - (i) sending it to the electronic address or addresses specified in the licence; or
    - (ii) delivering it to the Authority's principal place of business in the Cook Islands as specified in the licence; and
  - (b) requesting confirmation of receipt of the notice or other document.
- (3) Where the Authority or person does not confirm receipt within five (5) days after the sending of an electronic mail or the expected delivery date to the place of business or registered office, the sender must contact the other party by telephone or in person to confirm receipt.

## Part 12

### Other matters relating to regulations

#### **92 Procedure for amending regulations**

- (1) The Authority must keep under review the adequacy of these regulations in the light of new knowledge, technology and standards, and requirements or recommended practices of international and national organisations, bodies and agencies in the field of seabed mineral exploration and exploitation.
- (2) Before making any recommendation to amend these regulations, the Commissioner must provide persons who are likely to be directly affected by proposed revisions adequate time and opportunity to comment on the subject matter of possible changes, including—
  - (a) the responsible Minister for the Act; and
  - (b) the Committee; and
  - (c) the Technical Advisory Group; and
  - (d) licence holders; and
  - (e) relevant Crown agencies.
- (3) The Commissioner may take into account any comments received from persons under subclause (2) before making a recommendation to amend these regulations.
- (4) However, the Commissioner is not required to comply with subclause (2) if recommending the making of an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes or to amend any inconsistency with the Act.
- (5) Nothing in this regulation precludes any person described in subclause (2) from requesting the Commissioner to review these regulations under subclause (1).

## **Schedule 1**

### **Requirements for mining licence application**

#### **Part 1—General requirements about application**

- 1. Application to be in form and include information required by this Schedule**  
For the purpose of section 62 of the Act, an application for the grant of a mining licence must include the information described in this Schedule.
- 2. Applicant must complete digital form**  
The applicant must also complete a digital application form, as required by the Authority. The form will capture certain information required under Part 2 below.
- 3. Information does not need to be in particular form**  
The applicant is not required, unless otherwise specified, to provide the information in a particular format or layout, but it must be presented in a clear and logical manner, including, where applicable, an explanation as to why the applicant is unable to provide the information requested.
- 4. Applicant may be required to provide additional information relating to other enactments**  
The applicant may be required to provide additional information under the Environment Act 2003 and environment regulations, and other enactments relating to the regulated activity.
- 5. Attachments**
  - (1) The application must list all the attachments and annexes (all data and information should be submitted in hard copy and in a digital format specified by the Authority).
  - (2) The application may include any other information the applicant wishes the Authority and licensing panel to consider in support of its application.

#### **Part 2—Content of application**

- 6. Information concerning applicant**  
An application must include the following information about the applicant—
  - (a) full legal name of applicant:
  - (b) Cook Islands company registration number (and attach a copy of applicant's certificate of registration and memorandum and articles of incorporation):
  - (c) details of applicant's shareholders including a copy of the shareholders' agreement (if applicable):
  - (d) details of applicant's ultimate parent company (if applicable) and the date and country of incorporation of the parent as well as the registered address and headquarters of the parent, including the details of all the parents where the applicant is not wholly owned by one parent:

- (e) details of any change of name the applicant has made since incorporation:
- (f) details of the applicant's beneficial owners, including their nationalities:
- (g) directors' names, date of birth, nationality, occupation and place of primary residence:
- (h) street address of applicant:
- (i) registered address in Cook Islands (if different from applicant's street address):
- (j) telephone number:
- (k) email address:
- (l) name of applicant's designated representative:
- (m) street address of applicant's designated representative:
- (n) postal address of applicant's designated representative (if different from street address):
- (o) telephone number of applicant's designated representative:
- (p) email address of applicant's designated representative:
- (q) applicant's principal bankers:
- (r) applicant's principal auditors:
- (s) details of any subsidiaries or joint venture partners or other interests the applicant has.

**7. Information relating to the area under application**

An application must define the boundaries of the blocks under application by attaching a list of geographical coordinates (in accordance with the World Geodetic System 84).

**8. Technical information**

- (1) An application must include the information described in subclause (2), which will be used to determine that an applicant has or will have access to sufficient expertise and technical resources to carry out the proposed work plan.
- (2) The following technical information is required—
  - (a) detailed documentary evidence of the applicant's technical capability, or access to technical capability, to conduct mining including evidence of—
    - (i) the current and previous operating experience (that is day-to-day management of activities) of the applicant and any affiliates or associates under paragraph (e) in the exploring for or recovering seabed minerals, or comparable exploration or mining operations in similar physical conditions (water depth, distance from land) or relevant mining or extractive industry experience in the last ten (10) years, including details of—
      - (A) mineral discoveries made; and
      - (B) mineral production activities; and
      - (C) related levels of investment made in exploration or production development activities; and

- (ii) the experience of the applicant and any affiliates or associates under paragraph (e) in the collection and analysis of resource data, environmental baseline data, the conduct of environmental assessment, and in environmental monitoring and reporting; and
  - (iii) the applicant's data management practices, including quality assurance and quality control processes:
- (b) a general description of the technology, equipment (such as vessel, seabed minerals collection, transportation and processing systems, and surveying and monitoring equipment) and methods expected to be used in carrying out the proposed work plan and other relevant non-proprietary information about the characteristics of that technology, including technology to monitor environmental parameters:
- (c) details of the applicant's real-time monitoring technology and capacity:
- (d) where applicable, evidence of the applicant's ownership of intellectual property, or licences in respect of intellectual property, relating to the equipment or methods to be used to under paragraph (b):
- (e) a description of how the applicant's technical capability will be provided through the use of in-house expertise, including affiliates, associates, and consultants in respect of the proposed regulated activity:
- (f) details (skills, experience, technical qualifications, and competencies) of key personnel (management and technical personnel (by subject-matter areas)) who will be engaged by the licence holder, its affiliates or associates, together with an organisational structure chart incorporating hierarchical decision-making responsibilities:
- (g) details of processes and systems in place or being implemented for the supervision of operations, including operational management of in-house and external expertise, in accordance with good industry practice:
- (h) a general description of the applicant's technical capability to respond to any incident or activity that may cause serious harm to the marine environment or adversely impact other marine users:
- (i) copies of any technical studies and surveys undertaken by or made available to the applicant in respect of the blocks under application, together with any technical assessments and modelling undertaken in preparing the application:
- (j) details of the applicant's internationally accredited certification standards (including for example, the International Organization for Standardization or equivalent) and any independent verification of the standards adopted:
- (k) details of any existing projects and ventures, future commitments, and risks which may impact the applicant's ability to implement any future work programmes relating to the licence for which an application is sought.

## **9. Financial information**

- (1) An application must include the information described in subclause (2), which will be used to determine that an applicant has or will have access to sufficient financial resources to carry out the proposed work plan, environmental

management plan and other financial obligations arising under a licence, and to support the commitments presented in the financing plan.

- (2) The following financial information is required:
- (a) copies of the applicant's audited financial statements for the most recent five (5) years, that,—
    - (i) conform with internationally accepted accounting principles; and
    - (ii) are certified by an appropriately qualified firm of public accountants; and
    - (iii) include balance sheets and profit-and-loss statements:
  - (b) where the applicant is a group of companies, investors, or potential investors, copies of audited financial statements for the applicant's shareholders, parent company, and relevant affiliates for the most recent five (5) years, that meet the requirements in paragraph (a)(i) to (iii):
  - (c) where the applicant is a subsidiary company of a group of companies, a group structure chart showing the parent company, principal operating subsidiaries, and management structures:
  - (d) detailed information and evidence about how the applicant intends to finance the work plan, including, where applicable,—
    - (i) details and evidence of the amount of any committed borrowings from banks or other financial institutions, together with the terms and conditions of that borrowing; and
    - (ii) evidence of any cash or near cash reserves, guarantees, lines of credit, letters of support, agreements, or other arrangements and understandings between the applicant and any persons, including directors or shareholders, undertaking to finance the applicant:
  - (e) details of current borrowing and the applicant's borrowing history, including details of any defaults together with any credit rating reports and credit reference checks and bank references:
  - (f) details of any issue of additional share capital proposed and evidence that funds have been irrevocably committed to the share issue:
  - (g) where the applicant is held by a State or State owned enterprise, details from the State about how the applicant will be funded, including a statement by a duly authorised official of the State certifying that the applicant has access to sufficient financial resources:
  - (h) where applicable, the nature and terms of any financial guarantee to be provided or details of proposed insurance products in respect of the financing of exposure to risk commensurate with the proposed work plan:
  - (i) a description of the applicant's financial capacity or access to financial resources to—
    - (i) respond to any incident or activity which may cause serious harm to the marine environment or adversely impact other marine users; and
    - (ii) to implement the incident response and management plan:
  - (j) a list of any current or known future financial commitments or contingent liabilities, and a statement on whether these are likely to



materially affect the applicant's financial capability to meet licence obligations, including commitments and liabilities of persons who may finance the applicant:

- (k) details of the applicant's tax filings within the last five (5) years:
- (l) information on planned mergers, acquisitions and dispositions as well as any medium-term plans which are expected to alter materially the financial status of the applicant or financial guarantor.

**10. Labour standards and practices**

An application must include evidence of the applicant's labour standards and practices to be adopted and applied during the conduct of the proposed activities, and details of any significant employee and industrial relations issues in the past 5 years.

**11. Occupational health, safety and environmental capability and systems**

- (1) An application must include the information described in subclause (2), which will be used to determine that an applicant has the capability and systems necessary to meet and manage occupational health and safety and environmental requirements, including the applicant's ability to meet or exceed international standards in respect of these requirements.
- (2) The following occupational health and safety and environmental information is required:
  - (a) details of similar activities undertaken in the Cook Islands or internationally, including a summary of the occupational health and safety and environmental regulatory environment in which the activities were undertaken:
  - (b) details of the applicant's understanding of the Cook Islands regulatory requirements relating to occupational health and safety and the environment, as they apply to the regulated activity:
  - (c) a description of the occupational health and safety and environmental risks associated with the activities under the proposed work plan, together with proposed management of those risks:
  - (d) description of the applicant's occupational health and safety and environmental systems, processes, and capabilities to meet the requirements and manage the risks during the conduct of the activities proposed in the proposed work plan, including details and evidence of the following:
    - (i) the policies in relation to occupational health and safety:
    - (ii) the policies in relation to environmental management and performance:
    - (iii) the management structure (directors and managers) identifying specific responsibilities for occupational health and safety and environmental risk management:
    - (iv) the safety and environmental management systems adopted or to be adopted:
    - (v) the key personnel with relevant qualifications and experience to meet occupational health and safety and environmental standards and manage risks:

- (vi) the occupational health and safety and environmental certifications held:
  - (vii) future plans regarding occupational health and safety and environmental certifications and practices:
- (e) evidence of the successful delivery of plans for the closure and rehabilitation or restoration of areas where activities similar to the regulated activity took place:
- (f) details of any incidents related to occupational health and safety or the environment that have occurred in the applicant's, associates' or affiliates' operations in the last five (5) years and any investigation reports from such incidents:
- (g) copies of any occupational health and safety and environmental verification reports (for example compliance audits) and quality assurance documents produced in the last five (5) years.
- (3) If the applicant does not currently have the appropriate occupational health, safety and environmental systems, processes, capabilities or personnel that are likely to be required to comply with the requirements and manage the risks, the applicant must set out the process and timeframe by which the appropriate systems, processes, capability will be put in place or suitable personnel engaged.

## **12. Governance and risk management model**

- (1) An application must include the information in subclause (2), which will be used to determine that an applicant is governed by a corporate structure and risk management model, and staffed, in a way that is appropriate for the proper performance of obligations under the licence, including the management of affiliates and associates.
- (2) The following governance and risk management information is required:
  - (a) details of the applicant's risk management standards and internal systems and processes adopted, and evidence of the same:
  - (b) details of the applicant's corporate governance model and structure, including—
    - (i) risk oversight committees and reporting structures up to and including board, or equivalent, level:
    - (ii) copies of internal policies, procedures, or codes of conduct in relation to—
      - (A) ethical business practices:
      - (B) risk control and fraud mitigation:
      - (C) whistleblowing:
      - (D) anti-bribery and corruption:
  - (c) a statement on the applicant's understanding of the opportunity and risks posed to the interests of the Cook Islands (including social, cultural, environmental, economic, and financial interests) and any proposed mitigation measures:
  - (d) details of any membership of national or international industry and other associations or bodies, and any standards, codes of conduct or practice adopted or principles adhered to:

- (e) a copy of the applicant's (or where relevant affiliates or associates of the applicant) Corporate Social Responsibility (CSR) reports or a detailed description of its CSR initiatives for the past 5 years.

**13. Current and previous licences, approvals, and consents held and compliance history**

- (1) An application must include the information in subclause (2), which will be used to determine whether the applicant is a fit and proper person to hold a licence, and to indicate an applicant's likelihood to comply with and give proper effect to the work plan and the terms and conditions of a licence if granted.
- (2) The following information about current and previous licences, approvals, consents held, and compliance history is required:
  - (a) details of any approvals, including licences, permits, consents or other permissions, held or previously held by the applicant in the Cook Islands or internationally relating to sea- or land-based mineral activities or comparable activities relevant to the application, including approvals held or previously held by affiliates or associates who will be or are likely to be engaged in the regulated activity or involved in the management of the applicant's business:
  - (b) details of—
    - (i) any approvals held in the Cook Islands or internationally that have been cancelled for non-compliance; and
    - (ii) any enforcement action taken or concluded or ongoing investigation by a regulator, whether in the Cook Islands or elsewhere, in respect of the breach of an approval or an enactment, the breach relates to any term or condition of an the following:
      - (A) matters contemplated by section 65(1)(a) of the Act:
      - (B) any mining, occupational health and safety, or environmental legislation:
      - (C) non-compliance with any reporting, monitoring, or payment obligations:
      - (D) non-compliance with any work plan commitment or condition of an environmental approval:
      - (E) where applicable, details of the corrective action taken by the applicant, its affiliate or associate and enforcement action taken by a regulator, including details of any penalty imposed; and
    - (iii) any convictions described in section 65(1)(ii) and (iii) of the Act; and
  - (c) evidence of tax compliance; and
  - (d) details of any existing or threatened litigation, administrative or regulatory proceedings, investigations or governmental actions involving the applicant or any member of its board or senior management in connection with the affairs of the applicant in any jurisdiction; and

- (e) details of any consent, decree, judgment, order, settlement, or other similar agreements by which the applicant or any of its assets is bound; and
- (f) details of any sanctions against the applicant or any member of its board or senior management by a regulatory agency or an international institution, such as the World Bank for the past ten (10) years; and
- (g) if the company or firm is subject to USA Securities and Exchange Commission rules, latest evidence that the entity is SOX (Sarbanes Oxley Act) compliant; and
- (h) where applicable, evidence of compliance with latest securities and capital market regulatory filing of applicant's shareholders.

**14. Viability of operations**

An application must include the following information:

- (a) commentary in support of the proposed work plan and timeframe, showing that the mining work plan—
  - (i) presents a firm mining proposition over adequately defined seabed mineral reserves; and
  - (ii) reflects a commercial recovery programme that will satisfy the applicant's estimated production requirements over the term of the licence (not exceeding 30-years) in accordance with good industry practice; and
- (b) details of any existing projects and ventures, future commitments, and risks which may impact the company's ability to implement a proposed work plan under a licence.

**15. Compliance**

An application must include a statement about how the proposed regulated activity—

- (a) will comply with relevant enactments; and
- (b) will be conducted in accordance with good industry practice and best environmental practice.

**16. National interest**

An application must include the following information:

- (t) information about how the applicant has considered, and will ensure, that the granting of any licence is demonstrably in the Cook Islands national interest contemplated in section 69 of the Act, in particular—
  - (i) information about how the local engagement, training and business development plan will provide financial and other benefits to the Cook Islands; and
  - (ii) evidence of past success in the sourcing of local goods and services used in operations; and
  - (iii) evidence of past success in local employment and transfer of technology and skills to local persons; and
  - (iv) using examples, how any risks to the environment or society can be mitigated:

- (v) evidence of effective engagement with host and affected communities in the past; and
- (vi) using examples, information about how the grant of a licence will contribute to the ecologically sustainable use of the Cook Islands exclusive economic zone, including through the projected royalties and taxes to the Crown; and
- (vii) the promotion of the purpose and principles of the Marae Moana Act 2017.

**17. Undertakings**

An application must have attached to it a written undertaking that—

- (a) the content of the application is true and accurate to the best of the applicant's belief; and
- (b) the applicant intends to conduct the regulated activity in a responsible manner in accordance with the Act, other laws of the Cook Islands, and the terms and conditions of the licence; and
- (c) the applicant has not engaged in and will not engage in any activity related to the application or under any licence granted in exchange for any improper benefit of the type contemplated by clause 16 of Schedule 2 to the Act.

**Part 3—Manner of submission of applications**

**18. Application in respect of tender blocks**

The approved manner of making an application for a mining licence over tender blocks in response to the public announcement of a tender round under section 45 of the Act requires applications to be,—

- (a) submitted in the English language or in any language other than the English language together with a certified English translation; and
- (b) sealed in an envelope or other container that—
  - (i) identifies the relevant tender round; and
  - (ii) states the applicable closing time; and
  - (iii) displays no information that identifies the applicant; and
- (c) submitted to the lodgement location specified in the invitation to apply before the specified closing time; and
- (d) submitted as,—
  - (i) one (1) hard copy authoritative original of the application in the approved form, and of each annex, attachment or other enclosure, verified and signed by an authorised officer or authorised representative of the applicant; and
  - (ii) two (2) hard copies of the original of the application and each annex, attachment or other enclosure; and
  - (iii) one (1) electronic copy of the application and all text enclosures in a full text searchable format.

**19. Application in respect of standard blocks**

The approved manner of making an application for a mining licence over blocks other than tender blocks requires applications to be,—

- (a) submitted in the English language or in any language other than the English language together with a certified English translation; and
- (b) sealed in an envelope or other container that identifies the applicant; and
- (c) submitted to the lodgement location specified by the Authority on its website; and
- (d) submitted as,—
  - (i) one (1) hard copy authoritative original of the application in the approved form, and of each annex, attachment or other enclosure, verified and signed by an authorised officer or authorised representative of the applicant; and
  - (ii) two (2) hard copies of the original of the application and each annex, attachment or other enclosure; and
  - (iii) one (1) electronic copy of the application and all text enclosures in a full text searchable format.

## **Schedule 2**

### **Mining work plan**

#### **1. Content of mining work plan**

A mining work plan must be based on the results of exploration and set out the proposed commercial recovery programme that the applicant intends to carry out and must include the following:

- (a) the stated objectives of the work plan:
- (b) the proposed start date for mining operations:
- (c) a comprehensive statement of the seabed mineral resource delineated in the relevant mining area or areas, including—
  - (i) details of all known reserves reported in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves (ISBA/21/LTC/15 at Annex V); and
  - (ii) a comprehensive report by a suitably qualified and experienced person that includes details and validation of the grade and quality of the possible, proven, and probable ore reserves, as supported by a pre-feasibility study or a feasibility study, as the case may be:
- (d) details of the size, nature, extent, and location of the proposed mining operations including a map of the boundaries of the proposed mining areas (on a scale and projection specified by the Authority) and a list of geographical coordinates (in accordance with the World Geodetic System 84):
- (e) details of the proposed mining methods (including equipment and technology) to be used, including—
  - (i) the results of tests (including of collecting systems and equipment) conducted and the details of any tests to be conducted in the future; and
  - (ii) any other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, together with details of any certification from a conformity assessment body:
- (f) details of the proposed mining and a sequential production schedule by mining area, including—
  - (i) applicable time frames, milestones, and schedules for the various implementation phases (including commissioning, construction, trial mining) of the mining operations; and
  - (ii) production volumes and extraction efficiency:
- (g) any exploration work in relation to the proposed licenced area:
- (h) details of affiliates or associates to be involved in the mining operations:
- (i) details of the anticipated processing plan (including shipboard processing) and estimated overall recovery of ore and metal products:
- (j) details of estimated discharges (annual volume or weight) from shipboard processing:
- (k) details of the waste prevention and management plan and audit:

## **Seabed Minerals (Mining) Regulations 2020**

- (l) details of the anticipated marketing arrangements for the sale of the ore and mineral products:
- (m) details of quality assurance and quality control processes and procedures:
- (n) details relating to the identification of hazards and risks and a risk management plan in accordance with Schedule 3.



### **Schedule 3**

#### **Risk identification and risk management plan**

**1. Identification of hazards and risks**

The following information is required in work plans:

- (a) details of hazards that may arise from the regulated activity under the work plan, including hazards arising from—
  - (i) set up or construction:
  - (ii) mining operations:
  - (iii) shipboard or other processing:
- (b) an explanation of how the identified hazards may harm or damage the sensitive receptors described in the work plan, including evidence to support the assessment of the potential for harm or damage to be caused:
- (c) an assessment of the risks that the identified hazards may pose to identified sensitive receptors, having regard to—
  - (i) the nature of the hazard; and
  - (ii) the likelihood of the hazard causing, or contributing to, any harm or damage; and
  - (iii) the severity or consequence of the harm or damage that may be caused.

**2. Risk management plan**

A mining work plan must include a risk management plan that sets out the following information in relation to identified risks:

- (a) measures to be applied to eliminate or minimise the risks to as low as reasonably practicable:
- (b) the performance standards to be achieved by either individual measures or some combination of measures:
- (c) information about the management systems, practices and procedures that are to be applied to monitor and manage risks and compliance with performance standards:
- (d) an outline of the roles and responsibilities of personnel accountable for the implementation, management, and review of the risk management plan.

## **Schedule 4**

### **Financing plan**

#### **1. Content of financing plan**

A financing plan must include—

- (a) details and costing of the mining technique, technology and production rates applicable to the proposed mining activities; and
- (b) details and costing of the technological process applicable to the extraction and on-board processing of the metal-bearing ore; and
- (c) details and costing of the technical skills and expertise and associated labour requirements necessary to conduct the proposed mining activities; and
- (d) details and costing of regulatory requirements relevant to the proposed mining activities, including the cost of the preparation and implementation of the environmental management plan and closure plan; and
- (e) details regarding other relevant costing, including capital expenditure requirements; and
- (f) details of expected revenue applicable to the proposed mining activities; and
- (g) a detailed cash-flow forecast and valuation, excluding financing of the proposed mining activities, clearly indicating applicable regulatory costs; and
- (h) details of the applicant's resources or proposed mechanisms to finance the proposed mining activities, and details regarding the impact of such financing mechanisms on the cash-flow forecast.

## **Schedule 5**

### **Incident response and management plan**

**1. Content of incident response and management plan**

An incident response and management plan must—

- (a) be prepared in accordance with good industry practice, taking account of the relevant guidelines and the contingency plan:
- (b) provide an effective plan of action for the applicant's efficient response to incidents and events, including processes by which the applicant will work in close cooperation with the Authority, other competent Crown agencies and, where applicable, regional emergency response organisations:
- (c) include—
  - (i) the overall aims and objectives and arrangements for controlling the risk of incidents:
  - (ii) relevant codes, standards and protocols:
  - (iii) organisational structure and personnel roles and responsibilities:
  - (iv) details of individuals authorised to initiate response mechanism(s):
  - (v) details of control mechanisms in place during the course of normal operations:
  - (vi) details of the safety management system:
  - (vii) details of the environmental management system:
  - (viii) a description of the mining operations and equipment, including emergency response equipment:
  - (ix) a risk assessment, including a description of all foreseeable incidents, an assessment of their likelihood, consequences and associated control measures, including those due to normal operations of the vessel(s) such as oil spills and leaks:
  - (x) the number of persons that can be present on the vessel(s) engaged in regulated activities at any time:
  - (xi) a description of the arrangements to protect persons on the vessel(s), and to ensure their safe escape, evacuation and rescue:
  - (xii) details of arrangements for the maintenance of control systems to monitor the marine environment in the event of an incident:
  - (xiii) details of the emergency response plan:
  - (xiv) details of the known natural marine environmental conditions that may influence the efficiency of response equipment or the effectiveness of a response effort:
  - (xv) information and measures relating to the prevention of incidents which could result in serious harm to the marine environment or damage to submarine cables or to a marine user:
  - (xvi) an assessment of pollution hazards and the measures to prevent or reduce such hazards:
  - (xvii) details of the warning mechanisms intended to alert the Authority, together with the type of information to be contained in such warning:

- (xviii) details of arrangements for coordinating any emergency response:
- (xix) details of training programmes for personnel:
- (xx) description of the monitoring of performance under the plan:
- (xxi) details of audit and review processes of the plan.

**2. Application of content requirements**

The content for an incident response and management plan set out in clause 1 of this Schedule is indicative until the Minister finalises and approves a contingency plan under section 20(4) of the Act.

## **Schedule 6**

### **Local engagement, training, and business development plan**

**1. Content of local engagement, training, and business development plan**

A local engagement, training and business development plan must include details of proposed plans to—

- (a) engage with, and provide information to, the Cook Islands communities in respect of the regulated activity; and
- (b) employ or contract nationals of the Cook Islands in the regulated activity; and
- (c) provide comprehensive training, skills and capacity development to nationals of the Cook Islands; and
- (d) procure local goods or services in connection with the regulated activity.

## **Schedule 7**

### **Notifiable events**

#### **1. Notifiable events**

In respect of a vessel engaged in regulated activity, notifiable events for the purposes of regulation 51 include the following events:

- (a) the death of a person:
- (b) a missing person:
- (c) occupational lost time illness:
- (d) occupational lost time injury:
- (e) a medical evacuation:
- (f) a fire or explosion resulting in an injury or major damage:
- (g) a collision resulting in an injury or major damage:
- (h) a significant leak of a hazardous substance:
- (i) an unauthorized discharge:
- (j) any adverse environmental conditions with likely significant safety or environmental consequences:
- (k) a significant threat to or breach of security:
- (l) the implementation of an incident management plan:
- (m) damage compromising the ongoing integrity or emergency preparedness of a vessel:
- (n) damage to safety or environmentally critical equipment:
- (o) significant contact with fishing gear:
- (p) contact with submarine pipelines or cables:
- (q) significant contact with equipment related to marine scientific research.

**Schedule 8**  
**Matters relating to invitation to apply for applications for titles**  
**under section 45(2) of the Act**

**1. Content of invitation to apply**

- (3) For the purposes of section 45(2) of the Act, each invitation to apply (ITA) must provide for the following matters:
- (a) a general description of the scope and purpose of the tender process, including—
    - (i) an overview of the regime for seabed minerals activity under the Act; and
    - (ii) the blocks to be covered by the licence; and
    - (iii) a summary of the known geology of the blocks covered by the tender process; and
    - (iv) a statement to the effect that the requirements under the Act for the issue of the ITA have been met:
  - (b) details for the acquisition of the tender document package applicable to the application process, including the cost (if any) of the tender document package:
  - (c) the period within which applications may be submitted:
  - (d) details about where to submit applications:
  - (e) rules for amending the ITA and tender document package before the closing time:
  - (f) confidentiality requirements in relation to the application process, including the confidentiality of information in the document package:
  - (g) rules relating to the ownership of applications and the intellectual property rights in applications:
  - (h) requirements to ensure the probity of the application process, including the management of conflicts of interest and rules in relation to improper conduct by applicants (for example, collusive tendering and seeking or obtaining improper assistance from Government officials):
  - (i) a statement to the effect that applicants should ensure that applications contain sufficient information to enable the Authority and licensing panel to assess the application against the qualification criteria and evaluation criteria respectively, including in competition with other applicants:
  - (j) the evaluation criteria set out in these regulations and any weighting of those criteria:
  - (k) the process for assessing applications:
  - (l) any other process rules governing the conduct of the application process, for example, rules about—
    - (i) content and format requirements in addition to those specified in this Schedule; or
    - (ii) a process for the registration of potential applicants, who will receive communications in relation to the tender process; or

- (iii) communications between the Authority and potential applicants, including in relation to amendments to the ITA and tender document package; or
- (iv) due diligence requirements of potential applicants in respect of applications; or
- (v) the conduct of presentations, demonstrations or tests (where applicable) in relation to the assessment of applications; or
- (vi) details of how the Authority will conduct the public notification processes as required by the Act and the regulations; or
- (vii) the making of amendments to applications, including minor corrections; or
- (viii) the termination of the application process; or
- (ix) the return of information at the conclusion of the application process; or
- (x) the terms and intended legal effect of the declaration of applicants to accompany applications; or
- (xi) the application of relevant enactments or policies of the Government to the tender process; or
- (xii) disclosure of information about applications; or
- (xiii) applicant referees, and the procedures for obtaining references; or
- (xiv) additional rules governing the process for negotiating and granting licences as a result of the application process; or
- (xv) procedures for the debriefing of applicants.

**2. Content of tender package**

Each tender package must include—

- (a) information held by the Authority that is relevant to the geodetic, geophysical, geological, environmental, and other technical characteristics of the blocks covered by the ITA, including the identification of any relevant publicly available or Government studies; and
- (b) other documentation that the Authority decides to include in the tender blocks document package to assist with the preparation of applications.



**Schedule 9**  
**Prescribed evaluation criteria for the purposes of section 68(1)(a) of the Act**

**1. Evaluation criteria**

- (1) The criteria in this clause must be applied by the licensing panel in its evaluation of an application for a mining licence, taking into account the guidelines for the evaluation of mining applications.
- (2) *Proposed mining work plan and viability of mining operation*: the extent to which the applicant's proposed mining work plan—
  - (a) demonstrates the applicant's knowledge of the geology and extent of the seabed mineral resources that the applicant proposes to mine; and
  - (b) presents a firm mining proposition over adequately defined seabed mineral reserves; and
  - (c) is technically achievable and economically viable; and
  - (d) reflects the economic life of the project and proposed duration of the licence; and
  - (e) is supported by appropriate mining pre-feasibility or feasibility studies; and
  - (f) presents a logical and justified basis for scheduling, production and proposed seabed mineral recovery rates; and
  - (g) demonstrates that the proposed mining operations are in accordance with good industry practice; and
  - (h) shows, over the proposed licence period, that the applicant will allocate its resources to perform efficiently the proposed mining operations.
- (3) *Financial resources*: whether the estimated expenditure and financing plan is compatible with the proposed regulated activity, mining work plan and environmental plans, and whether the applicant has access to or will be capable of committing or raising sufficient financial resources, in particular—
  - (a) that the financing plan is compatible with the proposed mining project; and
  - (b) during the term of a mining licence, to cover the estimated costs of the regulated activity and all other associated costs of complying with the terms and conditions of the mining licence according to the financing plan, including the payment of any applicable fees, charges, taxes, bond, insurance, or other Government imposed payments arising in relation to the regulated activity; and
  - (c) after the term of the mining licence, to cover the estimated costs of closing the regulated activities, in accordance with the closure plan; and
  - (d) to respond to any incident, and to promptly implement the incident management plan; and
  - (e) access to insurance products that are appropriate to the financing of exposure to risk in accordance with good industry practice.
- (4) *Technical competence*: whether the applicant has the technical resources, and access to appropriate technical advice, to carry out the proposed regulated activity, and to economically extract the seabed minerals, in particular,—

- (a) technical and operational capability to carry out the proposed work plan in accordance with good industry practice using appropriately qualified and adequately supervised personnel; and
  - (b) technical capability to undertake responsibility for the day-to-day management of the proposed activities in accordance with good industry practice (by reference to the applicant's current and prior comparable work programme delivery in the Cook Islands or internationally); and
  - (c) technology and procedures necessary to comply with the terms of the environmental management plan and the closure plan, including the technical capability to measure and monitor environmental objectives and outcomes, and to modify management and operating procedures when appropriate; and
  - (d) risk assessment and risk management systems to effectively implement the proposed work plan in accordance with good industry practice; and
  - (e) certification to operate under internationally recognised quality control and management standards; and
  - (f) capability to respond effectively to incidents, in accordance with the incident response and management plan; and
  - (g) capability and capacity to utilize and apply best available technology and techniques.
- (5) *Compliance*: the capability of the applicant to conduct the proposed regulated activity in accordance with—
- (a) enactments; and
  - (b) the statutory and licence conditions applicable to the regulated activities; and
  - (c) international law obligations to which the Cook Islands is subject; and
  - (d) the requirements of the Act and these regulations pertaining to the making of applications; and
  - (e) the proposed work plan, taking into account the applicant's technical capability.
- (6) *Occupational health and safety and environmental requirements*: the applicant's capability and systems that are likely to be required to meet the occupational health and safety and environmental requirements of all relevant enactments.
- (7) *National interest*: the extent to which the applicant and proposed regulated activity will promote the national interest, including by reference to—
- (a) the benefits of the applicant's proposals concerning the employment, training and capacity development of the Cook Islands community; and
  - (b) the expected effectiveness of the applicant's plan to engage with the public of the Cook Islands; and
  - (c) the overall potential for the proposed mining operations to contribute to the sustainable economic development of the Cook Islands, including by reference to—
    - (i) an assessment of the estimated potential economic value to the Cook Islands; and
    - (ii) the potential to diversify the Cook Islands economy; and

## **Seabed Minerals (Mining) Regulations 2020**

- (d) the potential positive and negative impacts on both existing economic activity of the Cook Islands and the well-being of individuals, communities and cultural practices of the Cook Islands.

## Schedule 10

### Model mining licence



Seabed Minerals Authority  
Runanga Takere Moana  
COOK ISLANDS

Licence number— [ ]

#### 1. Introduction

This is a licence granted by the responsible Minister on behalf of the Crown to authorise the licence holder to carry on mining for which a licence is required under Part 4 of the Seabed Minerals Act 2019.

##### 1.1 Licence number

The licence number for this licence is [ ].

##### 1.2 Licence holder

The licence holder is the company set out below—

Company name	
Company registration number	
Registered address	
E-mail address	
Designated representative	
Position within company	

##### 1.3 Licence date

Version	
Licence start date	
Licence end date	
Date of original issue	
Date of variation issue	

##### 1.4 Licence validity and renewal

This version of this licence is valid from the licence start date to the licence end date.

This version of this licence supersedes any earlier version of this licence.

This licence may be renewed in accordance with the Act and the regulations.

##### 1.5 Licence rights

This licence gives the licence holder, subject to the Act and the regulations, the rights granted under section 81(1) of the Act, and the exclusive right to—

- (a) conduct mining over the blocks of the Cook Islands seabed delineated in annex 1 to this licence; and
- (b) apply for successive renewals of this licence.

#### **1.6 Specified seabed minerals covered by this licence**

This licence authorises mining and exploration for polymetallic nodules in the licensed area.

The licence holder is not permitted to extract, or to explore for, seabed minerals not covered by this licence.

## **2. General**

### **2.1 Interpretation**

In this licence, terms are as defined in section 6 of the Seabed Minerals Act 2019 (“the Act”) and the Seabed Minerals (Mining) Regulations 2020 (“the regulations”) and—

“environment regulations” means the Environment (Seabed Minerals Activities) Regulations 2020

“licensed activities” means the mining activity, and associated regulated activity set out in the mining work plan annexed to this licence

“licence holder” means the person(s) or organisation(s) named in clause 1.2 above to whom this licence is granted.

“Authority” means the Seabed Minerals Authority.

All geographical co-ordinates contained within this licence are in WGS84 format (latitude and longitude degrees and minutes to three decimal places) unless stated otherwise.

### **2.2 Authority contact**

Except where otherwise indicated, the main point of contact with the Authority and the address for email and postal correspondence and the serving of notices under the Act and the regulations is—

**Attention— Seabed Minerals Commissioner**

**The Cook Islands Seabed Minerals Authority**

**Avarua, Rarotonga, Cook Islands PO Box 733**

**Tel— (+682) 29 193**

**Email— sbma@cookislands.gov.ck**

## **3. Licensed activities**

### **3.1 Licensed activities authorised**

The licensed activities are authorised and must be carried out in accordance with this licence, and only in the licensed area.

### **3.2 Licensed area**

The licensed area allocated to the licence holder is the area defined by the coordinates listed in annex 1 to this licence.

#### **4. Implementation of and compliance with plans**

The licence holder must, pursuant to section 83 of the Act, commence and continue mining in accordance with the approved mining work plan and good industry practice, and comply with the following documents annexed to this licence—

- (a) the incident response and management plan:
- (b) the occupational health and safety plan:
- (c) the local engagement, training and business development plan.

#### **5. Licence terms and conditions**

##### **5.1 Standard terms and conditions**

###### **5.1.1 General duties of licence holders**

The general duties of licence holders set out in in Schedule 2 of the Act are incorporated by reference in this licence.

The licence holder, its employees and agents, its affiliates and associates must comply with the terms and conditions of this licence, the regulations, the Act and any other laws relating to the regulated activity.

###### **5.1.2 Commencement of activities**

Unless otherwise agreed in writing with the Authority, and subject to section 82(1) of the Act and clause 5.1.6, the licence holder must—

- (a) commence mining in accordance with the time schedule stipulated in the work plan; and
- (b) subject to any good grounds for the temporary suspension of mining activities provided for by the regulations, continue mining as provided for in the work plan; and
- (c) comply with any time periods or modifications to time periods provided for by this licence.

###### **5.1.4 Notification of commencement**

The licence holder must notify the Authority before the first instance of any regulated activity commences. This notice must be received by the Authority not less than twenty (20) days before the regulated activity commences.

###### **5.1.5 Licence conditions— affiliates and associates**

The licence holder is responsible for compliance with the Act, the regulations, the terms and conditions of this licence and other law, including the acts or omissions of its affiliates and associates.

The licence holder is not discharged from any obligation arising under this licence by contracting a third party to perform the relevant obligation.

###### **5.1.6 Financial guarantee**

This licence may require the licence holder to lodge a financial guarantee under the Act.

The form, amount, subject-matter, timing of lodgement, terms of release, and other conditions of the guarantee will be recorded as a specific condition under clause 7.1 to this licence or a condition under a project permit.

Where applicable, no regulated activity may commence or continue unless the licence holder has provided for a financial guarantee in accordance with this

licence and the regulations or an environmental bond in accordance with a condition of the project permit.

**5.1.7 Vessels**

The licence holder must notify the Authority in writing of any vessel being used to carry on any regulated activity under this licence on behalf of the licence holder. That notification must be received by the Authority no less than twenty (20) days before each cruise commences. Notification must include the master's name, vessel type, vessel IMO number, vessel flag, vessel owner or operating company, dates of entry and departure from Cook Island's jurisdiction, any scheduled ports of call, and details of persons aboard.

The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments is read and understood by the masters of any vessel being used to carry on any licensed activity and that a copy of this licence is held on board any such vessel.

**5.1.8 Notification of material matters**

If the licence holder becomes aware of new information or a change of circumstance which materially affects or is likely to materially affect the basis for granting this licence or the viability and appropriateness of the work plan or the licensee's ability to comply with the obligations under this licence, then the licence holder must notify the Authority at the earliest opportunity, and within five (5) days of becoming aware of the new information or change of circumstance. Failure to do so may lead to enforcement action.

**5.1.9 Modification to work plan**

The licence holder must not amend, alter or vary the work plan, except in accordance with the Act and the regulations.

**5.1.10 Requirements under the Environment Act 2003**

This licence, and the conduct of all licensed and regulated activities under it, is subject to obtaining and complying with the conditions of a project permit issued under the Environment Act 2003, and the requirements of that Act and the environment regulations.

The conditions of the applicable project permit are incorporated by reference in this licence pursuant to section 90(4) of the Act.

The licence holder must comply with the terms of—

- (a) the environmental management plan; and
- (b) the closure plan.

**5.1.11 Legal title to the specified seabed minerals**

The licence holder will obtain title to, and property rights over, the seabed minerals specified in this licence in accordance with section 81(1) of the Act.

**5.1.12 Use of local goods and services**

The licence holder undertakes in accordance with the local engagement, training and business development plan, when purchasing goods and services required with respect to the regulated activity, to give preference, at comparable quality, delivery schedule, and price, to goods produced in the Cook Islands and services provided by local citizens or businesses, subject to technical acceptability and availability of the relevant goods and services in the Cook Islands.

### 5.1.13 Fees and royalties

The licence holder must pay annual fees and any other applicable fees or charges relating to the licence, in accordance with the Seabed Minerals (Mining Fees) Regulations 2020 and other relevant enactments.

The licence holder must pay a royalty to the Crown calculated in accordance with the Seabed Minerals (Royalties) Regulations 2013.

### 5.1.14 Surrender, cancellation or expiry of this licence

Upon any surrender, cancellation or expiry of this licence, all rights granted to the licence holder under this licence cease, but the licence holder will remain subject to any continuing obligations arising out of this licence at the date of surrender, cancellation or expiry.

### 5.1.15 Review of mining work plan

Subject to section 87 of the Act and the regulations, and any specific review requirements under clause 7.1 to this licence, the licence holder and the Authority will undertake a joint review of the mining work plan, the mining activities conducted under the mining work plan, and the licence conditions within six (6) months following—

- (a) the first anniversary of this licence; and
- (b) the third anniversary of this licence.

## 5.2 Specific conditions

This clause sets out conditions specific to the licence holder and the project.

Licensee and project-specific conditions	
5.2.1	The licence holder must [ ] Reason— [-----]
5.2.2	The licence holder must [ ] Reason— [-----]
5.2.3 et al	[Etc.]

## 6. Compliance and enforcement

This licence and its terms and conditions are issued under and subject at all times to the Act and the regulations, as amended from time to time.

Any breach of the Act, the regulations and the licence terms and conditions may lead to enforcement action being taken by the Authority. This can include the issuing of written warnings or directions by the Authority under the Act, the variation, suspension or cancellation of the licence under section 117 of the Act, the imposition of penalties, and institution of criminal proceedings.

## 7. Force majeure

If the licence holder or the Authority is prevented from complying with this licence, in whole or in part, by an event or circumstance of force majeure, it must give written notice to the other as soon as practicable after its occurrence. The notice must specify the nature of the event or circumstance, what is



required to remedy the event or circumstance – if remedy is possible, the estimated time to cure or overcome the event or circumstance, and the obligations that cannot be properly or timely performed on account of the event or circumstance. The obligations of that party other than the payment of money due, the performance of which are prevented by the force majeure event or circumstance will be suspended during the continuance of such force majeure.

The term of the licence will be automatically extended for the period of the force majeure.

If an obligation is suspended by reason of force majeure for more than one (1) year, the licence holder and the Authority will enter into good faith negotiations to vary the terms and conditions of the licence to reflect the change in circumstances.

For the purposes of this licence, “force majeure” means an event or condition that the licence holder could not reasonably be expected to prevent or control; provided that the event or condition was not caused by any action, omission, negligence or by a failure to observe good industry practice by the licence holder, its associates or affiliates.

**8. Governing language**

This licence is provided and executed in the English language only.

**9. Governing law**

This licence will be governed by and construed in accordance with the laws of the Cook Islands.

**10. Annexes to this licence**

Annex 1: coordinates and illustrative chart of the licensed area and mining areas:

Annex 2: the approved mining work plan:

Annex 3: the approved incident response and management plan:

Annex 4: the approved occupational health and safety plan:

Annex 5: the approved local engagement, training and business development plan.

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**Clerk of the Executive Council**

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These regulations are administered by the Seabed Minerals Authority.  
These regulations were made on the \_\_\_\_\_ day of \_\_\_\_\_ 2020.