

**Twenty-Eighth Session**  
Council session, part II  
Kingston  
10-11 July 2023

## **Draft regulations on exploitation of mineral resources in the Area**

### **The Chair's further revised draft text on Part VII, Appendix IV and draft Standard and Guidelines**

**Prepared by the Chair, Olav Myklebust (Norway), of the Open-ended Working Group of the Council on the financial terms of a contract under article 13, paragraph 1 of Annex III to the United Nations Convention on the Law of the Sea and under section 8 of the Annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (OEWG)**

#### **Explanatory note**

1. I have prepared this further revised text (“the Chair’s further revised text”) in the enclosure to assist the discussions in the OEWG.
2. During the meetings of the OEWG in March 2023, participants discussed and provided input to the Chair’s revised text of February 2023. Subsequently, written proposals were submitted. Based on those, I have prepared this further revised text (“the Chair’s further revised text”) in the enclosure to assist in the discussions in the OEWG.
3. The structure and approach of the Chair’s further revised text is identical to the structure of the Chair’s revised text of 27 February 2023 ([ISBA/28/C/OEWG/CRP.2](#)) with the addition of a Schedule of definitions. Accordingly, the text is composed of five enclosures:
  - a. Enclosure I: Part VII, Financial terms of an exploitation contract and some inclusions from Part III (Regulations 23, 27, 38 and 39), Rights and obligations of Contractors and Part IX (Regulation 89), Information-gathering and handling;
  - b. Enclosure II: Appendix IV, Determination of a royalty liability;
  - c. Enclosure III: Draft Standard;
  - d. Enclosure IV: Draft Guidelines in accordance with Regulations 65 and 95 in respect of the administration and management of royalties prescribed in Part VII; and
  - e. Enclosure V: Schedule containing proposed new defined terms and proposed drafting and/or considerations .

**Enclosure I**  
**Part VII**  
**Financial terms of an exploitation contract**

**Section 1 General**

**Regulation 62**  
**Equality of treatment**

The Council shall, based on the recommendations of the Commission, apply the provisions of this Part ~~in~~ on a transparent, uniform and non-discriminatory basis ~~manner~~, and shall ensure equality of financial treatment and comparable financial obligations for Contractors.

**Explanation / Comment**

- Following the March 2023 meeting, two participants proposed the addition of "transparent" in addition to "uniform" and "non-discriminatory basis" which are from Article 13 (1) of Annex III to the Convention. They say transparency is a cross-cutting priority and should be part of this Regulation. I propose to include the word transparent.
- Those participants also proposed to change “manner” to “basis”. I propose to change “manner” to “basis” to be consistent with other provisions (i.e. Regulation 63).

**Regulation 63**  
**Incentives**

1. The Council may, taking into account the recommendations of the Commission, in accordance with the Standards and taking into account the Guidelines, provide for incentives to Contractors, including financial incentives, on a transparent, uniform and non-discriminatory basis, ~~to Contractors~~ to further the objectives set out in article 13 (1) of annex III to the Convention.

2. Furthermore, the Council may provide incentives, [including financial incentives,] to those Contractors entering into joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing including to developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

[4. Any incentives shall be fully compatible with the policies and principles under Regulation 2].

**Explanation / Comment**

**Paragraph 1**

- Participants seem to agree on a reference to Standards but one participant opposes a reference to Guidelines. I consider that while most matters could be included in Standards, there is a role for Guidelines. Regulations 94 and 95 set out when standards will be used and when guidelines will be used. Guidelines can be more easily changed than Standards, and therefore should be used for administrative and operational matters (such as forms to use etc.) as they can be kept current with industry practice; to ensure that the Authority is applying best practice and most current industry practice. They may also be useful for matters such as worked examples. I propose to retain the reference to Standards and Guidelines but to move its position to earlier in the text as suggested by some participants so that it follows recommendations and applies to the remainder of the paragraph.
- Some participants propose to remove the explicit reference to financial incentives, on the basis that

it is not consistent with Article 13 of Annex III. They submit that with regards to incentives, Annex 3 Section 13.1.d provides for incentives for joint arrangements with the Enterprise, the transfer of technology and training only; it does not provide for incentives to attract investment, despite this being an objective under Annex 3 13.1.b. Annex 3 Section 14 does provide that the authority may provide incentives to contractors for all the objectives in paragraph 1, including attracting investment. However, the language in Section 14 makes clear that this is something that the Authority may or may not do. They submit it is not consistent with best practice; they consider that the Authority should be encouraging efficient, low cost, profitable contractors that can and should pay taxes, not inefficient high-cost contractors that can only mine if they receive financial incentives. UNCLOS Article 11, Annex III includes a references to financial incentives.

- Most participants were satisfied with a reference to financial incentives in paragraph 1 and not in paragraph 2. However, after the March meeting, one participant proposed to re-insert the reference to financial incentives in paragraph 2. I invite the participants to settle on a position that is consistent with the UNCLOS language.
- One participant proposes that financial incentives should be on a “transparent, uniform and non-discriminatory basis”, for reasons stated above at Regulation 62. I propose to include “transparent”.

#### ***Paragraph 2***

- Most participants were satisfied with a reference to financial incentives in paragraph 1 and not in paragraph 2. However, after the March meeting, one participant proposed to re-insert the reference to financial incentives in paragraph 2. I invite the participants to settle on a position that is consistent with the UNCLOS language.
- Three participants proposed that the Standards and Guidelines should include a clear definition and explanation of “financial incentives”. Another participant opposes this, and considers it should be left to experts. I invite the view of the participants as to what that definition should include.

#### ***Paragraph 4***

- For paragraph 4, there is a proposal to include an express reference to incentives being compatible with Regulation 2. This proposal has mixed support from participants. I welcome further views.

## **Section 2**

### **Liability for and determination of royalty**

#### **Regulation 64**

##### **Contractor shall pay royalty**

A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the mineral-bearing ore sold or removed without sale from the Contract Area as determined in appendix IV to these regulations pursuant to paragraph 1 of section 8 of the annex to the Agreement.

#### **Explanation / Comment**

- Following discussions at the March 2023 meeting where a number of participants expressed views that Commercial Production should be defined with more specificity, some participants submitted comments indicating that further guidance is needed concerning the definition of “Commercial Production”.

**Regulation 65**  
**Secretary-General may issue Guidelines**

**Explanation / Comment**

- At the March 2023 meeting the participants agreed to delete **Regulation 65** (Secretary-General may issue Guidelines) on the basis that the draft Regulations 94 and 95 already provides the Commission with the powers to make Standards and Guidelines.

**Section 3**  
**Royalty returns and payment of royalty**

**Regulation 66**  
**Form of royalty returns**

A royalty return lodged with the Secretary-General shall be in the form prescribed by any Standards or Guidelines and signed by the Contractor's designated official.

**Regulation 67**  
**Royalty return period**

A royalty return period for the purposes of this Part is a half-year return period, from:

- (a) 1 January to 30 June; and
- (b) 1 July to 31 December.

**Regulation 68**  
**Lodging of royalty returns**

1. A Contractor shall lodge with the Secretary-General a royalty return for each Mining Area not later than 90 Days after the end of the royalty return period in which the date of commencement of Commercial Production occurs, and thereafter not later than 90 Days after the end of each subsequent royalty return period for the duration of the exploitation contract.
2. In connection with any joint venture arrangement or a consortium of Contractors, one royalty return shall be submitted by the joint venture or consortium.
3. A royalty return may be lodged electronically.

**Regulation 69**  
**Error or mistake in royalty return**

A Contractor shall notify the Secretary-General promptly of any error in calculation or mistake of fact in connection with a royalty return or payment of a royalty.

**Regulation 70**  
**Payment of royalty shown by royalty return**

1. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged.
2. Payments to the Authority ~~may shall~~ be made in United States dollars or other foreign currency which is freely convertible ~~[and approved in accordance with relevant Standards]~~.

[2.bis. A Contractor shall declare the currency to be used in the payment of royalties prior to the commencement of Commercial Production.]

[2.ter. A Contractor may only change the currency used for the payment of royalties on the anniversary of the fifth year of Commercial Production and at the end of every subsequent fifth year of Commercial

Production.]

3. All payments made to the Authority shall be made gross net and shall be free of any deductions, transmission fees, levies or other charges.

4. The Council [or the Secretary-General] may approve the payment of any royalty due by way of instalment where special [and extenuating] circumstances exist [, that justify payment by instalment, in accordance with relevant Standards, [that justify payment by instalment, taking account of rules, regulations and procedures of the Authority] that provide for incentives, on a uniform and non-discriminatory basis, to Contractors.

**Explanation / Comment**

***Paragraph 2***

- Two participants proposed language intended to ensure that the use of a non-US currency should be from a list of currencies set out in the Standards. I request interested participants to propose drafting for that proposed Standard.

***New paragraph 2.bis***

- Two participants proposed a new paragraph, between paragraphs 2 and 3, to require the Contractor, prior to commencement of commercial production, to declare the currency to be used in the payment of royalties for the first five-year production period. The reasoning given for this proposal is to avoid the frequent switching of currencies, complexities, and transaction costs on the Authority. I welcome views on this additional language.

***New paragraph 2.ter***

- Two participants proposed a new paragraph, between paragraphs 2 and 3, to require that the choice of currency may only be modified on the anniversary of the Contractor's five-year production period, unless otherwise decided by the Council. The reasoning given for this proposal is to avoid the frequent switching of currencies, complexities, and transaction costs on the Authority. I welcome views on this additional language.

***Paragraph 4***

- Paragraph 4 has mixed views from participants. Some participants have proposed deleting paragraph 4, as they consider that there are no circumstances where delayed payment should be approved. Other participants support keeping some form of paragraph 4, with the Standards to list the special circumstances in which instalments are allowed.
- Some participants proposed changes to paragraph 4 to include "extenuating" circumstances that "justify the payment by instalment". I welcome views on this additional language.

**Regulation 71**

**Information to be submitted**

1. A royalty return shall include the following information for each royalty return period, in accordance with the any applicable Standards and [taking into account] the any Guidelines:

- (a) The quantity in wet metric tons-[wet metric tons and] dry metric tons of mineral-bearing ore recovered from each Mining Area;
- (b) The quantity and value by Mineral in wet metric tons-[wet metric tons and] dry metric tons of the mineral-bearing ore shipped from the Mining Area; The value and the basis of the valuation (by Mineral) of the mineral-bearing ore sold or removed without sale from the Mining Area, as verified by a suitably-qualified-person Suitably Qualified Person and supported by a representative chemical analysis of the ore by a certified laboratory, with the cost of weighing and testing to be borne by the Contractor;
- (c) Details of all contracts and sale or exchange agreements relating to the mineral-bearing

ore sold or removed without sale from the Contract Area; and

- (d) A calculation of the royalty payable ~~in accordance with section 3~~, including any adjustment made to the prior royalty return period and a declaration signed by a designated official of the Contractor that the royalty return is accurate and correct.

2. In respect of a final royalty return period ending on the date of expiry, surrender or termination of the exploitation contract, the Contractor shall provide:

- (a) A final calculation of the royalty payable;
- (b) Details of any refund or overpayment of royalty claimed; and
- (c) The quantity and value (by Mineral) of all closing stocks of the mineral-bearing ore.

3. Within 90 Days from the end of a Calendar Year, the Contractor shall provide the Secretary-General and the sponsoring State or States with a statement from an auditor or certified independent accountant that the royalty calculation for that Calendar Year:

- (a) Is based on proper accounts and records properly kept and is in agreement with those accounts and records; and
- (b) Complies with these regulations and is accurate and correct.

#### **Explanation / Comment**

- Some participants have proposed changing “mineral-bearing” to “metal-bearing”, and “mineral” to “metal”, throughout this Regulation, because the mineralogy of nodules is fluid depending upon the level of desiccation and moisture content. I have not included this change as “metal-bearing” is a subset of “mineral-bearing” in the context of the definitions of Mineral and Metal in the Schedule, and so narrower. However, as previously noted, the Guidelines should require distinctions by Metal.

#### ***Paragraph 1***

- I suggest harmonized language on standards and guidelines throughout the Regulations.
- Two participants propose collecting both wet (at time of extraction) and dry (calculated outside of Area) weights. I propose including this language.
- Some participants have proposed to further clarify the definition and difference between dry and wet nodules and an agreed procedure for converting wet metric tons to dry metric tons in the Standards. I do not propose a conversion formula in the text. To my understanding, the most reliable measure to ensure consistency in analysis is to use DMT. The modelling assumes reporting and assays are done on the basis of dry metric tons (DMT). Calculations of royalties will need to be against DMT, however, contractors should be required to submit information on both the wet metric tons (WMT) and DMT collected from the area for data collection and audit purposes. Additional technical specifications and parameters (such as the point(s) in time at which wet metric tons should be measured, and a requirement to report details of the moisture content) may be included in Standards and Guidelines as already contemplated.
- Regulation 71 refers to sale or removal without sale from the Mining Area. For accuracy and consistency, weighing and sampling should take place at the same Valuation Point (as defined in Appendix IV) irrespective of whether there is a sale.
- Some participants propose that suitably qualified person and certified laboratory be qualified in the Guidelines; that this should be “as defined by ISO standards”; and that a list of approved persons and certified laboratories could be maintain by the Council. I welcome language proposals.
- One participant proposes adding “with the cost of measuring to be borne by the Contractor”. I propose to include that language, with a change to refer to weighing and testing.

## **Regulation 72**

### **Authority may request additional information**

The Secretary-General may, by notice to a Contractor who has lodged a royalty return, request the Contractor to provide, by the date stated in the notice, which shall be no later than 90 days from the date of the notice, information to support the matters stated in the royalty return.

## **Regulation 73**

### **Overpayment of royalty**

1. Where a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment.
2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry forward any overpayment and credit it against a future royalty amount payable under this Part, or, if the contract has expired, refund the amount within 90 days.
3. Any request to reduce a royalty-related amount payable by a Contractor must be made within [five years] [one year of an applicable financial report] [six months] after the Day the relevant royalty return was lodged with the Authority.
4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount within 90 days provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide, such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.

### **Explanation / Comment**

#### ***Paragraph 2***

- Some participants have proposed that relevant contents be added to paragraph 2 to deal with the situation that the contract has expired and no future royalty is needed. For example, if the contractor does not request a refund of any such overpayment within 90 days, and the contractor does not need to pay any future royalties upon expiration of the contract. Prior to the March 2023 session, I proposed text to address this situation, reflecting the time limits proposed in the preceding Regulation.

#### ***Paragraph 3***

- Two participants propose changing “5 years” to “6 months” on the basis that a five year period for paragraph 3 is too long. One participant proposes changing “5 years” to “one year of an applicable financial report”. I welcome views on these proposals.

## **Section 4**

### **Records, inspection and audit**

## **Regulation 74**

### **Proper books and records to be kept**

1. A Contractor shall keep and maintain, at a place agreed by the Contractor and the Secretary-General, complete and accurate records relating to the Minerals recovered in order to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation.

2. The Contractor shall prepare such records in conformity with internationally accepted accounting principles that verify, in connection with each Mining Area, inter alia:

- (a) Details of the quantity and grade of each Mineral recovered from each Mining Area;
- (b) Details of sales, shipments, transfers, exchanges and other disposals of ~~the Minerals~~ each Mineral from the Mining Area, including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;
- (c) Details of all eligible capital expenditure and liabilities by category of expenditure and liability [incurred in] [in connection with] each Mining Area [or in direct support of activities within the Mining Area]; and
- (d) Details of all revenues and operating costs associated with activities in the Mining Area.

3. A Contractor shall supply and file such records at such times as may be required by the Authority under these regulations and within 60 Days of the receipt of any such request from the Secretary-General.

4. A Contractor shall maintain all records for the duration of the contract and a period of 10 years following the expiry or cancellation of the contract [and including duration of the Closure Plan,] and make such records available for inspection and audit under regulation 75.

#### **Explanation / Comment**

- This Regulation refers to Minerals recovered from the Mining Area, as opposed to mineral-bearing ore recovered. I suggest including additional detailed requirements in the Guidelines to also refer to “mineral-bearing ore” and “Metals”, given that it is for record keeping purposes. This will aid auditing and analysis. It seems particularly appropriate given the level of detail of this Regulation (i.e. with respect to operating costs, and with respect to transfers and disposals).
- Additionally, these Regulations require Contractors to keep records of quantity and grade of Minerals recovered from the Mining Area, and the details of shipments from the Mining Area. This supports the formulation of a royalty based on weight and sampling at a Valuation Point, and calculation of the royalty based on weight and assays per shipment, as drafted here.

#### **Paragraph 2**

- Two participants proposed changes to paragraphs 2(a) and (b) so that the word "each" should immediately precede the word "Mineral", so that it is explicit that contractors will need to report for individual minerals and not an aggregate. I propose to include this language.

#### **Paragraph 3**

- Some participants proposed new timeframes in paragraphs 3 and 4; arguing that it would create consistency with earlier provisions in the Regulations, such as Regulations 24(2), 68 and 71(3). They propose a Contractor have 90 days from the Secretary-General’s request to supply and file records. In accordance with existing practice in land-based mining, they suggest maintaining records for a period of 2 years following the expiry or cancellation of a contract. There does not seem to be a particular reason for this provision (which relates to responding to requests) to be consistent with Regulations 68, 71(3) (which relate to lodgement). The 60 days agreed by participants is also consistent with other provisions that relate to responses to requests (such as Regulations 76, 77, and 78). I note participants agreed to 60 days at the March meeting but invite for discussions of this proposal.

#### **Paragraph 4**

- One participant proposed applying the record maintenance obligation to cover, *inter alia*, the duration of the Closure Plan. I invite comments.



## Regulation 75

### Audit [and inspection] by the Authority

1. The Secretary-General, or Council, may request an audit of the Contractor's records and all subcontractors' records associated with the exploitation activities in the Area.
2. Any such audit shall be undertaken at the Contractor's sole cost and shall be performed by [an] [Council approved] Inspector in accordance with Part XI of these regulations.
3. An Inspector may, in connection with a liability for a royalty payment:
  - (a) Inspect [all corporate offices, plants and] the mining and on-board processing facilities with a view to verifying the accuracy of [all information reported and the accuracy of] the equipment measuring the quantity of Mineral ore [sold or removed without sale from the Contract Area];
  - (b) Inspect, audit and examine any [relevant] documents, papers, records and data [available at the Contractor's offices or on-board any mining vessel or Installation];
  - (c) Require any duly authorized representative of the Contractor to answer any questions in connection with the inspection audit and provide any missing documents, papers, records and data; and
  - (d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the inspection audit and provide a Contractor with a list of such copies or extracts.
4. The Contractor shall make available to an Inspector such financial records and information contemplated as reasonably required by the Secretary-General to determine compliance with this Part.
5. Members of the Authority, in particular a sponsoring State or States, shall, ~~to the best of their abilities~~, cooperate with and assist the [Secretary-General] [relevant organ of the Authority] and any Inspector in the carrying out of any audit under this regulation, and shall facilitate access to the records of a Contractor by an Inspector and assist in the exchange of information relevant to a Contractor's obligations under this Part.

#### Explanation / Comment

- As mentioned in the Drafting Note to Regulation 74, this Regulation also refers to Minerals recovered from the Mining Area, as opposed to mineral-bearing ore recovered. It is recommend including additional detailed requirements in the Guidelines to also refer to "mineral-bearing ore" and "Metals".
- This Regulation as drafted suggests the possibility of some assaying of samples on-board the harvesting and/or transfer vessel. While the Valuation Point is the point that might be used as the weighing and sampling point, it is possible that detailed assaying of the samples is likely to take place at onshore facilities, and the grade will then be attributed retrospectively to the Valuation Point for the purpose of calculating the royalty on that shipment. It is therefore important to prescribe the appropriate parameters for independent assaying in the Guidelines.

#### Paragraph 1

- At the March 2023 meeting the participants agreed to paragraphs 1, 2, 4 and 5 as now drafted. Two participants have proposed reopening the text of paragraph 1 to extend it to all Contractors' and their sub-contractors' records, not just those in relation to activities in the Area.

#### Paragraph 2

- Two participants proposed the cost being borne by the Contractor.
- Two participants proposed that the Inspector be "Council-approved". Some participants have proposed that a financial audit should be undertaken by an independent auditor or accountant, rather than an Inspector. I propose that text regarding the qualifications and approval of Inspectors

be addressed in the Standards, and invite participants to propose text. This will also ensure greater consistency. I propose that if there is support for that proposal, adjusting the qualifications and functions of an Inspector, to require an independent auditor or accountant, could be addressed in Part XI itself, which contains provisions on Inspectors' functions.

**Paragraph 5**

- Two participants recommend the phrase "to the best of their abilities" be removed. Their view is that the members of the Authority, including Sponsoring States must cooperate and assist the Secretary General.

**Regulation 76**

**Assessment by the Authority**

1. Where the Secretary-General so determines, taking into account the relevant guidance provided by the Council and following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary-General considers reasonable in the circumstances, including the report of an auditor.
2. A Contractor shall provide such information requested by the Secretary-General within 60 Days of the date of such request, together with any further information the Contractor requires the Secretary-General to take into consideration.
3. The Secretary-General may, within 60 Days of the expiry of the period prescribed in paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.
4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.
5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4.
6. Except in cases of fraud or negligence, no assessment may be made under this regulation after the expiration of 6 years from the date on which the relevant royalty return is lodged.

**Explanation / Comment**

- Following the March 2023 meeting, some participants proposed reopening the text and proposed new timeframes in paragraphs 2 and 4, on the basis of ensuring consistency with earlier provisions in the Regulations, such as Regulations 24(2), 68 and 71(3). I am not aware of a particular reason for this provision (which relates to responding to requests) to be consistent with Regulations 68, 71(3) (which relate to lodgement). The 60 days agreed by participants is also consistent with other provisions that relate to responses to requests (such as Regulations 74, 77 and 78). I note participants agreed to 60 days at the March meeting.

## Section 5 Anti-avoidance measures

### Regulation 77 General anti-avoidance rule

1. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:
  - (a) Result in the avoidance, postponement or reduction of a liability for payment of a royalty under this Part;
  - (b) Have not been carried out for bona fide commercial purposes; or
  - (c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for payment of a royalty; then the Secretary-General shall determine the liability for a royalty as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with this Part.
2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall determine the liability for a royalty for the original or revised amount. If the Contractor is not satisfied with the Secretary-General's determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the Secretary-General to consider within 30 Days of a decision being made. The Secretary-General shall then re-consider and either affirm, revise, or revoke the decision, taking into account the further information provided by the Contractor, within 60 Days.
3. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.
4. If the Contractor [ineurs] [is found to be in] is in a [gross and persistent] non-compliance of payment of a breach of royalty payment obligations in accordance with this Part, the Council shall suspend or rescind the Contract pursuant to regulation 103 of these Regulations [and the Contractor's company principals shall be barred from direct or indirect involvement with any Contractor or subcontractor operating in the Area for a period of [10] years].

#### Explanation / Comment

##### *Paragraph 2*

- Some participants note that if a Contractor disagrees with the decision of the Secretary-General, the Contractor will have no recourse or method for reviewing a decision unless the Contractor commences costly dispute resolution procedures pursuant to Section 5, Part XI of the Convention. I invite for discussions of this view.
- Some participants proposed reopening the text to change the timeframes in paragraph 2, on the basis of ensuring consistency with earlier provisions in the Regulations, such as Regulation 24(2), 68 and 71(3), a Contractor should have 90 days from the Secretary-General's notice to make written representations. I am not aware of a particular reason for this provision (which relates to responding to requests) to be consistent with Regulations 68, and 71(3) (which relate to lodgement). The 60 days agreed by participants is also consistent with other provisions that relate to responses to requests (such as Regulations 74, 76 and 78).

##### *Paragraph 4*

- Previously participants proposed adding this additional paragraph to address cases where a Contractor repeatedly fails to comply with its payment duties, namely that the Council shall be entitled to terminate the contract in accordance with DR 103. This suggestion is made in support of DR 80, which only provides for conventional (pecuniary) penalties. I included language that would allow the Council to effect both the termination and suspension of the contract and to have

the power to impose conventional penalties for breaches of a Contractor.

- Three participants now propose additional language in this paragraph that would bar the Contractor, or its company principals from direct or indirect involvement with any Contractor or Subcontractor, operating in the Area for a period of, for example, 10 years. However, they recognize that this addition may be better suited to be included in Draft Regulation 103. I invite comments on the proposed text and proposed changes to Regulation 103.
- Several participants have proposed changes to paragraph 4. Some participants noted that Article 185 of the Convention limits suspension to circumstances of gross and persistent violations. I invite views on the text.
- One participant proposed deletion of paragraph 4 expressed as follows: “If the Contractor incurs in a non-compliance of payment of a royalty in accordance with this Part, the Council shall suspend or rescind the Contract pursuant to regulation 103 of these Regulations.” It said Regulation 77 is targeted at anti-avoidance and not compliance per se. It said matters relating to any violation under this Part VII are addressed by Regulation 80 which appears adequate for this purpose and now reflects suspension or termination.

## **Regulation 78**

### **Arm’s-length adjustments**

1. For the purposes of this regulation:

- (a) “Arm’s length”, in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties; and
- (b) “Arm’s-length value”, in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not related parties, would agree ~~[to] is fair under the circumstances.~~

~~2. — Where, for the purposes of calculating any amounts due under this Part VII or any associated Standard or Guidelines, any costs, prices and revenues have not been charged or determined on an arm’s length basis, pursuant to a contract or transaction between a Contractor and a related party, the [Secretary General] [Council] may adjust the value of such costs, prices and revenues to reflect an arm’s length value [ , taking into account the recommendations of the Commission] in accordance with internationally accepted principles.~~

~~2.Alt 1. — Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm’s-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Council may adjust the value of such costs, prices and revenues to reflect an arm’s-length value, taking into account the recommendations of the Commission, in accordance with internationally accepted principles.~~

~~2alt 2. — Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm’s length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary General may make recommendations to the Commission on the adjustment of the value of such costs, prices and revenues.]~~

~~[2.Alt3. — Where, for the purposes of calculating any amounts due under this Part VII or any associated Standard or Guidelines, any costs, prices and revenues have not been charged or determined on an arm’s-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary-General may adjust the value of such costs, prices and revenues to reflect an arm’s-length value in accordance with internationally accepted principles.]~~

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. [If the Contractor submits written representations, the Secretary-General shall affirm, amend or revoke the adjustment, taking into account

the further information provided by the Contractor, within 60 Days of being provided with that further information.]

#### **Explanation / Comment**

##### ***Paragraph 1***

- Two participants proposed replacing the text “would agree”, with the text “has been agreed by”. The existing text reflected the usual approach of hypothetical agreement. The proposed text would require actual agreement between the buyer and the seller.

##### ***Paragraph 2***

- At the March 2023 meeting the participants agreed to use 2.ALT.1 with a clarification that the Council makes the decision, as drafted here.

##### ***Paragraph 3***

- Some participants proposed additional text in paragraph 3, on the basis that, if a Contractor disagrees with an adjustment, the Contractor will have no internal recourse or method for reviewing an adjustment decision.

## **Section 6**

### **Interest and penalties**

#### **Regulation 79**

##### **Interest on unpaid royalty**

Where any royalty or other amount levied under this Part remains unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding [5] [10] [20] per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable in accordance with Appendix IV.

#### **Explanation / Comment**

- Participants have proposed different proposals for the interest rate. I invite participants to settle on a percentage.

#### **Regulation 80**

##### **Monetary penalties and suspension or termination of exploitation contract**

Subject to regulation 103 (6), [and depending on the seriousness of the breach,] the Council may impose a monetary penalty [or] suspend or terminate the exploitation contract in respect of a [material breach] [violation] under this Part or of the contract [and company principals would be barred from direct or indirect involvement with any Contractor or Subcontractor operating in the Area for a period of 10 years].

#### **Explanation / Comment**

- Two participants have proposed that this Regulation (and Regulation 77) should include the possibility of "barring company principals from direct or indirect involvement with any Contractor or Subcontractors operating in the Area for a period of, for example, 10 years." However, they note this may better fit within Regulation 103. I invite proposals for changes to Regulation 103.
- Two participants suggest that criteria be included for "seriousness of the breach", although they note

this too may be best included in Regulation 103. I invite them to propose changes to Regulation 103.

- Some participants have proposed inclusion of a materiality obligation. They say that suspension and termination of an exploitation contract may only occur in the event of a material breach under the Convention.

## Section 7

### Review of payment mechanism

#### Regulation 81

##### Review of system of payments

1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement, shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area.

2. The Council, based on the recommendations of the Commission [and in consultation with Contractors], may revise the system of payments ~~in the light of changing circumstances~~ and following any review under paragraph 1 above, taking into account the economic viability of the project save that any revision shall only apply [to existing exploitation contracts by agreement between the Authority and the Contractor] [after five years of Commercial Production have been completed under that exploitation contract] [from five years after such revising would be adopted] [to (i) new exploitation contracts agreed between the Authority and a Contractor after the revised system of payments is in effect; and (ii) existing exploitation contracts if the Authority and Contractors so agree].

#### Regulation 82

##### Review of rates of payments

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council [and every five years thereafter, applying to all Contractors that have commenced Commercial Production, unless otherwise determined by the Council], taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.

1.Alt.1. [In accordance with section 8 of annex to the Agreement, a first review of the rates of payments under an existing system of payments shall be initiated by the Council on the five year anniversary of the start of the first royalty period corresponding to the first instance of commencement of Commercial Production in the Area.]

1.Alt.1.bis. A review of the rates of payments shall be completed every six years following the initiation date of the first review of the rates under paragraph 1.

1.Alt.1.ter. A review of the rates of payments shall consider all Resource categories unless otherwise decided by the Council.]

2. [The Council, based on the recommendations of the Commission [and in consultation with Contractors], may adjust the rates of payments in the light of such recommendations and consultation, taking into account the economic viability of the project, [save that any adjustment to the rates of payments may only apply to existing exploitation contracts [from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations] [after five years of Commercial Production have been completed under that exploitation contract]].

2.Alt.2. [The Council, based on the recommendations of the Commission shall, within 12 months following the date when each review is initiated, decide on whether to adjust the rates of payments

and the magnitude of any adjustments.]

2.Alt.3. [The Council, based on the recommendations of the Commission, may adjust the rates of payments in the light of such recommendations, taking into account the economic viability of the project, save that any adjustment to the rates of payments may only apply to existing exploitation contracts after five years of Commercial Production have been completed under that exploitation contract.]

2.bis. [Recommendations of the Commission to the Council under paragraph 2 shall:

- (a) reflect the objectives contained in Article 13, Annex III of the Convention, including to ensure optimum revenues for the Authority from the proceeds of Commercial Production;
- (b) follow the process and consider relevant matters as set out in the applicable Standard; and
- (c) be informed by consultations with relevant experts and stakeholders [including the Economic Planning Commission].

2.ter. A change in the rates of payments:

- (a) shall take effect from the beginning of the first royalty period following the Council's decision under paragraph 2 [i.e., January 1st or July 1st];
- (b) shall apply to all future Contract Areas and all Contract Areas where the first five years of Commercial Production have been completed by the time that the change in rates of payments takes effect.

2.querter A change in the rates of payments shall only apply by agreement between the Authority and the Contractor for Contract Areas where the following conditions are met:

- (a) the first five years of Commercial Production under the Contact Area have not been completed; and
- (b) the Contractor does not hold another Contractor Area of the same Resource category which has already completed the first five years of Commercial Production.

2.quinquies Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate for any system of payments adopted under these regulations, including the manner and basis of their calculation and establishing rates of payments for new relevant metals or minerals that are likely to be commercially exploited during the next review cycle.]

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty [, including triggers for price-based royalties].

#### **Explanation / Comment**

##### ***Paragraph 2***

- There are now three alternative paragraphs proposed for paragraph 2. I welcome the views of participants on the three alternatives.

##### ***Four new paragraphs between paragraphs 2 and 3***

- I note that while paragraph 1(c) of section 8 of the Annex to the Agreement indicates that “a change to a system of payments may apply to existing contracts only at the election of the contractor” no such requirement is laid out regarding a change to rates. The fiscal stabilization provisions currently included in DR 82 are inconsistent with current global norms, as evidenced by the 2020 OECD Guiding Principles on Durable Extractive Contracts. It is proposed to have a simple, regular review of rate of payments every 5 years following the commencement of Commercial Production in the Area.

- Two participants have proposed 5 new paragraphs to sit between what are currently paragraphs 2 and 3, which includes details as to the review and recommendations. It also includes language to address the issue of how rate adjustments will apply to existing exploitation contracts.
- Two participants also propose a new standard. I invite views on the proposal and drafting for that standard. They suggest: “*An accompanying Standard could provide detailed instructions for the review of rates of payment, including:*
  - *The Council will establish a rate review schedule upon the commencement of Commercial Production in the Area.*
  - *Based on the rate review schedule, the Council will ensure that adequate funds are allocated in the Authority’s budget to undertake the review.*
  - *The Council will task the Legal and Technical Commission (LTC) to prepare terms of reference for each rate review.*
  - *The LTC will draft terms of reference for the review and Council approval at the relevant Council meeting according to the rate review schedule.*
  - *The LTC will be responsible for:*
    - *Undertaking the review*
    - *Engaging third-party experts or panel of experts*
    - *Ensuring consultations with all stakeholders*
    - *Providing the Council with recommendations and supporting rationale within an established time limit [# months].*
  - *During the rate review process, the LTC must formally consult relevant stakeholders including contractors, sponsoring states, the Enterprise, land-based mining countries, and the Economic Planning Commission (once established).*
  - *Any proposed rate change must be material in nature and not an administrative nuisance (e.g., rate change of less than [#] percentage point should not be recommended).*

*The Council should consider whether, when the LTC is conducting a rates review, there should be a presumption under a relevant Standard that the rates would not change unless there is substantial evidence that the existing rates have been set too high or low.”*

**Paragraph 3**

- One participant previously proposed triggers for price-based royalties. It proposes that the Regulation should be clear about what constitutes a review of system of payments *vis-à-vis* a review of rates of payment. A review of rates of payment should explicitly include reference to price “triggers” under variable royalty rate regimes. Some participants outlined their opposition to the inclusion of “triggers for price-based royalties” in paragraph 3 on the basis that the terms are ambiguous and appear to be inconsistent with the proposed system of payments set out in the Convention and the Part XI Implementation Agreement.

**Section 8**

**Payments to the Authority**

**Regulation 83**

**Recording in Seabed Mining Register**

1. All payment figures made by the Contractor to the Authority under this Part are publicly available.
2. All payments received by the Authority from Contractors shall be recorded in the Seabed Mining Register.



**[Regulation 83 bis**

**Beneficial Ownership**

1. A Contractor shall submit information to the Secretary-General to be included in a Beneficial Ownership Registry in accordance with relevant Standards and Guidelines.
2. The Beneficial Ownership Registry shall be published through the Seabed Mining Register.]

**Explanation / Comment**

- Some participants have proposed a new Regulation 83.bis with the explanation that a Beneficial Ownership Registry at the ISA would be in line with best practice. Standards/Guidelines could be used to introduce thresholds for reporting on beneficial ownership (e.g., a significant beneficial owner could be those holding at least 10% ownership of a contractor).

## Other Relevant Draft Regulations in Parts I, III and IX

### Part III Rights and obligations of Contractors

#### Regulation 23

##### Transfer of rights and obligations under an exploitation contract

1. A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Sponsoring State and Council, based on the recommendations of the Commission and with notification to the Sponsoring State or States.

2. ~~An application for consent to transfer the rights and obligations under an exploitation contract shall be made to the Secretary-General jointly by the Contractor and transferee. The Contractor and transferee shall jointly inform the Secretary-General of any application to transfer the rights and obligations under an exploitation contract. The Secretary-General shall transmit that application to the Commission, which shall give its recommendation to the Council.~~

2.Alt.1 [An application for consent to transfer the rights and obligations under an exploitation contract shall be made. The Secretary-General will be informed jointly by the Contractor and transferee of the transfer of the rights and obligations under an exploitation contract.]

2 Alt.2 [The Secretary-General will be informed jointly by the Contractor and transferee of the transfer of rights and obligations under an exploitation contract.]

3. The Commission shall [consider and decide whether to recommend approval of] the application for consent to [review and confirm the] transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.

4. ~~The Commission shall [consider whether] [ensure that] the transferee [In recommending approval of the transfer, the Commission shall ensure that the transferee] The Commission shall [verify] that the transferee:~~

- a. Meets the requirements of a qualified applicant as set out in regulation 5;
- b. Has submitted a certificate of sponsorship as set out in regulation 6;
- c. Has submitted a form of application as set out in regulation 7 if the Secretary-General considers that there is a Material Change to the Plan of Work;
- d. Has paid all relevant fees and levies established by the Council, including the administrative fee as set out in appendix II;

d bis Accepts to be bound by the Plan of Work and the Environmental Plans, applicable at the time of transfer;

e. Meets the criteria set out in regulation[s ~~12(4) and~~ [12] and 13(4)], ~~and has provided Environmental Plans that comply with regulation 13(4)(e);~~ [and]

f. Has deposited an Environmental Performance Guarantee [as set out in] [to the extent required under] regulation 26[; and][.]

g. has submitted ownership information to the Beneficial Ownership Registry.

4. Bis. [If at the time of the transfer a Material Change arises this should be addressed in accordance with Regulation 57.]

5. The Commission shall ~~[not recommend approval of]~~ ~~[sanction]~~ the transfer if it would:
  - a. Involve conferring on the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention; or
  - b. Permit the transferee to monopolize the conduct of activities in the Area with regard to the Resource category covered by the exploitation contract ~~[or the transferee would monopolize or significantly control the production of any single mineral or metal produced globally; or~~
  - c. ~~[If any circumstances under regulations 15(2) or (3) are applicable.]~~
  
6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to ~~[sanction]~~ the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.
  
7. Where the Commission determines that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall ~~[recommend approval of]~~ ~~[confirm]~~ the ~~[application for consent]~~ ~~[transfer]~~ to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not ~~[unreasonably]~~ withhold ~~[consent to a]~~ ~~[sanctioning of the]~~ transfer if the requirements of this regulation are complied with. ~~[Once the Council has received a recommendation from the Commission, the Council will inform the Contractor of the [Commission's][Council's] decision within 30 Days.]~~
  
8. A transfer is validly effected only upon:
  - a. Execution of the assignment and novation agreement between the Authority, the transferor and the transferee;
  - b. Payment of the prescribed transfer fee pursuant to appendix II; and
  - c. Recording by the Secretary-General of the transfer in the Seabed Mining Register.
  
9. The assignment and novation agreement shall be signed on behalf of the Authority by the Secretary-General or by a duly authorized representative, and on behalf of the transferor and the transferee by their duly authorized representatives.
  
10. ~~[The terms and conditions of the transferee's exploitation contract shall be those set out in the standard exploitation contract annexed to these Regulations that is in effect on the date that the Secretary-General or a duly authorized representative executes the assignment and novation agreement.]~~

**Explanation / Comment**

- I have not included the proposal to use “sanction” in the chapeau, as proposed in early comments, as it may be confused with the term of art in public international law.

**Paragraph 1**

- Two participants have proposed that the Sponsoring State must consent, rather than only being notified. I propose to accept this drafting.

**Paragraph 2**

- In February I proposed a new drafting approach at paragraph 2 that incorporates the key components of the original text and new text proposals from the parties: (i) joint action for informing; (ii) informing the Secretary-General of the “application for consent” not informing of the “transfer” itself; and (iii) including the obligation on the Secretary-General upon being informed (which addresses how that application moves from the Secretary-General to the Commission for consideration, and to the Council for the granting of consent). This proposal has been supported by a number of participants. One participant proposed new drafting in two alternatives. They does not appear to provide for the transmission of the joint application from the

Secretary-General to the Commission, or the Commission giving a recommendation to the Council. I welcome views on the various drafting proposals.

***Paragraph 3***

- One participant proposed changing “consider and decide whether to confirm” to “review and confirm the transfer” - no explicit explanation was provided. I have not included the proposal to change “consider” to “review and confirm”. Review would seem to be a weaker standard than consider; and “confirm” could obligate the Commission to confirm transfers, and removes the discretion of the Commission to consider whether the other requirements of this Regulation have been met. I have proposed “consider and decide whether to recommend approval of”.
- Some participants propose that the Commission should “make its recommendation to the Council within 90 days of the date it receives the application”, as opposed to “at its next available meeting provided the documentation has been circulated at least 30 days prior to the meeting”. They noted the Commission currently meets only twice a year, and they consider the timing to consider an application should not be tied to the meeting of the Commission. I invite for discussions on this view.

***Paragraph 5***

- Two participants have proposed that “monopolize” should be defined (e.g. a transfer could be prohibited if it provides a transferee with over 75% of the value of production in the Area once at least two permitted areas have already entered production). I welcome proposals.
- One participant has proposed new language in paragraph 6 (new requirements on the Commission) to broaden the circumstances in which a transfer cannot be recommended for approval – such that conduct of activities in the Area cannot be monopolised but also global production of any single mineral or metal cannot be monopolised. This may be a complex assessment. I welcome proposals.

***Paragraph 7***

- I have proposed to not adopt the proposal from the early comments to caveat withholding consent with “unreasonably”, as it is ambiguous as to what it adds to the text, which already requires that consent not be withheld if the conditions are met.

***Paragraph 8***

- I propose to retain the Recording by the Secretary-General of the transfer in the Seabed Mining Register.

***Paragraph 10***

- There has been a proposal for the terms of the exploitation contract to be updated to reflect those in effect at the time of the transfer. The commercial effect of this new paragraph would be that the transferee could obtain its rights on different terms to those on which the transferor held those rights. This is effectively a retrospective application of changes to the standardized exploitation contract, where otherwise the changes would not have applied.
- If agreement is reached on a profit share on the transfer of rights it will be necessary to add text to Draft Regulation 23 to make the payment of that profit share and the submission of relevant documentation a requirement for the approval of the transfer, and consider new Draft Regulations 23Bis and Draft Regulation 23Ter providing for a profit share on the direct and indirect transfer of rights respectively.

**Regulation 27**

**Commencement of production**

1. Where the requirements of regulation 25 are satisfied and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26, the Contractor, [consistent with Good Industry Practice], shall make [commercially reasonable] [all] efforts to bring the Mining Area into Commercial Production [consistent with Good Industry Practice] in accordance with the

Plan of Work [and the Rules of the Authority].

~~2. Once Commercial Production has begun, the Contractor shall promptly notify the Secretary-General of the date of commencement of Commercial Production. Upon notification, the Secretary-General shall notify members of the Authority, in particular coastal states in close proximity to the Mining Area, that Commercial Production has begun and the location of the Mining Area~~

~~2.bis. [Once the Contractor determines that it is engaging in sustained large-scale recovery operations which yield a quantity of materials in excess of the thresholds specified in the Standards, the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards. The Secretary-General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the proposal and supporting materials and approve or reject the Contractor's proposed date.]~~

~~3. Promptly following approval or rejection by the Commission, the Secretary-General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite the Contractor to re-submit its proposed date of commencement of Commercial Production under Regulation 27(2).~~

~~4. Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the Mining Area, that Commercial Production has begun and the location of the Mining Area.~~

~~5. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according to Regulation 27(3).]~~

#### **Explanation / Comment**

- In response to comments from a number of participants regarding the need for specificity with respect to Commercial Production, in February I proposed new text on commencement of Commercial Production here at Regulation 27 that: (i) provides greater specificity and an objective standard of assessment, to be included in Standards, and (ii) allows for verification and confirmation by the Authority. I would welcome proposals by participants on what the “thresholds” or parameters to be included in the Standards would be.
- I note that if the definition of Commercial Production in the Schedule to the Regulations is amended, this text may require consequential harmonization amendments.

#### ***Paragraph 1***

- Following the March 2023 negotiating round, one participant proposed that the original text regarding commercially reasonable efforts should be retained, on the basis that the Contractor is in the best position to assess this timing, subject to the making of reasonable efforts. One participant proposed “reasonable” efforts.
- Two participants proposed adding that it be in accordance with the Rules of the Authority”.

#### ***Paragraph 2 and following***

- Following the March 2023 negotiating round, one participant supported deletion, with revised drafting as proposed in the February text.
- On the development of “thresholds” proposed under paragraph 2bis, one participant stated that it trusts the necessary parameters will be simple and thus easily measurable and auditable by the Authority, reflecting the objective criteria set out in Article 17(2)(g), Annex III of UNCLOS. Indeed, it may be through further discussion that such simplicity can be embodied in an improved or modified definition for commercial production. A clearer definition or parameters for the date of first commercial production, with no potential for manipulation or misinterpretation is paramount, and it would welcome the introduction of paragraph 2bis to Regulation 27.

## Regulation 38

### Annual report

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General, ~~in such format as may be prescribed from time to time in the relevant Guidelines, covering~~ regarding its activities in the Contract Area and reporting on compliance with the terms of the exploitation contract.
2. Such annual reports shall be in accordance with relevant Standards and Guidelines and include:
  - (a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, reported against and noting variance from the approved Plan of Work;
  - (b) The quantity and [quality] [dry metal content] of the Resources [recovered] [extracted] during the period and the [volume] [tonnage] [in dry metric tons and wet metric tons] of Minerals and metals [produced] [recovered], marketed and sold during the Calendar Year, reported against the [Plan of Work] [Mining Workplan];
  - (c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period, if different from the Plan of Work;
  - (d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during the Contractor's accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable by the contractor to the Authority, governments, state enterprises, and other contractors, as well as payments and other forms of financial benefit received by the contractor from Sponsoring States, and reported against the Financing Plan;
  - ~~(e) — Health and safety information, including details of any accidents or Incidents arising during the period and actions taken in respect of the Contractor's health and safety procedures; Information on compliance with health, labour and safety standards;~~
  - (e) bis Details of any accidents or Incidents arising during the period
  - (f) Details of training carried out in accordance with the Training Plan:
  - (g) The actual results obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any criteria [and thresholds pursuant to the applicable Standards, and against the Environmental Management and Monitoring Plan, and taking into account environmental objectives pursuant to the applicable Regional Environmental Management Plan] [~~technical Standards and indicators, including environmental objectives and standards, pursuant to the applicable Regional Environmental Management Plan and the Environmental Management and Monitoring Plan~~], together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;
  - (h) A statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions and the results of any verification and audit undertaken internally or by independent competent persons, [appointed or employed by the Contractor];
  - (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;

- (j) [Details of any changes made in connection with subcontractors engaged by the Contractor during the Calendar Year; ]
- (k) The results of any Exploration activities, including updated data and information on the grade and quality of Resources and reserves identified in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves [and applicable Standards and Guidelines];
- (l) A statement that the Contractor’s Financing Plan is adequate for the following period; and
- (m) Details of any [proposed] significant modification to the Plan of Work [and the reasons for such modifications].

[(2)bis. The Secretariat shall arrange for the effective management of the submitted information in order to overcome existing gaps in knowledge concerning the marine ecosystems including their sensitivity and resilience, the determination of environmental quality standards and appropriate exploitation equipment.]

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted. [To this end, Contractors shall structure the annual reports such that any Confidential Information can be clearly identified and extracted.]

**Explanation / Comment**

***Paragraph 2.bis***

- One participant previously proposed an additional paragraph between 2 and 3, with the following explanation: Standards and/or Guidelines for the Annual Report and the Annual Financial Report will be needed. Guidelines are likely to be needed for more than just formatting of the Annual report. Standards and Guidelines could, among other areas, incorporate evolving best practices regarding financial disclosure in the extractives sector. These could, for example, specify internationally accepted accounting principles to be used (i.e., Generally Accepted Financial Practices (GAAP) or International Financial Reporting Standards (IFRS)), the definition of what constitutes a “direct Exploitation Expenditure”, and the definition of a “payment and other forms of financial benefit” (e.g., subsidies, deductions, etc.). Contractor payments to contractors (including the Enterprise), state enterprises, States, and Sponsoring States should be disclosed publicly in line with terrestrial mining best practices. This is in line with International standards, like the Extractives Industries Transparency Initiative (EITI), and national best practices, such as the Extractives Sector Transparency Measures Act (ESTMA) in Canada which requires that certain businesses involved in the commercial development of oil, gas and minerals report the payments they make to governments in Canada and abroad. Payments to the contractor from Sponsoring States should also be disclosed. This information will be needed to determine the effective tax rate for contractors and to enable reviews of the system of payment.
- Some participants proposed changes that Regulation (2)bis is out of place in the current section, which otherwise deals exclusively with a Contractor’s annual report. They suggest removing this provision and placing it elsewhere in the Regulations. I invite proposals as to placement.
- Thresholds for such information disclosure requirements may need to be defined. I invite proposals.
- Necessary amendments are needed to DR 89 regarding confidentiality. I invite proposals.
- Necessary amendments may be needed to DR 83 Recording in Seabed Mining Registry. I invite proposals.
- “State enterprises” is referred to in AGXI/A/S6(1)(d)(ii). However, something more definitive may be needed into the Schedule or Standards/Guidelines. Payments to sponsoring states will be important for determining a nodule transfer price in the future. I invite proposals.

## Regulation 39

### Books, records and samples

1. A Contractor shall keep a complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, which must include information that fully discloses actual and direct expenditures for Exploitation, including capital expenditures and operating costs and such other information as will facilitate an effective audit of the Contractor's expenditures and costs.
2. A Contractor shall maintain maps, geological, mining and mineral analysis reports, production records, processing records, records of sales or use of Minerals, environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with the Authority's data and information management policy.
3. ~~To the extent practical, a~~ A Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, from each sample collection period identified in the [relevant] Standard[s] and [Guidelines], together with biological samples, obtained in the course of Exploitation until the termination of the [exploitation contract] [Closure Plan]. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.
4. Upon request of the Secretary-General, the Contractor shall deliver to the Secretary-General for analysis a portion of any sample or core obtained during the course of Exploitation activities.
5. A Contractor shall, subject to reasonable notice, permit full access by the Secretary-General to the data, information and samples.

#### Explanation / Comment

- Accurate samples are integral to the correct calculation of royalties. The collection and storage of samples will be essential to accountability, royalty calculation, and auditing. Removing the words "to the extent practicable" will allow for a stronger obligation, commensurate with the level of obligation ascribed to the keeping of other records (the other record keeping obligations are not qualified by the inclusion of the words "to the extent practicable").
- One participant suggested that the BBNJ Article 10 will be relevant.
- The Regulation as currently drafted references the Guidelines for the purposes of detailing storage requirements for the samples; however, it should also link to the draft Guidelines in the present Chair's text for the purposes of how many samples should be collected, how often they should be collected, at what points/times during the loading of a Shipment samples should be collected, and other relevant matters. One participant proposes removing the reference to Guidelines.

#### Paragraph 3

- Some participants support "closure plan" as the appropriate end point. These participants proposed the use of "exploitation contract" rather than "Closure Plan". They also expressed concern that the current text of Regulation 39 may lack clarity, and suggest clarifying the purpose of sample collection in Regulation 39 (i.e. samples retained for knowledge purposes or samples collected for assaying to determine royalty payment). Alternatively, they suggest setting clear guidelines in the accompanying Standard and Guidelines.

## Regulation 89

### Confidentiality of information

1. There shall be a presumption that any data and information regarding the Plan of Work, exploitation contract, its schedules and annexes or the activities taken under the exploitation contract are public, other than Confidential Information.



2. “Confidential Information” means:

- (a) Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;
- (b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;
- (c) Data and information which have been categorized as Confidential Information by the Council; and
- (d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by the Secretary-General on the basis that there would be substantial risk of serious or unfair economic prejudice if the data and information were to be released;

3. “Confidential Information” does not mean or include data and information that:

- (a) Are generally known or publicly available from other sources;
- (b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;
- (c) Are already in the possession of the Authority with no obligation concerning its confidentiality;
- (d) Are required to be disclosed under the Rules of the Authority to protect the Marine Environment or human health and safety;
- (e) Are necessary for the formulation by the Authority of rules, regulations and procedures concerning the protection and preservation of the Marine Environment and safety, other than equipment design data;
- (f) Relate to the protection and preservation of the Marine Environment, [provided that unless] the Secretary-General may agree that such information is regarded as Confidential Information for a reasonable period where there are bona fide academic reasons for delaying its release;
- (f)alt. Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may designate such information as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its release on the terms proposed by the Secretary-General and the decision including the reasons are reported to Council;
- (g) Are an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);
- (h) [Relate to contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments and other forms of financial benefit received by the contractor from Sponsoring States;
- (i) Relate to beneficial ownership of contractors;
- (j) [Relate to Sponsorship Agreements or other contractual arrangements between contractors and Sponsoring States; or]
- (k) The Contractor to which the data and information relates has given prior written consent to its disclosure.
- (l) The area to which the data and information relates is no longer covered by an

exploitation contract; provided that following the expiration of a period of 10 years ISBA/25/C/WP.1 56/117 19-04869 after it was passed to the Secretary-General, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and the Secretary-General, [in accordance with the relevant Guidelines] and save any data and information relating to personnel matters under paragraph 2 (b) above.

4. Confidential Information will be retained by the Authority and the Contractor in strictest confidence in accordance with regulation 90 and shall not be disclosed to any third party without the express prior written consent of the Contractor, which consent shall not be unreasonably withheld, conditioned or delayed, save that Confidential Information may be used by the Secretary-General and staff of the Authority's secretariat, as authorized by the Secretary-General, and by members of the Commission as necessary for and relevant to the effective exercise of their powers and functions.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary - General the Information or any part of it as Confidential Information. If the Secretary-General objects to such designation within a period of 30 Days, the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. Any dispute arising as to the nature of the data and information shall be dealt with in accordance with Part XII of these regulations.

6. Nothing in these regulations shall affect the rights of a holder of intellectual property

**Explanation / Comment**

- Participants have proposed amendments to Regulation 89 with the following explanation: Contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments received by the contractor from Sponsoring States, should be disclosed publicly in line with terrestrial mining best practices. This is in line with International standards, like the Extractives Industries Transparency Initiative (EITI), and national best practices, such as the Extractives Sector Transparency Measures Act (ESTMA) in Canada which requires that certain businesses involved in the commercial development of oil, gas and minerals report the payments they make to governments in Canada and abroad. Payments to the contractor from Sponsoring States should also be disclosed. This information will be needed to determine the effective tax rate for contractors and enable reviews of the system of payment. Sponsorship Agreements should also be fully disclosed. A definition for these may be required in the Schedule: use of terms and scope. Beneficial ownership of contractors should also be disclosed as per best practice.
- Some participants submit that the text should mandate the publication, and process for publication, of sponsorship agreements, other contractual arrangements between sponsoring states and contractors, and payments between contractors and sponsoring states. I invite comments and proposals.
- Necessary amendments may be needed to DR 83 Recording in Seabed Mining Registry
- "State enterprises" are referred to in AGXI/A/S6(1)(d)(ii). However, something more definitive may be needed into the Schedule or Standards/Guidelines. Payments to sponsoring States will be important for determining a nodule transfer price in the future.

## Enclosure II

### Appendix IV

#### Determination of a royalty liability

Appendix IV sets out the methodology for the calculation of a royalty payable under Regulation 64 in respect of the categories of resources. It is indicative and presented for discussion only at this time.

Several updates have been made since the last version of Appendix IV. Therefore, I have replaced the Appendix in its entirety.

In the present appendix:

**Aggregate Relevant Metal Value** means the aggregate of the Relevant Metal Values for each Relevant Metal calculated in accordance with the applicable Standard.

**Applicable Royalty Rate** means the royalty rate set out in the applicable Standard, which may be by a decision of the Council following any review under these regulations.

**Average Listed Price** means the average listed price for a Relevant Metal, calculated in accordance with the applicable Standard.

**Average Grade** means the average metal content of the Relevant Metal calculated in accordance with the applicable Standard.

**Relevant Metal** means a metal contained in the mineral-bearing ore identified and determined in accordance with the applicable Standard.

**Relevant Metal Value(s)** means the gross market value(s) of a Relevant Metal calculated in accordance with the applicable Standard.

**Valuation Point** is the first point of transfer of the mineral-bearing ore by delivery onto a vessel transporting the ore out of the Contract Area. In the instance where the transfer of mineral-bearing ore onto another vessel does not take place, the valuation point shall be on board the original vessel before it leaves the Contract Area.

#### Explanation / Comment

- In relation to the Valuation Point, further specificity may be required in the Guidelines to clarify as to when, during the transferring process, weighing and sampling may take place, given that it is likely to be a continuous process over hours, or days, to load a single shipment onto the transport vessel.
- Some participants have proposed to add “applicable” before each reference to “Standards” as there may be different Standards which apply to the various matters listed as defined terms in Appendix IV. I have proposed including that change.
- Some participants have proposed additional text for Valuation Point, with the following explanation: There are scenarios where the ore remains in the hold of the collector ship and is transferred directly out of the area without being transferred onto a transport ship. It is also possible that the ships sink with the mineral-bearing ore in their hold. We recommend amending the definition of “Valuation Point” accordingly and recommend that any associated Guidelines also reflect this possibility. I have included text to address that possibility.
- Following the March 2023 negotiating round, one Contractor proposed a complete rewrite of Appendix IV. It considers the formulas for calculating the royalty to have design defects. The ore in the two formulas are valued according to the metal or mineral in the ore rather than the raw ore. It considers that the valuation should be based on the original ore rather than the metals in the ore. It

also considers that the 1994 Implementation Agreement is based on the principle of establishing a payment system that should treat both the contractor and the ISA fairly, and any one-sided pursuit of maximizing benefits by either party deviates from this principle. It considers the payment rate should be set so that the mineral types from the deep-sea bed have the ability of fair market competition with similar mineral types from the land. It suggests adopting a lower royalty rate equivalent to similar types of ore on land during the first 5-year commercial production stage (and as outlined above, it should be priced using the original ore).

## 1. The Authority shall set a royalty rate

The Authority shall set an Applicable Royalty Rate in respect of the royalty to be paid by the Contractor to the Authority for Minerals which constitute polymetallic nodules, as set out in the Standard and ~~taking into account the any~~ Guidelines.

### 1.bis. Additional Minerals

Additional Minerals shall be included in the calculation of the royalty should evidence become available that such minerals are being profitably extracted.

The Legal and Technical Commission shall recommend to the Council for decision whether additional Minerals shall be included.

The inclusion of additional Minerals in the determination of the royalty shall constitute a review of rates of payments as described in Regulation 82.]

#### Explanation / Comment

- Regulation 64 prescribes that a royalty will be paid by the Contractor. This paragraph 1 now establishes who will set and collect the royalty, and how it will be calculated. The paragraph only concerns polymetallic nodules. To maintain long term adaptability, it directs the details to the Standard and Guidelines.
- Some participants have proposed removing the reference to Guidelines. I propose to retain the reference, as it gives greater flexibility of options (including, for example, for worked examples in Guidelines). Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. I consider that the original text proposal, which would require the Authority to consider the Guidelines, would make consideration of the Guidelines (and therefore compliance with the Guidelines), binding.
- Participants have proposed different options for addressing additional metals. This is one such proposal, another is at the “Relevant Metals” section. I invite views of the participants on whether such updates could fall within the broader review and update mechanism contemplated under DR 81 and 82. I invite the submissions of participants on preferred approach for additional metals.

## 2. Calculation of royalty payable

The royalty payable to the Authority for each royalty return period shall be the product of the Applicable Royalty Rate multiplied by the Aggregate Relevant Metal Value for that royalty return period, calculated in accordance with the Standard and taking into account the Guidelines.

#### Explanation / Comment

- Regulation 64 prescribes that a royalty will be paid; paragraph 1 of Appendix IV above states that the rate will be set by the Authority. This paragraph 2 establishes how the royalty payment will be calculated.
- To maintain long term adaptability, it directs the details to the Standard and Guidelines.

Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. I consider that while most matters could be included in Standards, there is a role for Guidelines. Guidelines can be more easily changed than Standards, and therefore should be used for administrative and operational matters (such as forms to use etc.) as they can be kept current with industry practice, to ensure that the Authority is applying best practice and most current industry practice. They may also be useful for matters such as worked examples.

- I consider that the original text proposal makes consideration the Guidelines (and therefore compliance with the Guidelines), binding, as it requires the Authority to consider the Guidelines.

## Enclosure III

### Draft Standard

In the present Standard:

**First Period of Commercial Production** means a period of 5 years following the date of commencement of Commercial Production.

#### Explanation / Comment

- I invite views on whether it would be preferable for administrative purposes if the First Period of Commercial Production was to end at the end of a royalty return period.

**Listed Price** means:

1. For copper, nickel and cobalt: the price (in United States dollars), quoted for the Relevant Metal in the Official Listing relating to that Relevant Metal for the relevant period.
2. For manganese: the price (in United States dollars), quoted for manganese ore in the applicable Official Listing for the relevant period, the result of the following calculation:

$$(0.1 \times \text{EMM Price}) + (0.4 \times \text{LC FeMn Price}) + (0.4 \times \text{MC FeMn Price}) + (0.1 \times \text{HC FeMn Price})$$

Price) where:

- (a) ~~EMM Price means the price (in United States dollars), quoted for electrolytic manganese metal in the applicable Official Listing for the relevant period;~~
- (b) ~~LC FeMn Price means the price (in United States dollars), quoted for low-carbon ferromanganese in the applicable Official Listing for the relevant period;~~
- (c) ~~MC FeMn Price means the price (in United States dollars), quoted for medium-carbon ferromanganese in the applicable Official Listing for the relevant period;~~  
and
- (d) ~~HC FeMn Price means the price (in United States dollars), quoted for high-carbon ferromanganese in the applicable Official Listing for the relevant period.~~

#### Explanation / Comment

- Once the relevant indices have been settled, the applicable units for each quotation should be confirmed. It should also be confirmed that the relevant indices do in fact quote the prices for the relevant periods that are reflected by the draft Standards and Guidelines.
- To reflect the discussions of the OEWG, for manganese I have proposed text which features a medium-grade manganese reference price. This also reflects the new work done by MIT in their updated modelling. I invite further discussion on this point, noting that some participants proposed using only the electrolytic manganese price as the reference price, while another submission proposed eventually moving to a nodule ore price as opposed to a composite based on individual metals prices.
- To expand further on the relevant participant's proposal to use an official listing of EMM only rather than the composite calculation originally proposed based on MIT's earlier modelling, the explanation for that proposal is as follows: *The MIT model assumed, and included costs*

*and royalty rates consistent with this assumption, that manganese was processed to the electrolytic manganese metal (EMM) grade. If the royalty rates proposed are levied on a base containing different/lower manganese prices then the conclusions from the MIT model are no longer relevant and the royalty rates should be revised upwards to maintain ISA revenues. Likewise, the proposed minimum acceptable royalty rates assume that the royalty is levied on a base using the EMM price. If there is a change to the manganese price used then the royalty base will be lower and payments to the ISA will be lower, and we will then revise its minimum acceptable royalty rates upwards to maintain acceptable revenues for humankind. It is important to understand that the regulations are not dictating what manganese grade processors process manganese to. The royalty regulations are simply determining a base on which the royalty is applied. There is no reason that the Draft Regulations cannot use the EMM price for that base. Trying to understand exactly what grade processors will process manganese to is likely to be a fruitless and unconstructive task that will only serve to delay the Draft Regulations. Reasons for this include: a.) some nodules may be processed to the EMM grade, while others will be processed to a lower grade, b.) different contractors will sell nodules to different processors, and not all processors will process nodules to the same grade, c.) some contractors may not even know the full downstream sales and processing chain. They will sell unprocessed nodules and are not legally responsible for what happens to the metal in those nodules downstream. In short, the main criteria for the royalty base are that it is simple to calculate, easy to audit and results in significant revenues for the ISA. In addition review "Issue 3: The Valuation of Manganese" from the "African Group Speaking Notes on the Payment Regime" submitted on 15 January 2023, for further commentary to consider.*

**Official Listing** means the quoted or published price of the Relevant Metals as specified for each Relevant Metal in the Guidelines.

**Explanation / Comment**

- The reference to the Guidelines is to provide greater flexibility for future changes. The Guidelines also provide for a determination to be made by the Authority or Council (as determined during the negotiations) as to a new index, should the current one cease to be published.

**Second Period of Commercial Production** ~~means the period commencing on the day following the last day of the First Period of Commercial Production.~~ means a period of [x] years commencing on the day following the last day of the First Period of Commercial Production.

Third Period of Commercial Production means the period commencing on the day following the last day of the Second Period of Commercial Production.

**Explanation / Comment**

- Participants have proposed to define all periods of Commercial Production. I have proposed text to this effect.
- As additional context, the two periods of Commercial Production were intended to reflect the two-stage ad valorem nature of Option 4, with the royalty rate increasing for the second period (namely the duration of the contract following an initial 5 year ramp up).

**Shipment** means each shipment of mineral-bearing ore by a vessel transporting the ore out of the Contract Area.

**1. Relevant Metals**

(a.) For the purpose of polymetallic nodules and appendix IV, [during the first period of commercial

production] Relevant Metals will be copper, nickel, cobalt and manganese [only].

(b) During the Second Period of Commercial Production and subsequent periods of Commercial Production relevant metals will include copper, nickel, cobalt and manganese and may include other metals and substances, but only if there is substantial evidence that such other metals and substances are being processed from mineral-ore mined under the exploitation contract and are substantially increasing the value of polymetallic nodules mined in the area and in such case additional Standards will be published providing for the inclusion of these other metals and substances in aggregate relevant metal value.]

**Explanation / Comment**

- Participants have proposed different options for addressing additional metals. One proposal is to include text at Appendix IV. Another is here in the “Relevant Metals” section. Or such updates could be included within the broader review and update mechanism contemplated under DR 81 and 82.

**2. Calculation of Average Grade**

1. In respect of each Relevant Metal, the Average Grade shall be the metal content of that Relevant Metal expressed as a percentage per dry metric ton of mineral-bearing ore in a Shipment.
2. The metal content of each Relevant Metal shall be determined based on samples of the mineral bearing ore collected at the Valuation Point in accordance with the sampling and assaying procedures set out in the Standards and any Guidelines.

**Explanation / Comment**

- This provides for the royalty to be calculated based on the actual (sampled) metal content of each individual Shipment based on a number of samples taken at the Valuation Point during the loading of the transport vessel. This approach approximates the reality of the operations and the likely basis on which the product will be sold on a commercial basis.
- The MIT model assumes a consistent grade / content for each metal due to the fact that, for the purposes of analysing financials, MIT used the average composition and kept this constant. However, in practice the Contractors would need to measure actual composition for reporting and royalty calculations.
- Some participants have proposed removing the reference to Guidelines. I consider that while most matters could be included in the Standards, there is a role for Guidelines. Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. Guidelines can be more easily changed than Standards, and therefore should be used for administrative and operational matters (such as forms to use etc.) as they can be kept current with industry practice, to ensure that the Authority is applying best practice and most current industry practice. They may also be useful for matters such as worked examples.
- I consider that the original text proposal makes consideration the Guidelines (and therefore compliance with the Guidelines), binding, as it requires the Authority to consider the Guidelines, would make consideration of the Guidelines.

**3. Calculation of Average Listed Price**

The Average Listed Price for a Relevant Metal shall be the Listed Price for the Relevant Metal for the month during which loading of that Shipment commenced.

**Explanation / Comment**

- This calculates the royalty based on the market price applicable to each individual Shipment and avoids averaging market pricing across periods or Shipments. In calculating the price for each



Shipment, it is preliminarily proposed that the average price is reported for that month (or some other period, if the OEWG agrees), on the basis that this approach is similar to that used in the pricing of bulk commodities in commercial contracts (i.e. the ‘quotational period’).

- The model uses a single price over a 12-month period because future price forecasts don’t exist on a more granular basis; and it should be noted that the model makes no reference to the time periods for calculating royalties in practice. MIT’s modelling has demonstrated that more accuracy (with respect to reflect actual market prices) is achieved by not averaging prices over long periods of time.

#### 4. Calculation of Relevant Metal Value and Aggregate Relevant Metal Value

1. The value of the mineral-bearing ore for a royalty return period shall be the Aggregate Relevant Metal Value for that period.
2. The Aggregate Relevant Metal Value for a royalty return period shall be the aggregate of the Relevant Metal Values for each of the Relevant Metals for that period.
3. The Relevant Metal Value for each Relevant Metal during the royalty return period shall be calculated as follows:

- (a) For each Shipment:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

- (b) For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment [which commenced loading] in the royalty return period

Where:

- (i) Quantity means the quantity (in dry metric tons) of the mineral-bearing ore in each Shipment [which commenced loading] in a royalty return period and calculated in the light of the applicable Guidelines.
- (ii) Average Grade is calculated in accordance with this Standard and in the light of the applicable Guidelines.
- (iii) Average Listed Price is calculated in accordance with this Standard and in the light of the applicable Guidelines.

#### 5. Determination of the Applicable Royalty Rate

The Applicable Royalty Rate shall be:

~~Two stage variable ad valorem~~

1. For the First Period of Commercial Production, ~~[2-3 %]; and [1alt For the First Period of Commercial Production, [12%]; and]~~
2. ~~[For][From]~~ the Second Period of Commercial Production, a rate no less than ~~[5-7.5 %] and no greater than [9-12.5 %]~~ determined by reference to the table below and the Notional Relevant Metal Value:  
~~[2alt [For][From] the Second Period of Commercial Production, a rate no less than [12%]~~

and no greater than [25%] determined by reference to the table below and the Notional Relevant Metal Value:

Where:

- (a) Notional Relevant Metal Value means the [average Aggregate Relevant Metal Value per dry metric ton across all Shipments during the royalty return period].
- (b) The [average Aggregate Relevant Metal Value per dry metric ton across all Shipments during the royalty return period] shall be calculated by dividing the Aggregate Relevant Metal Value for that royalty return period by the total Quantity shipped during that royalty return period.

<b>Notional Relevant Metal Value</b> <i>[as may be adjusted in accordance with the Standards and Guidelines]</i>	<b>Applicable Royalty Rate</b> <b>[for] [from] Second Period of Commercial Production</b>
Less than [ <del>US\$850</del> ] [US\$ 510] per dry metric ton ( $x < [\del{US\$850/t}] [US\$ 510/t]$ )	[ <del>5-7.5 %</del> ] [alt [12%]]
Greater than or equal to [ <del>US\$850</del> ] [US\$ 510] per dry metric ton but less than [ <del>US\$925</del> ] [US\$ 580] per dry metric ton ( $[\del{US\$850/t}] [US\$ 510 X/t] \leq x < [\del{US\$925/t}] [US\$ 580/t]$ )	[ <del>6-8.75 %</del> ] [alt [15.3%]]
Greater than or equal to [ <del>US\$925</del> ] [US\$ 580] per dry metric ton but less than [ <del>US\$1,000</del> ] [US\$ 650] per dry metric ton ( $[\del{US\$925/t}] [US\$ 580/t] \leq x < [\del{US\$1,000/t}] [US\$ 650/t]$ )	[ <del>7-10 %</del> ] [alt [18.5%]]
Greater than or equal to [ <del>US\$1,000</del> ] [US\$ 650] per dry metric ton and less than [ <del>US\$1,075</del> ] [US\$ 720] per dry metric ton ( $[\del{US\$1,000/t}] [US\$ 650/t] \leq x < [\del{US\$1,075/t}] [US\$ 720/t]$ )	[ <del>8-11.25 %</del> ] [alt [21.8%]]
Greater than or equal to [ <del>US\$1,075</del> ] [US\$ 720] per dry metric ton ( $[\del{US\$1,075/t}] [US\$ 720/t] \leq x$ )	[ <del>9-12.5 %</del> ] [alt [25%]]

**Explanation / Comment**

- The applicable rates and thresholds provided are placeholders. I invite further discussion on this issue.

- The new proposed rates and thresholds reflect the new work done by MIT in the updated model, noting however that the rates and thresholds need to be considered alongside other proposals which still require further discussion, including that relating to an additional royalty, as proposed in the OEWG, and in two submissions received from participants.
- In particular, one participant proposed changes to the rates and to the proposal to move to a one-stage rather than two-stage model. The alternative text rates reflected here are based on that submission, which notably referenced an EMM price for the manganese component, and also proposed an additional royalty. The proposed alternative rates should be considered in that context.
- The drafting here provides for the variable rate to be set based on the average market price per DMT for all Shipments during the 6-month royalty return period. Although the MIT model uses an annual price so that the rate is constant over the year and does not change for each Shipment, this was because the model was not intended to address the royalty calculation periods. In practice, applying this formulation, the rate will be re-calculated every six months to reflect market prices over that period.
- Reflection should be given to the issue as to whether the Guidelines should address inflationary (or other applicable) increases to the Notional Relevant Metal Value amounts specified in the table. Alternatively, another approach may be to simply amend the table in this Standard from time to time to reflect appropriate price increases in the future.

## Enclosure IV

### Draft Guidelines in accordance with Regulations 65 and 95 in respect of the administration and management of royalties prescribed in Part VII

#### Official Listings

1. Official Listing in respect of copper means [appropriate reference to be determined].
2. Official Listing in respect of nickel means [appropriate reference to be determined].
3. Official Listing in respect of cobalt means [appropriate reference to be determined].
4. Official Listing in respect of manganese: [appropriate reference to manganese ore to be determined].
  - ~~(a) — in respect of [electrolytic manganese metal] means [appropriate reference to be determined];~~
  - ~~(b) — in respect of [low-carbon ferromanganese] means [appropriate reference to be determined];~~
  - ~~(c) — in respect of [medium-carbon ferromanganese] means [appropriate reference to be determined]; and~~
  - ~~(d) — in respect of [high-carbon ferromanganese] means [appropriate reference to be determined].~~

#### Explanation / Comment

- This definition could be moved directly into the Standard if preferred. It has been included here to provide greater flexibility for future changes.
- As identified in the past, manganese presents a challenge. There is currently no accepted market index price because the manganese product, form and value relative to reference prices remain highly uncertain. The new text in relation to manganese reflects the discussions of the OEWG with respect to a medium-grade manganese reference price. This also reflects the new work done by MIT in their updated modelling. I invite further discussion on this point, noting that one participant proposed using only the electrolytic manganese price as the reference price, while another participant proposed eventually moving to a nodule ore price as opposed to a composite based on individual metals prices.

#### Replacement of Official Listing

If:

1. any of the indices or publications listed as an Official Listing ceases to be published or determinable for a period of [one month] and there are reasonable grounds on which to conclude that the index or publication will continue not to be published on a consistent basis in future; or
2. any of the indices or publications listed as an Official Listing does not, in the opinion of the [Council] fairly and reasonably, whether due to persistent errors or omissions, a change in its methodology or for any other reason, reflect the fair market price of the Relevant Metal,

then the [Council] may determine a replacement Official Listing for the Relevant Metal, which shall be:

- (a) the price for the Relevant Metal quoted on a recognized international mineral exchange or market;

- (b) the published price for the Relevant Metal in a publication recognized for quoting or publishing prices of metals in an international market; or
- (c) based on recommendations of the Commission [and following consultation with Contractors], a formula determined by the Council.

### Worked example of royalty calculation

The following provides a worked example of the calculation of the royalty in accordance with regulation 64, appendix IV, the applicable Standard and these applicable Guidelines. This is for illustrative purposes only.

#### Explanation / Comment

- I invite views on whether the worked example should be retained in the Guidelines. The example will need to be updated and refined as changes are made to the proposed drafting, and if required, more detail could be added. For example, it could include changes to the Average Grade rather than the consistency shown in the example below, and adjustment of Shipment sizes and frequency to more closely emulate a typical nodule mining operation.
- Pending further discussion with members, the worked example has simply been updated to reflect the rates and thresholds proposed in this text, and does not yet take account of different participants' submissions, including on an additional royalty.

#### 1. Calculation of royalty payable (see Appendix IV)

Applicable Royalty Rate multiplied by the Aggregate Relevant Metal Value

$$= \underline{2.3\%} \times \underline{\text{US\$1,591,760,000}} \underline{\text{US\$1,035,262,000}} = \underline{\text{US\$31,835,200}} \underline{\text{US\$31,057,860}}$$

(First Period of Commercial Production) Or

$$= \underline{8.11.25\%} \times \underline{\text{US\$1,591,760,000}} \underline{\text{US\$1,035,262,000}} = \underline{\text{US\$127,340,800}} \underline{\text{US\$116,466,975}}$$

(Second Period of Commercial Production, if two stage variable ad valorem)

#### 2. Applicable Royalty Rate (see Standard)

If during First Period:  $\underline{2.3\%}$

If during Second Period:  $\underline{8.11.25\%}$  (two stage variable ad valorem)

where  $\underline{8.11.25\%}$  based is on a Notional Relevant Metal Value of  $\underline{\text{US\$1,061/t}}$   $\underline{\text{US\$690/t}}$  (as per table in Standard)

*Notional Relevant Metal Value*

= Aggregate Relevant Metal Value / total Quantity

$$= \underline{\text{US\$1,591,760,000}}$$

$$\underline{\text{US\$1,035,262,000}} /$$

$$1,500,000\text{DMT}$$

$$= \underline{\text{US\$1,061}} \underline{\text{US\$690}} \text{ per ton}$$

#### 3. Aggregate Relevant Metal Value (see Standard)

Aggregate Relevant Metal Value = the aggregate of the Relevant Metal Value for each Relevant Metal during the royalty return period

= Relevant Metal Value for copper + Relevant Metal Value for nickel +

Relevant Metal Value for cobalt + Relevant Metal Value for manganese

$$\begin{aligned}
 &= \text{US\$}180,400,000 + \text{US\$}469,300,000 + \\
 &\text{US\$}185,200,000 + \text{US\$}756,860,000 \\
 &\quad \underline{\text{US\$}200,362,000} \\
 &= \text{US\$}1,591,760,000 \\
 &\quad \underline{\text{US\$}1,035,262,000}
 \end{aligned}$$

Relevant Metal Value for Copper:

1. For each Shipment of copper:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	1.10%	9500	47025000
<b>Shipment 2</b>	500000	1.10%	10500	57750000
<b>Shipment 3</b>	550000	1.10%	12500	75625000
<b>Aggregate for royalty return period</b>				180400000

Relevant Metal Value for Nickel:

1. For each Shipment of nickel:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	1.30%	22000	128700000
<b>Shipment 2</b>	500000	1.30%	26000	169000000
<b>Shipment 3</b>	550000	1.30%	24000	171600000
<b>Aggregate for royalty return period</b>				469300000

Relevant Metal Value for Cobalt:

1. For each Shipment of cobalt:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	0.20%	55000	49500000
<b>Shipment 2</b>	500000	0.20%	62000	62000000
<b>Shipment 3</b>	550000	0.20%	67000	73700000
<b>Aggregate for royalty return period</b>				185200000

Relevant Metal Value for Manganese:

1. For each Shipment of manganese:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

*NOTE: Price based on the following:*

*(0.1 x EMM Price) + (0.4 x LC FeMn Price) + (0.4 x MC FeMn Price) + (0.1 x HC FeMn Price)*

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
<b>Shipment 1</b>	450000	28.40%	<del>1500</del> <u>490</u>	<del>191700000</del> <u>62622000</u>
<b>Shipment 2</b>	500000	28.40%	<del>2000</del> <u>475</u>	<del>284000000</del> <u>67450000</u>
<b>Shipment 3</b>	550000	28.40%	<del>1800</del> <u>450</u>	<del>281160000</del> <u>70290000</u>
<b>Aggregate for royalty return period</b>				<del>756860000</del> <u>200362000</u>

## Enclosure V

### Schedule of relevant definitions

#### Explanation / Comment

- During the March 2023 meetings and in various written submissions participants have raised that certain terms or concepts require definitions, or that existing definitions should be amended or updated. Proposed new definitions are included in this Schedule. I invite further discussion and text proposals on all of these, and any additional definitions or amendments to existing definitions which participants consider may be relevant to the text being considered by the OEWG.
- I note that once draft text for the various Regulations is settled, the text of the definitions may require consequential harmonization amendments, and the use of the defined terms in the Regulations may need to be capitalised.
- If the participants agree to including these terms, the Schedule in the President's Text will be updated accordingly for the next meeting.

["Certified Laboratory" means a laboratory certified to undertake a chemical analysis of mineral-bearing ore in accordance with the relevant standards of the International Organization for Standardization and which otherwise complies with the requirements for a Certified Laboratory in Standards and Guidelines.]

["financial incentive" means [a financial grant or reduction of amounts otherwise payable to the Authority which otherwise complies with the requirements for financial incentives in these Regulations and in Standards and Guidelines.]

["large scale production" means exploitation, production or removal from the Area of mineral-bearing ore in a quantity which is in excess of the thresholds specified in the Standards.]

["mineral-bearing ore" means [...].]

["monopolize" means the ability to control over 75 per cent of the estimated annual volume of similar mineral-bearing ore exploited, produced or removed from the Area after Commercial Production has occurred in respect of at least two exploitation contracts.]

["related parties" means parties that belong to the same corporate structure, such as a parent and subsidiary company, or sister companies which are both subsidiaries of the same parent company, and a state enterprise shall be considered a "related party" vis-à-vis its host State party or a contractor sponsored by its host State party unless evidence is provided that any costs, prices and revenues have been charged or determined on an arm's-length basis.]

["sustained large-scale recovery operations" means the exploitation, production or removal from the Area of mineral-bearing ore in a systematic manner over a minimum period specified in the Standards and which constitutes large-scale production.]

["Suitably Qualified Person" means a person qualified to conduct a valuation of mineral-bearing ore in accordance with the relevant standards of the International Organization for Standardization and who otherwise complies with the requirements for a Suitably Qualified Person in Standards and Guidelines.]

["Transferee" means an entity to which a Contractor may transfer, or has transferred, its rights and obligations under an exploitation contract in accordance with Regulation 23.]