TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION: COUNCIL - PART III

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. **Name of Working Group:**
   Open-ended Working Group of the Council on the Financial Terms of a Contract

2. **Name(s) of Delegation(s) making the proposal:**
   Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd.

3. **Please indicate the relevant provision to which the textual proposal refers.**

   Enclosure III – Draft Standard, First Period of Commercial Production

4. **Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.**

   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.

5. **Please indicate the rationale for the proposal. [150-word limit]**

- While we agree that administratively there may be value in aligning the First Period of Commercial Production to the end of a royalty return period, we also consider that from a royalty payment point of view, it would be undesirable to shorten the first period of Commercial Production to less than five years.

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   Enclosure III – Draft Standard, List Price

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   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 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.

5. Please indicate the rationale for the proposal. [150-word limit]

- We have a number of concerns regarding the explanation provided to the participant's proposal to use an official list of EMM only.
- First, we note that MIT model has already been adjusted for manganese ore prices and as a result sets higher royalty rates.
- Second, the model currently aims for a specific effective tax rate (ETR) comparable to land-based mining. As such, it is irrelevant whether a price based on EMM or ore price is used. The model will deliver the ETR that is consistent regardless of what price is chosen for manganese. However, unlike nickel, copper and cobalt, EMM represents just 6% of the manganese market – and is a small, volatile market.
- Third, the main criteria for the royalty base are not just raising simplicity of calculation, ease of audit, and generating "significant revenues for the ISA". As set out in Article 13(1) of Annex III to the Convention, the financial terms need to also ensure "optimum" revenue for the Authority and attract investment and technology to the exploration and exploitation of the Area. Section 8(1) of the Annex to the 1994 Agreement also requires the system of payments to be "fair both to the contractor and to the Authority" and be in line with land-based mining.
- Indeed, the comment that "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" seems to misunderstand how the royalties are intended to operate. It cannot be the case that each time a metal or ore price falls royalties will increase to

maintain ISA revenues. This would result in an uneconomic industry, particularly if costs rise when Contractor revenues are low.

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   Enclosure III – Draft Standard, Third Period of Commercial Production

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

5. **Please indicate the rationale for the proposal. [150-word limit]**

- We do not consider that this is definition is necessary. The term "Third Period of Commercial Production" is not used in the Draft Standard and we understood the regulations were being drafted on the basis of a two-stage royalty.

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   Enclosure III – Draft Standard

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1. **Determination of the Applicable Royalty Rate**

[…]

Notional Relevant Metal Value [*(as may be adjusted in accordance with the Standards and Guidelines)*]	**Applicable Royalty Rate [for][from] Second Period of Commercial Production**
Less than ~~[US$850]~~ [US$ 510] per dry metric ton (x < ~~[US$850/t]~~ [US$ 510/t])	[~~5~~ 7.5 %] [alt [12%]]
Greater than or equal to ~~[US$850]~~ [US$ 510] per dry metric ton but less than ~~[US$925]~~ [US$ 580] per dry metric ton	[~~6~~ 8.75 %] [alt [15.3%]]

Greater than or equal to ~~[US$925]~~ [US$ 580] per dry metric ton but less than ~~[US$1,000]~~ [US$ 650] per dry metric ton (~~[US$925/t]~~ [US$ 580/t] ≤ x <	[~~7~~ 10 %] [alt [18.5%]]
Greater than or equal to ~~[US$1,000]~~ [US$ 650] per dry metric ton and less than ~~[US$1,075]~~ [US$ 720] per dry metric ton (~~[US$1,000/t]~~ [US$ 650/t] ≤ x	[~~8~~ 11.25 %] [alt [21.8%]]
Greater than or equal to ~~[US$1,075]~~ [US$ 720] per dry metric ton (~~[US$1,075/t]~~ [US$ 720/t] ≤ x)	[~~9~~ 12.5 %] [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.

5. Please indicate the rationale for the proposal. [150-word limit]

- We note with serious concern that the proposed new Applicable Royalty rates in this table are significantly higher as compared to the previous text discussed at the last session.
- As noted by other submissions, the current proposed rates, particularly the alternative rates, are excessively high and beyond that imposed in land-based mining.
- If adopted, these rates would massively disincentivize deep seabed mining.

- As such we propose returning to the original level of rates that were being discussed and negotiated by the OEWG.

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   Enclosure III – Draft Standard

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   1. Relevant Metals

   ~~[~~2. 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.~~]~~

5. **Please indicate the rationale for the proposal. [150-word limit]**

- We reiterate that determination of the Relevant Metals should be done on a contract/operation-specific basis. Different operations will have different processing flows and capabilities that will limit their ability to extract and benefit from different minerals. This must be accommodated in the application of this definition.

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   Enclosure IV- Draft Guidelines in accordance with Regulations 95 in respect of the administration and management of royalties prescribed in Part VII

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   Explanation / Comment

   - 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.

5. **Please indicate the rationale for the proposal. [150-word limit]**

- In relation to the concern raised by the Chair, we note that manganese ore is quoted on Shanghai Metal which would provide an acceptable market index price.