Attachment 2

Amended Textual Proposal Submitted by Australia on behalf of the Intersessional Working Group on an Equalization Measure

Draft Regulation 64 Bis Contractor Shall Pay an Equalization Measure

A Contractor, from the date that its Plan of Work has been approved, shall pay the Equalization Measure as determined in accordance with the applicable Equalization Measure Standard.

Annex

Draft Equalization Measure Standard

Option 1: Hybrid Equalization Measure

I Determination of the applicable equalization measure

1. If a Contractor's most recent Equalization Measure Audit confirms that:

(a) the Contractor does not have any Tax Exemptions from its Sponsoring State(s); and

(b) the Contractor does not receive any Subsidies from its Sponsoring State(s),

then the Contractor shall pay the Top-up Profit Share Payment to the Authority.

2. If a Contractor's most recent Equalization Measure Audit confirms that:

(a) the Contractor does have Tax Exemptions from its Sponsoring State(s); and/or

(b) the Contractor does receive Subsidies from its Sponsoring State(s),

then the Contractor shall pay the Additional Royalty to the Authority.

3. A Contractor shall ensure that an Equalization Measure Audit shall be carried out prior to the commencement of Commercial Production and periodically thereafter as determined by the Authority in accordance with a further relevant Standard and applicable Guidelines. Promptly on its completion a Contractor shall forward a copy of the Equalization Measure Audit to the [Secretary-General] [Commission].

4. A Contractor shall pay for each Equalization Measure Audit, which shall be undertaken by an Independent Auditor in accordance with the relevant Standard and applicable Guidelines.

5. A Contractor and Sponsoring State(s) shall fully assist an Independent Auditor undertaking an Equalization Measure Audit and shall provide the Independent Auditor with all relevant documentation, including but not limited to the Contractor's audited accounts, any sponsorship agreement or other arrangements between the Contractor or any of its Related Entities and the Sponsoring State(s) or any other government authority in any jurisdiction, any contract, and any other documents that evidence or provide the Contractor with an actual or potential Tax Exemption or Subsidy.

6. If a Contractor or any of its Related Entities, at any time after the initial Equalization Measure Audit has been completed, enters into, or otherwise agrees, or receives the benefit of, any arrangement that could be considered to provide the Contractor with an actual or potential Tax Exemption or Subsidy, the Contractor shall immediately notify the [Secretary-General] [Commission]. The [Commission] may, in accordance with the relevant Standard and applicable Guidelines, determine that an Equalization Measure Audit must be carried out.

II Additional Royalty

1. The Additional Royalty payable under this Equalization Measure is in addition to the royalty provided for in Regulation 64.

2. If required under Standard I of this Standard, ~~a Contractor,~~ from the [commencement of the Second Period of Commercial Production] [fifth anniversary of the date of commencement of Commercial Production], a Contractor shall pay an Additional Royalty in respect of mineral-bearing ore sold or removed without sale from the Contract Area as provided for in Appendix IV to these regulations.

3. The Applicable Additional Royalty Rate shall be [8%].

4. The Additional Royalty payable to the Authority for each [royalty return period] [Calendar Year] shall be equal to X minus Y, where:

> (a) X is the product of the Applicable Additional Royalty Rate multiplied by the Aggregate Relevant Metal Value for that [royalty return period] [Calendar Year]; and
>
> (b) Y is any amount of Allowable Sponsoring State Payments that have not been deducted in previous [royalty return periods][Calendar Years] when calculating an Additional Royalty payment or a Top-up Profit Share Payment, calculated in accordance with a further Standard and taking into account the Guidelines.

In no circumstances shall the Additional Royalty be less than zero.

5. A payment from a Contractor to the Sponsoring State(s) is an Allowable Sponsoring State Payment where:

~~(a) the payment is an actual cash payment made by the Contractor to its Sponsoring State(s) due to seabed mining activities under the exploitation contract;~~

(a) it is an actual cash payment by the Contractor to its Sponsoring State(s) for payment of a compulsory fiscal imposition levied on the Contractor by its Sponsoring S~~s~~tate(s) on the income, profits or production from seabed mining activities under the exploitation contract. [Payments of dividends, distributions or similar by Contractors to their Sponsoring State(s) due to the Sponsoring State(s) holding equity in the Contractor are not an Allowable Sponsoring State Payment];

(b) there is a [signed letter] [receipt] from the Sponsoring State's tax authority stating the actual cash amount paid by the Contractor to the Sponsoring State for payment~~s~~ of a compulsory fiscal imposition(s) ~~-~~due to seabed mining activities under the exploitation contract; and

(c) there is a signed letter from an Independent Auditor confirming the actual cash amount paid by the Contractor to the Sponsoring State for payment of a compulsory fiscal imposition(s) due to seabed mining activities under the exploitation contract.

6. ~~(d)~~ The Contractor shall pay for the audit referred to in Standard II.5.c

7. ~~(e)~~ Draft Regulations 27, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 89 shall apply to the Additional Royalty as they apply to the royalty.

8. ~~(f)~~ Appendix IV definitions apply to the Additional Royalty as they apply to the royalty.

9. ~~(g)~~ Draft Standards 1 to 4 apply to the Additional Royalty as they apply to the royalty.

III Top-up Profit Share Payment

1. If required under Standard I, a Contractor, from the [commencement of the Second Period of Commercial Production] [fifth anniversary of the date of commencement of Commercial Production], shall pay a Top-up Profit Share Payment.

2. The Top-up Profit Share Payment Rate shall be 25%.

3. The Top-up Profit Share Payment payable to the Authority for each [royalty return period] [Calendar Year] shall be equal to **A** minus **B**, where:

(a) **A** is the Top-up Profit Share Payment Rate multiplied by Profits for that [royalty return period] [Calendar Year];
and

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(b) **B** is the Total Eligible Payments for that year, calculated in accordance with the Standard and taking into account the Guidelines.

In no circumstances shall the Top-up Profit Share Payment be less than -zero.

4. Profits for the [royalty return period] [Calendar Year] are equal to **C** plus **D** plus **E** (without double counting) where:

(a) **C** is the sum of the Income for that [royalty return period] [Calendar Year] from Relevant Activities from all Related Entities that have not met the Inclusion Criteria;

(b) **D** is the sum of the Income for that [royalty return period] [Calendar Year] from all activities from all Related Entities that have met the Inclusion Criteria; and

(c) **E** is the Income of the Contractor for that [royalty return period] [Calendar Year].

5. Total Eligible Payments for a [royalty return period] [Calendar Year] are equal to Eligible Royalty Payments to the Sponsoring State(s) for that [royalty return period] [Calendar Year] plus Other Eligible Payments for that [royalty return period] [Calendar Year].

6. Eligible Royalty Payments are royalties payable to the Sponsoring State(s) by the Contractor due to seabed mining activities under the exploitation contract.

7. Other Eligible Payments are equal to **F** plus **G**, where:

(a) **F** is the sum of Covered Taxes [incurred][paid] by all Related Entities to the Sponsoring State(s) or any other government authority in any jurisdiction arising due to Income that has been included in the calculation of Profits provided for by Standard III.4 for that [royalty return period] [Calendar Year]. Any payment made to any Sponsoring State(s) or any other government authority due to Income not included in the definition of Profits in Standard III.4 is not an Other Eligible Payment; and

(b) **G** is Covered Taxes [incurred][paid] by the Contractor to the Sponsoring State(s) [or any other government authority in any jurisdiction] for that [royalty return period] [Calendar Year].

8. A Contractor shall lodge with the Secretary-General a Top-up Profit Share Return not later than 90 Days after the end of each [royalty return period] [Calendar Year].

9. A Top-up Profit Share Return shall include the following information for each [royalty return period] [Calendar Year], in accordance with a further Standard and taking into account the Guidelines:

(a) the Top-up Profit Share Payment due, Profits, Income, Income included in Profits, Total Eligible Payments, Eligible Royalty Payments, and Other Eligible Payments for that [royalty return period] [Calendar Year];

(b) for each Related Entity, whether it meets the Inclusion Criteria;

(c) for each Related Entity that meets the Inclusion Criteria, its Income, Total Eligible Payments, and Other Eligible Payments;

(d) for each Related Entity that does not meet the Inclusion Criteria, its Income from Relevant Activities, Total Eligible Payments, and Other Eligible Payments, and Covered Taxes;

(e) audited accounts for the Contractor and its Related Entities;

(f) for each Related Entity that does not meet the Inclusion Criteria, audited segmented accounts for each of those Related Entities showing the Income, Total Eligible Tax Payments and Other Eligible Payments and Covered Taxes from Relevant Activities and separately from non-Relevant Activities; and

(g) any other information, document or anything required under the Standards, Guidelines or reasonably requested by the Authority for the administration and validation of the Top-Up Profit Share Payment.

10. A Profit Share Audit shall be carried out by an Independent Auditor [employed by and reporting to the Authority and] in accordance with the relevant Standard and applicable Guidelines.

11. A Contractor shall pay for each Profit Share Audit.

IV Requirement for a Further Standard for Financial Payments

1. The Authority shall adopt Standards [and Guidelines] providing for the effective operation of the Additional Royalty and Top-up Profit Share Payment, including but not limited to:

(a) definitions of Inclusion Criteria, Subsidies, Relevant Activities, and Tax Exemptions;

(b) definitions of Related Entities, Income and Covered Taxes that will be based to the greatest extent practicable on the OECD Pillar 2 Global Anti-Base Erosion Model Rules, or alternatively, may directly reference the relevant articles of the Pillar 2 Global Anti-Base Erosion Model Rules (as amended or updated from time to time);

(c) the criteria an auditor must meet to be an Independent Auditor;

(d) the criteria for the Equalization Measure Audit and Profit Share Independent Audit;

(e) the fees for the Equalization Measure Audit and Profit Share Audit;

(f) the format and required content of the Top-up Profit Share Return;

(g) the penalties, fees, and interest that the Authority shall levy on a Contractor due to non-cooperation with an Independent Auditor, late submission of a Top-up Profit Share Return, failure to submit a Topup Profit Share Return, submission of an incomplete Top-up Profit Share Return, late payment of the Top-up Profit Share Payment and non-payment of a Top-up Profit Share Payment; and any other provisions as required.

Option 2: Additional Profit Share Equalization Measure

I Additional Profit Share Imposed

1. A Contractor shall pay an Additional Profit Share to the Authority each year.

2. The Additional Profit Share shall be calculated and paid separately for each Exploitation Contract.

3. The Contractor when calculating the Additional Profit Share shall not transfer Accumulated Profits, Covered Payments, Revenue or Allowable Costs between Exploitation Contracts.

4. The Additional Profit Share for a year is equal to **A** minus **B,** when **A** minus **B** is a positive number, and is equal to zero when **A** minus **B** is zero or a negative number, where:

A is 25% of the Accumulated Profits for that year; and

B is any Covered Payments that have not previously been credited against the Additional Profit Share.

5. The Additional Profit Share shall be imposed in addition to any other royalty or charge owed by the Contractor to the Authority.

II Accumulated Profits

1. Accumulated Profits for a year shall be equal to **X** minus **Y** plus **Z,** where:

X is Revenue for that year;

Y is Allowable Costs for that year; and

Z is equal to zero if Accumulated Profits in the previous year were a positive number or zero, and **Z** is equal to Accumulated Profits in the previous year multiplied by **1.10** if Accumulated Profits in the previous year were a negative number.

III Revenue

1. The Revenue of a Contractor for a year shall include:

(a) any amount received by the Contractor for polymetallic nodules removed from the Exploitation Area;

(b) any amount received by the Contractor for any Resource removed from the Exploitation Area;

(c) any amount received by the Contractor under a policy of insurance, indemnity or any other financial instrument due to the loss or destruction of polymetallic nodules, loss or destruction of any Resource, loss or destruction of any item the cost of which was an Allowable Cost, or loss of income that would have been Revenue if the loss had not occurred;

(d) any amount received from the sale of data or information gathered under the Exploitation License or Exploration License; and

(e) any amount received from a decommissioning fund, environmental compensation fund or similar provided that the payment by the Contractor to the fund was an Allowable Cost.

IV Allowable Cost

1. Allowable Costs for a year include the cost of:

(a) the acquisition, repair and maintenance of equipment to undertake mining in the Exploitation Area;

(b) labour on vessels in the Exploitation Area that are required for mining in the Exploitation Area;

(c) fuel, haulage and supplies for vessels in the Exploitation Area that are required for mining in the Exploitation Area;

(d) labour, fuel, haulage and supplies for vessels required for transporting polymetallic nodules of other resources from the Exploitation Area to the first port of call;

(e) the general administration and management, including rent of land and building, essential to, and directly connected to, mining activities in the Exploitation Area and accruing in the Sponsoring State;

(f) royalty and fee payments by the Contractor under the Exploitation Contract to the Authority;

(g) exploration expenditures that:

(i) were made under the Exploration Contract that the Exploitation Contract Area was previously subject to; and

(ii) were made prior to the signing of the Exploitation Contract

are an Allowable Cost in the first year of the Exploitation Contract only;

(h) if the Exploitation Contract Area is extended, exploration expenditures that:

(i) were made under the Exploration Contract that the extended portion of the Exploitation Contract Area was previously subject to; and

(ii) were made after the signing of the Exploitation Contract and prior to the extension of the Exploitation Contract Area

are an Allowable Cost in the year that the Exploitation Contract was extended; and

(i) any payment made to a decommissioning fund, environmental compensation fund or similar that is operated by the Authority and that is required as a condition of the Exploitation Contract.

2. Allowable Costs for a year shall not include:

(a) any general administration and management costs, including rent and buildings, accruing outside of the sponsoring State;

(b) any cost related to the importation or processing of polymetallic nodules or other resources outside of the Exploitation Contract area;

(c) any costs related to the transportation of polymetallic nodules or other resources outside of the Exploitation Contract Area aside from the labour, fuel, haulage and supplies for vessels required for transporting polymetallic nodules or other resources from the Exploitation Area to the first port of call;

(d) any capital withdrawn, or sum employed or intended to be employed as capital;

(e) any interest on loans or payment on any financial instrument that has similar characteristics to a loan; and

(f) any other cost not provided for in Standard IV.1.

3. The Allowable Costs provided for in Standard IV.1 (e) [administrative costs] shall be limited to 3% of total Allowable Costs over the term of the Exploitation Contract.

V Arm's Length Transaction

1. In the event that an Allowable Cost or Revenue accrued through an Arm's Length Transaction, then the amount used to calculate the Additional Profit Share shall be the amount from that transaction;

2. In the event that an Allowable Cost or Revenue accrued through a transaction that was not an Arm's Length transaction then the Contractor shall, for the purposes of calculating the Additional Profit Share, report the value of the transaction as the value that would have accrued if the transaction had been an Arm's Length transaction; and

3. In the event that the Authority considers that the Contractor has reported Revenue at a lower value than that which would have accrued in an Arm's Length transaction, or reported an Allowable Cost at a value which is higher than that which would have accrued in an Arm's Length Transaction, then the Authority may, for the purposes of calculating the Additional Profits Share, amend the value of Revenue and/or Allowable Costs to an amount equal to that which would have accrued through an Arm's Length transaction.

VI Covered Payments

1. A Covered Payment is:

~~(a) the actual cash payment by a Contractor to a sponsoring State for payments relating to income, profits or production from seabed mining under the Exploitation Contract;~~

(a) an actual cash payment by the Contractor to its Sponsoring State(s) for payment of a compulsory fiscal imposition levied on the Contractor by its Sponsoring state(s) on the income, profits or production from seabed mining activities under the exploitation contract. Payments of dividends, distributions or similar by Contractors to their Sponsoring State(s) due to the Sponsoring State(s) holding equity in the Contractor are not a Covered Payment.

(b) where there is a signed letter from the sponsoring State's tax authority stating the actual cash amount paid by the Contractor to the sponsoring State for payment of a compulsory fiscal imposition(s) ~~s~~ relating to income, profits or production under the Exploitation Contract; and

(c) where there is a signed letter from an International Accounting Firm confirming the actual cash amount paid by the Contractor to the sponsoring State for payment of a compulsory fiscal imposition~~s~~ relating to income, profits or production under the Exploitation Contract.

VII Additional Profit Share Return

1. The Contractor shall provide an Additional Profit Share Return to the Authority within 90 days of the end of the year.

2. The Additional Profit Share Return shall include, inter alia, the Amount of the Additional Profit Share, Covered Payments, Revenues and Allowable Costs and further details as provided for by the Additional Profit Share Standards.

VIII Payment of Additional Profit Share

1. The Additional Profit Share shall be paid on the date the Additional Profit Share Return is lodged.

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2. The Additional Profit Share shall be paid in USD or any other freely convertible currency, save that the Contractor shall only make payment in one currency over the term of the Exploitation Contract.

3. All payments shall be paid gross and shall be free of any deductions, transaction fees or other charges.

IX Applicability of Other Regulations to the Additional Profit Share

1. The following provisions shall apply to the Additional Profit Share as they do to the Royalty:

(a) Regulation 77 Anti-avoidance rule; and

(b) Regulation 78 Arm's Length Adjustments.

[If Member States are happy with the provisions for Arm's Length Adjustments provided for by Regulation 78 then it may be possible to delete Standard V. In addition, it may be possible to link the profit share to other existing provisions concerning the royalty and to reduce the scope of the Standards provided for in the next paragraph].

X Requirement for Further Standards

1. The Authority shall publish Standards providing for:

(a) any further information required by Contractors to calculate the Additional Profit Share;

(b) further details on the format and information to be included in the Additional Profit Share Return;

(c) the rights of the Authority to audit the Additional Profit Share Return;

(d) requirements for contractors to keep records and books of account;

(e) penalties for any offences relating to the Additional Profit Share;

(f) the standards and criteria accounting firms must meet to be considered International Accounting Firms; and

(g) any further provisions required for the effective functioning of the Additional Profit Share.