We thank the Chair of the Open-Ended Working Group for preparing the useful Briefing Note on developing options for determining the financial terms of a contract, in particular, the basis for determining royalties to be paid by contractors to the Authority.

We also thank the Secretariat for arranging for independent consultants to undertake extended analysis to support our development of the financial terms to apply to contracts. And for organising the webinars earlier this year.

In Australia's view, there are three overarching considerations that should govern the determination of the financial terms of a contract:

- Equity – so as to ensure competitive neutrality between mining taking place in the Area and that undertaken within States' national jurisdiction, as required by Section 8, paragraph 1(b) of the Annex to the 1994 Implementing Agreement

- Simplicity – that is, to enable ease of administration and foster compliance

- Efficiency – that is, the encouragement of investment without distortions.

These 3 principles should be balanced as far as possible, but we recognise that this may require tradeoffs to achieve an appropriate balance.

Given that we are considering a regime that will be administered by the Authority, which does not have the extensive administrative resources available to many national governments, priority should be given to developing a regime that will be simple to administer and which will be easier for Contractors to comply with. But this is not to ignore the other two principles of equity and efficiency.

In terms of the methodology for determining the royalty, Australia is of the view that an ad valorem mechanism is to be preferred. This method is used in many jurisdictions, including Australia.

We support the suggestion in the Briefing Note that the royalty should be calculated by reference to observed international pricing benchmarks for the end product extracted and this should be regardless of the form in which the metal is extracted. This will promote efficiency, in that it will avoid distortions, because it takes account of movements in commodity prices.

In the case of copper and nickel, we support referencing the London Metal Exchange. Although for manganese, there is no equivalent single pricing benchmark, as the Briefing Note points out, there are third party pricing services that can be used

Although the Briefing Note does not support Option 1, Australia favours this option because it has the value of simplicity as it will be easier to administer and fosters compliance.

To promote compliance, the Regulations should provide for a royalty regime that is a stand-alone self-assessment regime that includes the appointment of independent auditors that provide their reports to the ISA. Auditors should be appointed at Contractors' expense.

We also recommend that the royalty regime as a whole is reviewed every 5 years to determine its suitability in light of the development of seabed mining, resource pricing and global taxation regimes. This review should not be limited only to the rates of royalty payments, but a broader review of the operation of the financial regime in Part VII of the Regulations.

With reference to the principle of equity, Section 8 1(b) of the Annex to the Implementing Agreement provides that the royalty rates should avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage as compared to land based miners.

We note that the Briefing Note suggests that Company Income Tax or CIT varies considerably between jurisdictions and should be ignored for the purpose of determining what royalty rate should be applied. However, to do this ignores the principle of equity and may place land-based miners at a disadvantage. To avoid this, Australia suggests that a higher rate of royalty should be applied to seabed miners as compared to land-based producers.

We also suggest including in the Regulations a requirement to clarify an Applicant's tax residence status, or in the case of a consortium, the lead member of the group. The OECD has been progressing international tax system reform intended to limit profit shifting to low tax countries, also referred to as the Two Pillar Solution, and this has 137 Members. Australia considers it important that the Authority takes note of, and reinforce, the international focus on profit shifting and transparency and signal to applicants the importance of these OECD initiatives.