Additional Profit Share – Equalisation Measure

Additional Profit Share Imposed	Paragraph 1 (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 Taxes, 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 Taxes 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.
Accumulated Profits	Paragraph 2 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 <u>**1.10**</u> if Accumulated Profits in the previous year were a negative number. [An uplift of 10% is provided for under Z. The actual value of the uplift should be the amount needed to ensure that Accumulated Profits turn positive after profits/taxable income turn positive in the sponsoring State’s tax regime. We would suggest that Dr. Richard Roth provide an opinion, based on the financial model of

	a nodule mine, on the value of the uplift needed to achieve this goal [e.g 8%, 10%, 12% etc].
Revenue	Paragraph 3 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.
Allowable Costs	Paragraph 4 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.) 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; e.) royalty and fee payments by the Contractor under the Exploitation Contract to the Authority;

	f.) expenditures made under the Exploration Contract provided that such expenditures are an Allowable Cost only in the first year of the Exploitation Contract and that the Exploration Costs are only deductible from the first Exploitation Contract. g.) 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, processing or transporting of nodules outside of the Exploitation Contract area; c.) any costs related to the transportation of nodules from inside the Exploitation Contract area to outside of the Exploitation Contract area; 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 section 1. 3.) The Allowable Costs provided for in section 1.d [administrative costs] shall be limited to 3% of total Allowable Costs over the term of the Exploitation Contract.
Arm’s Length Transactions	Paragraph 5 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 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.
Covered Taxes	Paragraph 6 A Covered Tax is: a.) the actual cash payment by a Contractor to a sponsoring State for taxes and royalties relating to income, profits or production from seabed mining under the Exploitation Contract; 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 taxes and royalties 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 taxes and royalties relating to income, profits or production under the Exploitation Contract
Additional Profit Share Return	Paragraph 7 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 Taxes, Revenues and Allowable Costs and further details as provided for by the Additional Profit Share Standards.
Payment of Additional Profit Share	Paragraph 8 1.) The Additional Profit Share shall be paid on the date the Additional Profit Share Return is lodged. 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.

	Paragraph 9 The following provisions shall apply to the Additional Profit Share as they do to the Royalty: 1.) Regulation 77 Anti-avoidance rule; and 2.) Regulation 78 Arm's Length Adjustments. [If state parties are happy with the provisions for Arm's Length Adjustments provided for by Regulation 78 then it may be possible to delete paragraph 5. 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]
Standards	Paragraph 10 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.

Simplified Examples

These highly simplified examples are provided as an aid to understanding the Additional Profit Share equalisation measure. The costs, revenues and profits shown are not an accurate representation of the actual costs, revenues or profits of a seabed mining contractor and the sponsoring State tax assumptions are not based on the tax regime of any specific sponsoring State. These examples are based on the draft text provided in paragraphs 1 and 2. In addition, paragraph 1 provides for the carry forward of uncredited sponsoring State Covered Taxes until they have been fully credited, and this carry forward is not explicitly shown in the below examples.

Example 1: Covered taxes are higher than additional profit share												
Additional Profit Share	0	0	0	0	0	0	0	0	0	0	0	0
A 25% of Accumulated Profits	-8	-23	-51	-48	-33	-16	2	20	20	20	20	20
B Covered Taxes	0	0	0	0	5	10	15	20	20	20	20	20
Accumulated Profits = X - Y + Z	-30	-93	-202	-193	-132	-65	9	80	80	80	80	80
X Revenue	0	0	0	50	100	100	100	100	100	100	100	100
Y Allowable Costs	30	60	100	20	20	20	20	20	20	20	20	20
Z Carried forward loss from previous year or 0	0	-33	-102	-223	-212	-145	-71	0	0	0	0	0

Example 2: Covered taxes are lower than additional profit share												
Additional Profit Share	0	0	0	0	0	0	2	15	15	15	15	15
A 25% of Accumulated Profits	-8	-23	-51	-48	-33	-16	2	20	20	20	20	20
B Covered Taxes	0	0	0	0	0	0	0	5	5	5	5	5
Accumulated Profits = X - Y + Z	-30	-93	-202	-193	-132	-65	9	80	80	80	80	80
X Revenue	0	0	0	50	100	100	100	100	100	100	100	100
Y Allowable Costs	30	60	100	20	20	20	20	20	20	20	20	20
Z Carried forward loss from previous year or 0	0	-33	-102	-223	-212	-145	-71	0	0	0	0	0