Equalization Measures Working Group: Briefing Note

Aims of the Intersessional Working Group on Equalization Measures

The primary aims of the intersessional working group are to:

- decide on the equalization measure to recommend to the Open-Ended Working Group on the Financial Terms of Contracts (OEWG), and
- provide draft text for that measure.

The intersessional working group should also:

- recommend methodology and target effective tax rate (e.g. 43%) for the payment regime
- recommend methodology and target rate for other payments to governments (e.g., Corporate Income Tax (CIT) rate of 25%)
- recommend cost and revenue assumptions to be used in the ISA Financial Model going forward
- determine the rate for the equalization measure (if relevant), and
- recommend which of the four payment regime options the OEWG should adopt.

Introduction

The payment regime for deep-seabed mining in the Area should conform to the provisions of the United Nations Convention on the Law of the Sea ('the Convention'), the 1994 Implementation Agreement and international best practice in extractive industry taxation.

Specifically, Section 8 of the Annex to the Implementation Agreement sets out the following principles:

- 'The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;[1]
- 'The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;[2]
- 'The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;'[3]

and Article 13 of Annex III to the Convention sets out the following guiding objectives for the Authority:

- 'to ensure optimum revenues for the Authority from the proceeds of commercial production,[4]

[1] Paragraph 1(a), Section 8 of the Annex to the Implementation Agreement
[2] Paragraph 1(b), Section 8 of the Annex to the Implementation Agreement
[3] Paragraphs 1(c), Section 8 of the Annex to the Implementation Agreement
[4] Convention, Annex III, Article 13.1(a).

- ‘to attract investments and technology to the exploration and exploitation of the Area,[5] and
- to ensure equality of financial treatment and comparable financial obligations for contractors’.[6]

The OEWG has proposed four options for the payment regime. These four options are:

a. Option 1: a one stage fixed ad valorem royalty;
b. Option 2: a two stage time-varying ad valorem royalty;
c. Option 3: a two stage blended ad valorem and profit share system; and
d. Option 4: a two stage progressive / price-varying ad valorem royalty.

At the July 2023 meeting of the OEWG, Professor Richard Roth made a presentation providing for royalty rates of 2.5%/4.5% to 9.5% for option four.[7] The 2.5% royalty rate would apply for the first five years of commercial production, and the rate range of 4.5% to 9.5% would apply for the remaining years of commercial production, with the royalty rate within that range increasing with metal prices.

Given the revenue, cost and sponsoring state tax assumptions made in the July 2023 version of the ISA financial model of a nodule mine[8] (ISA Financial Model), the 2.5%/4.5% to 9.5% royalty regime is forecasted to result in:

a. ISA revenues at $3,700 million, equal to 25% of pre-tax profits, over the mine’s life;
b. sponsoring state revenues (from a 25% corporate income tax) at $2,605 million, equal to 18% of pre-tax profits over the mine’s life;
c. a 43% effective tax rate (the combined ISA and sponsoring state share of pre-tax profits); and
d. a contractor post-tax internal economic rate of return 15.9%.

The above results are consistent with the objectives for the payment regime described earlier. However, these results are also dependent on the assumption that contractors pay a 25% sponsoring state corporate income tax (CIT). The African Group[9] has highlighted that two out of the three published sponsorship agreements provide a complete exemption from CIT. If it is assumed, in the ISA Financial Model, that contractors pay no sponsoring state CIT then the 2.5%/4.5% to 9.5% royalty rates:

- result in an effective tax rate of 25%, which is well below the rate of payment for land-based mining of the same and similar metals; and
- are not consistent with maximising ISA revenues.

One option would be to increase the ISA royalty to achieve a 43% effective tax rate assuming that contractors do not pay sponsoring state CIT. This would, however, result in high royalty rates, may unfairly disadvantage contractors that are liable for sponsoring state CIT and may inhibit investment in the Area.

There is, therefore, a strong rationale for an equalization measure. An equalization measure would aim to ensure that the effective tax rate paid by contractors was the same regardless of sponsoring state tax. Contractors that paid little or no sponsoring state tax due to tax exemptions would pay more

[5] Convention, Annex III, Article 13.1(b).
[6] Convention, Annex III, Article 13.1(c).
[7] See: https://www.isa.org.jm/wp-content/uploads/2023/07/MIT-Financial-Model-1.pdf
[8] Ibid.
[9] See: AGSubmissionPRFinal.pdf (isa.org.jm)

to the ISA under the equalization measure. While contractors that paid significant sponsoring state tax would pay less or nothing to the ISA under the equalization measure. The equalization measure would be in addition to the ISA royalty and could therefore only increase and not decrease ISA revenues. The equalization measure would also, ideally, be simple to administer and audit.

A well-designed equalization measure would have the following advantages:

a. it could increase but not decrease revenues for the ISA and humankind;
b. it demotivates aggressive avoidance of sponsoring state taxes;
c. it ensures similar rates of payment to land-based mining; and
d. it ensures a level playing field between contractors regardless of sponsoring state tax exemptions.

During the OEWG discussions in July 2023, there was broad acceptance from states parties concerning the need for an equalization measure. However, there was no firm agreement on the exact form of the equalization measure.

What equalization measures have been proposed?

The African Group, the IGF[10] and a group of commercial contractors have proposed three different equalization measures. The equalization measures aim to:

a. ensure that when a contractor pays less than an effective tax rate of 25% to a sponsoring state or, under the commercial contractors' proposal, all states which tax commercial production in the Area, the contractor pays an additional amount to the ISA;
b. ensure that the ISA royalty of 2.5%/4.5% to 9.5%, the equalization measure and sponsoring state tax payments combined result in an overall effective tax rate of 43%;
c. ensure that contractors paying little or no sponsoring state tax pay more to the ISA, while contractors paying an effective tax rate of 25% to the sponsoring state, or all states under the commercial contractors' proposal, would pay nothing to the ISA; and
d. demotivate contractors from aggressively avoiding sponsoring state tax.

The African Group[11] proposed an **additional royalty equalization measure**. This measure would see the ISA levy a royalty additional to the ISA base royalty (based on Option 4 for the base royalty) after five years of commercial production against which sponsoring state tax payments would be creditable. The African Group initially argued that a 6% additional royalty rate would, in the ISA Financial Model, result in a contractor paying a 25% sponsoring state corporate income tax making no payments to the ISA under the additional royalty: while at the other extreme a contractor paying no CIT would have to make significant additional payments to the ISA over the life of the mine. The July 2023 presentation by Richard Roth provides for a 7% additional royalty rate and shows that, in the ISA Financial Model, this is consistent with maintaining a 43% effective tax rate when contractors are exempt from CIT.

The additional royalty would be levied on the same measure of nodule value (Relevant Metal Value) as the base royalty, which would simplify its administration and minimise the amount of additional text required in the Exploitation Regulations. Draft text for this measure is provided in **Annex 1**. In addition, **Annex 2** provides an overview of amendments to the additional royalty that have been

[10] Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development.
[11] Ibid, fn 3.

suggested since the African Group initially proposed this measure, and how these have, or have not, been accounted for in the draft tax provided for in Annex 1.

IGF also shared the practice of cashflow taxes from land-based mining which could be used as a basis for an **additional profit share equalization measure**. The additional profit share equalization measure would work by the ISA levying, in addition to the base royalty, an additional 25% profit share (using the CIT rate initially assumed in the MIT model), based against which sponsoring state tax and royalty payments would be creditable. The 25% profit share would be set up as a cash flow system meaning that costs are immediately expensed, and that interest is not an allowable cost. These measures reduce the scope for tax avoidance and simplify tax administration. In addition, this equalization measure allows losses to be uplifted effectively meaning that contractors do not become liable for this profit share before they have achieved a minimum profit (internal economic rate of return). This uplift also ensures that CIT payments are made before and are creditable against the additional profit share. Draft text for this measure is provided for in **Annex 3**.

Commercial contractors have proposed a **Top-Up Profit Share** based on the OECD GloBe Rules. This equalization measure provides that a contractor pays an additional amount to the ISA if the taxes that it and all its related entities involved in mining operations pay to all states are less than 25% of the profits from mining operations. The amount of the equalization payment would be the difference between the equivalent of 25% of profits and the amount of taxes paid. This equalization measure would use OECD GloBe definitions of profits and taxes, which would simplify tax administration and audit, and allow the ISA to lean on a growing body of international tax audit expertise in this area. Draft text for this measure is provided in **Annex 4**.

Table 1 further discusses the relative advantages and disadvantages of these three equalization measures.

Table 1: Relative Advantages and Disadvantages of the Three equalization Measures

Measure	Strengths	Weaknesses
Additional Royalty	• Simple for the ISA to administer as the additional royalty is levied on the same measure of value (Relevant Metal Value) as the ISA royalty. • No or limited risk of transfer mispricing as overstating costs and/or understating revenues would not reduce a contractor's liability under the additional royalty.	• The 7% additional royalty rate is only equal to a 25% CIT when costs and revenues are as forecast in the ISA Financial Model. • If costs are higher than forecast then a contractor's sponsoring state tax payments, even under a 25% CIT, would fall below the additional royalty liability and the overall burden of taxation on the contractor would increase. This would reduce profits and may inhibit investment in the Area.
Additional Profit Share	• This equalization measure encourages contractors to pay taxes in their sponsoring state. • This equalization measure would not disadvantage contractors if costs were higher than forecast as the ISA additional profit liability would fall.	• Definitions of revenues, costs, profits will require careful drafting. • There may be profit shifting through transfer mispricing of revenues and costs, reducing the contractor's profits and its ISA additional profit share liability even if limited tax is paid to the sponsoring state. However, there are two features of the profit share that reduce this risk: The first is that a tax on cash flows allows investors to immediately deduct all business expenses in full as soon as they are incurred. Consequently, there is no deduction for depreciation since all investment expenditure is expensed when it is incurred and doing so would amount to a double deduction. This means there would be no need for the ISA to verify depreciation expenses, which is typically a challenge under CIT. The second is that interests on loans are not deductible from a cash flow tax base. Instead, applying a fixed uplift approximates the cost of capital to negative cash flows.
Top-Up Profit Share	• Builds on definitions of revenues, costs and profits from OECD GloBE Rules, which simplifies administration and means an existing pool of expert accountants and auditors can be used by the ISA. • The inclusion of taxes and profits in all states (not just the sponsoring state) where a contractor and its related entities are involved in mining operations reduces the risk of transfer mispricing between related entities.	• The OECD GloBe Rules do not contain a definition of mining operations and defining and operationalizing such a ring-fencing rule will be complicated. • The inclusion of taxes paid by entities involved in mining operations to non-sponsoring states reduces the motivation for the contractor to pay taxes to the sponsoring state, and is from the viewpoint of a sponsoring state, a weakness.

Annex 1: Additional Royalty Equalization Measure Text

Draft Regulation 64 Bis, Additional Royalty

1. In addition to the royalty provided for in Regulation 64 a Contractor shall pay an Additional Royalty to the Authority.

2. A Contractor from the fifth anniversary after the first day of commercial production 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 Additional Royalty payment shall for a fiscal year shall be equal to X minus Y, where:

   X is the Gross Additional Royalty Liability for that year which is equal to [TBD]% multiplied by the Aggregate Relevant Metal Value, as provided for in appendix IV to these regulations, for that year; and

   Y is any amount of Sponsoring State Covered Tax that has not been credited in previous years.

4. A payment is a Sponsoring State Covered Tax payment when:

   a) it is an actual cash payment by a Contractor to its sponsoring state of taxes and royalties payable on the income, profits or production accruing 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.

5. The Authority may publish Standards providing for any further provisions required for the effective administration, accounting, calculation or functioning of the Additional Royalty.

6. 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.

7. Enclosure II Appendix IV definitions and section 3 and section 4 [These twos section will have to be drafted] apply to the Additional Royalty as they apply to the royalty.

8. Enclosure III Draft Standard sections 1 to 4 apply to the Additional Royalty as they apply to the royalty.

Annex 2: Suggested Amendments to the Additional Royalty Equalization Measure Text

Amendments Suggested During the First Intersessional Workshop on the Equalization Measure	Accounted for in Current/Amended Additional Royalty Text (as shown in Annex)?
Originally the design of the additional royalty only allowed sponsoring state corporate income tax to be credited in the year the tax payment was made. Commercial contractors argued that this was unfair as it would mean that they could not fully credit payments of sponsoring state corporate income tax in those years when such payments were higher than the additional royalty liability.	Yes. The amended additional royalty text allows for uncredited sponsoring state tax payments to be carried forward to future years until fully credited.
Originally the design of the additional royalty only allowed sponsoring state corporate income tax payments to be credited against the additional royalty. Commercial contractors argued that this was unfair as they might pay a royalty or other (than corporate income tax) taxes in the sponsoring state and that these payments should also be creditable.	Yes. The amended additional royalty text provides for all sponsoring state tax and royalty payments to be credited.
There was some discussion of allowing the carry back of uncredited sponsoring state tax payments, which might result in the ISA refunding tax paid in year X in future years.	No. The carry back of uncredited sponsoring state tax is not accounted for in the amended text for the additional royalty as it might cause cash flow problems for the ISA.
Sponsoring states might want to incentivise certain expenditures by contractors such as those on research and development. The additional royalty mechanism arguably removes such incentives because spending on research and development etc would lower a contractor's corporate income tax liability but increase their additional royalty payments (as they would have less corporate income tax to credit against the additional royalty).	No, as no specific mechanism was proposed to account for this problem.
There was some discussion of uplifting contractors' sponsoring state tax payments. For example, if a contractor pays $1 dollar in sponsoring state tax then it gets a $1.2 credit against the additional royalty. This would directly address commercial contractors main concern and would be beneficial to sponsoring states as it would provide a strong motivation for paying more tax to the sponsoring state. However, as this was quite a significant change to the design of the additional royalty, it was considered that it would benefit from further discussion prior to any amendments being made to the additional royalty text.	No, as this is a substantial change to the design of the additional royalty, and it was considered that it would benefit from more discussion and debate.

Annex 3: Additional Profit Share Equalization Measure Text

<table>
<tr><td>Additional Profit Share Imposed</td><td>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. A is 25% of the Accumulated Profits for that year; and

b. 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.</td></tr>
<tr><td>Accumulated Profits</td><td>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</td></tr>
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	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: a) Regulation 77 Anti-avoidance rule; and b) 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.

Annex 4: Top-Up Profit Share Equalization Measure Text

Reg	Amended text
Draft Regulation 64	**Contractor shall pay royalty** 1. 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. 2. The date of commencement of Commercial Production, will be the date notified according to Regulation 27(2). 3. In addition to the royalty referred to in Regulation 64(1), a Contractor may be required to pay a top-up profit share on their profit derived from Commercial Production in the Contract Area as determined in Appendix IV to these regulations.
Appendix IV	**3. Determining a top-up profit share** The top-up profit share on profit from Contractor's Commercial Production in the Contract Area may be payable to the Authority on an annual basis starting in the financial year following five years after the first day of Commercial Production. The top-up profit share shall be calculated in accordance with the Standard and taking into account the Guidelines.
Appendix IV	**6. Calculation and payment of the Top-Up Profit Share** 1. **OECD/G20 Global Anti-Base Erosion Rules (GloBE) Rules** shall be used for the purpose of defining Group companies inside the Mining Perimeter and calculating Income, Covered Taxes, ETR and Top-up Profit Share subject to modifications outlined below. 2. **'Mining Perimeter':** Contractor and other constituent entities that are part of the Group for GloBE Rules purposes and have substantial transactions with the Contractor's mining business in the Area will be deemed to be inside the 'Mining Perimeter.' No revenue thresholds or exemptions will apply. A Contractor shall submit to the Authority twelve months before the start of Commercial Production and every year thereafter, a detailed disclosure of the corporate structure used to conduct mining activities in the Contract Area ('Group companies inside the Mining Perimeter'). 3. **Income:** Income for GloBE Rules purposes will be defined as consolidated income generated by Contractor group companies inside the Mining Perimeter. 4. **Covered taxes**: Covered taxes for GloBE Rules purposes will include any mineral royalties or other revenue-based levies paid by the Contractor group companies inside the Mining Perimeter to the Sponsoring State and other governments. 5. **ETR calculation**: Effective Tax Rate (ETR) calculation will be executed as per GloBE Rules but blended for the Mining Perimeter (adding up all Income and all Covered Taxes for group companies inside the Mining Perimeter). A Contractor shall submit to the Authority within 15 months of the end of the 6th financial year of Commercial Production and every year thereafter an ETR calculation for Mining Perimeter companies audited by an independent auditor qualified in the

	application of GloBE Rules. If ETR calculation shows ETR for the Mining Perimeter of 25% or more, no further action is required by the Contractor. 6. **Top-up profit share calculation**: If ETR for the Mining Perimeter is below 25%, Contractor will submit an independently audited top-up profit share calculation to equalize Mining Perimeter ETR to 25%. 7. **Payment of top-up profit share**: If a top-up profit share is due to the Authority, the profit share shall be payable to the Authority within [90] days.