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DRAFT CONVENTION ON THE LAW OF THE SEA
(INFORMAL TEXT)

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ANNEX III. BASIC CONDITIONS OF PROSPECTING, EXPLORATION AND EXPLOITATION

Article 1
Title to minerals

Title to minerals shall pass upon recovery in accordance with this Convention.

Article 2
Prospecting

1. (a) The Authority shall encourage the conduct of prospecting in the Area.

(b) Prospecting shall be conducted only after the Authority has received a satisfactory written undertaking that the proposed prospector shall comply with this Convention and the relevant rules and regulations of the Authority concerning protection of the marine environment, co-operation in training programmes, and protection of the marine environment. The Authority may require the prospector to conduct prospecting in accordance with the requirements of this Convention and the relevant rules and regulations of the Authority.

(c) Prospecting may be carried out by more than one prospector in the same area or areas simultaneously.

2. Prospecting shall not confer any preferential, proprietary, exclusive or any other rights on the prospector with respect to the resources. A prospector shall, however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling.

Article 3
Exploration and exploitation

1. The Enterprise, States Parties, and the other entities referred to in article 153, paragraph 2 (b), of Part XI of this Convention, may apply to the Authority for approval of plans of work covering activities of the Area.

2. The Enterprise may apply with respect to any part of the Area, but applications by others with respect to reserved areas are subject to the additional requirements of article 5.

3. Exploration and exploitation shall be carried out only in areas specified in plans of work referred to in article 153, paragraph 3, of Part XI of this Convention and approved by the Authority in accordance with the provisions of this Annex and the relevant rules, regulations and procedures of the Authority.

4. Every plan of work approved by the Authority shall:

(a) be in strict conformity with this Convention and the rules and regulations of the Authority;

(b) ensure control by the Authority of activities in the Area in accordance with article 153, paragraph 4, of Part XI of this Convention;

(c) confer on the operator exclusive rights for the exploration and exploitation of the specified categories of resources in the area covered by the plan of work in accordance with the rules and regulations of the Authority. If the plan of work is approved, the operator may retain exclusive rights with respect to such a stage.

5. Except for plans of work proposed by the Enterprise, each plan of work
shall take the form of a contract to be signed by the Authority and the operator or operators upon approval of the plan of work by the Authority.

Article 4
Qualifications of applicants

1. Applicants, other than the Enterprises, shall be qualified if they have the nationality or control and sponsorship required by article 153, paragraph 2 (b), of Part XI of this Convention and if they follow the procedures and meet the qualification standards established by the Authority by means of rules, regulations and procedures.

2. Sponsorship by the State Party of which the applicant is a national shall be sufficient unless the applicant has more than one nationality, as in the case of a partnership or consortium of entities from several States, in which event all States Parties involved shall sponsor the application, or unless the applicant is effectively controlled by another State Party or its nationals, in which event both States Parties shall sponsor the application. The criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority.

3. The sponsoring State or States shall, pursuant to article 159 of Part XI of this Convention, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with its obligations under this Convention and the terms of its contract. A contractor shall not, however, be liable for damage caused by any failure of the sponsoring State to comply with its obligations if that State has sponsored the contractor by it to comply with its obligations or if the sponsoring State has adopted and administered measures which are, within the framework of its legal system and reasonably appropriate for securing compliance by persons under its jurisdiction.

4. Except as provided in paragraph 5, such qualification standards shall relate to the financial and technical capabilities of the applicant and his performance under previous contracts with the Authority.

5. The procedures for assessing the qualifications of States Parties which are applicants shall take into account their character as States.

6. The qualification standards shall require that every applicant, without exception, shall as part of his application undertake:

(a) to accept an enforceable and comply with the applicable obligations created by the provisions of Part XI, rules and regulations of the Authority, decisions of the organs of the Authority, and terms of his contracts with the Authority;

(b) to accept control of the Authority's activities in the Area, as authorized by this Convention;

(c) to provide the Authority with a written assurance that his obligations under the contract will be fulfilled in good faith;

(d) to comply with the provisions on the transfer of technology set forth in article 5.

Article 5
Transfer of technology

1. When submitting a proposed plan of work, every applicant shall make available to the Authority a general description of the equipment and methods to be used in carrying out activities in the Area, as well as other relevant
non-proprietary information about the characteristics of such technology, and
information as to where such technology is available.

2. Every operator under an approved plan of work shall inform the Authority
of revisions in the description and information required by paragraph 1 whenever a
substantial technological change or innovation is introduced.

3. Every contract for the conduct of activities in the Area entered into by
the Authority shall contain the following undertakings by the operator:

(a) to make available to the Enterprise, if and when the Authority so requests
under fair and reasonable commercial terms and conditions, the technology
by which he uses in carrying out activities in the Area under the contract and which he
is legally entitled to transfer. This shall be done by means of licence or other
appropriate arrangements which the operator shall negotiate with the Enterprise,
and which shall be set forth in a special agreement supplementary to the contract;

(b) to obtain a written assurance from the owner of any technology not
covered under subparagraph (a) that the operator uses in carrying out activities in
the Area under the contract and which is not generally available on the open market
that the owner will, if and when the Authority so requests, make available to the
Enterprise to the same extent as made available to the operator, that technology
under licence or other appropriate arrangements and on fair and reasonable commercial
terms and conditions. If such assurance is not obtained, the technology in question
shall not be used by the operator in carrying out activities in the Area;

(c) to acquire, if and when requested to do so by the Enterprise and whenever it
is possible to do so without substantial cost to the contractor, a legally binding and
enforceable right to transfer to the Enterprise in accordance with subparagraph (a) any
technology he uses in carrying out activities in the Area under the contract which he
is legally entitled to transfer and which is not generally available on the open
market. In cases where there is a substantial corporate relationship between the
operator and the owner of the technology, the closeness of this relationship and the
degree of control or influence shall be relevant to the determination whether all
feasible measures have been taken. In cases where the contractor exercises effective
control over the owner, failure to acquire the legal rights from the owner shall be
considered relevant to the applicant's qualifications for any subsequent proposed
plan of work.

(d) to facilitate the acquisition by the Enterprise under licence or other
appropriate arrangements and on fair and reasonable commercial terms and conditions
any technology covered by subparagraph (b) should the Enterprise decide to negotiate
directly with the owner of the technology and request such facilitation;

(a) to take the same measures as those prescribed in subparagraphs (a), (b),
(c) and (d) for the benefit of a developing State or group of developing States
which has applied for a contract under article 9; provided that these measures shall
be limited to the exploitation of the part of the area proposed by the contractor
which has been reserved pursuant to article 8 and provided that activities under the
contract sought by the developing State or group of developing States would not
involve transfer of technology to a third State or the nationals of a third State.
Obligations under this provision shall only apply with respect to any given
contractor where technology has not been requested or transferred by him to the
Enterprise.

4. Disputes concerning the undertakings required by paragraph 3, like other
provisions of the contract, shall be subject to compulsory dispute settlement in
accordance with Part XII, and monetary penalties, suspension, or termination of contract as provided in article 28. Disputes as to whether offers made by the contractor are within the range of fair and reasonable commercial terms and conditions may be submitted by either party to binding commercial arbitration in accordance with the UNCITRAL Arbitration Rules or other arbitration rules as may be prescribed in the rules, regulations and procedures of the Authority. In any case in which the finding is negative, the contractor shall be given 45 days to revise his offer to bring it within that range before the Authority makes any determination with respect to annulation of the contract and the imposition of penalties, as provided in article 30.

5. In the event that the Enterprise is unable to obtain appropriate technology on fair and reasonable commercial terms and conditions to commence in a timely manner the recovery and processing of minerals from the Area, either the Council or the Assembly may convene a group of States Parties composed of those which are engaged in activities in the Area, those which have sponsored entities which are engaged in activities in the Area, and other States Parties having access to such technology. This group shall consult together and shall take effective measures to ensure that such technology is made available to the Enterprise on fair and reasonable commercial terms and conditions. Each such State Party shall take all feasible measures to this end within its own legal system.

6. In the case of joint ventures with the Enterprise, technology-transfer will be in accordance with the terms of the joint venture agreement.

7. The undertakings required by paragraph 3 shall be included in each contract for the conduct of activities in the Area until 10 years after the Enterprise has begun commercial production of minerals from the resources of the Area and may be invoked during that period.

8. For the purposes of this article, "technology" means the specialized equipment and technical know-how, including manuals, designs, operating instructions, training and technical advice and assistance, necessary to assemble, maintain and operate a viable system and the legal right to use these items for that purpose on a non-exclusive basis.

Article 6
Approval of plans of work submitted by applicants

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration proposed plans of work.

2. When considering an application for a contract with respect to activities in the Area, the Authority shall first ascertain whether:

(a) the applicant has complied with the procedures established for applications in accordance with article 4 and has given the Authority the commitments and assurances required by that article. In cases of non-compliance with these procedures or of absence of any of the commitments and assurances referred to, the applicant shall be given 45 days to remedy such defects;

(b) the applicant possesses the requisite qualifications pursuant to article 4.

3. All proposed plans of work shall be dealt with in the order in which they were received, and the Authority shall conduct, as expeditiously as possible, an inquiry into their compliance with the terms of this Convention and the rules, regulations and procedures of the Authority, including the operational requirements, the financial contributions and the undertakings concerning the transfer of
technology. As soon as the issues under investigation have been settled, the Authority shall approve such plans of work, provided that they conform to the uniform and non-discriminatory requirements established by the rules, regulations and procedures of the Authority, unless:

(g) part or all of the proposed area is included in a previously approved plan of work or a previously submitted proposed plan of work which has not yet been finally acted on by the Authority; or

(h) part or all of the proposed area is disapproved by the Authority pursuant to article 152, paragraph 2 (w), of Part XII of this Convention;

(i) the proposed plan of work has been submitted or sponsored by a State Party which already holds:

(i) plans of work for exploration and exploitation of polymetallic nodules in non-reserved sites that, together with either part of the proposed site, would exceed in size 30 per cent of a circular area of 400,000 square kilometres surrounding the centre of either part of the area covered by the proposed plan of work;

(ii) plans of work for the exploration and exploitation of polymetallic nodules in non-reserved sites which in aggregate size constitute 2 per cent of the total sea-bed area which is not reserved or otherwise withdrawn by the Authority from eligibility for exploitation pursuant to article 152, paragraph 2 (w), of Part XII of this Convention.

4. For the purpose of the standard set forth in paragraph 3 (c), a plan of work proposed by a partnership or consortium shall be counted on a pro rata basis among the sponsoring States Parties involved, according to article 4, paragraph 2. The Authority may approve plans of work covered by paragraph 3 (a) if it determines that such approval would not permit a State Party or persons sponsored by it to monopolize the conduct of activities in the Area or to prejudice other States Parties from activities in the Area.

5. Notwithstanding the provisions of paragraph 3 (a), after the end of the interim period as defined in article 151 of Part XI of this Convention, the Authority may adopt by means of rules, regulations and procedures other procedures and criteria consistent with this Convention for deciding which applicants shall have plans of work approved in cases of selection among applicants for a proposed area. These procedures and criteria shall ensure approval of plans of work on an equitable and non-discriminatory basis.

Article 15
Selection of applicants for production authorizations

1. Six months after the entry into force of this Convention, and thereafter each fourth month, the Authority shall take up for consideration applications for production authorization submitted during the immediately preceding period. In the event all such applications can be approved without exceeding the production limitation or contravening the obligations of the Authority under a commodity agreement or arrangement to which it has become a party, as provided in article 151 of Part XII of this Convention, the Authority shall issue the authorizations applied for.

2. Where the selection must be made among applicants for production authorization because of the production limitation set forth in article 151, paragraph 2, of Part XII of this Convention, or because of the obligations of the Authority under a commodity agreement or arrangement to which it has become a party,
as provided for in article 151, paragraph 1, of Part X of this Convention, the Authority shall make the selection on the basis of objective and non-discriminatory standards set forth in rules and regulations drawn up in accordance with this article.

3. The Authority shall consider all applications for production authorization received within the preceding period of time referred to in paragraph 1, and shall give priority to those which:

(a) ensure better assurance of performance, taking into account the financial and technical qualifications of the proposed operator and performance, if any, under previously approved plans of work,

(b) provide earlier prospective financial benefits to the Authority, taking into account when production is scheduled to begin;

(c) have already invested most resources and efforts in prospecting or exploration.

4. Applicants who are not selected in any period shall have priority in subsequent periods until they receive an authorization.

5. Selection shall be made taking into account the need to enhance opportunities for all States Parties, irrespective of their social and economic systems or geographical locations so as to avoid discrimination against any State or system, to participate in activities in the area and to prevent monopolization of such activities. The provisions of this subparagraph shall be applied whenever the Authority considers priorities for production authorization.

6. Production authorization with respect to reserved areas shall have priority whenever fewer reserved sites than non-reserved sites are under exploitation.

7. The Authority shall make its decisions pursuant to this article as promptly as possible after the close of each period.

Article 6

Reservation of sites

Each application, other than those proposed by the Enterprise or by any others for reserved sites, shall cover a total area, which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow mining operations. The applicant shall indicate the co-ordinates of the area into two parts of equal estimated commercial value and submit all the data obtained by him with respect to both parts of the area. Without prejudice to the powers of the Authority pursuant to article 17 the data to be submitted concerning polymetallic nodules to be submitted concerning polymetallic nodules will relate to mapping, sampling, the density of nodules, and the composition of nodules in them. Within 45 days of receiving such data the Authority shall designate the part which is to be reserved solely for the conduct of activities by the Authority through the Enterprise or in association with developing States. This designation may be deferred for a further period of 45 days if the Authority requests an independent expert to assess whether all data required by this article has been submitted to the Authority. The area designated shall become a reserved area as soon as the plan of work for the non-reserved area is approved and the contract is signed.

Article 7

Activities in reserved sites

1. The Enterprise shall be given an opportunity to decide whether it intends to carry out activities in each reserved site. This decision may be taken at any time, unless a notification pursuant to paragraph 4 is received by the Authority, in which
event the Enterprise shall take its decision within a reasonable time. The Enterprise may decide to exploit such sites in joint ventures with the interested State or entity.

2. The Enterprise may conclude contracts for the execution of part of its activities in accordance with Annex IV, article 12. It may also enter into joint ventures for the conduct of such activities with any willing entities which are eligible to carry out activities in the area pursuant to article 123, paragraph 2 (b), of Part XI of this Convention. When considering such joint ventures, the Enterprise shall offer to States Parties which are developing States and their nationals the opportunity of effective participation.

3. The Authority may prescribe, in the rules, regulations and procedures of the Authority, procedural and substantive requirements and conditions with respect to such contracts and joint ventures.

4. Any State Party which is a developing State or any natural or juridical person sponsored by it and effectively controlled by it or by other developing States which is a qualified applicant, or any group of the foregoing, may notify the Authority that it wishes to submit a plan of work pursuant to article 4 with respect to a reserved area. The plan of work shall be considered if the Enterprise decides, pursuant to paragraph 1, that it does not intend to carry out activities in that area.

Article 10
Separate phases of operations

If an operator in accordance with article 3, paragraph 4 (e), has an approved plan of work for exploration only, he shall have a preference and a priority among applicants for a plan of work for exploitation with regard to the same areas and resources; provided, however, that where the operator's performance has not been satisfactory such preference or priority may be withdrawn.

Article 11
Joint arrangements

1. Contracts may provide for joint arrangements, when the parties so agree, between the contractor and the Authority through the Enterprise, in the form of joint ventures, or production sharing, as well as any other form of joint arrangement which shall have the same protection against termination, suspension or revocation as contracts with the Authority.

2. Contractors entering into such joint arrangements with the Enterprise may receive financial incentives as provided for in the financial arrangements established in article 13.

3. Joint venture partners of the Enterprise shall be liable for the payments required by article 13 to the extent of their joint venture share, subject to financial incentives as provided in article 13.

Article 12
Activities conducted by the Enterprise

1. Activities in the area conducted under article 123, paragraph 2 (a), of Part XI of this Convention through the Enterprise shall be governed by the provisions of Part XI, and the relevant Annexes, the rules, regulations and procedures of the Authority and its relevant decisions.

2. Any plan of work proposed by the Enterprise shall be accompanied by evidence supporting its financial and technological capability.
Article 13

Financial terms of contracts

1. In adopting rules, regulations and procedures concerning the financial terms of a contract between the Authority and the entities referred to in Article 135, paragraph 2 (b), of Part XII of this Convention in accordance with the provisions of Part XI, and in negotiating the financial terms of a contract in accordance with the provisions of Part XI and those rules, regulations and procedures, the Authority shall be guided by the following objectives:

(a) to ensure optimum revenues for the Authority from the proceeds of commercial exploitation;

(b) to attract investments and technology to the exploration and exploitation of the area;

(c) to ensure equality of financial treatment and comparable financial obligations on the part of all States and other entities which obtain contracts;

(d) to provide incentives on a uniform and non-discriminatory basis for contractors to undertake joint arrangements with the Enterprise and developing countries or their nationals, to stimulate the transfer of technology thereto, and to train the personnel of the Authority and of developing States;

(e) to enable the Enterprise to engage in sea-bed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b), of Part XI of this Convention; and

(f) to ensure that the financial incentives provided to contractors under paragraph 14, or under the terms of contracts reviewed in accordance with Article 13, or under the provisions of Article 11 with respect to joint ventures, shall not result in subsidizing contractors with a view to placing them at an artificially competitive advantage relative to land-based miners.

2. A fee shall be levied for the administrative cost of processing an application for a contract for exploration and exploitation and shall be fixed at an amount of 500,000 per application. If the cost incurred by the Authority in processing an application is less than 500,000, the Authority shall refund the difference to the applicant. The amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative cost of processing such an application.

3. A contractor shall pay an annual fixed fee of 1 million from the date of entry into force of the contract. If the approved commencement of commercial production is postponed because of a delay in the allocation of the production authorization, in accordance with Article 151 of Part XI of this Convention, the annual fixed fee shall be waived for the period of postponement. From the commencement of commercial production, the contractor shall pay either the production charge or the annual fixed fee, whichever is greater.

4. Within a year from the date of commencement of the commercial production, in conformity with paragraph 3, a contractor shall choose to make his financial contribution to the Authority either by:

(a) paying a production charge only; or

(b) paying a combination of a production charge and a share of net proceeds.

5. (a) If a contractor chooses to make his financial contribution to the Authority by paying a production charge only, it shall be fixed at a percentage
of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

(i) years 1-10 of commercial production
(ii) years 11 to the end of commercial production

(b) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year, as defined in paragraphs 7 and 8.

5. If a contractor chooses to make his financial contribution to the Authority by paying a combination of a production charge and a share of net proceeds, such payments shall be determined as follows:

(c) The production charge shall be fixed at a percentage of the market value of the processed metals produced from the nodules extracted from the contract area in accordance with the following schedule:

(i) first period of commercial production
(ii) second period of commercial production

If, in the second period of commercial production, as defined in subparagraph (d), the return on investment in any accounting year, as defined in subparagraph (a), shall fall below 15 per cent as a result of the payment of the production charge at 4 per cent, the production charge shall be 2 per cent instead of 4 per cent in that accounting year.

(b) The said market value shall be the product of the quantity of the processed metals produced from the nodules extracted from the contract area and the average price for those metals during the relevant accounting year as defined in paragraphs 7 and 8.

(c) (i) The Authority's share of net proceeds shall be taken out of that portion of the contractor's net proceeds which is attributable to the mining of the resources of the contract area, referred to hereinafter as attributable net proceeds.

(ii) The Authority's share of attributable net proceeds shall be determined in accordance with the following incremental schedule:

<table>
<thead>
<tr>
<th>Portion of attributable net proceeds</th>
<th>First period of commercial production</th>
<th>Second period of commercial production</th>
</tr>
</thead>
<tbody>
<tr>
<td>a return on investment which is greater than 0 per cent, but less than 10 per cent</td>
<td>35 per cent</td>
<td>40 per cent</td>
</tr>
<tr>
<td>a return on investment which is 10 per cent or greater, but less than 20 per cent</td>
<td>42.5 per cent</td>
<td>50 per cent</td>
</tr>
</tbody>
</table>
That portion representing  

a return on investment  

which is 20 per cent or  

greater  

50 per cent  

70 per cent  

(a) The first period of commercial production referred to in subparagraphs (a)  

and (b), shall commence in the first accounting year of commercial production, and  

terminate in the accounting year in which the contractor’s development costs with  

interest on the unrecovered portion thereof are fully recovered by his cash surplus,  

as set out below.  

In the first accounting year during which development costs are incurred,  

unrecovered development costs shall equal the development costs less cash surplus  

in that year. In each subsequent accounting year, unrecovered development costs  

shall equal the unrecovered development costs of the preceding accounting year,  

plus interest thereon at the rate of 10 per cent per annum, plus development costs  

incurred in the current accounting year and less contractor’s cash surplus in the  

current accounting year. The accounting year in which unrecovered development  

costs become zero for the first time, shall be the accounting year in which the  

contractor’s development costs with interest on the unrecovered portion thereof  

are fully recovered by his cash surplus.  

The contractor’s cash surplus in any accounting year shall be his gross  

proceeds less his operating costs and less his payments to the Authority under  

subparagraph (e).  

The second period of commercial production shall commence in the accounting  

year following the termination of the first period of commercial production and  

shall continue until the end of the contract.  

(b) The term “attributable net proceeds” shall mean the product of the  

contractor’s net proceeds and the ratio of the development costs to the contractor’s development costs. In the event that the contractor engages in mining, transportation of nodules and production primarily of three  

processed metals, namely, cobalt, copper and nickel, the amount of attributable  

net proceeds shall not be less than 25 per cent of the contractor’s net proceeds.  

Subject to subparagraph (b), in all other cases, including those where the  

contractor engages in mining, transportation of nodules, and production primarily  

of four processed metals, namely, cobalt, copper, manganese and nickel, the  

Authority may, by regulations, prescribe appropriate floors which shall bear the  

same relationship to each case as the 25 per cent floor does to the three metal  

cases.  

(c) The term “contractor’s net proceeds” shall mean the contractor’s gross  

proceeds less his operating costs and less the recovery of his development costs  

as set out in subparagraph (e).  

(d) (1) In the event that the contractor engages in mining, transportation  

of nodules and production of processed metals, the term “contractor’s  

gross proceeds” shall mean the gross revenues from the sale of the  

processed metals, and any other monies deemed to be reasonably  

attributable to the operation of the contract in accordance with the  

financial rules, regulations and procedures of the Authority.  

(2) In all cases other than those specified in subparagraphs (d) (1) and  

(d) (iii), the term “contractor’s gross proceeds” shall mean the gross  

revenues from the sale of the semi-processed metals from the nodules  

extracted from the contract area, and any other monies deemed reasonably  

attributable to the operation of the contract in accordance with the  

financial rules, regulations and procedures of the Authority.
(b) The term "contractor's development costs" shall mean:

(i) all expenditures incurred prior to commencement of commercial production which are directly related to the development of the productive capacity of the contract area and the activities related thereto for operations under the contract in all cases other than that specified in subparagraph (a) in conformity with generally recognized accounting principles, including, inter alia, costs of machinery, equipment, ships, processing plant, construction, buildings, land, roads, prospecting and exploration of the contract area, research and development, interest, required licenses, licenses, fees; and

(ii) similar expenditures to those described in (i) above, incurred subsequent to commencement of commercial production, necessary to carry out the plan of work, except those chargeable to operating costs.

(i) The proceeds from the disposal of capital assets and the market value of those capital assets which are no longer required for operations under the contract and which are not sold shall be deducted from the contractor's development costs during the relevant accounting year. If these deductions exceed the contractor's development costs the excess shall be added to the contractor's gross proceeds.

(ii) The contractor's development costs referred to in subparagraph (b) (i) and (ii) shall be recovered in 10 equal annual installments from the date of commencement of commercial production. The contractor's development costs incurred subsequent to the commencement of commercial production, referred to in subparagraphs (b) (ii) and (ii) (iv) shall be recovered in 10 or fewer equal annual installments so as to ensure their complete recovery by the end of the contract.

(b) The term "contractor's operating costs" shall mean all expenditures incurred after the commencement of commercial production in the operation of the productive capacity of the contract area and the activities related thereto, for operations under the contract, in conformity with generally recognized accounting principles, including, inter alia, the fixed annual fee or the production charge, whichever is greater, expenditures for wages, salaries, employee benefits, materials, services, transportation, processing and marketing costs, interest, utilities, preservation of the marine environment, overhead and administrative costs specifically related to the operation of the contract, and any net operating losses carried forward or backward as specified below. Net operating losses may be carried forward for two consecutive years except in the last two years of the contract when they may be carried forward to the two preceding years.

(c) In the event that the contractor engages in mining, transportation of modules, and production of processed and semi-processed metals, the term "development costs of the mining sector" shall mean the portion of the contractor's development costs which is directly related to the mining of the resources of the contract area, in conformity with generally recognized accounting principles, and the financial rules, regulations and procedures of the Authority, including, inter alia, application fee, annual fixed fee, and, where applicable, costs of prospecting and exploration of the contract area, and a portion of research and development costs.

(e) The term "return on investment" in any accounting year, shall mean the ratio of attributable net proceeds in that year to the development costs of the mining sector. The development costs of the mining sector for the purpose of this subparagraph shall include expenditures on new or replacement equipment in the mining sector less the original cost of the equipment replaced.

(n) In the event that the contractor engages in mining only:
the term "attributable net proceeds" shall mean the whole of the contractor's net proceeds;

(ii) the term "contractor's net proceeds" shall be as defined in subparagraph (i);

(iii) the term "contractor's gross proceeds" shall mean the gross revenues from the sale of the nodules, and any other monies deemed to be reasonably attributable to the operation of the contract in accordance with the financial rules, regulations and procedures of the Authority;

(iv) the term "contractor's development costs" shall mean all expenditures incurred prior to the commencement of commercial production as in subparagraph (a) (i), and all expenditures incurred subsequent to the commencement of commercial production, as in subparagraph (a) (ii), which are directly related to the mining of the resources of the contract area, in conformity with generally recognized accounting principles;

(v) the term "contractor's operating costs" shall mean the contractor's operating costs as in subparagraph (b), which are directly related to the mining of the resources of the contract area in conformity with generally recognized accounting principles;

(vi) the term "return on investment" in any accounting year shall mean the ratio of the contractor's net proceeds in that year to the contractor's development costs. Contractor's development costs for the purpose of this subparagraph shall include expenditures on new or replacement equipment less the original cost of the equipment replaced.

(c) The costs referred to in subparagraphs (a), (b), (c) and (d), in respect of interest paid by the contractor shall be allowed to the extent that, in all the circumstances, the Authority approves, pursuant to article 4, paragraph 1, the debt-equity ratio and the rates of interest as reasonable, having regard to existing commercial practice.

(g) The costs referred to in this paragraph shall not be interpreted as including payments of corporate income taxes or similar charges levied by States in respect of the operations of the contractor.

7. (a) The term "processed metals", referred to in paragraphs 5 and 6, shall mean the metals in the most basic form in which they are customarily traded on international terminal markets. For this purpose, the Authority shall specify, in the financial rules, regulations and procedures, the relevant international terminal market. For the metals which are not traded on such markets, the term customarily traded in representative arm's length transactions.

(b) In the event that the Authority cannot otherwise determine the quantity of the processed metals produced from the nodules extracted from the contract area referred to in paragraphs 5 (b) and 6 (b), the quantity shall be determined on the basis of the metal content of the nodules extracted from the contract area, processing recovery efficiency and other relevant factors in accordance with the rules, regulations and procedures of the Authority, and in conformity with generally recognized accounting principles.

8. If an international terminal market provides a representative pricing mechanism for processed metals, nodules and semi-processed metals from the nodules, the average price on such a market shall be used. In all other cases, the Authority shall, after consulting the contractor, determine a fair price for the said products in accordance with paragraph 9.
9. (a) All costs, expenditures, proceeds and revenues and all determinations of price and value referred to in this article shall be the result of free market or arm's length transactions. In the absence thereof, they shall be determined by the Authority, after consulting the contractor, as though they were the result of free market or arm's length transactions taking into account relevant transactions in other markets.

(b) In order to ensure enforcement of and compliance with the provisions of this paragraph, the Authority shall be guided by the principles adopted for, and the interpretation given to, arm's length transactions by the United Nations Group of the Economic and Social Council on International Enterprises, the Ad Hoc Group of Experts on Tax Treaties between Developing and Developed Countries and other international organizations, and shall adopt rules and regulations specifying uniform and internationally acceptable accounting rules and procedures, and the means of selection by the contractor of certified independent accountants acceptable to the Authority for the purpose of auditing in compliance with the said rules and regulations.

10. The contractor shall make available to the accountants, in accordance with the financial rules, regulations and procedures of the Authority, such financial data as are required to determine compliance with this article.

11. All costs, expenditures, proceeds and revenues, and all prices and values referred to in this article shall be determined in accordance with generally recognized accounting principles and the financial rules, regulations and procedures of the Authority.

12. The payments to the Authority under paragraphs 5 and 6 shall be made in freely usable currencies or currencies which are freely available and effectively usable in the major foreign exchange markets, or at the contractor's option, in the equivalents of processed metals at market value. The market value shall be determined in accordance with paragraph 5 (b). The freely usable currencies and currencies which are freely available and effectively usable in the major foreign exchange markets shall be defined in the rules, regulations and procedures of the Authority in accordance with prevailing international monetary practice.

13. All financial obligations of the contractor to the Authority, as well as all her fees, costs, expenditures, proceeds and revenues referred to in this article shall be adjusted by expressing them in constant terms relative to a base year.

14. The Authority may, taking into account any recommendations of the Economic Planning Commission and the Legal and Technical Commission, adopt rules and regulations that provide for incentives, on a uniform and non-discriminatory basis, to contractors to further the objectives set out in paragraph 1.

15. In the event of a dispute between the Authority and a contractor over the interpretation or application of the financial terms of a contract, either party may submit the dispute to binding commercial arbitration, unless both parties agree to settle the dispute by other means, in accordance with article 188, paragraph 2, of Part X of this Convention.

Article 14
Transfer of Data

1. The operator shall transfer in accordance with the rules and regulations and the terms and conditions of the plan of work to the Authority all data which are both necessary and relevant to the effective implementation of the powers and functions of the principal organs of the Authority in respect of the area covered by the plan of work.
2. Transferred data in respect of the area covered by the plan of work, deemed to be proprietary may only be used for the purposes set forth in this article. Data which are necessary for the promulgation of rules and regulations concerning protection of the marine environment and safety other than equipment design data shall not be deemed to be proprietary.

3. Data transferred to the Authority by prospectors, applicants for contracts for exploration and exploitation, and contractors deemed to be proprietary shall not be disclosed by the Authority to the Enterprise or outside the Authority, but the data on the reserved sites may be disclosed to the Enterprise. Such data transferred by such persons to the Enterprise shall not be disclosed by the Enterprise to the Authority or outside of the Authority. The responsibilities set forth in article 169, paragraph 2, of Part XI of this Convention are equally applicable to the staff of the Enterprise.

**Article 15**

**Training programme**

The contractor shall draw up practical programmes for the training of personnel of the Authority and Developing States, including the participation of such personnel in all activities covered by the contract, in accordance with article 144, paragraph 2, of Part XI of this Convention.

**Article 16**

**Exclusive right to explore and exploit**

The Authority shall, pursuant to Part XI and the rules and regulations prescribed by the Authority, accord the operator the exclusive right to explore and exploit the area covered by the plan of work in respect of a specified category of minerals and shall ensure that no other entity operates in the same area for a different category of minerals in a manner which might interfere with the operations of the operator. The operator shall have security of tenure in accordance with article 153, paragraph 6, of Part XI of this Convention.

**Article 17**

**Rules, regulations and procedures**

1. The Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160, paragraph 2(c)(ii), and article 162, paragraph 2(h)(ii) of Part XI of this Convention, for the implementation of its functions as prescribed in Part XI, inter alia, on the following matters:

(a) Administrative procedures relating to prospecting, exploration and exploitation in the Area;

(b) operations;

(i) size of area;

(ii) duration of operations;

(iii) performance requirements including assurances pursuant to article 4, paragraph 6 (a);

(iv) categories of resources;

(v) denomination of areas;

(vi) progress reports;
(vii) submission of data;
(viii) inspection and supervision of operations;
(ix) prevention of interference with other activities in the marine environment;
(x) transfer of rights and obligations by a contractor;
(xi) procedures for transfer of technology to developing States in accordance with Article 144 of Part XI of this Convention and for their direct participation;
(xii) mining standards and practices including those relating to operational safety, conservation of resources and the protection of the marine environment;
(xiii) definition of commercial production;
(xiv) qualification standards for applicants;
(c) financial matters:
(i) establishment of uniform and non-discriminatory costing and accounting rules, as well as the method of selection of quotas;
(ii) apportionment of proceeds of operations;
(iii) the incentives referred to in Article 151;
(d) rules, regulations and procedures to implement decisions of the Council taken in pursuance of Articles 151, paragraph 4, and 164, paragraph 2(d), of Part XI of this Convention.

2. Regulations on the following items shall fully reflect the objective criteria set out below:

(a) size of areas:

The Authority shall determine the appropriate size of areas for exploration which may be up to twice as large as those for exploitation in order to permit intensive exploration operations. The size of area shall be calculated to satisfy the requirements of Article 5 on reservation of sites as well as stated production requirements consistent with Article 151 of Part XI of this Convention in accordance with the terms of the contract taking into account the state of the art of technology then available for ocean mining and the relevant physical characteristics of the area. Areas shall neither be smaller nor larger than are necessary to satisfy this objective.

(b) duration of operations:

(i) Prospecting shall be without time-limit;
(ii) Exploration shall be of sufficient duration as to permit a thorough survey of the specific area, the design and construction of mining equipment for the area, the design and construction of small and medium-size processing plants for the purpose of testing mining and processing systems;
(iii) The duration of exploitation should be related to the economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability. Exploitation should be of sufficient duration
as to permit commercial extraction of minerals of the area and should include a reasonable time period for completion of commercial scale mining and processing systems, during which period commercial production shall be required. The total duration of exploitation, however, should also be short enough to give the Authority an opportunity to amend the terms and conditions of the plan of work at the time it considers renewal in accordance with rules and regulations which it has issued subsequent to entering into the plan of work.

(e) Performance requirements:

The Authority shall require that during the exploration stage, periodic expenditures be made by the operator which are reasonably related to the size of the area covered by the plan of work and the expenditures which would be expected of a bona fide operator who intended to bring the area into commercial production. Such required expenditures shall not be established at a level which would discourage prospective operators with less costly technology than is prevalent in use. The Authority shall establish a maximum time interval after the exploration stage is completed and the exploitation stage begins to achieve commercial production. To determine this interval, the Authority should take into consideration that construction of large-scale mining and processing systems cannot be initiated until after the termination of the exploration stage and the commencement of the exploitation stage. Once commercial production is achieved in the same area, the Authority shall make reasonable allowance for unavoidable delays in the construction schedule. Operators maintaining production in the same area are required to maintain commercial production throughout the period of the plan of work.

(f) Categories of resources:

In determining the category of resources in respect of which a plan of work may be approved, the Authority shall give emphasis inter alia to the following characteristics:

(i) resources which require the use of similar mining methods; and

(ii) resources which can be developed simultaneously without undue interference between operators in the same area developing different resources.

Nothing in this subparagraph shall deter the Authority from granting a contract for more than one category of mineral in the same area to the same applicant.

(g) Renunciation of areas:

The operator shall have the right at any time to renounce without penalty the whole or part of his rights in the area covered by a plan of work.

(h) Protection of the marine environment:

Rules and regulations shall be drawn up in order to secure effective protection of the marine environment from harmful effects directly resulting from activities in the area or from shipboard processing immediately above a plan site of minerals derived from the mine site, taking into account the extent to which such harmful disposal, dumping and discharge into the marine environment of sediment, waste or other effluents.
(g) Commercial production:

Commercial production shall be deemed to have begun if an operator engages in activity of sustained large-scale recovery operations which yield a sufficient quantity of materials as to indicate clearly that the principal purpose is large-scale production rather than production intended for information gathering, analysis or equipment or plant-testing.

Article 18

Penalties

1. A contractor's rights under the contract concerned may be suspended or terminated only in the following cases:

(a) if, in spite of warnings by the Authority, the contractor has conducted his activities in such a way as to result in serious, persistent and willful violations of the fundamental terms of the contract, Part XI and the rules and regulations of the Authority; or

(b) if a contractor has failed to comply with a final binding decision of the dispute settlement body applicable to him.

2. The Authority may impose upon the contractor monetary penalties proportionate to the seriousness of the violation in any case of violation of terms of contract not covered under paragraph 1 (a), or in lieu of suspension or termination in any case covered under paragraph 1 (a).

3. Except in cases of emergency orders as provided for in article 152, paragraph 2 (v), of Part XI of this Convention, the Authority may not execute a decision involving monetary penalties, suspension or termination until the contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to him pursuant to Part XI, section 5.

Article 19

Revision of contract

1. When circumstances have arisen, or are likely to arise, which, in the opinion of either party, would render the contract inequitable or make it impracticable or impossible to achieve the objectives set out in the contract or in Part XI, the parties shall enter into negotiations to adjust it to new circumstances.

2. Any contract entered into in accordance with article 153, paragraph 3, of Part XI of this Convention may be revised only with the consent of the parties.

Article 20

Transfer of rights and obligations

The rights and obligations existing out of a contract shall be transferred only with the consent of the Authority, and in accordance with the rules and regulations adopted by it. The Authority shall not unreasonably withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant and assumes all of the obligations of the transferor and if the transfer does not confer to the transferee a plan of work, the approval of which would be forbidden by article 6, paragraph 3 (a).

Article 21

Applicable law

1. The law applicable to the contract shall be the provisions of Part XI, the
rules and regulations of the Authority, the terms and conditions of the contract, and
other rules of international law not incompatible with this Convention. Any final
decision rendered by a court or tribunal having jurisdiction by virtue of this
Convention relating to the rights and obligations of the Authority and of the
contractor shall be valid and enforceable in the territory of each State Party.

2. No State Party may impose conditions on a contractor that are inconsistent
with Part XI. However, the application by a State Party of environmental or other
stringent than those imposed by the Authority pursuant to article 17, paragraph 2 (i),
shall not be deemed inconsistent with Part XI.

Article 22
Liability

Any responsibility or liability for wrongful damage arising out of the conduct
of operations by the contractor shall lie with the contractor, account being taken
of contributory factors by the Authority. Similarly, any responsibility or
liability for wrongful damage arising out of the exercise of the powers and functions
of the Authority, including liability for violations under article 159, paragraph 2,
of Part XI of this Convention, shall lie with the Authority account being taken of
contributory factors by the contractor. Liability in every case shall be for the
actual amount of damage.

ANNEX IV. STATUTE OF THE ENTERPRISE

Article 1
Purpose

1. The Enterprise shall be the organ of the Authority which shall carry out
activities in the Area directly pursuant to article 153, paragraph 2 (a), of
Part XI of this Convention, as well as transportation, processing and marketing of
minerals recovered from the Area.

2. In carrying out its purposes and in the performance of its functions, the
Enterprise shall act in accordance with the provisions of this Convention, including
its Annexes, and the rules, regulations and procedures of the Authority.

3. In developing the resources of the Area pursuant to paragraph 1, the
Enterprise shall, subject to the provisions of this Convention, operate on sound
commercial principles.

Article 2
Relationship to the Authority

1. Pursuant to article 170 of Part XI of this Convention, the Enterprise shall
act in accordance with the general policies of the Assembly and the directives of the
Council.

2. Subject to paragraph 1, the Enterprise shall enjoy autonomy in the conduct
of its operations.

3. Nothing in this Convention shall make the Enterprise liable for the acts
or obligations of the Authority or the Authority liable for the acts or obligations
of the Enterprise.