

FOURTH AMENDMENT TO VOISEY'S BAY DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT AGREEMENT is made as of 28 February 2009.

BETWEEN:

HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented by The Minister of Natural Resources

VALE INCO NEWFOUNDLAND & LABRADOR LIMITED, a corporation incorporated under the laws of the Province of Newfoundland and Labrador, and formerly known as Voisey's Bay Nickel Company Limited ("**Vale Inco NL**")

and

VALE INCO LIMITED, a corporation incorporated under the laws of Canada, and formerly known as Inco Limited ("**Vale Inco**")

(collectively referred to as the "**Parties**")

WHEREAS:

- A. The Parties entered into the Voisey's Bay Development Agreement dated 30 September 2002 (the "**Development Agreement**");
- B. The Parties amended the terms of the Development Agreement under the First Amendment Agreement dated 31 December 2008, the Second Amendment Agreement dated 29 January 2009 (which terminated the First Amendment Agreement), and the Third Amendment Agreement dated 27 February 2009 (which terminated the Second Amendment Agreement); and
- C. The Parties entered into an Agreement-in-Principle dated 29 January 2009, and wish to amend the Development Agreement in accordance with the principles in the Agreement-in-Principle as more particularly set forth in this Fourth Amendment Agreement.

THE PARTIES AGREE AS FOLLOWS:

Article 1 - DEFINITIONS AND INTERPRETATION

- 1.1 **Capitalised terms.** All capitalised terms not defined herein shall have the same meaning ascribed thereto in the Development Agreement.
- 1.2 **Interpretation.** The provisions of Sections 1.3 to 1.14 of the Development Agreement are hereby incorporated by reference into this Fourth Amendment Agreement, and references therein to "this Agreement" shall be construed as "this Fourth Amendment Agreement".
- 1.3 **Schedules.** The following schedules attached to this Fourth Amendment Agreement form an integral part of this Fourth Amendment Agreement:

[REDACTED]

- (b) Schedule B – Nickel Concentrate Exemption Order (2009);
- (c) Schedule C – Copper Concentrate Exemption Order (2009);

[REDACTED]

[REDACTED]

[REDACTED]

Article 2 - REPRESENTATIONS AND WARRANTIES

- 2.1 **Proponent's Representations and Warranties.** Acknowledging that the Government is relying on such representations and warranties, Vale NL and Vale Inco jointly and severally represent and warrant to the Government that:
- 2.1.1 each is a corporation which has been duly incorporated or organized, as applicable, under the laws of its jurisdiction of incorporation or organization, as applicable, and is validly existing under such laws;
 - 2.1.2 Vale Inco is extra-provincially registered in the Province;

- 2.1.3 each has all necessary corporate power, authority and capacity to enter into this Fourth Amendment Agreement and to perform its respective obligations herein;
- 2.1.4 [REDACTED] the execution and delivery of this Fourth Amendment Agreement and the consummation of the transactions contemplated herein, by each of them, have been duly authorized by all necessary corporate action on the part of each of them;
- 2.1.5 neither is a party to, bound or affected by, or subject to, any indenture, mortgage, lease, agreement, instrument, charter or by-law provision, which, with or without the giving of notice or the lapse of time, or both, would be violated, contravened or breached by, or under which default would occur as a result of, the execution, delivery or performance of this Fourth Amendment Agreement or the consummation of any of the transactions provided for herein;
- 2.1.6 neither is bound or affected by or subject to any Applicable Law which, with or without the giving of notice or the lapse of time, or both, would be violated, contravened or breached by, or under which default would occur as a result of, the execution, delivery or performance of this Fourth Amendment Agreement or the consummation of any of the transactions provided for herein;
- 2.1.7 no approval, authorization, consent, permit, or other action by, or filing with, any Government Entity is required in connection with the execution and delivery of this Fourth Amendment Agreement and the performance of their respective obligations hereunder, except as otherwise stated herein;
- 2.1.8 there is no suit, action, litigation, arbitration proceeding or proceeding by a Governmental Entity, including appeals and applications for review, in progress, pending or, to the Knowledge of either of them, threatened against or involving either of them, [REDACTED] or any judgment, decree, injunction or order of any court or arbitrator which could adversely affect their capacity or power to execute and deliver this Fourth Amendment Agreement or to consummate the transactions contemplated herein or which could materially adversely affect their respective assets, financial condition or future prospects;

- 2.1.9 this Fourth Amendment Agreement shall, upon execution and delivery, constitute legal, valid and binding obligations of each of them enforceable against them in accordance with their respective terms, except as limited by (a) applicable bankruptcy laws or laws affecting the enforcement of creditors' rights generally, and (b) the general principles of equity;
- 2.1.10 all references to estimates made by Vale Inco and Vale NL in this Fourth Amendment Agreement have been determined by them based upon information available at the date of this Fourth Amendment Agreement, and have been estimated by each of them *bona fide* and reasonably and neither of them has any reason to believe that any such estimate is unreasonable or unfounded at the date of this Fourth Amendment Agreement; and
- 2.1.11 Vale NL and Vale Inco is each a wholly owned subsidiary of Vale.
- 2.2 **Government Acknowledgments.** The Government acknowledges that none of Vale NL, Vale Inco or any Person for whom either of them may be responsible in law have made any representations and warranties with respect to this Fourth Amendment Agreement except the representations and warranties expressly made in this Fourth Amendment Agreement.
- 2.3 **Government's Representations and Warranties.** Acknowledging that the Proponent is relying on such representations and warranties, the Government represents and warrants to the Proponent that:
- 2.3.1 the execution and delivery of this Fourth Amendment Agreement and each of the Exemption Orders and the consummation by the Government of the transactions contemplated herein and therein have been duly authorized by all necessary Government action;
- 2.3.2 it is not a party to, bound or affected by or subject to any indenture, agreement or instrument which, with or without the giving of notice or the lapse of time, or both, would be violated, contravened or breached by, or under which default would occur as a result of, the execution, delivery or performance of this Fourth Amendment Agreement or either of the Nickel Concentrate Exemption Order (2009) or the Copper Concentrate Exemption Order (2009) or the consummation of any of the transactions provided for in any of them; and

2.3.3 this Fourth Amendment Agreement, the Nickel Concentrate Exemption Order (2009) and the Copper Concentrate Exemption Order (2009) shall, upon execution and delivery, constitute legal, valid and binding obligations of it enforceable against it in accordance with their terms, except as they may be limited by the general principles of equity.

2.4 **Proponent Acknowledgements.** Each of Vale Inco and Vale NL acknowledges that neither the Government nor any Person for whom it may be responsible in law has made any representations and warranties with respect to this Fourth Amendment Agreement or the Exemption Orders except the representations and warranties expressly made in this Fourth Amendment Agreement.

Article 3 - AMENDMENTS TO THE DEVELOPMENT AGREEMENT

3.1 Article 1 (Definitions and Interpretation).

3.1.1 Article 1 of the Development Agreement is amended by the addition of the following provisions:

"Agreement-in-Principle" means the Agreement-in-Principle between the Government, Vale Inco NL and Vale Inco dated 29 January 2009.

[REDACTED]

[REDACTED]

[REDACTED]

"Commissioning" means start-up testing, adjustments and initial operation of equipment, sub-systems, systems, components and subcomponents necessary to demonstrate they have been properly installed and are functioning and capable of being brought into operational service.

"Copper Concentrate Exemption Order (2009)" means the Copper Concentrate Exemption Order in the form set forth in Schedule C to the Fourth Amendment Agreement.

"Cure Period" has the meaning set forth in Section 12.4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"FEL 1" means the first stage of front end engineering and design work for the development of underground mines as determined by the Proponent in accordance with its standard methodologies and assumptions.

"FEL 2" means the second stage of front end engineering and design work for the development of underground mines as determined by the Proponent in accordance with its standard methodologies and assumptions which will result in the delivery of a preliminary feasibility study setting out a preliminary assessment of the technical and economic viability of the proposed project and a preliminary cost estimate with an estimated accuracy which is aligned to standards of the Association for the Advancement of Cost Engineering International ("**AACEI**") including the AACEI's standard classification of a Class 4 cost estimate.

"First Amendment Agreement" means the agreement dated 31 December 2008 entered into by the Government, Vale Inco NL and Vale amending the terms of the Development Agreement.

"Fourth Amendment Agreement" means the agreement dated 28 February 2009 entered into by the Government, Vale Inco NL and Vale amending the terms of the Development Agreement.

[REDACTED]

[REDACTED]

"Milestone" has the meaning set forth in Section 12.1.

"Milestone Date" has the meaning set forth in Section 12.1.

"Milestone Notice" has the meaning set forth in Section 12.2.

[REDACTED]

[REDACTED]

"Nickel-in-Concentrate" means that portion of Nickel Concentrate comprising the base metal nickel.

"Nickel Concentrate Exemption Order (2009)" means the Nickel Concentrate Exemption Order in the form set forth in Schedule B to the Fourth Amendment Agreement.

[REDACTED]

"Second Amendment Agreement" means the agreement dated 29 January 2009 entered into by the Government, Vale Inco NL and Vale amending the terms of the Development Agreement.

[REDACTED]

"Suspension Notice" has the meaning set forth in Section 12.3.

"Third Amendment Agreement" means the agreement dated 27 February 2009 entered into by the Government, Vale Inco NL and Vale amending the terms of the Development Agreement.

"Vale" means Companhia Vale do Rio Doce, a corporation incorporated under the laws of Brazil.

3.1.2 The definitions in Article 1 of the Development Agreement noted below are amended as follows:

- (a) the definition of **"Copper Concentrate Exemption Order"** is deleted and replaced by the following provision:

"Copper Concentrate Exemption Order" means the Copper Concentrate Exemption Order in the form of Schedule 1.1A, as the same may be amended or replaced by Copper Concentrate Exemption Order (2009);

- (b) the definition of **"Engineer"** is amended by the deletion of the first two lines and paragraph (a) of the definition, and the substitution thereof with the following provisions:

"Engineer" means an individual, or other Person, independent of and acceptable to both the Proponent and the Government who:

- (a) is an engineer or engineering firm having expertise in the engineering, design, construction and project management of industrial facilities similar in size and complexity to the Processing Plant;
- (c) the definition of **"Event of Default"** is amended by deleting subsection (d) of that definition and substituting the following provision:
- (d) subject to an Event of Force Majeure and/or Section 6.5.2:
- (i) the Decision has not been delivered by 15 November 2008; or
- (ii) the applicable Implementation Plan has not been delivered as required by Section 4.7.4 or 4.7.5;

(iii) the Processing Plant has not been completed on or before 28 February 2013;

(iv) an Engineer has determined that the Proponent is not proceeding diligently to complete the engineering work for and the construction of the Processing Plant so that it will be completed on or before 28 February 2013 as required by Section 4.7.4 or 4.7.5; or

(v) [REDACTED]

(d) the definition of "**Exemption Orders**" is deleted and replaced by the following provision:

"Exemption Orders" means collectively, the Nickel Concentrate Exemption Order, Nickel Concentrate Exemption Order (2009), Copper Concentrate Exemption Order, Copper Concentrate Exemption Order (2009), and Matte Plant Exemption Order;

(e) the definition of "**IEBA**" is deleted and replaced by the following provision:

"IEBA" means the Industrial and Employment Benefits Agreement in the form set out in Schedule 4.9, as amended by the First Amendment to Voisey's Bay Industrial and Employment Benefits Agreement between the parties dated 28 February 2009;

(f) the definition of "**Implementation Plan**" is deleted and replaced by the following provision:

"Implementation Plan" means a detailed description of and time schedule for the completion of the engineering work for and the construction of the Processing Plant by 28 February 2013, which is consistent with the requirements set forth in Schedule A to the Fourth Amendment Agreement;

(g) the definition of "**Inco**" is deleted and replaced by the following provision:

"Vale Inco" or "**Inco**" means Vale Inco Limited, a corporation organized under the laws of Canada, and formerly known as Inco Limited;

- (h) the definition of "**Nickel Concentrate Exemption Order**" is deleted and replaced by the following provision:

"Nickel Concentrate Exemption Order" means the Nickel Concentrate Exemption Order in the form of Schedule 1.1A, as the same may be amended or replaced by Nickel Concentrate Exemption Order (2009);

- (i) the definition of "**VBNC**" is deleted and replaced by the following provision:

"Vale Inco NL" or "**VBNC**" means Vale Inco Newfoundland & Labrador, a corporation incorporated under the laws of the Province, and formerly known as Voisey's Bay Nickel Company Limited.

- 3.2 **Section 4.4 (Underground Exploration Program)**. A new Section 4.4A shall be added to the Development Agreement, immediately following Section 4.4:

4.4A Underground Exploration Program – FEL 1 / FEL 2.

4.4A.1 The Proponent shall provide the Government with the results from the underground exploration program FEL 1 study upon execution of the Fourth Amendment Agreement, or as soon thereafter as the parties may agree.

4.4A.2 The Proponent shall continue its underground exploration program in accordance with Section 4.4, and shall complete a FEL 2 study by 30 June 2011. The Proponent shall provide the Government with the results from the FEL 2 study forthwith following its completion.

3.3 **Section 4.7 (Selection of Applicable Processing Plant)**

- (a) **Implementation Plan Submission.** Section 4.7.4 of the Development Agreement is deleted and replaced by the following provision:

4.7.4 The Proponent has confirmed in its Decision that it intends to construct the Hydromet Plant and shall deliver the Implementation Plan for the Hydromet Plant on or before 31 March 2009 and thereafter shall proceed diligently to complete the detailed engineering for and construction of the Hydromet Plant in

accordance with the Implementation Plan so that it shall be completed on or before 28 February 2013. The detailed project schedule included in the Implementation Plan shall be predicated upon the Milestones and Milestone Dates and follow the general sequence of events as set out in the draft Implementation Plan dated 31 December 2008.

- (b) **Engineer's Certification as to Due Diligence.** Section 4.7.6 of the Development Agreement is deleted and replaced by the following provisions:

4.7.6 The determination as to whether the Proponent is proceeding diligently with the completion of the engineering work for and the construction of the Processing Plant for completion on or before 28 February 2013 as required by Section 4.7.4 or 4.7.5 shall be made by an Engineer:

- (a) on 31 August 2009;
- (b) on February 28th and August 31st of each year after 2009 until the Construction Completion Date, unless otherwise agreed by the parties; and
- (c) as requested by the Government or the Proponent from time to time, which request shall be in writing and given to the Engineer and the other party.

In each instance, the Engineer shall, within thirty (30) days of the dates referred to in paragraphs 4.7.6(a) and (b) and within thirty (30) days of the date of a request under paragraph 4.7.6(c), certify to both the Government and the Proponent as to whether the Proponent is proceeding diligently with the actual engineering work for and construction of the Processing Plant for completion on or before 28 February 2013 in accordance with the Implementation Plan.

4.7.6A The Proponent shall make available to the Engineer all Project data concerning the engineering and construction of the Processing Plant required to permit the Engineer to issue a certificate in accordance with Section 4.7.6, and shall provide a copy of the same to the Government if so requested.

4.7.6B If the parties have not on or before 28 February 2009, or such other date as the Government and Proponent may agree upon in writing, appointed an Engineer, the appointment of the Engineer shall be determined by arbitration in accordance with the applicable provisions of Schedule 8.1 (Dispute Resolution Procedures), subject to the following modifications thereto:

- (a) the Government and the Proponent shall each appoint one Arbitrator and send notice of the same to the other party on or before Monday, 9 March 2009;
- (b) promptly following the appointment of the Arbitrators nominated by the Government and the Proponent, and in any event on or before Monday, 16 March 2009, the two Arbitrators shall appoint a third Arbitrator, who shall be chair;
- (c) the Government and the Proponent shall each submit to the Arbitration Panel its position in writing together with any and all documentation in support thereof no later than Wednesday, 18 March 2009; and
- (d) the Arbitration Panel shall convene no later than Wednesday, 25 March 2009, and thereafter render a ruling on the matter no later than Tuesday, 31 March 2009.

3.4 **Article 5 (Force Majeure)**. Section 5.1 of the Development Agreement is deleted and replaced by the following provision:

5.1 **Events of Force Majeure.** For the purposes of this Article 5 and subject to the exceptions and qualifications below, "**Event of Force Majeure**" means any act or event that prevents the Proponent from performing its obligations under this Agreement, provided such act or event is beyond the reasonable control of the Proponent and the Proponent has been unable to overcome such act or event by the exercise of due diligence. Acts or events of force majeure hereunder include, strikes and other labour disturbances, acts of God, storms, fires, floods, epidemics, explosions, earthquakes, lightning, riots, insurrections, acts of war, provided that the effect of such event of force majeure must continue for a period of time of not less than forty-eight (48) hours. Explicitly excluded as an Event of Force Majeure are:

- 5.1.1 shortage of necessary labour;
- 5.1.2 an inability to obtain supplies, labour or other services;
- 5.1.3 lack of finances or changes in economic circumstances of the Proponent; and
- 5.1.4 any act or event which merely results in the performance of the obligations hereunder being at a cost to the Proponent greater than that which would, but for the occurrence of the act or event, have been incurred by the Proponent.

3.5 **Section 6.2 (Electrical Rights and Provision of Power)**. Section 6.2 (Electrical Rights and Provision of Power) of the Development Agreement is deleted and replaced by the following provisions:

6.2 **Electrical Rights and Provision of Power.** The Government shall cause Newfoundland and Labrador Hydro or its successors to:

- 6.2.1 provide to the Proponent electrical power for the Processing Plant at the island industrial electrical rate; and
- 6.2.2 ensure that Newfoundland and Labrador Hydro or its successors can supply to the Proponent sufficient electrical power for the operation of the Processing Plant.

3.6 **Section 6.4 (Exemption Orders)**. Section 6.4 (Exemption Orders) of the Development Agreement is amended by making the existing provision subsection 6.4.1 and the addition of the following provisions, immediately following subsection 6.4.1:

6.4.2 **Exemption Orders (2009).** The Government shall issue the Nickel Concentrate Exemption Order (2009) and Copper Concentrate Exemption Order (2009) effective 28 February 2009.

6.4.3 **Export of Nickel-in-Concentrate.** The Government shall permit the Proponent to export a maximum of 440,000 tonnes of Nickel-in-Concentrate from the Province during the period commencing on 30 September 2002 and ending on the earlier of the Construction Completion Date and 28 February 2013. During the period commencing 1 January 2009 and ending 28 February 2013, the Proponent shall be permitted to export Nickel-in-

Concentrate from the Province at a rate which does not exceed an average over the period of 55,000 tonnes per calendar year, and, in respect of the 2009 calendar year, does not exceed 55,000 tonnes.

3.7 **Article 7 (Proponent's Default).**

(a) **Termination.** Section 7.2 (Termination) of the Development Agreement is amended by adding the phrase "or Section 7.4" after "Section 6.5.2" in the second line.

(b) [REDACTED]

7.4 [REDACTED]

7.5 [REDACTED]

3.8 **Milestones and Remedies.** The Development Agreement is amended by the addition of the following provisions, immediately following Article 11:

ARTICLE 12
MILESTONES AND REMEDIES

12.1 **Milestones.** The Proponent shall proceed diligently with the engineering, procurement, construction and completion of the Processing Plant. The Proponent shall in addition

meet each of the following milestones (each a "Milestone") by the dates set forth below (each a "Milestone Date") and after each Milestone, shall continue to diligently commence and continue all activities contained within the Implementation Plan.

12.1.1 Implementation Plan. The Proponent shall deliver the Implementation Plan to the Government no later than 31 March 2009 in accordance with Section 4.7.4.

12.1.2 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

[REDACTED]

12.1.3 Vale Board Project Sanction. The Proponent shall, no later than [REDACTED] obtain formal project sanction of the Board of Directors of its parent company Vale, which sanction shall approve the estimated budget for the engineering and construction of the Processing Plant and authorize the Proponent to commence construction and further engineering, and forthwith provide the Government with notice in writing of the same.

12.1.4 [REDACTED]

12.1.5 [REDACTED]

12.2.2 The Government shall determine whether the Proponent has met the Milestones set forth in Sections 12.1.1 (Implementation Plan) and 12.1.3 (Vale Board Project Sanction) by the applicable Milestone Date.

12.2.3 Any determination as to whether the Proponent has met or has failed to meet a Milestone by the applicable Milestone Date shall be made and written notice of the same ("**Milestone Notice**") delivered to the Government and Proponent by the Engineer, or to the Proponent if the determination is made by the Government, as applicable, on the day following the relevant Milestone Date, or as soon as is reasonably possible thereafter, which in any event shall be no later than thirty (30) days after the relevant Milestone Date. Each Milestone Notice shall be accompanied by a report setting forth the detailed basis for the determination.

12.3 **Failure to Meet a Milestone.** If the Proponent fails to meet a Milestone, then upon the delivery to the Proponent of a Milestone Notice in accordance with Section 12.2.3 setting forth the determination that the Proponent has failed to meet a Milestone, the Government may suspend the Proponent's right to export Nickel Concentrate and Copper Concentrate from the Province under the Exemption Orders upon notice in writing being given to the Proponent (a "**Suspension Notice**"), and, subject to Sections 12.4 and 12.5, the Proponent shall not export any Nickel Concentrate or Copper Concentrate from the Province following receipt of any such Suspension Notice.

12.4 **Post-2009 Cure Period.** If the Government delivers a Suspension Notice to the Proponent for a failure to meet a Milestone with a Milestone Date after 2009, the Proponent may continue to export Nickel Concentrate and Copper Concentrate from the Province under the Exemption Orders for a further thirty (30) days ("**Cure Period**") unless the Engineer determines the Proponent is not proceeding diligently to complete the engineering and construction of the Processing Plant in accordance with the Milestones and the Implementation Plan. After the Cure Period, the Government may, in its sole discretion, suspend the Proponent's right to export Nickel Concentrate and Copper Concentrate from the Province under the Exemption Orders upon notice in writing being given to the Proponent, and, subject to Section 12.5, the Proponent shall not export any Nickel Concentrate or Copper Concentrate from the Province following receipt of any such notice.

12.5 **Cessation of Suspension.** If a Milestone has been met for which a Suspension Notice has been issued, the Proponent shall provide notice in writing to the Government, and the Government or Engineer, as applicable, shall, on the day following receipt of such notice, or as soon as is reasonably possible thereafter, which in any event shall be no later than ten (10) days from the date of the notice determine whether the Milestone has been met by the Proponent. The Proponent may recommence the export of Nickel Concentrate and Copper Concentrate from the Province under the Exemption Orders as and from the date the Government or Engineer issues a Milestone Notice confirming the Milestone has been met by the Proponent.

12.6 **Extension of Time for Engineer.** Notwithstanding any other provision in this Agreement, if the Engineer is unable to deliver any determination or notice by the time prescribed in Article 12 due to circumstances beyond the control of the Engineer notwithstanding the exercise of due diligence, the period of time for delivery of the determination or notice shall be extended by such period of time as is reasonable in the circumstances.

3.9 **Financial Assurances.** The Development Agreement is amended by the addition of the following provisions, immediately following Article 12:

ARTICLE 13
FINANCIAL ASSURANCES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

3.10 **Reporting Requirements.** The Development Agreement is amended by the addition of the following provisions, immediately following Article 13:

ARTICLE 14
REPORTING REQUIREMENTS

14.1 **Monthly Reports.** As and from the date the Proponent submits the Implementation Plan to the Government in accordance with Section 4.7.4, and until the Construction Completion Date, the Proponent shall on or before the 21st day of each month provide the Government with a monthly progress report for the Processing Plant indicating the progress of the engineering, procurement, fabrication, construction and Commissioning of the Processing Plant in the preceding calendar month, in a form and with such level of detail as is reasonably satisfactory to the Government. The Proponent shall meet to brief the Government on monthly progress reports as may be reasonably requested by the Government from time to time.

14.2 **Annual Reports.** As and from the date the Proponent submits the Implementation Plan to the Government in accordance with Section 4.7.4, the Proponent shall on or before March 31st of each year provide the Government with a report on the Project for the preceding calendar year, which report shall include production figures, export quantities, actual capital expenditures and operating expenditures, forecast capital expenditures and operating expenditures for the calendar year immediately following, and other costs associated with mining, concentrating and processing for the Project.

14.3 **Other reporting requirements.** The Proponent's reporting requirements under this Article 14 are in addition to any other reporting requirements of the Proponent under this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Article 5 - GENERAL MATTERS

5.1 **Entire Agreement.** This Fourth Amendment Agreement comprises the complete and exclusive agreement of the Parties regarding the subject matter of this Fourth Amendment Agreement and supersedes all oral and written communications, negotiations, representations or agreements in relation to that subject matter made or entered into before the date hereof.

5.2 **Development Agreement Clauses.** The provisions of Article 8 (Dispute Resolution), Article 9 (Confidential Information) and Article 11 (General Matters), save and except for Section 11.11 (Entire Agreement), of the Development Agreement are hereby incorporated by reference into this Fourth Amendment Agreement, and references therein to "this Agreement" shall be construed as "this Fourth Amendment Agreement".

5.3 **No Further Amendments.** Save as expressly set forth in this Fourth Amendment Agreement, the terms and conditions of the Development Agreement remain unchanged and in full force and effect.

5.4 **No Third Party Benefits.** This Fourth Amendment Agreement is solely for the benefit of the Proponent and the Government and this Fourth Amendment Agreement does not, and shall not be deemed to, confer upon or give to any other Person any benefit, remedy, claim, entitlement, reimbursement, cause of action or other right in relation to any of the Parties, nor is it the intent of the Parties that third parties have any right to claim benefits from, or to compel performance by, any of the Parties to this Fourth Amendment Agreement .

5.5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

5.6 **Third Amendment Agreement.** The Third Amendment Agreement dated 27 February 2009 between the Parties (which terminated the Second Amendment Agreement dated 29 January 2009) is terminated as of the date of this Fourth Amendment Agreement, and the First Amendment Agreement, Second Amendment Agreement and the Third Amendment Agreement are no longer of any force and effect.

5.7 **Agreement-in-Principle.** The Agreement-in-Principle dated 29 January 2009 between the Parties is terminated as of the date of this Fourth Amendment Agreement and is no longer of any force and effect.

[THE REST OF THIS PAGE IS LEFT DELIBERATELY BLANK.]

IN WITNESS WHEREOF this First Amendment Agreement is executed by the Parties as of the date first above written.


THE HONOURABLE THE MINISTER OF
NATURAL RESOURCES

VALE INCO NEWFOUNDLAND & LABRADOR LIMITED

By: 

VALE INCO LIMITED

By: 

Schedule A

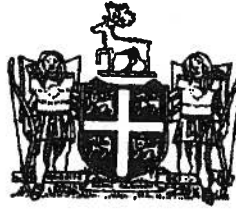
IMPLEMENTATION PLAN CONTENTS

[See attached]

Schedule B

NICKEL CONCENTRATE EXEMPTION ORDER (2009)

[See attached]



NEWFOUNDLAND AND LABRADOR
REGULATION 11/09

Nickel-in-Concentrate Exemption Order, 2009
under the
Mineral Act
(O.C. 2009-051)

(Filed February 28, 2009)

Under the authority of section 31.1 of the *Mineral Act*, the Lieutenant-Governor in Council makes the following Order.

Dated at St. John's, February 28, 2009.

Sandra M. Barnes
Deputy Clerk of the Executive Council

ORDER

Analysis

- | | |
|-------------------------------|----------------------------------|
| 1. Short title | 5. Suspension of shipping rights |
| 2. Interpretation | 6. Suspension of exemption |
| 3. Production order exemption | 7. NLR 66/02 Rep. |
| 4. Termination of exemption | |

Short title 1. This Order may be cited as the *Nickel-in-Concentrate Exemption Order, 2009*.

Interpretation 2. (1) In this Order

(a) "Act" means the *Mineral Act*;

(b) "development agreement" means the Development Agreement made as of September 30, 2002 among Her Majesty the Queen in Right of Newfoundland and Labrador, Voisey's

Bay Nickel Company Limited and Inco Limited and includes the amendments to the agreement entered into on February 28, 2009 by Her Majesty in Right of Newfoundland and Labrador, Vale Inco Newfoundland and Labrador Limited and Vale Inco Limited; and

(c) "production order" means the Voisey's Bay Nickel Company Limited Primary Production Order.

(2) In interpreting this Order, the terms, "construction completion date", "government", "implementation plan", "nickel-in-concentrate", "processing plant" and "proponent" have the meanings given to them in the development agreement.

Production order exemption

3. (1) Notwithstanding the production order, the proponent, prior to the earlier of the construction completion date of the processing plant and February 28, 2013, may ship a maximum of 440,000 tonnes of nickel-in-concentrate from the province.

(2) The amount of nickel-in-concentrate the proponent may ship from the province under subsection (1) includes the amount shipped by the proponent before February 28, 2009 under the Voisey's Bay Nickel Company Limited Nickel Concentrate Exemption Order.

(3) In the period beginning on January 1, 2009 and ending on December 31, 2009, the proponent shall not ship from the province an amount of nickel-in-concentrate that exceeds 55,000 tonnes.

(4) In the period beginning on January 1, 2010 and ending on the earlier of the construction completion date of the processing plant and February 28, 2013, the proponent shall not ship from the province an amount of nickel-in-concentrate that exceeds, on average over the period, 55,000 tonnes in a calendar year.

Termination of exemption

4. The exemption contained in section 3 shall terminate on the earliest of the

(a) date on which the shipments of nickel concentrate by the lessee have reached a total of 440,000 tonnes of nickel-in-concentrate;

(b) construction completion date; and

(c) date on which it is rescinded under section 31.1(3) of the Act.

Suspension of shipping rights

5. Notwithstanding section 3, where the proponent is not proceeding diligently to complete the engineering and construction of the processing plant as required by section 4.7.4 or 4.7.5 of the development agreement, the right of the proponent to ship nickel-in-concentrate out of the province under section 3 shall be suspended, subject to sections 5.3 and 6.5.2 of the development agreement.

Suspension of exemption

6. (1) Notwithstanding section 3, the right of the proponent to ship nickel-in-concentrate from the province shall be suspended where a term of the development agreement provides for the suspension for a failure of the proponent to fulfil an obligation under the development agreement, or for another reason provided for in the development agreement, and a notice, where one is required in the circumstances, has been given by the government to the proponent.

(2) Where the failure of the proponent, or the other reason, giving rise to the suspension of the proponent's right to ship nickel-in-concentrate from the province under this Order has been remedied as provided for under the development agreement, the proponent may resume the shipments.

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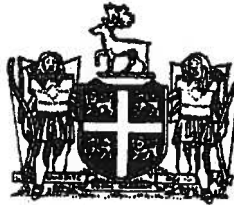
7. *The Voisey's Bay Nickel Company Limited Nickel Concentrate Exemption Order, Newfoundland and Labrador Regulation 66/02, is repealed.*

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Schedule C

COPPER CONCENTRATE EXEMPTION ORDER (2009)

[See attached]



**NEWFOUNDLAND AND LABRADOR
REGULATION 10/09**

Copper-in-Concentrate Exemption Order, 2009
under the
Mineral Act
(O.C. 2009-052)

(Filed February 28, 2009)

Under the authority of section 31.1 of the *Mineral Act*, the Lieutenant-Governor in Council makes the following Order.

Dated at St. John's, February 28, 2009.

Sandra M. Barnes
Deputy Clerk of the Executive Council

ORDER

Analysis

- | | |
|-------------------|-----------------------------|
| 1. Short title | 4. Suspension of exemption |
| 2. Interpretation | 5. Order continues in force |
| 3. Exemption | 6. NLR 64/02 Rep. |

Short title 1. This Order may be cited as the *Copper-in-Concentrate Exemption Order, 2009*.

Interpretation 2. (1) In this order

 (a) "Act" means the *Mineral Act*; and

 (b) "development agreement" means the Development Agreement made as of September 30, 2002 among Her Majesty

the Queen in Right of Newfoundland and Labrador, Voisey's Bay Nickel Company Limited and Inco Limited and includes the amendments to the agreement entered into on February 28, 2009 by Her Majesty in Right of Newfoundland and Labrador, Vale Inco Newfoundland and Labrador Limited and Vale Inco Limited.

(2) In interpreting this Order, the terms "copper-in-concentrate", "project" and "proponent" have the meanings given to them in the development agreement.

Exemption

3. The proponent shall be exempt from the provisions of the Voisey's Bay Nickel Company Limited Primary Production Order with respect to all copper-in-concentrate for the life of the project.

Suspension of exemption

4. (1) Notwithstanding section 3, the right of the proponent to ship copper-in-concentrate from the province shall be suspended where a term of the development agreement provides for the suspension for a failure of the proponent to fulfil an obligation under the development agreement, or for another reason provided for in the development agreement, and a notice, where one is required in the circumstances, has been given by the government to the proponent.

(2) Where the failure of the proponent, or the other reason, giving rise to the suspension of the proponent's right to ship copper-in-concentrate from the province under this Order has been remedied as provided for under the development agreement, the proponent may resume the shipments.

Order continues in force

5. Notwithstanding section 3, this Order shall continue in force until it is rescinded or repealed

(a) as contemplated in section 4.14.3 of the development agreement; or

(b) under subsection 31.1(3) of the Act.

NLR 64/02 Rep.

6. The *Voisey's Bay Nickel Company Limited Copper Concentrate Exemption Order*, Newfoundland and Labrador Regulation 64/02, is repealed.

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