

VOISEY'S BAY DEVELOPMENT AGREEMENT

AMONG

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR

AND

VOISEY'S BAY NICKEL COMPANY LIMITED

AND

INCO LIMITED

Made as of 30 September 2002

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SCHEDULES

THIS DEVELOPMENT AGREEMENT made as of 30 September 2002.

AMONG: **HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR**, as represented by The Honourable The Premier, The Honourable The Minister of Mines and Energy and The Honourable The Minister of Labrador and Aboriginal Affairs;

AND: **VOISEY'S BAY NICKEL COMPANY LIMITED**, a corporation incorporated under the laws of the Province;

AND: **INCO LIMITED**, a corporation organized under the laws of Canada;

NOW THIS DEVELOPMENT AGREEMENT WITNESSETH that for and in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties hereto mutually agree one with the other as follows:

ARTICLE 1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** When used in this Agreement (including the Schedules identified in Section 1.2), unless the context otherwise requires, the following terms shall have the meanings ascribed thereto:

"Affiliate" means, in respect of a Person:

- (a) a Person that Controls such Person;
- (b) a Person that is Controlled by such Person; or
- (c) a Person that is under common Control with such Person;

"Agreement" means this Agreement and all Schedules attached to this Agreement, in each case as they may be amended or supplemented from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and, unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Agreement;

"Applicable Laws" means any statute, ordinance, regulation, authorization, order, permit, approval, grant, license, consent, policy, rule, right, franchise, privilege, determination, directive, decree, by-law, code or standard that is enacted, made, issued or granted by any Government Entity;

“**Approval**” means express approval or concurrence in writing and “**Approve**” and “**Approved**” shall be construed accordingly;

“**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province;

“**Cessation of Mining Operations**” means the date by which, due to the lack of Sufficient Reserves, the continued operation of the Mine and Concentrator Plant would no longer be economically feasible;

“**Closing**” means the execution and delivery of the Instruments and the coming into effect of this Agreement and the Instruments in their entirety as contemplated by Article 10;

“**Closing Date**” means the date which is the fifth Business Day after the date of delivery of the Closing Notice by the Proponent to the Government or such earlier date as the parties agree;

“**Closing Notice**” has the meaning ascribed thereto in Section 10.3;

“**Commercial Production Date**” means the date, to be certified by the Proponent and, at the option of the Government, confirmed by an Engineer, upon which the Hydromet Plant has operated at an annualized production rate of 30,000 tonnes of Finished Nickel Product for a period of ninety consecutive days;

“**Concentrator Plant**” has the meaning ascribed thereto in Section 4.3.1;

“**Construction Completion Date**” means the date, to be certified by the Proponent and, at the option of the Government, confirmed by an Engineer, upon which the construction of the Processing Plant has been completed in accordance with the Proponent’s plans and specifications therefor;

“**Control**” means, with respect to a Person, the ability, directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such Person through:

- (a) the legal or beneficial ownership of voting securities, partnership interests or other equivalent ownership interests in such Person;
- (b) the right or ability to appoint or elect a majority of the directors or individuals of a comparable position of such Person;
- (c) the right or ability to appoint the management of such Person; or
- (d) a contract, an operating agreement, a management agreement, a voting trust or other similar agreement;

and “**Controlled**” means, with respect to a Person, being subject to the Control of another;

“Copper Concentrate” means the intermediate concentrate or similar product produced by the Concentrator Plant containing the principal quantities of copper from ore extracted or removed from the Leased Lands;

“Copper Concentrate Exemption Order” means the Copper Concentrate Exemption Order in the form of Schedule 1.1B;

“Decision” means the written decision to be delivered by the Proponent to the Government as to whether the Proponent intends to engineer and construct the Hydromet Plant or the Matte Plant;

“Decision Date” means the date of delivery of the Decision;

“Decision Materials” means the Feasibility Study and all other information and data in the Proponent’s possession or control (including information and data generated by its advisors and consultants) which form the basis for the Proponent making the Decision (including such data and information subsequently available to or the existence of which is subsequently known by the Proponent) in form which will permit the Government and the Experts to undertake the review of the Decision and the reasons therefor, as contemplated by Section 4.7.5. Such data and information shall include, without limitation, reports on metallurgical test work, proposed flowsheets, detailed capital and operating cost estimates and a detailed economic analysis;

“Demonstration Plant” means the facility at Argentia where hydrometallurgical processing technology will be tested, including any part or sub-process of such technology, the mechanical or processing equipment required therefor and any pilot plant testing or similar campaigns to determine the technical and economic feasibility of such technology;

“Demonstration Plant Completion Date” means the date, as certified by the Proponent and, at the option of the Government, confirmed by an Engineer, upon which the construction of the Demonstration Plant has been completed in accordance with the Proponent’s plans and specifications therefor and is ready to test Nickel Concentrate;

“EMA” means the Environmental Management Agreement entered into among the Government, the Government of Canada, the LIA and Innu Nation dated as of 22 July 2002;

“Engineer” means an individual independent of and acceptable to both the Proponent and the Government who:

- (a) is an engineer with at least ten years of experience in base metals primary processing engineering and the engineering, design and construction management of base metals primary processing plants;
- (b) has the requisite experience to make the relevant determination, confirmation or report to be made or given pursuant to this Agreement; and

- (c) is a member in good standing of a professional association, where “professional association” means a self-regulatory organization of engineers that:
- (i) has been given authority or recognition by statute;
 - (ii) admits members primarily on the basis of their academic qualifications and experience;
 - (iii) requires compliance with the professional standards of competence and ethics established by the organization; and
 - (iv) has disciplinary powers, including the power to suspend or expel a member.

“Event of Bankruptcy” means:

- (a) the entry of a decree or order by a court having jurisdiction adjudging the Proponent a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization or winding-up of the Proponent under the *Companies’ Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-Up Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or issuing sequestration or process of execution against the Proponent or any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order or appointment unstayed, undischarged and in effect for a period of 60 days from the date thereof;
- (b) the institution by the Proponent of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the *Companies’ Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-Up Act* (Canada) or any other bankruptcy, insolvency or analogous laws, or the consent by it to the filing of any such petition or to the appointment of a receiver of the Proponent or of any substantial part of its property, or the making by it of a general assignment for the benefit of creditors, or the Proponent’s admission in writing of its inability to pay its debts generally as they become due or the Proponent taking such action in furtherance of any of such aforementioned purposes; or
- (c) whenever a custodian, receiver, receiver and manager, sequestrator, liquidator, trustee, agent for a secured creditor or other Person with similar powers is appointed for any substantial part of the Project, whether by a court or by extra-judicial means unless such custodian, receiver, receiver and manager, sequestrator, liquidator, trustee or agent is removed within 60 days of such appointment;

“Event of Default” means any one or more of the following:

- (a) an Event of Bankruptcy has occurred with respect to the Proponent;

- (b) the Proponent is wound up, its constating documents or by-laws are forfeited or surrendered or the corporate or other existence of the Proponent is otherwise terminated;
- (c) the Proponent is in breach of its obligations in Section 4.15; or
- (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;
 - (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 31 December 2011; or
 - (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 31 December 2011 as required by Section 4.7.4 or 4.7.5;

“Event of Force Majeure” has the meaning ascribed thereto in Section 5.1;

“Exemption Orders” means collectively, the Nickel Concentrate Exemption Order, the Copper Concentrate Exemption Order and the Matte Plant Exemption Order;

“Experts” means collectively (a) an Engineer or firm of Engineers who will make the technical feasibility review of the Decision, and (b) a recognized third party financial expert independent of the Government and the Proponent who will make the financial feasibility review of the Decision, and who will jointly deliver the Experts’ Report, if requested by the Government pursuant to Section 4.7.5. The Experts shall be selected at the time and in the manner provided for in Section 4.7.3;

“Experts’ Report” has the meaning ascribed thereto in Section 4.7.5;

“Feasibility Study” means the study undertaken by or on behalf of the Proponent containing the technical and economic evaluations which form the basis for the Decision;

“Finished Copper Product” means finished copper product(s) having a copper content of not less than 99%;

“Finished Nickel Product” means finished nickel product(s) having a nickel content of not less than 99.8%;

“Government” means the Government of the Province;

“Government Entity” means (a) any federal, provincial, state, regional, municipal, local or other government, governmental or public department, commission, board, bureau or agency, whether domestic or foreign, (b) any subdivision, agency, commission, board or authority of any of the foregoing, or (c) any quasi governmental or private body exercising any regulatory, expropriation, or taxing authority under or for the account of any of the foregoing, in each case which has jurisdiction in respect of the Project or any part thereof;

“Hydromet Plant” has the meaning ascribed thereto in Section 4.6.1;

“IBAs” means collectively the Impacts and Benefits Agreements made as of 29 July 2002, between the Proponent and each of Innu Nation and the LIA, without any amendment or variation;

“IEBA” means the Industrial and Employment Benefits Agreement in the form set out in Schedule 4.9;

“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 31 December 2011;

“Inco” means Inco Limited, a corporation organized under the laws of Canada;

“Information” has the meaning ascribed thereto in Section 9.1.1;

“Innovation Centre” has the meaning ascribed thereto in Section 3.4;

“Innu Nation” means Innu Nation, a corporation incorporated under the laws of Canada;

“Instruments” means collectively, the University Agreement, the Tax Agreement and the IEBA;

“Leased Lands” means the lands described in Schedule “A” to the Mining Lease, as amended from time to time;

“Legislative Framework” means the Applicable Laws of the Province in existence as of the date hereof applicable to the Project or any part thereof;

“LIA” means the Labrador Inuit Association, a corporation incorporated under the laws of the Province;

“Matte” means any form of granular nickel in matte product containing not less than 50% nickel which can be processed by the Matte Plant to produce Finished Nickel Product;

“Matte Plant” has the meaning ascribed thereto in Section 4.6.2;

“Matte Plant Exemption Order” means the Matte Plant Exemption Order in the form of Schedule 1.1C;

“Mine” means collectively (a) the open pit mine or mines to be developed by the Proponent for the extraction of the mineral ores located on the Leased Lands, and (b) the underground mine or mines as contemplated by Section 4.5 for the extraction of the mineral ores at depth located under the Leased Lands;

“Mineral Act” means the *Mineral Act* (Newfoundland and Labrador), and the regulations thereunder;

“Mining Lease” means the Mining Lease in the form of Schedule 6.3;

“Mining Tax Act” means the *Mining and Mineral Rights Tax Act* (Newfoundland and Labrador), and the regulations thereunder;

“Mining Tax Act Amendments” means the proposed amendments to the Mining Tax Act set out in Schedule 6.9;

“Nickel Concentrate” means the intermediate concentrate or similar product produced by the Concentrator Plant containing the principal quantities of nickel and cobalt from ore extracted or removed from the Leased Lands;

“Nickel Concentrate Exemption Order” means the Nickel Concentrate Exemption Order in the form of Schedule 1.1A;

“Person” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, or Government Entity however designated or constituted;

“Primary Production Order” means the Primary Production Order in the form of Schedule 6.10;

“Processing Plant” means either the Hydromet Plant or the Matte Plant which the Proponent shall construct and operate in the Province as contemplated by Section 4.6;

“Processing Related Reason” means any situation where the Proponent is unable to meet its obligations under Section 4.13.1 as a result of either (a) the unavailability, for whatever *bona fide* reason, of Replacement Concentrate, or (b) the unavailability of Replacement Concentrate on reasonable commercial terms including, without limitation, where the terms relating to price or specifications would make it not economically or technically feasible for processing at the Processing Plant;

“Project” has the meaning ascribed thereto in Section 3.1;

“Proponent” means collectively VBNC, Inco, their respective Affiliates or any Person which (as permitted by this Agreement) individually or together with any of them by way of partnership, joint venture, sub-contract or otherwise holds or is entitled to a majority interest in or Control of the Project or is the operator of the Project, and their respective successors and permitted assigns;

“Province” means the Province of Newfoundland and Labrador, Canada;

“R & D Program” has the meaning ascribed thereto in Section 3.5;

“Replacement Concentrate” means any product containing nickel or cobalt or both derived from ores or any other source of nickel or cobalt or both, mined, extracted or produced outside the Province that, in each case, does not represent Finished Nickel Product but which can be further processed at the Processing Plant to produce Finished Nickel Product;

“Sufficient Reserves” means the estimated quantities of “Proven Mineral Reserves” or “Probable Mineral Reserves”, or both, within the meaning of National Instrument 43-101, “Standards of Disclosure for Mineral Projects” (as amended from time to time), determined by the Proponent in accordance with its standard methodologies and assumptions for such estimates;

“Tax Agreement” means the Tax Agreement to be entered into between the Government and the Proponent as contemplated by Sections 4.12 and 6.8;

“Time of Closing” means 10:00 o’clock in the morning, in the Province, on the Closing Date;

“Underground Exploration Program” means the underground exploration program contemplated by Section 4.4;

“University” means Memorial University of Newfoundland;

“University Agreement” means the agreement to be entered into between the Proponent and the University as contemplated by Section 4.8;

“VBN Undertaking Order” means the Voisey’s Bay Nickel Company Limited Mine and Mill Undertaking Order under the *Environmental Assessment Act* (Newfoundland and Labrador) dated 5 August 1999 (O.C. 99-286), as amended from time to time; and

“VBNC” means Voisey’s Bay Nickel Company Limited, a corporation incorporated under the laws of the Province.

1.2 Schedules.

The documents attached hereto and identified below shall form an integral part of this Agreement:

Schedule 1.1A	- Nickel Concentrate Exemption Order
Schedule 1.1B	- Copper Concentrate Exemption Order
Schedule 1.1C	- Matte Plant Exemption Order
Schedule 4.9	- IEBA
Schedule 4.13.2	- Assaying Procedures
Schedule 6.3	- Mining Lease
Schedule 6.9	- Mining Tax Act Amendments
Schedule 6.10	- Primary Production Order
Schedule 8.1	- Dispute Resolution Procedures

- 1.3 **Subdivisions.** Unless otherwise stated, a reference herein or in a Schedule by numerical or alphabetical designation to an Article, Section, Subsection, Paragraph, Subparagraph or Schedule shall refer to the Article, Section, Subsection, Paragraph, Subparagraph or Schedule bearing that designation in this Agreement or in a Schedule.
- 1.4 **Headings.** The division of this Agreement into Articles, Sections, Subsections, Paragraphs, and Subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.5 **Number and Gender.** Words importing the singular shall include the plural and vice versa and words importing a particular gender shall include all genders. The use of the neuter singular pronoun to refer to a party is deemed a proper reference. The necessary grammatical changes required to make the provisions of this Agreement apply shall in all instances be assumed as though in each case fully expressed.
- 1.6 **Statutes, Regulations, Rules and Orders.** Any reference in this Agreement to all or any part of any statute, regulation, rule or order shall, unless otherwise stated, be a reference to that statute, regulation, rule or order or the relevant part thereof, as amended, substituted, replaced or reenacted from time to time.
- 1.7 **Business Day.** If the day on which any act or payment is required to be done or made under this Agreement is a day which is not a Business Day, then such act or payment shall be performed or made on the next following Business Day.
- 1.8 **Contract Always Speaking.** With the exception of the representations and warranties of the parties set out in Article 2 and any estimates referred to in this Agreement including, without limitation, the estimated dollar amounts, employment levels, economic and related benefits and costs of facilities referred to in this Agreement made by the Proponent, where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise.

- 1.9 **Governing Law and Choice of Forum.** This Agreement shall be interpreted in accordance with the laws in force in the Province, subject to any applicable federal laws and for all purposes this Agreement shall be treated as a Newfoundland and Labrador contract. The Proponent irrevocably submits and attorns to the exclusive jurisdiction of the courts of the Province.
- 1.10 **Construed Covenants.** Each obligation or agreement of this Agreement (other than the representations and warranties of the parties) even though not expressed as a covenant, is to be construed as a covenant.
- 1.11 **Inconsistency or Conflict.** Except where otherwise provided either expressly or by necessary implication in this Agreement, a Schedule hereto or any Instrument, in the event of any inconsistency or conflict between any such Schedule or Instrument and any provision contained in this Agreement, the provision of this Agreement shall prevail to the extent of the inconsistency or conflict.
- 1.12 **Severability.** If any provision of this Agreement, or the application thereof to any Person or circumstance, is, to any extent, held or rendered invalid, void, illegal or unenforceable for any reason, then the particular provision:
- 1.12.1 shall be deemed to be independent of and severed from the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect; and
- 1.12.2 shall continue to be applicable and enforceable to the fullest extent permitted by law against any Persons and in any circumstances other than those as to which it has been held or rendered invalid, void, illegal or unenforceable.
- If a severance occurs under this Section 1.12, the parties shall use their respective best efforts to negotiate in good faith an enforceable replacement provision that, to the greatest extent possible, reflects the intent or serves the purpose of the severed provision.
- 1.13 **Currency.** All references in this Agreement to currency are to Canadian dollars.
- 1.14 **Knowledge.** In this Agreement, where “**Knowledge**” of a party is referred to:
- 1.14.1 in respect of the Proponent, it shall mean the actual knowledge of the executive officers of the Proponent, after due inquiry in respect thereof; and
- 1.14.2 in respect of the Government, it shall mean the actual knowledge of the responsible executives of the applicable department of Government, after due inquiry in respect thereof.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES

- 2.1 **Proponent's Representations and Warranties.** Acknowledging that the Government is relying on such representations and warranties, VBNC and 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 Inco is extra-provincially registered in the Province;
 - 2.1.3 each has all necessary corporate power, authority and capacity:
 - 2.1.3.1 to cause the design, engineering and construction of and to operate and maintain all parts of the Project; and
 - 2.1.3.2 to enter into this Agreement and the Instruments and to perform its respective obligations herein and therein;
 - 2.1.4 the execution and delivery of this Agreement and each of the Instruments and the consummation of the transactions contemplated herein and therein, 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 Agreement or any of the Instruments or the consummation of any of the transactions provided for in any of them;
 - 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 Agreement or any of the Instruments or the consummation of any of the transactions provided for in any of them;
 - 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 Agreement or any of the Instruments and the performance of their respective obligations hereunder or thereunder, 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, 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 Agreement or any of the Instruments or to consummate the transactions contemplated herein or therein or which could materially adversely affect their respective assets, financial condition or future prospects;

- 2.1.9 this Agreement and the Instruments 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 Inco and VBNC in this Agreement including, without limitation, the estimated dollar amounts, employment levels, economic and related benefits and costs of facilities, are made as of the date of this Agreement, have been determined by them based upon information available at the date of this 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 Agreement; and
- 2.1.11 VBNC is a wholly owned subsidiary of Inco and, to the Knowledge of the Proponent, no Person, individually or with any other Person or Persons, currently Controls Inco.
- 2.2 **Government Acknowledgments.** The Government acknowledges that (a) none of VBNC, Inco or any Person for whom either of them may be responsible in law have made any representations and warranties with respect to this Agreement or any of the Instruments, except the representations and warranties expressly made in this Agreement or in any of the Instruments; and (b) the Proponent shall use the most efficient and cost effective mining techniques, including state of the art automated mining technologies aimed at lowering operating costs and extending the life of the Project.
- 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 Agreement and each of the Instruments 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 Agreement or any of the Instruments or the consummation of any of the transactions provided for in any of them; and

2.3.3 this Agreement and the Instruments shall, upon execution and delivery, constitute legal, valid and binding obligations of it enforceable against it in accordance with its terms, except as they may be limited by the general principles of equity.

2.4 **Proponent Acknowledgements.** Each of Inco and VBNC 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 Agreement or any of the Instruments, except the representations and warranties expressly made in this Agreement or in any of the Instruments.

ARTICLE 3

DESCRIPTION OF THE PROJECT AND RELATED FACILITIES

3.1 **The Project.** The “**Project**” will comprise collectively the Underground Exploration Program, the Mine, the Concentrator Plant, the R & D Program, the Demonstration Plant, the Processing Plant and, if applicable, the Concentrator Plant expansion referred to in Section 4.5. The Processing Plant will be capable of processing concentrate and intermediate feeds containing nickel from other sources world wide, which will give the Processing Plant the capability of operating well beyond the life of the Mine.

3.2 **Capital Investment.** The Proponent estimates that the aggregate capital investment in the Project and related facilities will be \$2.9 billion over the estimated 30-year life of the Project, inclusive of sustaining capital expenditures.

3.3 **Employment.** The Proponent estimates that:

3.3.1 the construction phase of the Mine and Concentrator Plant will create approximately 1,700 person-years of employment in the Province, the construction phase of the Hydromet Plant will create approximately 3,000 person-years of employment in the Province and the construction phase of the Matte Plant will create approximately 2,500 person-years of employment in the Province;

3.3.2 during the various operating phases, the Project will create the following employment levels in the Province: Mine and Concentrator Plant - 400 people; R & D Program - 200 people; Underground Exploration Program - 85 people; Hydromet Plant - 400 people; Matte Plant - 350 people;

3.3.3 over the estimated 30-year life of the Project, total employment benefits from the Project in the Province will be 76,000 direct and indirect person-years; and

3.3.4 gross domestic product impact to the Province with respect to the Project will be \$11 billion.

3.4 **Innovation Centre.** The Proponent shall spend \$10 million on, and provide an endowment of \$1 million per year over a ten-year period to cover operational costs for, an Inco Innovation Centre (the “**Innovation Centre**”) at St. John’s in conjunction with the University pursuant to the University Agreement. The focus of the Innovation Centre will be on education and research in mineral exploration, mining and metallurgical processing.

The Innovation Centre will provide world-class education, research and training related to the mining industry to 50-60 students per year to be engaged in Bachelors, Masters and Doctorate level programs. The Proponent shall commence work on the Innovation Centre in 2002 with target completion in 2004.

- 3.5 **R & D Program.** The Proponent shall undertake a comprehensive research and development program intended to establish the commercial, technical and economic feasibility of hydrometallurgical process technology to process the Nickel Concentrate (the “**R & D Program**”). The R & D Program will include the evaluation of chemical engineering sub-processes for the hydrometallurgical process, the mechanical equipment design for the Demonstration Plant and the construction and operation of the Demonstration Plant.

ARTICLE 4 **PROPONENT’S UNDERTAKINGS**

- 4.1 **Infrastructure and Initial Work.** Commencing in 2002, the Proponent shall:
- 4.1.1 at the Mine site, undertake site mobilization, including the establishment of a construction camp, initiation of work on temporary port facilities and construction of access roads;
 - 4.1.2 at Argentia, undertake leasing or other arrangements for occupancy and site preparation, including demolition, fencing, security and signage;
 - 4.1.3 undertake the construction of a warehouse building and establish staging areas and lay down areas in support of Labrador activities;
 - 4.1.4 establish a project office at Argentia and information centres at St. John’s and Happy Valley-Goose Bay; and
 - 4.1.5 complete site selection and commence architectural design and engineering work for the Innovation Centre.

The Proponent estimates that this infrastructure and initial work program will employ in aggregate approximately 250 persons and the Proponent shall spend not less than \$55 million on this program in the Province on or before 31 March 2003.

- 4.2 **R & D Program.**
- 4.2.1 The Proponent shall undertake the R & D Program and as a part thereof shall construct the Demonstration Plant at a cost which the Proponent estimates will be \$130 million. The Proponent shall commence the site development for the Demonstration Plant in 2002 and continue such development into 2003. The initiatives in support of these activities will include the operation of an information centre, preparation of environmental baseline studies and continued upgrading or replacement of utility services required for the Demonstration Plant, maintaining staging areas and cleanup and civil works at Argentia consisting of demolition,

grading and earth works construction. The Proponent has scheduled the completion of the engineering, design and construction of the Demonstration Plant so that the Demonstration Plant Completion Date shall have occurred on or before 31 December 2006.

- 4.2.2 The Proponent shall provide to the Government within 15 days of the end of each calendar quarter commencing with the calendar quarter ending 31 December 2002, a detailed progress report on the results during such calendar quarter of the R & D Program, which report will detail costs incurred to the end of such calendar quarter and contain sufficient documentation and information to enable the Government to evaluate the Proponent's progress with respect to the R & D Program and the development of hydrometallurgical process technology for processing the Nickel Concentrate. If requested by the Government, upon reasonable notice, the Proponent shall provide the Government and its representatives and advisors access, at reasonable times, to the facilities where the R & D Program is being conducted and make appropriate personnel of the Proponent available to respond to any requests for additional information.
- 4.2.3 In addition to the utilization of the Demonstration Plant for the purposes of developing hydrometallurgical process technology for processing the Nickel Concentrate, the Proponent shall explore business opportunities for the ongoing utilization of the Demonstration Plant for the evaluation of other concentrates and intermediate feeds after completion of the R & D Program.

4.3 **Mine and Concentrator Plant.**

- 4.3.1 The Proponent shall cause the development of the Mine and the design, engineering and construction of a mill/concentrator plant which will be capable of processing 6,000 tonnes of ore per day (the "**Concentrator Plant**"). The Concentrator Plant will produce the Copper Concentrate and the Nickel Concentrate. The Proponent has scheduled to begin the development of the Mine and the construction of the Concentrator Plant in 2003 and estimates that the Mine and Concentrator Plant will require three years to construct at a cost of approximately \$710 million.
- 4.3.2 The Proponent:
- 4.3.2.1 shall not ship any Nickel Concentrate out of the Province as permitted by the Nickel Concentrate Exemption Order before the Demonstration Plant Completion Date; and
- 4.3.2.2 shall ship Nickel Concentrate from the Concentrator Plant to the Demonstration Plant in sufficient quantities for the continued operation of the Demonstration Plant during the R & D Program following successful start up of the Concentrator Plant.

- 4.4 **Underground Exploration Program.** The Proponent shall undertake an underground exploration program which it estimates will cost \$95 million and employ approximately 85 people. This program is intended to identify Sufficient Reserves at depth under the Leased Lands and, if there are such Sufficient Reserves, the Proponent shall develop a mining plan for the economic extraction of such Reserves. The initial phase of this underground exploration program will be an advanced surface program which the Proponent estimates will cost \$20 million, to commence in 2002 with completion targeted for 2006. Subsequent underground exploration will be scheduled to ensure that Sufficient Reserves under the Leased Lands are available to sustain full operation of the Concentrator Plant during the transition from open-pit operations to full underground mining operations, if applicable.
- 4.5 **Underground Mine Development and Concentrator Plant Expansion.** If the underground exploration program described in Section 4.4 identifies Sufficient Reserves as contemplated by Section 4.4, the Proponent shall commence the development of an underground mine or mines on the Leased Lands and an expansion of the Concentrator Plant in order to supply sufficient Nickel Concentrate to maintain the operation of the Processing Plant at full capacity. The Proponent estimates that this program will cost approximately \$750 million and employ an aggregate of 800 people.
- 4.6 **Processing Plant.**
- 4.6.1 In order to maximize long-term benefits for the Province and the people of the Province, the Proponent shall use its best efforts through the R & D Program to develop a technically and economically feasible hydrometallurgical process technology for processing the Nickel Concentrate in the Province. If such technology is successfully developed, the Proponent shall cause the design, engineering and construction of and operate and maintain a hydrometallurgical processing plant with a design capacity to produce annually approximately 50,000 tonnes of Finished Nickel Product, together with associated cobalt and copper products (the "**Hydromet Plant**"). The Proponent estimates that the Hydromet Plant will have a capital cost of approximately \$800 million and during the three-year construction period will generate approximately 3,000 person-years of employment. The Proponent estimates that the Hydromet Plant will employ approximately 400 people during operations.
- 4.6.2 If, pursuant to Section 4.7, it is determined that a Hydromet Plant is not technically or economically feasible, the Proponent shall construct a commercial hydrometallurgical nickel-matte processing facility or other similar facility incorporating a proven, state of the art technology to produce Finished Nickel Product (the "**Matte Plant**"). The Matte Plant will have a design capacity to produce annually approximately 50,000 tonnes of Finished Nickel Product, together with associated cobalt and copper products. The Proponent estimates the Matte Plant will have a capital cost of approximately \$670 million and during the estimated three-year construction period will generate approximately 2,500 person-years of employment. The Proponent estimates that the Matte Plant will employ approximately 350 people during operations.

- 4.6.3 The Proponent has represented to the Government that its objective is to operate the Processing Plant well beyond the life of the Mine. Accordingly, the Proponent undertakes to explore technically and economically feasible opportunities for the expansion of the Processing Plant and to secure opportunities to supply the Processing Plant with feed from world wide sources to fully utilize the Proponent's large capital investment in the Processing Plant.
- 4.6.4 The Proponent shall establish the Processing Plant at Argentia unless environmental conditions at Argentia would make it not economically feasible to establish the Processing Plant at Argentia and, in such circumstances, the Proponent shall locate the Processing Plant at another site in the Province.

4.7 **Selection of Applicable Processing Plant.**

- 4.7.1 The Proponent shall use commercially reasonable efforts to deliver as soon as possible but, in any event, shall deliver on or before 15 November 2008, the Decision and the Decision Materials to the Government and the Experts.
- 4.7.2 If the Proponent has not, on or before 30 June 2008, delivered to the Government the Decision and the Decision Materials:
 - 4.7.2.1 it shall forthwith meet with the Government to review on a confidential basis the status of its efforts towards being able to deliver the Decision;
 - 4.7.2.2 thereafter, it shall promptly update the Government from time to time on its efforts to be able to deliver the Decision and the outstanding issues relevant to whether the Decision will be to build the Hydromet Plant or the Matte Plant; and
 - 4.7.2.3 to the extent that the Proponent is not, by 30 June 2008, in a position to deliver the Decision which confirms that the Proponent intends to proceed with the construction of the Hydromet Plant, the Proponent shall use commercially reasonable efforts to develop Implementation Plans for both a Hydromet Plant and a Matte Plant so that it will be able to deliver the Implementation Plan for the Hydromet Plant or Matte Plant, as applicable, on or before 31 December 2008.
- 4.7.3 The Government may at any time after the earlier of the Decision Date or 30 June 2008 give the Proponent notice in writing that it wishes to proceed with the appointment of the Experts. When the Government gives notice to the Proponent requiring the appointment of the Experts, the Government and the Proponent shall then forthwith agree upon the appointment of the Experts. If the Government and the Proponent cannot so agree within 15 days after the giving by the Government of such notice, the appointment of the Experts shall be submitted to arbitration in accordance with the provisions of Schedule 8.1 without first referring the matter to

the Joint Committee or the Mediation Procedure referred to therein. If the Experts are appointed prior to the delivery by the Proponent of the Decision and the Decision Materials, the Proponent shall provide to the Government and the Experts such data and information as is then available that will assist the Experts in their review under Section 4.7.5. The Proponent and the Government shall each pay 50% of the fees and expenses of the Experts. Before receiving the Decision, the Decision Materials or any other information or data from the Proponent under this Agreement, the Experts shall first execute a confidentiality agreement containing substantially the same terms as provided for in Article 9.

- 4.7.4 If in the Decision the Proponent confirms it intends to construct the Hydromet Plant, the Proponent shall deliver the Implementation Plan for the Hydromet Plant on or before 31 December 2008 and thereafter shall proceed diligently to complete the detailed engineering for and construction of the Hydromet Plant in accordance with such Implementation Plan so that it shall be completed on or before 31 December 2011.
- 4.7.5 If in the Decision the Proponent confirms it intends to construct the Matte Plant, the Government shall, on or before the seventh Business Days after the Decision Date, deliver to the Proponent and the Experts a notice in writing (in this Section 4.7.5, the “**Government Decision**”) that the Government either (a) accepts the Decision to build the Matte Plant or (b) intends to refer such Decision to the Experts for review. If in the Government Decision, the Government states it intends to refer the Decision to the Experts, the Proponent shall promptly deliver to the Experts the Decision and the Decision Materials, if it has not previously done so. The Experts will review the Decision, the Decision Materials and any other information or data which the Experts deem appropriate or which the Government requests them to consider, and render their report (the “**Experts’ Report**”) within 30 days of the date on which the Government delivers the Government Decision. If the Government requests the Experts to consider any other information or data in addition to the Decision Materials, it shall provide to the Experts and the Proponent copies of such request and any such information and data at the time it delivers the Government Decision, and the Proponent shall have the right, within five Business Days to comment on or respond to such information and data to the Experts, with a copy to the Government. The Experts’ Report shall determine whether, in the opinion of the Experts, it would be technically and economically feasible for the Proponent to build the Hydromet Plant, together with reasons for such determination. If the Experts’ Report determines that it is technically and economically feasible for the Proponent to build the Hydromet Plant, the Proponent shall, on or before 31 December 2008, deliver to the Government an Implementation Plan for the Hydromet Plant and thereafter shall proceed diligently to complete the detailed engineering for and construction of the Hydromet Plant so that it shall be completed on or before 31 December 2011. If the Experts’ Report confirms that it would not be technically or economically feasible to build the Hydromet Plant, the Proponent shall, on or before 31 December 2008, deliver to the Government an Implementation Plan for the Matte Plant and thereafter shall proceed diligently to complete the detailed engineering for and construction of the Matte Plant in accordance with such Implementation Plan

so that it shall be completed on or before 31 December 2011. Subject to Section 4.7.7, the Experts' Report shall be final and binding on the Government and the Proponent.

- 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 31 December 2011 as required by Section 4.7.4 or 4.7.5 shall be made annually on the anniversary date of the Decision Date by an Engineer, who shall certify to both the Government and the Proponent as to whether the actual engineering work for and construction of the Processing Plant is on schedule with the applicable Implementation Plan.
- 4.7.7 If there is a manifest error in the Experts' Report which, if corrected, would result in a different determination by the Experts, the Experts' Report shall be referred back to the Experts for the purpose of forthwith correcting such manifest error, changing the determination in the Experts' Report and submitting a revised Experts' Report to the Proponent and the Government.
- 4.7.8 Where an Engineer is required to be appointed from time to time for the purposes of Section 4.7.6 or for determining the Commercial Production Date, the Construction Completion Date or the Demonstration Plant Completion Date, the Government and the Proponent shall forthwith agree upon the appointment of such Engineer. If the Government and the Proponent cannot so agree, within 15 days of the Government or the Proponent giving the other notice requiring appointment of an Engineer, the appointment of the Engineer shall be submitted to arbitration in accordance with the provisions of Schedule 8.1 without first referring the matter to the Joint Committee or the Mediation Procedure referred to therein. The Proponent and the Government shall each pay 50% of the fees and expenses of any Engineer.
- 4.8 **Innovation Centre.** The Proponent shall enter into an agreement (the "**University Agreement**") with the University in form and content satisfactory to the Government on or before the Closing Date. The University Agreement shall contain, among other things, the Proponent's commitments and intentions set out in Section 3.4.
- 4.9 **Industrial and Employment Benefits.** The Proponent shall execute the IEBA to be effective 7 October 2002.
- 4.10 **IBAs.** The Proponent represents and warrants to the Government that it has entered into the IBAs.
- 4.11 **VBN Undertaking Order.** The Proponent agrees to abide by and implement the terms and conditions contained in the VBN Undertaking Order.
- 4.12 **Corporate Income Tax.** The Proponent shall use its best efforts to negotiate and execute with the Government an agreement covering the matters set forth in this Section 4.12 and Section 6.8 (the "**Tax Agreement**") as soon as possible, but in any event on or before the Closing Date. The Tax Agreement will contain provisions which, to the extent permitted by

law, will result in an allocation to the Province, for the purposes of Part IV of the Federal Income Tax Regulations, of the Proponent's gross revenues from the sale or disposition of nickel, copper and cobalt products, whether in intermediate or final form, from the Project.

4.13 **Return of Concentrate.**

4.13.1 In consideration of the Government granting the Exemption Orders, the Proponent guarantees that it shall, prior to Cessation of Mining Operations, commence shipping into the Province Replacement Concentrate for processing into Finished Nickel Product at the Processing Plant. Such Replacement Concentrate shall be shipped to and processed by the Processing Plant in sufficient quantities to permit the Processing Plant to operate continuously at a rate that will produce not less than 25,000 tonnes of Finished Nickel Product annually and such shipments shall continue at least until such time as the contained nickel and cobalt in the Replacement Concentrate shall have equalled the total quantity of contained nickel and cobalt in the Nickel Concentrate shipped out of the Province under the terms of the Nickel Concentrate Exemption Order and otherwise than under the provisions of an Exemption Order.

4.13.2 The Proponent shall undertake the Assaying Procedures set out in Schedule 4.13.2 with respect to the Nickel Concentrate and the Replacement Concentrate.

4.13.3 The Proponent acknowledges that if it does not perform its contractual obligations under Section 4.13.1: (a) the Province and the economy of the Province will suffer substantial loss; (b) the Government would not be properly compensated for its loss by monetary damages, which therefore will not be considered an adequate remedy for such breach; and (c) the Government may at any time subsequent to such breach commence an action against the Proponent for any one or more of the following remedies, whether claimed as primary or secondary alternative relief:

4.13.3.1 an order for specific performance;

4.13.3.2 appropriate injunctive relief, whether mandatory or prohibitory; and

4.13.3.3 monetary damages, including for consequential and economic loss, reflecting the substantial losses suffered by the Government and the economy of the Province as a result of such breach.

The Proponent expressly waives any right to claim or argue that the Government cannot claim the relief set out in Sections 4.13.3.1, 4.13.3.2 and 4.13.3.3 in any suit commenced by the Government against the Proponent for the Proponent's failure to perform its obligations under Section 4.13.1.

4.14 **Copper Processing in the Province.**

4.14.1 The Government acknowledges that, at the date hereof, the quantity of copper currently identified in the mineralized zones on or under the Leased Lands together with identified copper deposits elsewhere in the Province are not sufficient to justify the construction and operation of a copper processing facility in the Province on an economically feasible basis.

4.14.2 If at any time in the future:

4.14.2.1 Sufficient Reserves of copper are discovered by the Proponent in the Province (including on or under the Leased Lands) to make economic the processing on a commercial basis of the Copper Concentrate or any other product containing the principal quantities of copper extracted from the Leased Lands into Finished Copper Product in the Province, the Proponent shall process such Copper Concentrate into Finished Copper Product in the Province; or

4.14.2.2 a third party establishes a facility in the Province for the commercial processing of copper concentrate, the Proponent shall offer for sale its then available Copper Concentrate from the Concentrator Plant to such third party for processing in such facility, on then prevailing commercial terms and conditions, subject to the Proponent's then existing contractual obligations.

4.14.3 In the circumstances set out in Section 4.14.2, the Proponent acknowledges that the Government has the right, pursuant to Section 31.1(3) of the Mineral Act, to rescind the Copper Concentrate Exemption Order.

4.15 **Parties in Contract, Change of Control and Assignment.**

4.15.1 The Proponent covenants with the Government that, without the prior Approval of the Government, it:

4.15.1.1 shall not take or threaten or purport to take any action, whether by way of contract, corporate reorganization or arrangement or otherwise that would have the effect of transferring, assigning, subletting or otherwise divesting itself of a majority interest in or Control of (a) the Project, or (b) all or substantially all of the Proponents' rights under this Agreement, the Instruments, the Exemption Orders, the Primary Production Order and, subject to Applicable Laws, the Mining Lease; and

4.15.1.2 shall not take or threaten or purport to take any action which, directly or indirectly, results in a change of Control of VBNC to a party other than Inco.

- 4.15.2 Wherever, pursuant to Section 4.15.1, the Government is requested to grant its Approval, such Approval may be withheld by the Government in its sole and absolute discretion for any reason whatsoever.
- 4.15.3 For *bona fide* tax or other corporate reasons, the Proponent may, without the Approval of the Government, transfer, assign, sublet or otherwise divest to an Affiliate a majority interest in or Control of (a) the Project, or (b) all or substantially all of the Proponent's rights under this Agreement, the Instruments, the Exemption Orders, the Primary Production Order and, subject to Applicable Laws, the Mining Lease. Notwithstanding Section 11.1, no such transfer, assignment, sublet or divestiture shall relieve the Proponent of its obligations hereunder or thereunder.
- 4.15.4 The Proponent shall promptly give written notice to the Government of any action it takes under Section 4.15.1 or 4.15.3.
- 4.16 **Members of House of Assembly.** The Proponent undertakes to (a) ensure that no member of the House of Assembly of the Province shall have any interest in this Agreement, and (b) use its best efforts to ensure that no Member of the House of Assembly of the Province receives any benefit to arise herefrom or from any report, study, review or analysis required to be made or submitted pursuant to this Agreement.
- 4.17 **Mining Lease.** VBNC shall execute the Mining Lease effective 30 September 2002.
- 4.18 **Proponent's Financing.** The Proponent shall use best efforts to obtain the financing contemplated by Section 10.2.4 including, without limitation, the preparation of all feasibility studies required in order to obtain such financing.

ARTICLE 5 **FORCE MAJEURE**

- 5.1 **Events of Force Majeure.** For the purposes of this Article 5 and subject to the exceptions and qualifications below, each of the following shall be an "**Event of Force Majeure**":
- 5.1.1 acts of God or natural disasters, adverse weather conditions or other similar occurrences;
- 5.1.2 acts of war (declared or undeclared) or conditions arising out of or attributable to any such acts of war, revolutions, insurrections, civil strife, formal or informal hostilities, mob violence, riots and similar disturbances, blockades or any other unlawful acts against public order or authority;
- 5.1.3 strikes, lockouts, work stoppages or labour disturbances, unless directly and proximately caused by an unlawful act or omission of the Proponent;
- 5.1.4 (a) delay or failure by suppliers of labour, transportation, materials, machinery, equipment, parts, supplies, utilities or services; (b) contractors' or sub-contractors' shortage of, or inability to obtain, labour, transportation, materials, machinery,

equipment, parts, supplies, utilities or services; or (c) breakdown of equipment, machinery or facilities, unless any of the foregoing are directly and proximately caused by or result from an unlawful act or omission of the Proponent;

- 5.1.5 accidents; and
- 5.1.6 solely in respect of the Proponent's obligations in Section 4.13.1, a Processing Related Reason, provided that a Processing Related Reason shall not be an Event of Force Majeure at any time after three years following Cessation of Mining Operations.
- 5.2 **Obligation to Perform.** In order to obtain relief for an Event of Force Majeure, the Proponent shall (a) use commercially reasonable efforts to (i) prevent the occurrence of, (ii) perform its obligations in the face of, and (iii) terminate any such Event of Force Majeure (other than the events described in Section 5.1.3 relied upon); and (b) give the Government written notice of the facts which the Proponent claims constitute an Event of Force Majeure as soon as reasonably practical upon becoming aware of their existence.
- 5.3 **Force Majeure Relief.** If the Proponent establishes that it is prevented from performing any of its obligations under this Agreement, the Nickel Concentrate Exemption Order or the Matte Plant Exemption Order by reason of an Event of Force Majeure, such obligations will be suspended for the period of the existence of such Event of Force Majeure and the Proponent will be entitled to an extension of all dates referred to in this Agreement, the Nickel Concentrate Exemption Order and the Matte Plant Exemption Order for a reasonable period of time that reflects (a) the period during which the Proponent is prevented from performing its obligations by reason of the Event of Force Majeure, and (b) the impact that such Event of Force Majeure has on the Project including, without limitation, shipping schedules and construction schedules that have been delayed by reason of such Event of Force Majeure. Even though the Proponent's obligations will be suspended for such reasonable period of time, when the applicable Event of Force Majeure is no longer preventing the Proponent from performing its obligations, the Proponent will again be obliged to perform such obligations.

ARTICLE 6

GOVERNMENT UNDERTAKINGS

- 6.1 **Aboriginal Agreements.** The Government represents and warrants that it has entered into (a) interim measures agreements with the Innu Nation and the LIA that include the Voisey's Bay chapter of the respective land claims agreements, and (b) the EMA.
- 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 lower of (a) the island industrial electrical rate or (b) any lower electrical rate that may be

offered from time to time by Newfoundland and Labrador Hydro or its successors to its industrial customers in comparable circumstances; 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.
- 6.3 **Mining Lease.** The Government shall issue the Mining Lease effective 30 September 2002.
- 6.4 **Exemption Orders.** The Government shall issue the Exemption Orders effective 30 September 2002.
- 6.5 **Issue of Authorizations.**
 - 6.5.1 Where the Proponent has submitted all information and data in accordance with Applicable Laws and required by the Government for it to issue or grant any permit, authorization, order or other approval necessary for the Proponent to implement the Project or any part thereof (in this Section 6.5, the “**Authorization(s)**”), the Government shall issue or grant any such Authorization on a timely basis.
 - 6.5.2 If the Government does not issue or grant an Authorization on a timely basis:
 - 6.5.2.1 the Government shall grant the Proponent an extension of all dates referred to in this Agreement, the Nickel Concentrate Exemption Order and the Matte Plant Exemption Order for a reasonable period of time that reflects (a) the period of delay in granting such Authorization, and (b) the impact that such delay has on the Project including, without limitation, shipping schedules and construction schedules that will have been delayed by Government’s failure to issue or grant such Authorization on a timely basis; and
 - 6.5.2.2 if, as a result of the Government’s failure to issue or grant an Authorization on a timely basis, the completion date for the Processing Plant is delayed, and provided that the Proponent establishes that it is likely it will ship out of the Province the total volume of contained nickel in the Nickel Concentrate permitted under the Nickel Concentrate Exemption Order prior to the revised completion date of the Processing Plant, the Government shall amend the Nickel Concentrate Exemption Order to allow an additional quantity of contained nickel in Nickel Concentrate to be shipped out of the Province, which quantity will reflect the reasonable period of time of the extension referred to in Section 6.5.2.1.
 - 6.5.3 The Government shall not be responsible for any delays nor shall the Proponent be entitled to any relief under this Section 6.5 unless such delays are directly and

proximately caused by or result from an act or omission of the Government or a department, regulatory body, board, agent or employee of the Government.

6.6 **Legislative Framework.**

6.6.1 The Government represents to the Proponent (and acknowledges that the Proponent is relying upon such representation) that it shall maintain substantially the Legislative Framework for the duration of the Project, subject to legislative amendments contemplated in this Agreement and legislation of general application. The Government shall maintain the Legislative Framework consistent with this Agreement, subject to Governmental responsibilities, including the responsibility for ensuring proper management of the Province's resources, the protection and maintenance of public health and safety and the protection of the environment. The Government acknowledges that this Agreement is consistent with current public law and Governmental responsibilities.

6.6.2 The Proponent represents to the Government (and the Proponent acknowledges that the Government, in consideration of agreeing to maintain the Legislative Framework, has relied upon such representation) that the Proponent shall perform its obligations set out in this Agreement, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease.

6.7 **Special Project Orders.** The Government shall issue a Special Project Order or Special Project Orders under Section 70 of the *Labour Relations Act* (Newfoundland and Labrador) to ensure a stable labour relations environment throughout the construction phases of the Project. This Order or these Orders shall include, without limitation, provisions such as no strikes and lock-outs and the ability to designate the union organization and employer's representative for the purposes of collective bargaining.

6.8 **Corporate Income Tax.** The Government shall use best efforts to negotiate and execute with the Proponent the Tax Agreement as soon as possible, but in any event on or before the Closing Date. The Tax Agreement will contain provisions:

6.8.1 whereby the Government will provide that the rate of the Province's corporate income tax applicable to the Proponent will be the lower of the "all provinces average" or the Province's income tax rate;

6.8.2 which, to the extent permitted by law, will result in an allocation to the Province, for the purposes of Part IV of the Federal Income Tax Regulations, of the Proponent's gross revenues from the sale or disposition of nickel, copper and cobalt products, whether in intermediate or final form, from the Project; and

6.8.3 whereby the Government will undertake to indemnify the Proponent for any double taxation resulting from the allocation referred to in Section 6.8.2.

- 6.9 **Mining Tax Act.** At the next session of the House of Assembly of the Province, the Government shall introduce and support legislation to amend the Mining Tax Act in accordance with the Mining Tax Act Amendments.
- 6.10 **Primary Production Order.** The Government shall issue the Primary Production Order effective 30 September 2002.
- 6.11 **Industrial and Employment Benefits.** The Government shall execute the IEBA to be effective 7 October 2002.

ARTICLE 7 **PROPONENT'S DEFAULT**

- 7.1 **Notice of an Event of Default.** Upon the happening of an Event of Default, the Government may deliver to the Proponent a notice of default setting forth in reasonable detail the nature of the Event of Default and, if the Government intends to exercise its rights under Section 7.2, indicating the date upon which the Government intends to exercise such rights.
- 7.2 **Termination.** Subject to an Event of Force Majeure or the provisions of Section 6.5.2, where an Event of Default has occurred, and in each of such cases and so often as an Event of Default happens, after giving the notice provided for in Section 7.1, the Government may at any time in its sole discretion do any one or more of the following: (a) terminate this Agreement; (b) terminate the Mining Lease; (c) rescind the Exemption Orders; and (d) take action for any remedy at law or in equity.
- 7.3 **Release by Proponent and Proponent's Indemnity.** The Proponent hereby releases and discharges and agrees to indemnify and save harmless the Government from every claim of every nature, whether in damages (including consequential or indirect damages) or not, which may arise or be suffered by the Proponent or any Person claiming through or under the Proponent by reason of or as a result of anything done by the Government or any successor or assign claiming through or under the Government under the provisions of Section 7.2.

ARTICLE 8 **DISPUTE RESOLUTION**

- 8.1 **Dispute Resolution.** Any dispute or difference between the parties hereto arising:
- 8.1.1 as to whether a Processing Related Reason exists;

- 8.1.2 as to the selection of an Engineer or firm of Engineers, the Experts or an umpire under Schedule 4.13.2;
 - 8.1.3 under Section 4.5, as to whether the Underground Exploration Program has identified Sufficient Reserves under the Leased Lands;
 - 8.1.4 as to the determination of the date of Cessation of Mining Operations;
 - 8.1.5 as to whether commercial processing is economic as contemplated by Section 4.14.2.1;
 - 8.1.6 as to then prevailing commercial terms and conditions as contemplated by Section 4.14.2.2;
 - 8.1.7 under Section 5.1, as to whether an Event of Force Majeure exists;
 - 8.1.8 under Section 5.3, as to whether an Event of Force Majeure prevents the Proponent from performing any of its obligations under this Agreement;
 - 8.1.9 under Section 5.3 or Section 6.5.2, as to the reasonable period of time for the extension of the dates of performance of the Proponent's obligations;
 - 8.1.10 under Section 6.5.2.2, the additional quantity of contained nickel in Nickel Concentrate to be shipped out of the Province; or
 - 8.1.11 as to whether the Proponent is complying with its obligations under Section 5.2;
- shall, in each case, be resolved in the manner provided for in Schedule 8.1.

ARTICLE 9

CONFIDENTIAL INFORMATION

9.1 Confidential Information. The Government:

- 9.1.1 acknowledges that information (the "**Information**") supplied to it by or on behalf of the Proponent pursuant to or in connection with this Agreement or the Instruments including, without limitation, information provided pursuant to or in connection with Sections 4.2.2, 4.7.1, 4.7.2, 4.7.5, 5.2 and 8.1 is of a financial, commercial, scientific or technical nature and is supplied in confidence; and
- 9.1.2 subject to Sections 9.3 and 9.4, shall keep the Information confidential and shall not use or disclose the Information to any third party without the Approval of the Proponent and, in doing so, shall use the same care as it applies to avoid disclosure or dissemination of its own confidential information to prevent the disclosure of Information to any third party.

- 9.2 **Effect of Disclosure.** The Government acknowledges that disclosure of the Information contrary to the provisions of this Article 9 could reasonably be expected to:
- 9.2.1 harm significantly the competitive position or interfere significantly with the negotiating position of the Proponent;
 - 9.2.2 result in similar information no longer being supplied by or on behalf of the Proponent to the Government when it is in the public interest that similar information continued to be supplied; and
 - 9.2.3 result in material financial loss to the Proponent or result in material financial gain to competitors of the Proponent and other Persons.
- 9.3 **Approval.** The Government may disclose Information if Approved by the Proponent.
- 9.4 **Permitted Disclosure of Information.** The provisions of this Article 9 shall not apply to Information which:
- 9.4.1 is now, or which hereafter, through no act or omission of the Government, becomes generally known or available to the public without breach of this Agreement;
 - 9.4.2 after disclosure to the Government becomes generally known or available to the public by publication or otherwise through no act or omission of the Government;
 - 9.4.3 the Government can establish was in its possession at the time of disclosure and was not previously acquired directly or indirectly from the Proponent;
 - 9.4.4 is disclosed to the Government by a third party on a non-confidential basis, which party, to the Knowledge of the Government, is not prohibited from disclosing such Information to the Government by any legal, contractual or fiduciary obligation to which such party is bound or subject; or
 - 9.4.5 is required to be disclosed by law.
- 9.5 **Remedy.** Without limiting the Proponent's rights and recourses for a breach by the Government of its obligations in this Article 9:
- 9.5.1 the Government acknowledges that the Proponent shall suffer irreparable harm if the Government discloses Information contrary to the provisions of this Article 9 and, unless prohibited by law, the Proponent shall be entitled to an injunction or injunctions to prevent such disclosure;
 - 9.5.2 the Government shall be liable for and shall indemnify and save the Proponent harmless from and against costs, losses, damages and claims that it may suffer, pay, incur or be liable for, as a result of any breach by the Government of this Article 9; and

- 9.5.3 in the event there are any measures which the Government can take to ensure compliance with the provisions of Section 9.1.2, the Proponent shall be relieved of the obligation to provide information of the type with respect to which the breach occurred until the Government has taken such measures.

ARTICLE 10
CONDITIONS, CLOSING AND TERMINATION

- 10.1 **Conditions for the Benefit of the Government.** Subject to Section 10.6.1, the obligations of the Government in this Agreement are subject to the satisfaction of or compliance with, at or prior to the Time of Closing, each of the following conditions:
- 10.1.1 the representations and warranties of the Proponent made in or pursuant to this Agreement shall be true and correct at the Time of Closing with the same force and effect as if made at and as of the Time of Closing; the covenants contained in this Agreement to be performed by the Proponent at or prior to the Time of Closing shall have been performed; the Proponent shall not be in breach of any agreement on its part contained in this Agreement at the Time of Closing; and the Government shall have received a certificate confirming the foregoing, signed for and on behalf of the Proponent in form and content satisfactory to the Government;
- 10.1.2 the University Agreement shall have been executed by the Proponent and a copy thereof shall have been delivered to the Government;
- 10.1.3 the Tax Agreement shall have been executed by the Proponent and delivered to the Government; and
- 10.1.4 no action or proceeding shall be pending or threatened by any Person to restrain or prohibit the consummation of the actions or transactions contemplated by this Agreement.
- 10.2 **Conditions for the Benefit of the Proponent.** Subject to Section 10.6.1, the obligations of the Proponent in this Agreement are subject to the satisfaction of or compliance with, at or prior to the Time of Closing, each of the following conditions:
- 10.2.1 the representations and warranties of the Government made in or pursuant to this Agreement shall be true and correct at the Time of Closing with the same force and effect as if made at and as of the Time of Closing; the covenants contained in this Agreement to be performed by the Government at or prior to the Time of Closing shall have been performed; the Government shall not be in breach of any agreement on its part contained in this Agreement at the Time of Closing; and the Proponent shall have received a certificate confirming the foregoing, signed for and on behalf of the Government in form and content satisfactory to the Proponent;

- 10.2.2 no action or proceeding shall be pending or threatened by any Person to restrain or prohibit the consummation of the actions or transactions contemplated by this Agreement;
 - 10.2.3 the Tax Agreement shall have been executed by the Government and delivered by the Government to the Proponent;
 - 10.2.4 the Proponent shall have secured financing on reasonable commercial terms to enable it to develop the Mine and construct the Concentrator Plant; and
 - 10.2.5 the Mining Tax Act Amendments shall have become law.
- 10.3 **Closing Notice.** If the Proponent (a) wishes to waive the condition set out in Section 10.2.4, or (b) has obtained the financing contemplated by Section 10.2.4, it shall forthwith deliver to the Government a notice (the “**Closing Notice**”) confirming that it has either waived the condition set out in Section 10.2.4 or that such condition has been satisfied.
- 10.4 **Deliveries and Closing.**
- 10.4.1 The Closing shall take place at the Time of Closing on the Closing Date at a location to be agreed by the parties.
 - 10.4.2 At the Closing:
 - 10.4.2.1 the Proponent shall deliver to the Government the certificate contemplated by Section 10.1.1 and, if not previously delivered, the executed University Agreement and the executed Tax Agreement; and
 - 10.4.2.2 the Government shall deliver to the Proponent the certificate contemplated by Section 10.2.1 and, if not previously delivered, the executed Tax Agreement.
- 10.5 **Termination.** This Agreement and the IBEA may be terminated at any time prior to the Time of Closing:
- 10.5.1 by agreement of the Government and the Proponent;
 - 10.5.2 by the Government, if the conditions set out in Section 10.1 have not been satisfied or waived by the Government or the Closing Notice has not been delivered to the Government on or before 31 March 2003; or
 - 10.5.3 by the Proponent, if the conditions set out in Section 10.2 have not been satisfied or waived by the Proponent (except the condition set out in Section 10.2.4 in the event the Proponent has delivered the Closing Notice).
- 10.6 **Effect of Agreement and Termination.**
- 10.6.1 Notwithstanding Section 10.6.2 and subject to Section 10.6.3, the Government and the Proponent shall be bound by the provisions of Sections 4.1, 4.2.1, 4.2.2, 4.10,

4.11, 4.12, 4.15, 4.16, 4.17, 4.18, 6.1, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10 and 6.11 and Articles 5, 8, 9 and 11 effective as of and from the date of execution of this Agreement.

10.6.2 Subject to Section 10.6.1, the obligations of the Proponent and the Government in this Agreement shall be effective as of and from the Time of Closing.

10.6.3 If this Agreement and the IEBA are terminated in accordance with the provisions of Section 10.5, this Agreement and the IEBA shall thereafter become null and void and have no effect and no party shall have any liability to the other except:

10.6.3.1 the obligations contained in Sections 4.1, 4.2.1, 4.11, 6.9 and Article 9 hereof; and

10.6.3.2 the liability of a party in respect of its breach of this Agreement and the IEBA prior to such termination;

all of which shall survive such termination for a period of twelve months following such termination.

ARTICLE 11 **GENERAL MATTERS**

- 11.1 **Enurement.** This Agreement, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease shall be binding upon and shall enure to the benefit of the parties hereto, the successors and assigns of the Government and the successors and permitted assigns of the Proponent. Any such assignment permitted by this Agreement shall become effective only when the assignee executes with the Government an instrument whereby it agrees to be bound by and perform all of the Proponent's obligations under this Agreement, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease. Subject to Section 4.15.3, from and after the execution of such instrument, the assignor shall be relieved of and released from all its obligations under this Agreement, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease with effect from and after the date of execution of such instrument.
- 11.2 **Counterparts.** This Agreement and the other documents referred to herein and/or otherwise required to complete the transactions contemplated hereby may be executed in two or more counterparts, including by facsimile, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 11.3 **Notices.** All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if in writing and either delivered personally, sent by facsimile transmission or by air courier service, to the addresses designated below or such other addresses as may be designated in writing by notice given hereunder, and shall be

effective upon personal delivery or facsimile transmission thereof with proof of transmission receipt or upon delivery by air courier service:

If to VBNC: Voisey's Bay Nickel Company Limited
Suite 700, Baine Johnston Centre
10 Fort William Place
St. John's, Newfoundland
A1C 1K4
Attention: President
Facsimile: (709) 758-8820

If to Inco: Inco Limited
145 King Street West
Suite 1500
Toronto, Ontario
M5H 4B7
Attention: President
Facsimile: (416) 361-7734

If to the Government: Government of Newfoundland & Labrador
Department of Mines & Energy
Natural Resources Building
7th Floor, 50 Elizabeth Avenue
St. John's, Newfoundland
A1A 1W5
Attention: The Minister
Facsimile: (709) 729-0059

- 11.4 **Legal Fees.** In the event of any dispute or controversy between the Proponent on the one hand and the Government on the other hand relating to the interpretation of this Agreement or to the transactions contemplated herein, the prevailing party shall be entitled to recover from the other party reasonable legal fees and expenses incurred by the prevailing party. Such award shall include reasonable post judgment legal fees and costs.
- 11.5 **Payment of Fees and Expenses.** Each party hereto shall pay its own fees, expenses and disbursements incurred in connection with this Agreement and the transactions contemplated hereby and all other costs and expenses incurred in its performance and compliance with all conditions to be performed hereunder and thereunder.
- 11.6 **Time of Essence.** Time is of the essence of this Agreement.
- 11.7 **Further Assurances.** Each of the parties shall promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and the transactions contemplated hereby and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions hereof and thereof.

- 11.8 **Public Notices.** No press release or other announcement concerning the transactions contemplated by this Agreement shall be made either by the Proponent or the Government without the prior Approval of the other (such Approval not to be unreasonably withheld) provided, however, that the Proponent may, without such Approval, make such disclosure if the same is required by law or any stock exchange on which any of the securities of the Proponent or any of its Affiliates are listed or by any securities commission or other similar regulatory authority having jurisdiction over the Proponent or any of its Affiliates, and if such disclosure is required, the Person making the disclosure shall use best efforts to give prior oral or written notice to the Government, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure. Notwithstanding the foregoing, the Proponent acknowledges that the Government will make this Agreement and the Schedules hereto public.
- 11.9 **Independent Legal Advice.** Each of the parties acknowledges having obtained its own independent legal advice with respect to this Agreement and the transactions contemplated hereby to the fullest extent deemed necessary by each party prior to its execution and delivery. Furthermore, the parties acknowledge that neither acted under any duress in negotiating, drafting and executing this Agreement, the Instruments and any documents contemplated hereby. There shall be no presumption that any ambiguity in this Agreement, the Instruments and any documents contemplated hereby be resolved in favour of any of the parties.
- 11.10 **Compliance with Laws.** Without limiting the generality of any other covenant herein, the Proponent shall, at its own cost and expense, comply with, and shall use best efforts to ensure that all Persons for whom the Proponent is at law responsible comply with, all Applicable Laws in connection with the Project.
- 11.11 **Entire Agreement.** This Agreement, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease set forth the entire agreement and all the covenants, promises, assurances, agreements, representations, conditions, warranties, statements and understandings (collectively “**Representations**”) between the parties concerning the subject matter hereof. No Representations are made by the Government to the Proponent or by the Proponent to the Government except as expressly set out in this Agreement, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease. For greater certainty, the Statement of Principles between the Government and the Proponent dated as of 11 June 2002 shall have no application to the parties or the matters contemplated by this Agreement after the date hereof, and is replaced entirely by this Agreement, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease.
- 11.12 **Good Faith.** Each of the Government and the Proponent shall at all times exercise all its rights hereunder in a manner consistent with good business practices and shall act in good faith.
- 11.13 **Waiver.** The failure of any party hereto to insist, in any one instance, upon the strict performance by another party hereto of its obligations hereunder, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease, or the failure of any

party hereto to exercise any right, option or remedy, shall not constitute a waiver or relinquishment for the future of any such obligation, right, option or remedy nor shall it constitute a waiver of a subsequent breach. No covenant or condition of this Agreement may be waived by any party hereto except by the written consent of that party, and forbearance or indulgence by that party in any regard whatsoever for no matter how long shall not constitute a waiver of such covenant or condition and until such covenant or condition has been performed or waived in writing that party shall be entitled to invoke any remedy available to that party under this Agreement, the Instruments, the Exemption Orders, the Primary Production Order and the Mining Lease, despite its forbearance or indulgence.

- 11.14 **No Partnership, Joint Venture or Agency.** The Government and the Proponent expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of the parties shall constitute or be deemed to constitute the Government and the Proponent as partners, joint venturers or principal and agent in any way or for any purpose.

THE HONOURABLE THE PREMIER

**THE HONOURABLE THE MINISTER OF
MINES AND ENERGY**

**THE HONOURABLE THE MINISTER OF
LABRADOR AND ABORIGINAL AFFAIRS**

INCO LIMITED

By: _____
Chairman and Chief Executive Officer

VOISEY'S BAY NICKEL COMPANY LIMITED

By: _____
President

**SCHEDULE 1.1A
NICKEL CONCENTRATE EXEMPTION ORDER**

This document can be found at the following web address: <http://www.gov.nf.ca/hoa/regulations/rc020066.htm>

**SCHEDULE 1.1B
COPPER CONCENTRATE EXEMPTION ORDER**

This document can be found at the following web address: <http://www.gov.nf.ca/hoa/regulations/rc020064.htm>

**SCHEDULE 1.1C
MATTE PLANT EXEMPTION ORDER**

This document can be found at the following web address: <http://www.gov.nf.ca/hoa/regulations/rc020065.htm>

**SCHEDULE 4.9
INDUSTRIAL AND EMPLOYMENT BENEFITS AGREEMENT**

ATTACHED

VOISEY'S BAY INDUSTRIAL AND EMPLOYMENT BENEFITS AGREEMENT

AMONG

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR

AND

VOISEY'S BAY NICKEL COMPANY LIMITED

AND

INCO LIMITED

Made as of 30 September 2002

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SCHEDULE

THIS INDUSTRIAL AND EMPLOYMENT BENEFITS AGREEMENT made as of 30 September 2002.

AMONG: **HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR**, as represented by The Honourable The Premier, The Honourable The Minister of Mines and Energy and The Honourable The Minister of Labrador and Aboriginal Affairs;

AND: **VOISEY'S BAY NICKEL COMPANY LIMITED**, a corporation incorporated under the laws of the Province, being a wholly owned subsidiary of Inco;

AND: **INCO LIMITED**, a corporation organized under the laws of Canada;

NOW THIS INDUSTRIAL AND EMPLOYMENT BENEFITS AGREEMENT THEREFORE WITNESSETH that, for and in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties hereto mutually agree one with the other as follows:

ARTICLE 1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** When used in this Agreement, unless the context otherwise requires, the following terms shall have the meanings ascribed thereto:

“Agreement” means this Agreement and the Schedule attached to this Agreement, in each case as they may be amended or supplemented from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and, unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Agreement;

“Communicate” means that the Proponent shall (a) post the applicable information on the VBNC website, (b) provide computer and internet facilities and personnel at the offices referred to in Article 3 to assist Provincial Suppliers and/or residents of the Province to access the applicable information, and (c) make the applicable information available by mail to applicable Provincial Suppliers and/or residents of the Province at their request, and **“Communicated”** and **“Communicating”** shall be construed accordingly. For the

purposes of this definition, “**applicable information**” means the information which the Proponent is required to Communicate under the applicable provision of this Agreement;

“**Contract**” means a contract, sub-contract or purchase order for the supply of goods or provision of commercial services or both in respect of the Project or any part thereof;

“**Department**” means the Department of Mines and Energy of the Government or such other department as the Government may from time to time designate;

“**Development Agreement**” means the Development Agreement among the parties hereto made as of 30 September 2002;

“**Information**” shall have the meaning ascribed thereto in Section 13.1;

“**Major Contract**” means any Contract or combination of Contracts for the supply of goods or the provision of commercial services (a) with an aggregate price, consideration, fee or value in excess of \$250,000, or (b) with respect to which, because of the nature of the goods or commercial services to be provided thereunder, the Department has expressed a special interest;

“**Provincial Supplier**” means a Supplier that maintains business operations and employees in the Province; and

“**Supplier**” means a Person that has the capacity to and intends to or does supply goods or commercial services, or both, in respect of the Project including, without limitation, a manufacturer, consultant, contractor, sub-contractor or service company.

Other capitalized terms used in this Agreement which are not defined herein but which are defined in the Development Agreement shall have the meanings ascribed thereto in the Development Agreement.

- 1.2 **Subdivisions.** Unless otherwise stated, a reference herein or in a Schedule by numerical or alphabetical designation, to an Article, Section, Subsection, Paragraph, Subparagraph or Schedule shall refer to the Article, Section, Subsection, Paragraph, Subparagraph or Schedule bearing that designation in this Agreement or in a Schedule.
- 1.3 **Headings.** The division of this Agreement into Articles, Sections, Subsections, Paragraphs, and Subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.4 **Number and Gender.** Words importing the singular shall include the plural and vice versa and words importing a particular gender shall include all genders. The use of the neuter singular pronoun to refer to a party is deemed a proper reference. The necessary grammatical changes required to make the provisions of this Agreement apply shall in all instances be assumed as though in each case fully expressed.

- 1.5 **Statutes, Regulations, Rules and Orders.** Any reference in this Agreement to all or any part of any statute, regulation, rule or order shall, unless otherwise stated, be a reference to that statute, regulation, rule or order or the relevant part thereof, as amended, substituted, replaced or reenacted from time to time.
- 1.6 **Business Day.** If the day on which any act or payment is required to be done or made under this Agreement is a day which is not a Business Day, then such act or payment shall be performed or made on the next following Business Day.
- 1.7 **Contract Always Speaking.** With the exception of the representations and warranties of the parties set out in Article 2, where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise.
- 1.8 **Governing Law and Choice of Forum.** This Agreement shall be interpreted in accordance with the laws in force in the Province, subject to any applicable federal laws and for all purposes this Agreement shall be treated as a Newfoundland and Labrador contract. The Proponent irrevocably submits and attorns to the exclusive jurisdiction of the courts of the Province.
- 1.9 **Construed Covenants.** Each obligation or agreement of this Agreement (other than the representations and warranties of the parties), even though not expressed as a covenant, is to be construed as a covenant.
- 1.10 **Inconsistency or Conflict.** Except where otherwise provided either expressly or by necessary implication in this Agreement or the Schedule hereto, in the event of any inconsistency or conflict between such Schedule and any provision contained in this Agreement, the provision of this Agreement shall prevail to the extent of the inconsistency or conflict.
- 1.11 **Severability.** If any provision of this Agreement, or the application thereof to any Person or circumstance, is, to any extent, held or rendered invalid, void, illegal or unenforceable for any reason, then the particular provision:
- 1.11.1 shall be deemed to be independent of and severed from the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect; and
- 1.11.2 continues to be applicable and enforceable to the fullest extent permitted by law against any Persons and in any circumstances other than those as to which it has been held or rendered invalid, void, illegal or unenforceable.
- If a severance occurs under this Section 1.11, the parties shall use their respective best efforts to negotiate in good faith an enforceable replacement provision that, to the greatest extent possible, reflects the intent or serves the purpose of the severed provision.
- 1.12 **Currency.** All references in this Agreement to currency are to Canadian dollars.

- 1.13 **Knowledge.** In this Agreement, where any representation or warranty is expressed to be made with the “**Knowledge**” of a party:
- 1.13.1 in respect of the Proponent, shall mean the actual knowledge of the executive officers of the Proponent, after due inquiry in respect thereof; and
- 1.13.2 in respect of the Government, shall mean the actual knowledge of the responsible executives of the applicable department of Government, after due inquiry in respect thereof.
- 1.14 **Schedule.** The following document attached hereto shall form an integral part of this Agreement.

Schedule 8.3

Human Resources Plan Outline

ARTICLE 2 **REPRESENTATIONS AND WARRANTIES**

- 2.1 **Proponent’s Representations and Warranties.** Acknowledging that the Government is relying on such representations and warranties, VBNC and 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 Inco is extra-provincially registered in the Province;
- 2.1.3 each has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its respective obligations herein;
- 2.1.4 the execution and delivery of this 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 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 and performance of this 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 Agreement and the performance of their respective obligations hereunder;
- 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 or any judgment, decree, injunction or order of any court or arbitrator which might adversely affect their capacity or power to execute and deliver this Agreement or to consummate the transactions contemplated herein or which could materially adversely affect their respective assets, financial condition or future prospects; and
- 2.1.9 this Agreement will, upon execution and delivery, constitute legal, valid and binding obligations of each of them enforceable against them in accordance with its 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.

2.2 Government Acknowledgments. The Government:

- 2.2.1 acknowledges that none of VBNC, Inco or any Person for whom either of them may be responsible in law have made any representations and warranties with respect to this Agreement, except the representations and warranties expressly made in this Agreement; and
- 2.2.2 recognizes and accepts the Proponent's obligations in the IBAs as they apply to those aspects of the Project which are located in Labrador.

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 Agreement and the consummation of the transactions contemplated herein, by the Government, 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 Agreement or the consummation of any of the transactions provided for in any of them; and

2.3.3 this Agreement shall, upon execution and delivery, constitute legal, valid and binding obligations of the Government enforceable against it in accordance with its terms, except as limited by the general principles of equity.

2.4 **Proponent's Acknowledgements.** Each of Inco and VBNC 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 Agreement, except the representations and warranties expressly made in this Agreement.

ARTICLE 3 **PROVINCIAL OFFICES**

3.1 **Offices.** VBNC shall establish and maintain one or more offices in the Province, shall manage the Project from such office or offices, and shall staff such office or offices with individuals having appropriate skills and with a staff complement appropriate to the nature and level of the Project development, construction and operations activities taking place in the Province, all as determined by VBNC, acting reasonably.

3.2 **Information Centres.** The Proponent shall establish Project information centers in Argentia, St. John's and Happy Valley-Goose Bay to make available to the general public of the Province information concerning the status of and major developments relating to the Project. Such centers will also provide information relating to employment and Supplier participation opportunities for all phases of the Project and will serve as receiving points for resumes and pre-qualification documentation. All bids will be required to be filed at VBNC's St. John's office.

ARTICLE 4 **PROCUREMENT PRINCIPLES, POLICIES AND PROCEDURES**

4.1 **Procurement Principles:** The Proponent shall establish and implement procurement principles to enhance opportunities for Provincial benefits, which principles shall provide that:

4.1.1 Provincial Suppliers will be provided full and fair opportunity and first consideration to participate on a competitive basis for the supply of goods and commercial services to the Project;

4.1.2 the acquisition of goods and commercial services for the Project will be undertaken on the basis of (a) the pre-qualification of potential Suppliers, (b) a competitive bidding process, and (c) the utilization of the evaluation criteria set out in Section 4.4.6; and

- 4.1.3 economic and industrial opportunities in the Province associated with direct and indirect expenditures incurred in connection with the acquisition of goods and commercial services for the Project will be enhanced.
- 4.2 **Full and Fair Opportunity and First Consideration.** In furtherance of the principles stated in Section 4.1, the Proponent shall:
- 4.2.1 identify, on a timely, ongoing basis, opportunities for the supply of goods and commercial services during all phases of the Project and Communicate these to potential Provincial Suppliers to enable such Suppliers to identify and evaluate those opportunities of interest to them;
 - 4.2.2 use best efforts to identify, in conjunction with the Department, all Major Contracts that could offer opportunities for significant long-term benefits to the Province;
 - 4.2.3 commit to work co-operatively with the Government and industry organizations to jointly identify potential Provincial Suppliers of goods and commercial services required for the Project;
 - 4.2.4 include in each Contract a provision requiring the Supplier to adhere to the Proponent's principles stated in Section 4.1. Suppliers will be required to incorporate similar provisions in any subsequent sub-contract arrangements that they may enter into in connection with such Contract; and
 - 4.2.5 base procurement personnel at the Project's main procurement office (which the Proponent shall locate in the Province) who are knowledgeable respecting the capabilities and capacities of Provincial Suppliers of goods and commercial services.
- 4.3 **Procurement Policies.** The Proponent will implement procurement policies which reflect the following:
- 4.3.1 The Proponent shall acquire goods and commercial services on a basis designed to enable the Project to be competitive.
 - 4.3.2 The Proponent shall provide qualified Provincial Suppliers with a full and fair opportunity to participate on a competitive basis in the supply of goods and commercial services during all phases of the Project including development, construction and operations.
 - 4.3.3 The Proponent shall develop and apply a competitive bidding process incorporating the pre-qualification of potential Suppliers. However, the Proponent may award Contracts for goods and commercial services without a competitive bidding process where (a) the Contract is awarded to a Provincial Supplier, or (b) no pre-qualified Provincial Supplier can supply such goods or commercial services on competitive terms, including the Proponent's schedule for the delivery thereof.

- 4.3.4 The Proponent shall, acting reasonably, undertake bid packaging, bid specifications, a bidding process and bid follow-up procedures in a manner that will provide qualified Provincial Suppliers with a full and fair opportunity to participate on a competitive basis for the supply of goods and commercial services to the Project. This will include Communicating bid requirements for goods and commercial services to Provincial Suppliers on a timely basis.
- 4.3.5 The Proponent will not create artificial barriers to participation in the Project by qualified Provincial Suppliers by specifying a non-Provincially produced component when an equivalent component can be supplied from the Province, as determined by the Proponent, acting reasonably, on the basis of the criteria outlined in Section 4.4.6.
- 4.4 **Procurement Procedures:** The Proponent shall implement the following procurement procedures:
- 4.4.1 To facilitate an efficient bidding process, the Proponent shall use best efforts to pre-qualify potential Suppliers of goods and commercial services on the basis of relevant commercial and technical attributes and criteria (including, without limitation, capability, capacity, competence, technical/financial resources and experience) and only pre-qualified bidders will be invited to bid.
- 4.4.2 Prior to commencement of a bidding process, the Proponent shall make available a preliminary scope of work and a pre-qualification questionnaire to those Suppliers who have requested to be pre-qualified for a specific Contract.
- 4.4.3 Under the bidding process, the Proponent shall issue requests for proposals to Suppliers pre-qualified under the procedures described in Section 4.4.1 and/or to previously qualified Suppliers in good standing. Requests for proposals will not be solicited from other Suppliers.
- 4.4.4 Subject to assurances that the Proponents' functional, safety and environmental criteria and operational requirements are not compromised, the Proponent shall draft bid specifications so as to encourage participation in the bidding process by Provincial Suppliers.
- 4.4.5 The Proponent shall require that all bid proposals describe and quantify the extent of expected benefits to accrue in the Province from such bid proposals, including the extent of expected Provincially-sourced goods and commercial services to be acquired or used, the expected number of Provincial residents employed or to be employed and the expected geographic location in the Province of such Suppliers, and potential Suppliers will be advised that such information will be considered as part of the bid evaluation process.
- 4.4.6 Accepted bids or offers to provide goods or commercial services will be evaluated by the Proponent on the basis of the following criteria:

- 4.4.6.1 bid price (or cost), including proposed rates and fixed fees;
 - 4.4.6.2 ability to manage, perform and complete the work within the Project schedule;
 - 4.4.6.3 knowledge, appreciation and understanding of the scope of work;
 - 4.4.6.4 safety and security program and/or record;
 - 4.4.6.5 quality assurance program;
 - 4.4.6.6 experience, competence and the ability to meet applicable technical requirements;
 - 4.4.6.7 technical ability to supply the goods and/or commercial services and to work effectively with the Proponent;
 - 4.4.6.8 the level, nature and geographic location of expected Provincial benefits;
 - 4.4.6.9 the continuity of supply of goods and/or commercial services; and
 - 4.4.6.10 any other criteria that the Proponent may consider appropriate in the evaluation.
- 4.4.7 The Proponent, at its sole discretion, may reject any bid which:
- 4.4.7.1 fails to comply with the specified requirements of the bid documents;
 - 4.4.7.2 contains reservations, additions, alterations, erasures, omissions or irregularities of any kind; or
 - 4.4.7.3 is incomplete, conditional, contains qualifications or is illegible or obscure.
- 4.4.8 The Proponent shall be entitled to award Contracts based upon its analysis of the criteria set out in Section 4.4.6, acting reasonably, and the Government acknowledges that the Proponent may reject all other bids not previously rejected under Section 4.4.7.
- 4.4.9 If, following the evaluation referred to in Section 4.4.6, the Proponent determines that two or more bids are essentially equal, and at least one of the bids is from a Provincial Supplier, the Proponent shall give first consideration for the award of the Contract:
- 4.4.9.1 where the goods or commercial services are to be provided or supplied in Labrador, in the manner contemplated by the IBAs; and

4.4.9.2 in all other cases, to a Provincial Supplier.

4.4.10 Upon a bidder's request, acting reasonably, the Proponent shall de-brief such bidder with regard to the bidding process after award of the applicable Contract. The contents of any individual bid (detail, prices, etc.) will be discussed only with the Person who has made such bid.

ARTICLE 5 **SUPPLIER DEVELOPMENT**

- 5.1 **Supplier Development Principles.** The Proponent recognizes that the availability of a competitive and competent Provincial Supplier capability in the Province is a key element in the development and long term success of the Project. The Proponent shall enhance this capability through the implementation of the procedures and practices set out in this Article 5.
- 5.2 **Potential Requirements.** The Proponent shall develop, and from time to time update, lists of potential requirements for the supply of goods and commercial services for the construction and operations phases of the Project, which lists will be Communicated in a timely manner.
- 5.3 **Supplier Capability.** The Proponent and the Department shall work together to (a) identify the capabilities of Provincial Suppliers, (b) identify potential Provincial supply and labour force gaps and (c) provide recommendations to, and assist the Government to develop, initiatives to improve the capacity of Provincial Suppliers to provide goods and commercial services to the Project.
- 5.4 **Alliances.** The Proponent shall encourage the formation of appropriate alliances involving Provincial Suppliers to enhance their ability to compete for the supply of goods and commercial services to the Project.

ARTICLE 6 **PROVINCIAL CONSTRUCTION FACILITIES**

- 6.1 **Provincial Facilities.** The Proponent recognizes the existence of significant construction, fabrication and assembly infrastructure within the Province and shall encourage the utilization of such infrastructure. Specifically, the Proponent shall:
- 6.1.1 require that potential bidders bid work on the basis of utilizing competitive, qualified Provincial Suppliers of construction, fabrication and assembly services, where available;
- 6.1.2 make potential bidders from outside the Province aware of the Province's construction, fabrication and assembly infrastructure; and

- 6.1.3 provide qualified Provincial Suppliers of construction, fabrication and assembly services a full and fair opportunity to bid on Project related construction, fabrication and assembly services.
- 6.2 **Use of Provincial Facilities.** Where any Contract for construction, fabrication and assembly services is performed in the Province, the Proponent shall require the Supplier carrying out such services to locate in the Province its management, fabrication engineering and procurement activities relating to such Contract.

ARTICLE 7

RESEARCH AND DEVELOPMENT AND TECHNOLOGY

- 7.1 **Acknowledgement.** The Proponent acknowledges that research and development and technology transfer are a basis for developing new technologies to support the growth of Provincial industries. Technology transfer provides an opportunity for the transfer of skills from firms and workers outside the Province to firms and workers in the Province, which can lead to the development of a highly skilled workforce and industry sector in the Province.
- 7.2 **Skills Development.** The Proponent shall encourage the transfer of technological capabilities and skills to firms and residents in the Province through its Suppliers by:
- 7.2.1 encouraging the formation of alliances and joint ventures between Suppliers from outside the Province and Provincial Suppliers; and
- 7.2.2 encouraging Suppliers from outside the Province to establish branch operations in the Province to provide ongoing support services for equipment supplied to the Project.
- 7.3 **Inco Innovation Centre.** Inco has agreed to establish and maintain the Innovation Centre and perform the R & D Program in accordance with the terms and conditions of the Development Agreement.

ARTICLE 8

EMPLOYMENT AND TRAINING

- 8.1 **Principles.** With respect to Project employment benefits, the Proponent shall:
- 8.1.1 carry out the Project consistent with Applicable Laws and the Proponent's best operating practices and procedures;
- 8.1.2 consistent with the Canadian Charter of Rights and Freedoms and Applicable Laws, implement a Project employment strategy that ensures that individuals resident in

the Province are given first consideration for training and employment opportunities related to the Project; and

- 8.1.3 implement programs that will allow for the orderly succession of residents of the Province to increasingly higher levels of responsibility, subject to the needs of the Project and the skills, qualifications, ability and experience of such residents, and consistent with the Proponent's career development program.
- 8.2 **Full and Fair Opportunity and First Consideration.** In keeping with the Proponent's commitment to providing full and fair opportunity and giving first consideration to residents of the Province for Project-related employment and training, the Proponent shall:
- 8.2.1 promote an understanding of the current scope of all phases of the Project;
- 8.2.2 Communicate information on the Project's labour and training requirements in a timely manner;
- 8.2.3 develop and implement appropriate training programs;
- 8.2.4 develop an employment equity policy and implementation plan that addresses recruitment, training, and advancement of qualified women, particularly in occupations where they have been traditionally under-represented and provide a monitoring program in respect to such implementation plan; and
- 8.2.5 develop and implement policies and procedures to encourage the participation of disadvantaged individuals and groups.
- 8.3 **Human Resources Plan.** The Proponent shall work co-operatively with the Government to implement a human resources plan which shall (a) comply with the requirements of the VBN Undertaking Order, and (b) address, without limitation, the matters referred to in Schedule 8.3.
- 8.4 **Supplier Obligations.** With respect to the supply of goods and commercial services to the Project, the Proponent shall require Provincial Suppliers to adhere to the Proponents' principles and policies stated in Sections 8.1.2, 8.2.4 and 8.2.5.
- 8.5 **Training Initiatives.** The Proponent shall develop and implement training initiatives (a) for all phases of the Project in cooperation with the Government, labour organizations, Provincial Suppliers and educational and training institutions in the Province and, (b) with respect to the phases of the Project located in Labrador and, subject to the provisions of the IBAs, for the LIA and Innu Nation. These initiatives will include pre-employment and employment training programs utilizing in-house and external training organizations throughout the Province. The Proponent shall establish specific programs for training at the Mine site and the Processing Plant site and make maximum use of existing Provincial educational facilities near the Mine site and the Processing Plant site.

ARTICLE 9 **ENGINEERING**

- 9.1 **Principles.** The Proponent shall ensure that Project management, engineering, procurement and project service activities for the Project shall be carried out in the Province to the greatest extent possible. This work will be undertaken by, or have the significant participation, of Provincial Suppliers.
- 9.2 **Opportunities for Provincial Expertise.** Where specialized expertise is not available in the Province, such expertise will be sourced and carried out wherever available and the Proponent shall encourage Suppliers from outside the Province to involve engineering firms inside the Province for the provisions of such services.
- 9.3 **Human Resources Plan.** The Proponent shall include in the human resources plan referred to in Section 8.3 an outline of the participation by Provincial engineers, geoscientists and other individuals with technical disciplines relevant to the Project, together with a plan indicating the opportunities for them to develop and assume increasingly senior positions as the Project proceeds.

ARTICLE 10 **AIR AND MARINE OPERATIONS**

- 10.1 **Shipping Operations.** The Proponent shall require that Suppliers retained to ship Nickel Concentrate and finished nickel, cobalt and copper revert, have a base of operations in the Province. For the purposes of this Section, “base of operations” means the day to day administration of ship management, including technical management, crew management, loading and unloading requirements and procurement services relating thereto.
- 10.2 **Ships Crews.** The Proponent undertakes that, with respect to shipping to destinations in Canada, all vessels shall be Canadian flagged and crewed, and ships transporting Nickel Concentrate shall be crewed by residents of the Province, subject to availability.
- 10.3 **Air Transportation Services.** The Proponent shall require that air transportation services Suppliers for the Project have a base of operations in the Province. For the purposes of this Section, “base of operations” means aircraft management and maintenance facilities and personnel in connection with the provision of such services. Notwithstanding the foregoing, the Government acknowledges that the Proponent will not require its Suppliers of air transportation services utilizing C-130 Hercules and C-5 Cargo aircraft (or their equivalents) to have a base of operations in the Province with respect to such aircraft; provided that, if such aircraft are used on a regular basis to service the Mine site, they will be loaded, unloaded and refueled at an airport in the Province if such loading, unloading or refueling services are required and can be performed at an airport in the Province on a competitive basis.

ARTICLE 11
REPORTING, COMMUNICATIONS AND MONITORING REQUIREMENTS

- 11.1 **Quarterly Reporting.** In order to provide the Government with appropriate assurance that the Proponent is adhering to its obligations hereunder, the Proponent shall provide to the Department reports on a quarterly basis during the construction and operating phases of the Project, containing the following information relating to the Project for that period in a summary form:
- 11.1.1 total value of goods and commercial services purchased;
 - 11.1.2 total value of goods and commercial services purchased from businesses in the Province by geographic location (e.g. Labrador, Island of Newfoundland, or other);
 - 11.1.3 total value of purchases by industry category (e.g. transportation, fuel, equipment);
 - 11.1.4 cumulative total value of goods and services referred to in Section 11.1.1, 11.1.2 and 11.1.3 for the year to date;
 - 11.1.5 total direct and indirect employment by job category/occupation, geographic location, aboriginal membership and gender; and
 - 11.1.6 cumulative total employment for the year to date.
- 11.2 **Monthly Reporting.** In order to provide the Government with appropriate assurance that the Proponent is performing its obligations hereunder, the Proponent shall provide to the Department reports for the period from 1 November 2002 to 31 October 2003 on a monthly basis containing (a) the information referred to in Section 11.1.1 and (b) total employment for the Project by: gender, location of work being performed by employees (Labrador, Island of Newfoundland and outside the Province), residency of employees (Labrador, Island of Newfoundland and outside the Province) and number of Inuit and Innu peoples for that period, in a summary form. On 31 October 2003 and annually thereafter, the Department will determine if it requires the Proponent to continue to provide such monthly reporting for the balance of the construction phases of the Project, and thereafter the Proponent shall continue to so provide such monthly reporting.
- 11.3 **Filing of Reports.** The Proponent shall submit the monthly and quarterly reports referred to in Sections 11.1 and 11.2: (a) by the twenty-first day of the month following the end of the month to which a monthly report applies; and (b) by the end of the first month following the last month of the quarter to which the quarterly report applies.
- 11.4 **Review Meetings.** Following the submission of the reports referred to in this Article 11, the Proponent shall meet with the Department to discuss the Section 11.1 and 11.2 reports for the purposes of reviewing the information relating to opportunities for benefits in the Province in respect of the Project. At quarterly meetings, the Proponent shall also review with the Department all Major Contracts identified pursuant to Section 4.2.2.

- 11.5 **Major Contracts.** After the Proponent has awarded a Major Contract in which the Department has expressed a special interest because of the nature of the goods or commercial services to be provided thereunder, it shall provide, at the request of the Department acting reasonably, the estimated value of, the bidders list for, and the Contract award notification in respect of, such Contract.

ARTICLE 12
ADMINISTRATION OF OPPORTUNITIES FOR PROVINCIAL BENEFITS

- 12.1 **Co-ordinators.** Each of the Proponent and the Government shall identify one individual and an alternate who shall have the prime responsibility on their respective behalf for administering this Agreement (in this Section 12.1, the “**Co-ordinators**”). Each of the Proponent and the Government will advise the other of any changes in the appointment of its respective Co-ordinator(s). The Co-ordinators will be the individuals on behalf of each of the Proponent and the Government to communicate to each of them information which either party requires in connection with the performance by the Proponent of its policies, procedures and undertakings hereunder.

ARTICLE 13
CONFIDENTIAL INFORMATION

- 13.1 **Confidential Information.** The Government:
- 13.1.1 acknowledges that information (the “**Information**”) supplied to it by or on behalf of the Proponent pursuant to or in connection with this Agreement is of a financial, commercial, scientific or technical nature and is supplied in confidence; and
- 13.1.2 subject to Section 13.4, the Government shall keep the Information confidential and shall not use or disclose the Information to any third party without the Approval of the Proponent and, in doing so, shall use the same care as it applies to avoid disclosure or dissemination of its own confidential information to prevent the disclosure of Information to any third party.
- 13.2 **Effect of Disclosure.** The Government acknowledges that disclosure of the Information contrary to the provisions of this Article 13 could reasonably be expected to:
- 13.2.1 harm significantly the competitive position or interfere significantly with the negotiating position of the Proponent;
- 13.2.2 result in similar information no longer being supplied by or on behalf of the Proponent to the Government when it is in the public interest that similar information continued to be supplied; and

13.2.3 result in material financial loss to the Proponent or result in material financial gain to competitors of the Proponent or other Persons.

13.3 **Approval.** The Government may disclose Information if Approved by the Proponent.

13.4 **Permitted Disclosure of Information.** The provisions of this Article 13 shall not apply to Information which:

13.4.1 is now, or which hereafter, through no act or omission of the Government, becomes generally known or available to the public without breach of this Agreement;

13.4.2 after disclosure to the Government becomes generally known or available to the public by publication or otherwise through no act or omission of the Government;

13.4.3 the Government can establish was in its possession at the time of disclosure and was not previously acquired directly or indirectly from the Proponent;

13.4.4 is disclosed to the Government by a third party on a non-confidential basis, which party, to the Knowledge of the Government, is not prohibited from disclosing such Information to the Government by any legal, contractual or fiduciary obligation to which such party is bound or subject; or

13.4.5 is required to be disclosed by law.

13.5 **Remedy.** Without limiting the Proponent's rights and recourses for a breach by the Government of its obligations in this Article 13:

13.5.1 the Government acknowledges that the Proponent shall suffer irreparable harm if the Government discloses Information contrary to the provisions of this Article 13 and, unless prohibited by law, the Proponent shall be entitled to an injunction or injunctions to prevent such disclosure;

13.5.2 the Government shall be liable for and shall indemnify and save the Proponent harmless from and against costs, losses, damages and claims that it may suffer, pay, incur or be liable for, as a result of any breach by the Government of this Article 13; and

13.5.3 in the event there are any measures which the Government can take to ensure compliance with the provisions of Section 13.1.2, the Proponent shall be relieved of the obligation to provide information of the type with respect to which the breach occurred, until the Government has taken such measures.

ARTICLE 14 **GENERAL MATTERS**

14.1 **Assignment.** This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and the successors and permitted assigns of the Proponent; provided, however, that any such assignment shall be subject to the terms of this Section 14.1. The Proponent shall not take or threaten or purport to take any action, whether by way of

contract, corporate reorganization, arrangement or otherwise that would have the effect of transferring, assigning, subletting or otherwise divesting itself of this Agreement or its obligations hereunder, except as specifically provided in Section 4.15 of the Development Agreement, the provisions of which Section 4.15 shall apply *mutatis mutandis*. Any such assignment permitted by this Agreement shall become effective only when the assignee executes with the Government an instrument whereby it agrees to be bound by and perform all of the Proponent's obligations under this Agreement. From and after the execution of such instrument, the assignor shall be relieved of and released from all its obligations under this Agreement with effect from the date of execution of such instrument.

- 14.2 **Counterparts.** This Agreement and the other documents referred to herein and/or otherwise required to complete the transactions contemplated hereby may be executed in two or more counterparts, including by facsimile, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 14.3 **Notices.** All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if in writing and either delivered personally, sent by facsimile transmission or by air courier service, to the addresses designated below or such other addresses as may be designated in writing by notice given hereunder, and shall be effective upon personal delivery or facsimile transmission thereof with proof of transmission receipt or upon delivery by air courier service:

If to VBNC: Voisey's Bay Nickel Limited
Suite 700, Baine Johnston Centre
10 Fort William Place
St. John's, Newfoundland
A1C 1K4

Attention: President
Facsimile: (709) 758-8820

If to Inco: Inco Limited
145 King Street West
Suite 1500
Toronto, Ontario
M5H 4B7

Attention: President
Facsimile: (416) 361-7734

If to the Government: Government of Newfoundland and Labrador
Department of Mines & Energy
Natural Resources Building
7th Floor, 50 Elizabeth Avenue
St. John's, Newfoundland
A1A 1W5

Attention: The Minister
Facsimile: (709) 729-0059

- 14.4 **Legal Fees.** In the event of any dispute or controversy between the Proponent on the one hand and the Government on the other hand relating to the interpretation of this Agreement or to the transactions contemplated herein, the prevailing party shall be entitled to recover from the other party reasonable legal fees and expenses incurred by the prevailing party. Such award shall include post judgment legal fees and costs.
- 14.5 **Payment of Fees and Expenses.** Each party hereto shall pay its own fees, expenses and disbursements incurred in connection with this Agreement and all other costs and expenses incurred in its performance and compliance with all conditions to be performed hereunder.
- 14.6 **Time of Essence.** Time is of the essence of this Agreement.
- 14.7 **Further Assurances.** Each of the parties shall promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other parties hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions hereof.
- 14.8 **Public Notices.** No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Proponent or the Government without the prior Approval of the other (such Approval not to be unreasonably withheld) provided, however, that the Proponent may, without such Approval, make such disclosure if the same is required by any stock exchange on which any of the securities of the Proponent or any of its Affiliates are listed or by any securities commission or other similar regulatory authority having jurisdiction over the Proponent or any of its Affiliates, and if such disclosure is required, the Person making the disclosure shall use best efforts to give prior oral or written notice to the Government, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure. Notwithstanding the foregoing, the Proponent acknowledges that the Government will make this Agreement and the Schedule hereto public.
- 14.9 **Independent Legal Advice.** Each of the parties acknowledges having obtained its own independent legal advice with respect to this Agreement to the fullest extent deemed necessary by each party prior to its execution and delivery. Furthermore, the parties acknowledge that neither acted under any duress in negotiating, drafting and executing this

Agreement. There shall be no presumption that any ambiguity in this Agreement be resolved in favour of any of the parties.

- 14.10 **Compliance with Laws.** Without limiting the generality of any other covenant herein, the Proponent shall, at its own cost and expense, comply with, and shall use best efforts to ensure that all Persons for whom the Proponent is at law responsible comply with, all Applicable Laws applicable to the Project.
- 14.11 **Entire Agreement.** This Agreement sets forth the entire agreement and all the covenants, promises, assurances, agreements, representations, conditions, warranties, statements and understandings (collectively "**Representations**") between the parties concerning the subject matter hereof. No Representations are made by the Government to the Proponent or by the Proponent to the Government except as expressly set out in this Agreement.
- 14.12 **Good Faith.** Each of the Government and the Proponent shall at all times exercise all its rights hereunder in a manner consistent with good business practices and shall act in good faith.
- 14.13 **Waiver.** The failure of any party hereto to insist, in any one instance, upon the strict performance by another party hereto of its obligations hereunder, or the failure of any party hereto to exercise any right, option or remedy, shall not constitute a waiver or relinquishment for the future of any such obligation, right, option or remedy nor shall it constitute a waiver of a subsequent breach. No covenant or condition of this Agreement may be waived by any party hereto except by the written consent of such party, and forbearance or indulgence by such party in any regard whatsoever for no matter how long shall not constitute a waiver of such covenant or condition and until such covenant or condition has been performed or waived in writing such party shall be entitled to invoke any remedy available to such party under this Agreement, despite its forbearance or indulgence.
- 14.14 **No Partnership, Joint Venture or Agency.** The Government and the Proponent expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of the parties shall constitute or be deemed to constitute the Government and the Proponent as partners, joint venturers or principal and agent in any way or for any purpose.
- 14.15 **Members of House of Assembly.** The Proponent undertakes to (a) ensure that no member of the House of Assembly of the Province shall have any interest in this Agreement, and (b) use its best efforts to ensure that no Member of the House of Assembly of the Province receives any benefit to arise herefrom or from any report, study, review or analysis required to be made or submitted pursuant to this Agreement.
- 14.16 **Effective Date.** This Agreement will take effect as of 7 October 2002, subject to Sections 10.5 and 10.6.3 of the Development Agreement.

EXECUTION PAGE FOLLOWS

THE HONOURABLE THE PREMIER

**THE HONOURABLE THE MINISTER OF
MINES AND ENERGY**

**THE HONOURABLE THE MINISTER OF
LABRADOR AND ABORIGINAL AFFAIRS**

VOISEY'S BAY NICKEL COMPANY LIMITED

By: _____
President

INCO LIMITED

By: _____
Chairman and Chief Executive Officer

SCHEDULE 8.3

Human Resources Outline

A. The Proponent's human resources plan will ensure that human resource needs and the needs of all personnel are addressed throughout the life of the Project. The plan will address, without limitation, the following elements:

- ! organization planning;
- ! succession and career plans;
- ! recruitment and placement programs;
- ! employee relations;
- ! training and development;
- ! compensation plans and profit sharing;
- ! benefit programs;
- ! health and safety programs;
- ! human resource information systems;
- ! total quality management;
- ! employee communications; and
- ! incorporation of relevant IBAs terms and conditions.

B. The human resource policies and procedures will be based on the following principles:

- ! open and honest communications;
- ! conducting all business with integrity;
- ! providing supportive management;
- ! emphasizing quality in everything the Proponent does, focusing on customer service both internally and externally;
- ! promoting a climate of continuous improvement;
- ! ensuring equality of treatment in all areas affecting employees;
- ! providing the opportunity for life-long learning, development, and growth;
- ! attracting and retaining talented men and women;
- ! safe and healthy work environment; and
- ! supporting diversity.

SCHEDULE 4.13.2 ASSAYING PROCEDURES

For the purposes of determining the quantities of nickel and cobalt contained in the Nickel Concentrate and the Replacement Concentrate pursuant to Section 4.13.2 of this Agreement, the Nickel Concentrate Exemption Order and the Matte Plant Exemption Order, the following weighing, sampling and assaying provisions will apply:

1. Based upon the anticipated size of each shipment of Nickel Concentrate out of the Province or Replacement Concentrate into the Province, the Proponent shall arrange for all shipments of Nickel Concentrate and Replacement Concentrate to be divided into lots of an appropriate size (in this Schedule 4.13.2, a “**Lot**”). Each such Lot shall be given an identification number and separated into unit loads for shipment by container or other means of shipment from or into the Province. Each unit load will be clearly identified by the numbering of each container or other means of shipment. The Proponent shall, at its own expense, arrange for all Lots of Nickel Concentrate and Replacement Concentrate to properly reflect its (a) Lot number, (b) unit load number in the Lot, (c) gross weight, and (d) identification as to whether it represents Nickel Concentrate or Replacement Concentrate.
2. The Proponent, at its own expense, shall arrange for weighing (utilizing certified weighing systems) of all shipments of Nickel Concentrate out of the Province and shipments of Replacement Concentrate into the Province. The Proponent shall ensure that each such shipment is properly and accurately weighed. The gross weight of each such shipment documented by or for or on behalf of the Proponent will be final for all purposes of this Agreement, absent manifest error.
3. Samples will be taken from each Lot, and disposed of or analyzed as follows:
 - 3.1 A basic sample of an appropriate size for the purposes of sampling procedures (proportional to the size of the Lot) will be obtained from each Lot prior to such Lot being readied for shipment out of (in the case of Nickel Concentrate) or into (in the case of Replacement Concentrate) the Province, using recognized sampling devices and procedures. The basic sample will be split into two samples, one for metal content analysis purposes (in this Schedule 4.13.2, the “**Chemical Analysis Sample**”) and the other will be held by the Proponent as a second reserve sample.
 - 3.2 The Chemical Analysis Sample will be dried, pulverized and split into four composite quality samples by recognized sampling procedures. All four composite quality samples will be promptly heat sealed in plastic sample bags to prevent oxidation or degeneration of its contents. After shipment of the relevant Lot out of or into the Province, the Proponent shall, at its expense, send to the Government at the address specified by the Government for such purpose one composite quality sample. The Proponent shall promptly analyze one composite quality sample with respect to its chemical composition by dry weight of contained nickel and cobalt. One of the remaining composite quality samples from the Chemical Analysis Sample will be marked as an umpire’s sample (in this Schedule 4.13.2, the “**Umpire’s Sample**”) and the Proponent shall ensure the safe storage thereof while in its possession as required by this Schedule. The Umpire’s Sample will be appropriately segregated by the Proponent from potential contaminants. In the event that the Umpire’s Sample is to be analyzed pursuant to Section 3.6 hereof, the Proponent shall provide the Government with a certificate covering the sealing,

custody and safekeeping of the Umpire's Sample. The Proponent shall hold the remaining composite quality sample as a reserve sample.

- 3.3 The Proponent shall promptly send the Government its analysis of the nickel and cobalt content of each Lot.
- 3.4 The Government may analyze or cause to be analyzed the nickel and cobalt content of the composite quality sample from the Chemical Analysis Sample sent to it by the Proponent, using recognized mining industry methods of analysis that have been agreed to by the Proponent, and will promptly notify the Proponent of any significant difference between the Government's analysis and the Proponent's analysis. For purposes of this Agreement, a significant difference in analysis (a) for nickel means a difference of more than 0.30% of one sample, and (b) for cobalt means a difference of more than 0.05% for one sample. The Proponent and the Government will consult in a mutual effort to reconcile any such significant difference.
- 3.5 If a significant difference has occurred, the Government will send its analysis to the Proponent. In addition, the Proponent will promptly analyze the reserve composite quality sample for the applicable Lot with respect to its nickel and/or cobalt content. Upon such analysis of the reserve composite quality sample, the Proponent may, at its option, give notice to the Government that the Proponent agrees or does not agree that the Government's analysis is determinative for the relevant Lot. If the Proponent does not give such notice within 45 days of receipt of the Government's analysis, it shall be deemed to have agreed that the Government's analysis is determinative for the relevant Lot.
- 3.6 If any such significant difference is not reconciled between the Government and the Proponent pursuant to the foregoing provisions, the Proponent shall promptly forward the Umpire's Sample for analysis for the nickel and cobalt content in dispute, to one umpire selected on a rotating basis from a panel of three disinterested umpires mutually agreed upon by the Government and the Proponent. If the umpire's result (in this Schedule 4.13.2, the "**Umpire's Result**") is between that of the Proponent and that of the Government or outside that of the Proponent and the Government by no more than the splitting limit of 0.30% for nickel and 0.05% for cobalt (in this Schedule 4.13.2 the "**Splitting Limit**"), the result for settlement will be the mean of the Umpire's Result and whichever of the Proponent's and the Government's result is the closer to the Umpire's Result. If the Umpire's Result is outside of that of the Proponent and that of the Government by more than the Splitting Limit, then the result for settlement will be whichever of the Proponent's and the Government's result is closer to the Umpire's Result. The cost of any umpire's analysis will be for the account of the party whose analysis is further from that of the Umpire's Result. All other expenses in connection with any analysis hereunder shall be for the account of the party making such analysis. In the event that the Umpire's Result is exactly midway between the Proponent's and the Government's Result, the result for settlement will be the Umpire's Result. The cost of the Umpire's Result in such case will be shared equally between the Government and the Proponent.
- 3.7 The Umpire's Sample and the reserve sample for each Lot shall be retained by the Proponent for six months after they have been taken unless the Government or the

Proponent shall give the other notice that it disputes an analysis of the nickel or cobalt content of a particular Lot prior to the expiration of such period, in which case the applicable sample(s) shall be retained until such dispute is finally resolved. If the Government has not delivered its analysis of any Lot pursuant to Section 3.4 of this Schedule within 120 days after receiving its composite quantity sample with respect to such Lot as provided for in Section 3.2 hereof, the Government shall be deemed to have accepted the Proponent's analysis of such Lot.

4. Except as otherwise expressly provided for herein, all expenses relating to the weighing, sampling and analysis procedure conducted by or on behalf of the Government and the Proponent under this Schedule 4.13.2 will be for their respective accounts. The Government will be entitled, at its own expense, to have a representative present during any weighing, sampling or assaying performed by or for or on behalf of the Proponent in respect of any shipment of Nickel Concentrate or Replacement Concentrate and the Proponent shall give the Government prompt and adequate notice to enable the Government to have a representative present.
5.
 - 5.1 The Proponent shall regularly monitor and maintain all equipment it uses to weigh, sample and assay Nickel Concentrate and Replacement Concentrate to ensure such equipment is working properly and accurately to a standard consistent with recognized mining industry practices. The Proponent shall monitor and have maintained any such equipment of a third party utilized for weighing, sampling or assaying of Nickel Concentrate and Replacement Concentrate.
 - 5.2 Upon receiving reasonable notice in advance from the Government, the Proponent shall provide details of all monitoring and maintenance it has conducted or undertaken under Section 5.1 hereof.
6. If the analyses undertaken under this Schedule 4.13.2 consistently indicates a material difference between the results of the analyses undertaken by the Government and the Proponent, each of the Government and the Proponent shall review its respective method of analysis with a view to ascertaining and adopting, upon mutual agreement, the most equitable method of sampling and analysis so as to avoid such material differences in analysis results.

**SCHEDULE 6.3
MINING LEASE**

THIS INDENTURE (the "Lease") made as of 30 September 2002.

BETWEEN: **HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND AND LABRADOR**, as represented by **THE HONOURABLE THE MINISTER OF MINES AND ENERGY (the "Minister")**, acting pursuant to section 31 and other provisions of the *Mineral Act* RSNL c. M-15 (the "Act"),

of the one part

AND: **VOISEY'S BAY NICKEL COMPANY LIMITED**, a corporation incorporated under the laws of the Province of Newfoundland and Labrador, (the "Lessee"),

of the other part

WHEREAS:

- (a) The Lessee holds a valid and subsisting extended Licence Number 9147M dated as of 21 March 1999, issued pursuant to section 22 of the Act (the "Licence"), for the areas situated near Voisey's Bay, in the Province of Newfoundland and Labrador (the "Province"), and being more particularly described in the Licence;
- (b) The Lessee has represented to the Minister that all the terms, provisions and conditions of or pertaining to the Licence have been complied with during the currency of the Licence, and the Minister has relied upon such representation; and
- (c) The Lessee has delivered an application under and has become entitled to the issuance of a Lease pursuant to section 31 of the Act.

NOW THEREFORE THIS INDENTURE WITNESSETH that for and in consideration of the covenants and agreements hereinafter mentioned and on the part of the Lessee to be observed and performed, the Minister does hereby LEASE AND DEMISE ALL THAT piece or parcel of land situate at Voisey's Bay, in the Province, and being more particularly described in Schedule "A" attached hereto (the "Lands"), which Schedule "A" forms a part of this Lease, unto the Lessee for a term of 25 years, commencing on the date of this Lease, together with the exclusive right to develop, extract, remove, deal with, sell, mortgage or otherwise dispose of all the unalienated minerals located on or under the Lands.

EXCEPTED AND RESERVED NEVERTHELESS out of the Lease granted herein, all stratified deposits other than coal from which oil can be extracted by destructive distillation, petroleum as

defined in the *Petroleum and Natural Gas Act*, all waters and water power, all timber and all other surface rights on, in and under the Lands.

CONDITIONS

- 1.1 When used in this Lease, the term "minerals" shall have the same meaning as is ascribed to that term in the Act.
- 1.2 This Lease is subject to the conditions set forth in section 31(5)(b) of the Act.
- 1.3 The Lessee shall pay at the office of the Minister an annual rental in accordance with Schedule "B" of the *Mineral Regulations*, payable in advance, with the first payment of rental due on the issuance of the Lease, and each subsequent payment shall be made on the anniversary of the date hereof in each and every year during the term of the Lease.
- 1.4 This Lease is also subject to the other terms and conditions imposed by the Minister pursuant to section 31(5)(b)(vii) of the Act as are set forth and contained in Schedule "B" attached hereto, which Schedule "B" forms a part of this Lease.

IN WITNESS WHEREOF the Lease has been executed and delivered by the Lessee and issued by the Minister.

VOISEY'S BAY NICKEL COMPANY LIMITED

By: _____
President

This lease was issued by me pursuant to the
Mineral Act as of 30 September 2002.

**THE HONOURABLE THE
MINISTER OF MINES AND ENERGY**

SCHEDULE "A"

September 26, 2002

All that piece or parcel of land situate and being at Voisey's Bay in the electoral district of Torngat Mountains in the Province of Newfoundland being bound and abutted as follows, that is to say:

Beginning at a point the said point being a Capped Iron Bar being distant 1008.13 as measured on a bearing of North 66 degrees 28 minutes 00 seconds East from G.P.S. Monument P004, the said point having co-ordinates of North 6243679.16 and East 555543.30 of the six degree U.T.M. co-ordinate system;

Thence within Licence No. 9147M, Voisey's Bay Nickel Company Limited, South 69 degrees 22 minutes 40 seconds East 3412.02 metres;

Thence Due South 928.03 metres;

Thence North 69 degrees 22 minutes 40 seconds West 3801.77 metres;

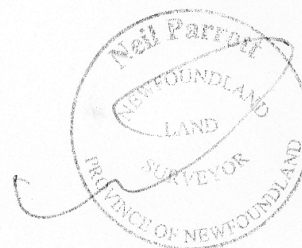
Thence Due West 2164.52 metres;

Thence Due North 790.77 metres;

Thence Due East 2529.30 metres, more or less, to the point of beginning.

Containing an area of 498.876 hectares, more or less;

All bearings being referred to Grid North, U.T.M. Zone 20, NAD 83.



VOISEY'S BAY
NICKEL COMPANY LIMITED
LICENCE No. 9147M

N 6243679.16
E 553014.00

VOISEY'S BAY
NICKEL COMPANY LIMITED
LICENCE No. 9147M

GRID NORTH NAD 83
U.T.M. ZONE 20

6242888.39
553014.00

N 6242888.39
E 555178.52

VOISEY'S BAY
NICKEL COMPANY LIMITED
LICENCE No. 9147M

N 6243679.16
E 555543.30

DF06

VOISEY'S BAY
NICKEL COMPANY LIMITED
LICENCE No. 9147M

NOTE:

ALL BOUNDARY LINES CUT AND MARKED
AT REGULAR INTERVALS IN OPEN AREAS.

POINT	NORTHING	EASTING
P004	6243276.636	554619.023
DF06	6243627.922	556671.703

LINE	BEARING	DISTANCE
L 1	N 66° 28' 00" E	1008.13m
L 2	DUE SOUTH	928.09m
L 3	DUE NORTH	780.77m

N 6241549.41
E 558736.69

N 6242477.44
E 558736.69

VOISEY'S BAY
NICKEL COMPANY LIMITED
LICENCE No. 9147M

N. E. PARROTT SURVEYS LTD.
NEWFOUNDLAND LAND SURVEYORS
GOOSE BAY, LABRADOR 896-5019

- - IRON BAR
- ⊙ - CAPPED IRON BAR
- ▲ - G.P.S. MONUMENT

DATE: - SEPTEMBER 25, 1997

SCALE - 1:25,000

MINING LEASE No. -

(LICENCE No. 9147M)

Linear Measurement Horizontal Ground Distances



SCHEDULE "B"

1.1 **Mineral Act**

The Lessee shall perform all of its obligations contained in (a) the *Mineral Act*, RSNL 1990 c. M-12, as amended, and the regulations issued thereunder and (b) any orders of the Lieutenant-Governor in Council issued pursuant to section 31.1 of said Act.

1.2 **Mining and Mineral Rights Tax Act**

The Lessee shall perform all of its obligations contained in the *Mining and Mineral Rights Tax Act*, RSNL 1990 c. M-16, as amended, and the regulations issued thereunder.

1.3 **Mining Act**

The Lessee shall perform all of its obligations contained in the *Mining Act*, SNL 1999 c. M-15.1, as amended, and the regulations issued thereunder.

1.4 **Rates of Production**

The Lessee shall ensure that the production of the Mine shall not exceed on average 2.2 million tonnes of ore annually for the first 10 years of mining operations and on average 5.5 million tonnes of ore annually thereafter.

1.5 **Binding Instruments**

The Lessee shall perform all of its obligations contained in the following:

- (a) The Development Agreement (the "Development Agreement") dated as of 30 September 2002 between Her Majesty the Queen in Right of Newfoundland and Labrador, the Lessee and Inco Limited;
- (b) The Industrial and Employment Benefits Agreement dated as of 30 September 2002 between Her Majesty the Queen in Right of Newfoundland and Labrador, the Lessee and Inco Limited; and
- (c) The Voisey's Bay Nickel Company Limited Primary Production Order, O.C. 2002-326, subject to the provisions of:
 - (i) the Voisey's Bay Nickel Company Limited Nickel Concentrate Exemption Order, O.C. 2002-327;
 - (ii) the Voisey's Bay Nickel Company Limited Copper Concentrate Exemption Order, O.C. 2002-328; and
 - (iii) the Voisey's Bay Nickel Company Limited Matte Plant Exemption Order, O.C. 2002-329.

1.6 Stop Work Orders

Where the Lessee fails to fulfil any of terms or conditions of the Lease the Minister may issue to the Lessee a stop work order in relation to the activities of the Lessee under the Lease, and where a stop work order is issued, the Lessee shall abide by the terms and conditions thereof.

1.7 Continuing Obligations

The Lessee agrees and acknowledges that the obligations of the Lessee arising under this Lease survive the cancellation, surrender or expiry of this Lease.

1.8 Development Agreement Termination

In addition to any other circumstances in which the Minister may terminate this Lease, the Minister may terminate this Lease if the Development Agreement is terminated pursuant to Section 10.5 thereof.

1.8 Definitions

Capitalized terms used in this Lease and not otherwise defined herein shall have the meanings ascribed thereto in the Development Agreement.

SCHEDULE 6.9
MINING TAX AMENDMENTS

Tax Rate

- ! 16% effective rate
 - » 15% on 80% of net income
 - » 20% of 20% of net income less taxable royalties paid for the grant of the right to engage in mining operations

Tax Base

- ! Gross revenue (including hedging gains or losses related to mine output)

- ! Less:
 - » Reasonable operating expenses directly attributable to mining and processing
 - » Depreciation
 - » 25% declining balance
 - » 100% for new mine assets
 - » Pre-production expenses over estimated mine life
 - » Exploration expenses incurred in Province – carry forward indefinite period
 - » Processing allowance
 - » 8% of milling and concentrating assets in the Province
 - » 15% of other processing assets in the Province
 - » Maximum of 65% of net income before processing allowance

Tax Credits

- ! Provincial corporate income tax paid in respect of mining income may be used to reduce mining tax payable for the first 10 years of operation. Maximum annual credit of \$2 million.

Non-deductible Expenses

- ! Income and capital taxes
- ! Mining tax
- ! Professional fees related to tax appeals
- ! Interest and other costs of financing
- ! Donations
- ! Social and recreational costs not incurred at a remote mine site
- ! Payments made pursuant to an applicable Industrial Benefits Agreement
- ! Amounts in excess of the actual cost of non-arm's length transactions

**SCHEDULE 6.10
PRIMARY PRODUCTION ORDER**

This document can be found at the following web address: <http://www.gov.nf.ca/hoa/regulations/rc020063.htm>

SCHEDULE 8.1

DISPUTE RESOLUTION PROCEDURES

ARTICLE 1 GENERAL

1.1 Definitions

For the purposes of this Schedule 8.1, the following terms shall have the meanings ascribed thereto:

“Arbitration Panel” means the three-member arbitration panel if appointed pursuant to Section 4.2 of the Arbitration Procedures;

“Arbitration Procedures” means the provisions of Article 4 hereof;

“Arbitrator” means any arbitrator appointed pursuant to the Arbitration Procedures who is (a) appropriately qualified by education and relevant experience to review and reach a decision on the matters contemplated by the Dispute; and (b) independent and free from any existing or potential conflict of interest;

“Dispute” means any disagreement, dispute, conflict or controversy contemplated by Section 8.1 of this Agreement;

“Dispute Resolution Procedures” means the three-step process contemplated by Section 1.2 hereof;

“Final Position” has the meaning ascribed thereto in Section 4.3.2 hereof;

“Information” means any documents, presentations or other information submitted to the Joint Committee, the Mediator, the Sole Arbitrator or the Arbitration Panel or otherwise disclosed by a Party or Parties for purposes of these Dispute Resolution Procedures;

“Initiating Party” has the meaning ascribed thereto in Section 4.2.2 hereof;

“Institute” means the ADR Institute of Canada, Inc. of Toronto, Ontario;

“Joint Committee” has the meaning ascribed thereto in Section 2.1 hereof;

“Joint Committee Procedure” means the provisions of Article 2 hereof;

“Mediation Procedure” means the provisions of Article 3 hereof;

“Mediator” means the mediator appointed pursuant to the Mediation Procedure who is (a) appropriately qualified by education and relevant experience to review and reach a decision

on the matters contemplated by the Dispute; and (b) independent and free from any existing or potential conflict of interest;

“**Notice**” has the meaning ascribed thereto in Section 4.2.2 hereof;

“**Party**” means the Government or the Proponent and “**Parties**” means both of them;

“**Recipient**” has the meaning ascribed thereto in Section 4.2 2 hereof;

“**Rules**” means the Institute’s Commercial Arbitration Rules in effect at the time that the Sole Arbitrator, or the third Arbitrator in the case of the Arbitration Panel, is appointed or a Notice is sent; and

“**Sole Arbitrator**” means the single Arbitrator, if appointed by the Parties pursuant to Section 4.2.1 hereof.

1.2 **Purpose and Sequence of Dispute Resolution**

The purpose of this Schedule is to set forth the framework and procedures which each Party agrees to use to resolve a Dispute without resort to litigation. The Parties agree to use a three-step process to achieve this goal, to be undertaken in the following order:

1.2.1 first, by referring the Dispute to a Joint Committee;

1.2.2 second, by mediation; and

1.2.3 third, by arbitration.

1.3 **Confidentiality**

1.3.1 All Information disclosed by a Party or Parties to the Joint Committee, a Mediator, the Sole Arbitrator or the members of the Arbitration Panel for purposes of the Dispute Resolution Procedures shall be treated as confidential and neither the delivery nor disclosure of Information shall represent any waiver of privilege by a Party or Parties disclosing the same. Each Party agrees not to disclose Information provided by the other Party for the purposes hereof to any other Person for any other purpose, except as may be required by Applicable Laws, provided that notice is first given to the other party before such disclosure is made. Such Information shall not be used in any subsequent proceedings, except between the Parties, without the consent of the Party who has made disclosure of the same. The Parties agree that any Joint Committee member, Mediator or Arbitrator appointed hereunder shall not be subpoenaed or otherwise compelled as a witness in any proceedings for any purpose whatsoever in relation to this Agreement.

- 1.3.2 Except as may be required by Applicable Laws, the Parties, the members of the Joint Committee, a Mediator, the Sole Arbitrator and the members of the Arbitration Panel shall not disclose the existence, contents or results of any of the Dispute Resolution Procedures without the Approval of the Parties.

ARTICLE 2 JOINT COMMITTEE

- 2.1 Each Dispute shall be first referred to, on a non-binding basis, a committee (the “**Joint Committee**”) comprising two individuals, one of each to be appointed by each of the Parties in writing. References to the Joint Committee may be initiated at any time by one Party or by both Parties acting separately or together, on not less than five days’ prior notice. Each Party shall be afforded an opportunity to present all relevant Information regarding its position on the Dispute to the Joint Committee. If the Joint Committee has not resolved the Dispute to the satisfaction of the Parties within fourteen days of the date the Dispute has been referred to it for review, the matter shall then be referred to mediation pursuant to Article 3 hereof. If either Party does not present Information regarding its position on the Dispute to the Joint Committee, the Joint Committee may attempt to resolve the Dispute without such Information.

ARTICLE 3 MEDIATION

- 3.1 When a Dispute is to be referred to mediation, the Joint Committee shall, within seven days notice given to it by either Party, meet and attempt to appoint a Mediator. If the Joint Committee fails to appoint a Mediator within fourteen days after a Dispute is referred to mediation, or if the Dispute is not resolved by the Mediator within sixty days after his or her appointment, then the Dispute shall be referred to arbitration pursuant to Article 4 hereof. All mediation undertaken hereunder shall be non-binding.

ARTICLE 4 ARBITRATION PROCEDURES

- 4.1 **Applicable Rules**

If the Parties are unable to resolve the Dispute pursuant to Articles 2 and 3 hereof, they shall submit the Dispute to binding arbitration before a Sole Arbitrator or Arbitration Panel pursuant to the Arbitration Procedures and, if applicable, the Rules, except as modified in this Article 4 thereof.

4.2 Appointment of Arbitrators

- 4.2.1 In the event of a Dispute which the Parties wish to submit to Arbitration, they shall, subject to Section 4.2.3 hereof, submit the Dispute to a Sole Arbitrator (the “**Sole Arbitrator**”) selected and appointed by them in accordance with the Rules.
- 4.2.2 In the event the Parties cannot agree on the appointment of a Sole Arbitrator as contemplated by Section 4.2.1 hereof, either Party (the “**Initiating Party**”) shall select one initial Arbitrator and shall send a notice (the “**Notice**”) to the other Party (the “**Recipient**”) setting out the name of the Arbitrator selected by the Initiating Party.
- 4.2.3 The Recipient shall have ten days from receipt of the Notice to select a second Arbitrator and to notify the Initiating Party of the name of the Arbitrator selected by the Recipient.
- 4.2.4 Promptly upon their selection and in any event within seven days of the appointment of the second Arbitrator the two Arbitrators then selected shall appoint a third Arbitrator, who shall be chair.
- 4.2.5 If the Recipient fails to appoint a second Arbitrator pursuant to Section 4.2.3 hereof, or the two selected Arbitrators fail to appoint a third Arbitrator, the Initiating Party in the event the Recipient fails to appoint an Arbitrator, or either of the Parties in the event the two Arbitrators fail to appoint the third Arbitrator, shall be free upon notice to the other Party to request the Executive Director defined in the Rules (in accordance with the Rules) to promptly appoint the second or third Arbitrator, as applicable, and to notify the Parties of such appointments.

4.3 Procedures

- 4.3.1 The Parties shall agree in advance on the procedures to be followed by the Sole Arbitrator or the Arbitration Panel to hear witnesses and arguments, review documents and otherwise conduct the arbitration. Failing agreement by the Parties on all of the procedures to be so followed by the Sole Arbitrator or the Arbitration Panel within seven days from the date of the appointment of the Sole Arbitrator or the third Arbitrator, the Sole Arbitrator or the Arbitration Panel shall, subject to Sections 4.3.2, 4.3.3 and 4.3.4 hereof, use the Rules and promptly commence and expeditiously conduct the arbitration proceedings.
- 4.3.2 Each Party shall submit to the Sole Arbitrator or the Arbitration Panel and to each other, at least ten days in advance of the hearing to be held on a Dispute, its position (in this Section 4.3.2, a “**Final Position**”), together with any and all documentation in support of such Final Position, on what the award or decision of the Sole Arbitrator or Arbitration Panel should be with respect to the Dispute. A Party shall limit its Final Position to the Dispute to be determined by the Sole Arbitrator or Arbitration Panel. The decision or award of the Sole Arbitrator or Arbitration Panel shall be limited to selecting the Final Position of one of the Parties.

The decision or award of the Sole Arbitrator or Arbitration Panel shall be in writing and shall include a reasoned opinion explaining the reasons for the decision or award made.

4.3.3 The Sole Arbitrator or the Arbitration Panel shall issue its decision or award (by majority decision in the case of the Arbitration Panel) in writing within forty-five days from the date of appointment of the Sole Arbitrator or the third Arbitrator.

4.3.4 Neither the Sole Arbitrator nor the Arbitration Panel shall have the jurisdiction to amend or vary the terms of this Article 4 or of the Rules.

4.4 **Site**

The arbitration shall take place at St. John's, in the Province.

4.5 **Decision or Award**

4.5.1 The arbitration decision or award of the Sole Arbitrator or the Arbitration Panel shall be final and binding on the Parties with respect to the Dispute and shall not be subject to any appeal. Each Party shall bear its own costs and expenses and an equal share of the fees and expenses of the Sole Arbitrator or the Arbitration Panel and, if required, the Executive Director defined in the Rules. The fees of the Sole Arbitrator or Arbitration Panel shall be agreed by the Parties at the time of its or their selection.

4.5.2 Judgment upon the arbitration decision or award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.