

SIXTH AMENDMENT TO VOISEY'S BAY DEVELOPMENT AGREEMENT

THIS SIXTH AMENDMENT AGREEMENT is made on December 19, 2014.

AMONG:

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

- and -

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

- and -

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

(collectively referred to as the "Parties")

WHEREAS:

- A. The Proponent continues to commission and ramp-up the Processing Plant to allow for the processing of nickel concentrate from the Mine.
- B. To ensure continuity of operations at the Mine and to provide operational flexibility at the Processing Plant while the commissioning and ramp-up are underway, the Proponent requires the Additional Exemption (2014) from the primary processing requirement under the Mineral Act.
- C. In consideration of the Additional Exemption (2014), the Proponent has agreed to the payment to Government of (i) the Definitive Unprocessed Nickel Charge (2014); (ii) the Community Investment in Newfoundland and Labrador; and (iii) a requirement that the Proponent return an equivalent amount of Nickel-in-Concentrate to the Province for processing at the Processing Plant.
- D. Accordingly, the Parties wish to amend the Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1- DEFINITIONS AND INTERPRETATION

- 1.1 **Capitalised Terms.** All capitalised terms used but not defined in this Sixth Amendment Agreement (including the recitals) shall have the respective meanings ascribed thereto in the Agreement.
- 1.2 **Interpretation.** The provisions of Sections 1.3 to 1.14 of the Agreement, and of Article 11 of the Agreement (save and except for Section 11.11) are hereby incorporated by

reference into this Sixth Amendment Agreement, and references therein to "**this Agreement**" shall be construed as "**this Sixth Amendment Agreement**".

1.3 **Schedules.** The following schedules attached to this Sixth Amendment Agreement form an integral part of this Sixth Amendment Agreement:

(a) Schedule A - Form of Nickel Concentrate Exemption Order (2014).

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

2.1 **Proponent's Representations and Warranties.** Acknowledging that Government is relying on such representations and warranties, Vale NL and Vale Canada jointly and severally represent and warrant to Government that:

- 2.1.1 each is a corporation which has been duly incorporated or organized, as applicable, under the laws of its jurisdiction of incorporation or organization, as applicable, and is validly existing under such laws;
- 2.1.2 Vale Canada is extra-provincially registered in the Province;
- 2.1.3 each has all necessary corporate power, authority and capacity to enter into this Sixth Amendment Agreement and to perform its respective obligations herein;
- 2.1.4 the execution and delivery of this Sixth Amendment Agreement and the consummation of the transactions contemplated herein, by each of them, have been duly authorized by all necessary corporate action on the part of each of them;
- 2.1.5 neither is a party to, bound or affected by, or subject to, any indenture, mortgage, lease, agreement, instrument, charter or by-law provision, which, with or without the giving of notice or the lapse of time, or both, would be violated, contravened or breached by, or under which default would occur as a result of, the execution, delivery or performance by them of this Sixth Amendment Agreement or the consummation of any of the transactions provided for herein;
- 2.1.6 neither is bound or affected by or subject to any Applicable Law which, with or without the giving of notice or the lapse of time, or both, would be violated, contravened or breached by, or under which default would occur as a result of, the execution, delivery or performance of this Sixth Amendment Agreement or the consummation of any of the transactions provided for herein;
- 2.1.7 no approval, authorization, consent, permit, or other action by, or filing with, any Government Entity is required in connection with the execution and delivery of this Sixth Amendment Agreement and the performance of their respective obligations hereunder, except as otherwise stated herein;
- 2.1.8 there is no suit, action, litigation, arbitration proceeding or proceeding by a Governmental Entity, including appeals and applications for review, in progress, pending or, to the Knowledge of either of them, threatened against or involving either of them, or any judgment, decree, injunction or order of any court or arbitrator which could adversely affect the capacity or power of either of them to

execute and deliver this Sixth Amendment Agreement or to consummate the transactions contemplated herein or which could materially adversely affect their respective assets, financial condition or future prospects;

2.1.9 this Sixth Amendment Agreement shall, 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;

2.1.10 all references to estimates made by Vale Canada and Vale NL in this Sixth Amendment Agreement have been determined by them based upon information available at the date of this Sixth Amendment Agreement, and have been estimated by each of them bona fide and reasonably and neither of them has any reason to believe that any such estimates are unreasonable or unfounded at the date of this Sixth Amendment Agreement; and

2.1.11 Vale NL and Vale Canada is each a wholly owned subsidiary of Vale.

2.2 **Government Acknowledgments.** The Government acknowledges that none of Vale NL, Vale Canada or any Person for whom either of them may be responsible in law has made any representations and warranties with respect to this Sixth Amendment Agreement except the representations and warranties expressly made in this Sixth Amendment Agreement.

2.3 **Government's Representations and Warranties.** Acknowledging that the Proponent is relying on such representations and warranties, the Government represents and warrants to the Proponent that:

2.3.1 the execution and delivery of this Sixth Amendment Agreement and the Nickel Concentrate Exemption Order (2014) 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 by it of this Sixth Amendment Agreement or the Nickel Concentrate Exemption Order (2014) or the consummation of any of the transactions provided for therein; and

2.3.3 this Sixth Amendment Agreement and the Nickel Concentrate Exemption Order (2014) shall, upon execution and delivery, constitute legal, valid and binding obligations of the Government enforceable against it in accordance with their respective terms, except as they may be limited by the general principles of equity.

2.4 **Proponent Acknowledgements.** Each of Vale Canada and Vale NL acknowledges that neither Government nor any Person for whom Government may be responsible in law has made any representations and warranties with respect to this Sixth Amendment

Agreement or the Nickel Concentrate Exemption Order (2014) except the representations and warranties expressly made in this Sixth Amendment Agreement.

ARTICLE 3- AMENDMENTS TO THE AGREEMENT

3.1 Article 1 - (Definitions and Interpretation).

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

"Additional Exemption (2014)" has the meaning set forth in Section 6.4.3.

"Community Investment" means a substantial Community Investment to be made by Vale NL in the Province in the amount of \$30,000,000.

"Definitive Unprocessed Nickel Charge (2014)" has the meaning set forth in Section 4.4B.

"Implementation Plan (2014)" has the meaning set forth in Section 4.1A.1.

"Middlings Concentrate" means generally, an intermediate-grade nickel-copper-iron sulphide concentrate that contains less than 15% of nickel (dry basis) and more than 3% of copper (dry basis).

"Middlings Concentrate Exemption Option" has the meaning set forth in Section 6.8.1.

"Nickel Concentrate Exemption Order (2014)" means the Nickel-in-Concentrate Exemption Order in the form set forth in Schedule A.

"Sixth Amendment Agreement" means the Sixth Amendment Agreement dated December 19, 2014 entered into by the Government, Vale NL and Vale Canada amending the terms of the Agreement.

"Term Sheet (2014)" means the term sheet dated as of November 21, 2014 between Government, Vale Canada and Vale NL.

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

(a) the definition of **"Additional Exemption"** is deleted and replaced by the following:

"Additional Exemption" means the additional exemption of 99,000 tonnes of nickel-in-concentrate provided for in the Nickel Concentrate Exemption Order (2013)."

(b) the definition of **"Agreement"** is deleted and replaced by the following:

"Agreement" means the Voisey's Bay Development Agreement dated 30 September 2002, as amended by the First Amendment Agreement, the Second Amendment Agreement (which terminated the First Amendment Agreement), the Third Amendment Agreement (which terminated the

Second Amendment Agreement), the Fourth Amendment Agreement, the Fifth Amendment Agreement, and the Sixth Amendment Agreement and includes all Schedules attached to this Agreement, and all such further amendments or supplements to this Agreement, 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 of this Agreement.

- (c) the definition of "Exemption Orders" is deleted and replaced by the following:

"Exemption Orders" means, collectively, the Nickel Concentrate Exemption Order (2013), the Nickel Concentrate Exemption Order (2014), the Copper Concentrate Exemption Order (2013) and the Matte Plant Exemption Order.

- (d) the definition of "Exemption Order Termination Date" is deleted and replaced by the following:

"Exemption Order Termination Date" has the meaning set forth in Section 6.4.4.

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

"Nickel Concentrate Exemption Order" means collectively, the Nickel Concentrate Exemption Order (2013) and the Nickel Concentrate Exemption Order (2014).

- (f) the definition of "Nickel Concentrate Exemption Order (2009)" is deleted.

- (g) the definition of "Nickel Concentrate Exemption Order (2013)" is deleted and replaced by the following:

"Nickel Concentrate Exemption Order (2013)" means the *Nickel-in-Concentrate Exemption Order*, 2013 NLR 40/13 under the Mineral Act dated March 27, 2013, as amended by amendment dated December 5, 2014, all of which shall be amended and replaced by the Nickel Concentrate Exemption Order (2014).

- (h) The definition of "Notice" is deleted and replaced by the following:

"Notice" has the meaning set forth in Section 11.3.

- 3.1.3 Section 1.2 Schedules is amended by deleting therefrom Schedule A and replacing it by the following:

Schedule A – Form of Nickel Concentrate Exemption Order (2014).

3.2 **Article 4 - (Proponent's Undertakings).** The Parties agree that the following provisions of Article 4 shall be amended as follows:

3.2.1 Section 4.1A.1 is deleted and replaced by the following:

4.1A.1 **Implementation Plan (2014).** The Proponent has delivered to Government a revised implementation plan (the "**Implementation Plan (2014)**") under cover of a letter dated December 18, 2014. The Proponent shall proceed diligently generally in accordance with the Implementation Plan (2014) recognizing the Proponent's focus on Commissioning and the production of nickel will continue to require flexibility in the sequencing and scope of work described in the Implementation Plan (2014) and any revisions thereto. For greater certainty, the Engineer's Assessment shall continue to include the Engineer's Assessment as to whether the Proponent is proceeding diligently to complete the Processing Plant as required by this Section 4.1A.1.

3.2.2

[REDACTED]

3.2.3 The date "**30 June 2014**" where it appears in Section 4.2A.1 shall be deleted and replaced by the date "**December 31, 2015**".

3.2.4 There is added to Section 4.2A.2 the following:

The PTVI Matte under the 2014 Option must be imported into the Province on or before December 31, 2015.

3.2.5 There is added to Article 4 a new Section 4.4B as follows:

4.4B **Definitive Unprocessed Nickel Charge (2014)** The Proponent shall pay to Government a definitive unprocessed nickel charge in respect of Nickel-in Concentrate exported from the Province pursuant to the Additional Exemption (2014) ("**Definitive Unprocessed Nickel Charge (2014)**").

[REDACTED]

All other provisions of Section 4.4A shall apply to the calculation of the Definitive Unprocessed Nickel Charge (2014), *mutatis mutandis*.

3.2.6

[REDACTED]

3.2.7 Section 4.13.1 is amended by deleting therefrom the words and figures "..., including without limitation, under Section 6.4.5 and 6.4.6 of the Agreement..."

3.2.8 A new Section 4.17 is added as follows:

4.17 **Community Investment.** The Proponent shall make the Community Investment for capital and other projects to be determined by Government, the terms of which shall be agreed by the Parties.

3.3 **Article 6 - (Government Undertakings).**

3.3.1 Section 6.4 of the Agreement is deleted and replaced by the following:

6.4 **Exemption Orders.**

6.4.1 As at the date of the Sixth Amendment Agreement, the Nickel Concentrate Exemption Order (2013), the Copper Concentrate Exemption Order (2013) and the Matte Plant Exemption Order remain in full force and effect.

6.4.2 Effective immediately following the effectiveness of the Sixth Amendment Agreement, the Government shall issue the Nickel Concentrate Exemption Order (2014) (which by its terms shall terminate the Nickel Concentrate Exemption Order (2013)). As an administrative matter, Government shall issue an order terminating the Matte Plant Exemption Order.

6.4.3 The Nickel Concentrate Exemption Order (2014) shall serve to (a) increase the maximum aggregate amount of permitted shipments of Nickel-in-Concentrate from the Province by 94,000 tonnes over and above the 539,000 tonnes which were permitted under the Nickel Concentrate Exemption Order (2013) (such additional permitted shipments of Nickel-in-Concentrate, the "**Additional Exemption (2014)**") and (b) provide for the Middlings Concentrate Exemption Option.

6.4.4 The Exemption Orders shall permit the Proponent to ship an aggregate maximum of 633,000 tonnes of Nickel-in-Concentrate from the Province during the period commencing on 30 September 2002 and extending until the earliest of: (a) the date on which the shipments of Nickel-in-Concentrate by the Proponent have reached the aggregate maximum of 633,000 tonnes, (b) the date on which the applicable Exemption Order has been rescinded under section 31.1(3) of the Mineral Act, and (c) 31 December 2020 (the "**Exemption Order Termination Date**").

6.4.5 For greater certainty, the Additional Exemption and the Additional Exemption (2014) shall be subject to the Proponent's obligations under Section 4.13.

3.3.2 There is added to the Agreement a new Section 6.8 as follows:

6.8 Middlings Concentrate Exemption Option and Replacement

- 6.8.1 In order to allow the Proponent the flexibility to address complications associated with the introduction of Middlings Concentrate to the Processing Plant feed and maintain ramp-up in general accordance with the Implementation Plan (2014), the Proponent shall have the option of exporting Middlings Concentrate ("**Middlings Concentrate Exemption Option**").
- 6.8.2 Prior to each occurrence of the Proponent exercising the Middlings Concentrate Exemption Option, the Proponent shall provide Government with notice of its intention to exercise the Middlings Concentrate Exemption Option together with the operational rationale and details of replacement concentrate source and timing. Without interfering with the Proponent's ability to exercise the Middlings Concentrate Exemption Option, Government maintains the right to seek advice from an expert who shall be provided information by the Proponent related to the operational rationale.
- 6.8.3 The Middlings Concentrate Exemption Option shall be on the basis of a "No Net Export" principle meaning that the Proponent shall replace the Middlings Concentrate exported with an equivalent amount of nickel feed for processing at the Processing Plant as soon as reasonably possible in order to maintain ramp up in general accordance with the Implementation Plan (2014) and, in any event, not later than within 12 months of the Middlings Concentrate having been exported.
- 6.8.4 The Middlings Concentrate Exemption Option shall expire on the Exemption Order Termination Date.
- 6.8.5 Exports made under the Middlings Concentrate Exemption Option, if not replaced within 12 months as contemplated in accordance with Section 6.8.3 shall be deemed to be a portion of the Additional Exemption (2014).
- 6.8.6 In the event that (a) exports made under the Middlings Concentrate Exemption Order have not been replaced within 12 months as contemplated in accordance with Section 6.8.3 and (b) all of the Nickel-in-Concentrate permitted to be exported under the Additional Exemption (2014) has been exported, then the obligation to replace an equivalent amount of nickel feed that was exported after all of the Nickel-in-Concentrate permitted to be exported under the Additional Exemption (2014) has been exported shall be an ongoing obligation of the Proponent and Government may suspend the Middlings Concentrate Exemption Option after 12 months has elapsed from the date of export until the Nickel-in-Concentrate has been replaced.
- 6.8.7 Exports made under the Middlings Concentrate Exemption Option, if not replaced within 12 months as contemplated in accordance with Section 6.8.3 shall be subject to and calculated in accordance with Section 4.4B as a liquidated damages amount, which the Parties agree shall be a genuine pre-estimate of the loss to the Government as a result of a

breach of the Proponent's obligation to replace Middlings Concentrate in accordance with Section 6.8.3. Such liquidated damages shall be the sole and exclusive remedy available to Government in the event the Middlings Concentrate is not replaced within 12 months as contemplated in accordance with Section 6.8.3.

6.8.8 Notwithstanding the liquidated damages provided for in Section 6.8.7, Government maintains its rights under section 31.1(3) of the Mineral Act and Section 6.8.6

3.4 **Article 9 - (Confidential Information)**. Section 9.6 is hereby deleted and replaced with the following:

9.6 **Other Confidentiality Undertakings**. The parties acknowledge that the supplemental confidentiality undertakings in Section 5.5 of the Fourth Amendment Agreement, Section 4.6 of the Fifth Amending Agreement and 4.6 of the Sixth Amending Agreement remain in full force and effect.

3.5 **Article 15 – Project Completion, Progress Reports, Engineer's Assessments and Remedies**

3.5.1



ARTICLE 4- GENERAL MATTERS

4.1 **Change in Circumstances**. The Parties recognize that technical, economic or other circumstances may arise which would require the Parties to review and reconsider the covenants contained in this Sixth Amendment Agreement and in any definitive agreements created as a result of the understandings in this Sixth Amendment Agreement. As such, the Proponent may request of Government from time to time that it meet to discuss these technical, economic or other circumstances and both parties shall act in good faith in working towards mutually agreeable solutions to the matters discussed.

4.2 **Waiver**. In consideration for the obligations and undertakings of the Proponent in this Sixth Amendment Agreement, the Government hereby acknowledges and agrees that it has expressly waived the right to exercise any of the remedies arising from any Event of Default that may have occurred up to the effective date of this Sixth Amendment Agreement.

4.3 **Entire Agreement**. This Sixth Amendment Agreement comprises the complete and exclusive agreement of the Parties regarding the subject matter of this Sixth Amendment Agreement and supersedes all oral and written communications, negotiations, representations or agreements in relation to that subject matter made or entered into before the date hereof, including without limitation (a) Term Sheet.

4.4 **No Further Amendments**. This Sixth Amendment Agreement is supplemental to and shall be read with and deemed to be part of the Agreement. The Agreement shall be deemed to be amended and modified in accordance with this Sixth Amendment

Agreement. In all other respects, however, the Agreement shall remain unchanged and in full force and effect.

- 4.5 **Consolidation and Restatement of the Agreement.** To facilitate the management of the Parties' respective rights and responsibilities in relation to the Project, the Parties shall endeavour to prepare a consolidated and restated version of the Agreement at their earliest convenience.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 4.7 **Counterparts.** This Sixth Amendment Agreement may be executed by the Parties in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument. Delivery of an executed signature page of this Sixth Amendment Agreement by facsimile transmission or via email in PDF or similar format shall be as effective as delivery of a manually executed counterpart of this Sixth Amendment Agreement.

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Schedule A

Nickel Concentrate Exemption Order (2014)

[See attached]