

This Agreement made July 22, 2002 at St. John's in the Province of Newfoundland and Labrador:

**Memorandum of Agreement
Concerning the
Voisey's Bay Project**

BETWEEN: Her Majesty the Queen in right of Newfoundland and Labrador
as represented by the Minister of Labrador and Aboriginal Affairs
(hereinafter called the Province)

OF THE FIRST PART

AND: The Innu of Labrador as represented by the
Innu Nation, a body corporate under the laws of Canada
(hereinafter called the Innu Nation)

OF THE OTHER PART

Whereas the Innu of Labrador, represented by the Innu Nation, assert constitutionally protected aboriginal rights in and to lands in Labrador that have been used and continue to be used by the Innu, which are the subject of comprehensive land claims negotiations currently underway pursuant to a Framework Agreement signed by the Innu Nation, Canada, Newfoundland and Labrador on March 29, 1996;

And whereas the Voisey's Bay Project will impact on the lands which the Innu people assert are their traditional lands, and will impact as well on their culture, environment and socio-economic circumstances;

And whereas as part of the reconciliation of the asserted rights and interests of the various persons and entities affected by the Voisey's Bay Project, the Innu Nation is negotiating the Voisey's Bay Impacts and Benefits Agreement with the Developer of the Voisey's Bay Project;

And whereas as a further part of such reconciliation, the comprehensive claim agreement now being negotiated between the Innu Nation, Canada and the Province will include a chapter which relates to the Voisey's Bay Project;

And whereas as an additional part of such reconciliation the Parties to this MOA are participating in the negotiations of an Environmental Management Agreement between the Innu Nation, the Labrador Inuit Association, the Government of Newfoundland and Labrador, and the Government of Canada;

And whereas as an additional part of such reconciliation, the Parties to this MOA have found it appropriate to make bilateral agreements between themselves, in order to facilitate the commencement, operation and closure of the Voisey's Bay Project;

And whereas the Parties have the authority to enter into this agreement and will seek the needed authorizations from their respective constituencies for this MOA to come into force;

NOW, THEREFORE, THE PARTIES IN CONSIDERATION OF THESE PRESENTS, COVENANT AND AGREE AS FOLLOWS:

Part 1 Definitions

1.1. In this MOA, words that begin with a capitalized letter or phrases in which each word begins with a capital letter have the meaning set out below:

“Agreement” means the final land claims agreement between the Innu, as represented by the Innu Nation, Canada and the Province should such an agreement come into being;

“Closure” means Termination and compliance with all and the completion of all provincially approved Rehabilitation plans; the commencement of all post-Rehabilitation monitoring and maintenance measures required by or pursuant to provincial legislation; and the implementation of any additional measures required by the Province following Consultation with the Innu Nation, which are intended to ensure the long-term environmental safety of the Voisey's Bay Area.

“Consult” means to provide:

- (a) to the Person being consulted, notice of a matter to be decided in sufficient form and detail to allow that Person to prepare its views on the matter;
- (b) a reasonable period of time in which the Person being consulted may prepare its views on the matter, an opportunity to present its views to the Person obliged to consult;
- (c) full and fair consideration by the Person obliged to consult of any views, presented; and
- (d) discussion with the Innu Nation where the views of the Innu Nation are not

proposed to be substantially incorporated as well as provision of written reasons if any views are not substantially incorporated.

“Developer” means Inco and Voisey’s Bay Nickel Company Limited and their respective Successors, permitted Assigns, nominees, contractors and agents;

“Effective Date” means the first date on which federal and provincial ratification legislation implementing the Agreement are both in effect;

“Environmental Management Agreement” means the agreement between the Innu, as represented by the Innu Nation, the Inuit as represented by the Labrador Inuit Association, Canada and the Province regarding the environmental management of the Undertaking as defined in that agreement, and includes any agreed amendments thereto;

“Gas” means natural gas and includes all substances other than Oil that are produced in association with natural gas;

“Geothermal Resource” means a subsurface or surface source of heat energy that results from subsurface geological processes, and includes steam, hot fluids or heated rock but does not include the normal background heat flow found in the subsurface.

“Inco” means Inco Limited, a corporation organized and existing under the *Canada Business Corporations Act*, the parent company of Voisey’s Bay Nickel Company Limited;

“Inuit Final Agreement” means the final land claims agreement between the Inuit, as represented by Labrador Inuit Association, Canada and Newfoundland and Labrador;

“Innu Government” means the government as so defined, identified, and characterized in the Agreement;

“Labrador Innu Lands” means those lands as so defined, identified, selected and characterized by the Agreement;

“Labrador Innu Settlement Area” means that area as so defined, delineated, and characterized by the Agreement;

"Labrador Inuit Association" means the body corporate by that name organized and existing under provincial law, and includes its successors and assigns;

“Labrador Inuit Lands” means those lands so defined, delineated, and characterized by the Inuit Final Agreement;

“Labrador Inuit Settlement Area” means that area so defined, delineated, and characterized by the Inuit Final Agreement;

“Labrador Innu and Inuit Lands” means those co-owned Innu and Inuit Lands which may arise pursuant to section 4.4 (2) of this MOA;

“Labrador Innu and Inuit Settlement Area” means the co-designated Innu and Inuit Settlement Area which may arise pursuant to section 4.7 of this MOA;

“Mineral” means any naturally occurring inorganic substance including gems, precious and base metals, coal, and minerals contained in mine tailings, but does not include water, Quarry Materials, stratified deposits other than coal from which Oil can be extracted, or Petroleum;

“MOA” means this Memorandum of Agreement concerning the Voisey’s Bay Project;

“Oil” means:

- (a) crude oil regardless of gravity produced at a well-head in liquid form; and
- (b) any other hydrocarbons, except coal and gas and, without limiting the generality of the foregoing, hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from other types of deposits in, upon or beneath the soil of the earth including on the sea bed or the subsoil of the sea bed;

“Nunatsiavut Government” means the government as so defined, identified, and characterized in the Inuit Final Agreement.

“Overlap Agreement” means any written agreement between the Innu Nation or the Innu Government and the Labrador Inuit Association or the Nunatsiavut Government regarding any overlapping issues noted in this MOA;

“Parties” means the parties to this MOA;

“Person” includes an individual, a partnership, a corporation, a trust, an unincorporated association, government or any agency or political subdivision of government, or other entity and their respective heirs, executors, administrators and other legal representatives and for greater certainty includes the Developer, all Subsequent Developers, and the Province;

“Petroleum” means Oil or Gas;

“Quarry Material” means a substance used in its natural form for construction or agricultural purposes and includes:

- (a) clay, sand, gravel, stone, topsoil, soil, marl, peat and peat moss; and
- (b) a mineral, rock or stone capable of being cut or polished for use as an ornament, personal adornment or decoration.

“Rehabilitation” means any measure that is provincially required that is intended to:

- (a) restore as close as is reasonably possible the site to its original condition,
- (b) restore the site to the satisfaction of the applicable provincial minister or ministers;
- (c) render the site suitable for a use that the applicable provincial minister or ministers considers appropriate, or
- (d) achieve one or more of the above objectives;

“Revenue” means:

- (a) any Tax that is received by the Province under the *Mining and Mineral Rights Tax Act*, the *Petroleum and Natural Gas Act*, the *Quarry Materials Act* or the *Mineral Act*;
- (b) any Tax that is received by the Province under any provincial legislation to replace or amend the *Mining and Mineral Rights Tax Act*, the *Petroleum and Natural Gas Act*, the *Quarry Materials Act* or the *Mineral Act* or to levy a new or additional Tax in respect of Subsurface Resources in the province;
- (c) any amount that is received by the Province under a Tax collection, Tax rental, revenue sharing or other similar arrangement with Canada or any other jurisdiction in respect of a Tax in respect of Subsurface Resources in the province, and
- (d) any interest or penalty that is received by the Province in respect of a Tax or an amount referred to in paragraph (a), (b) or (c);

“Site Closure” means either

- (a) the completion of Rehabilitation in respect of a parcel of land within the Voisey’s Bay Area following Termination, or
- (b) the completion of Rehabilitation in respect of a parcel of land within the Voisey’s

Bay Area prior to Termination if the Parties agree that a Site Closure may take place with respect to the subject parcel of land prior to Termination pursuant to section 4.8;

“Subsequent Developer” means any Person undertaking all or any part of the Voisey’s Bay Project and their Successors, Assigns, nominees, contractors and agents, but does not include the Developer.

“Subsequent Development” means any part of the Voisey’s Bay Project not undertaken by the Developer.

“Subsequent Impacts and Benefits Agreement” means the agreement noted in Part 5 hereof, whether reached through arbitration or not, between a Subsequent Developer and the Innu Nation, and amendments thereto.

“Subsurface Resource” for the purposes of this MOA means Minerals, Petroleum, Quarry Materials and Geothermal Resources.

“Tax” means:

- (a) a tax, royalty, rent, fee, excluding a fee levied for administrative purposes, or payment in the nature of a royalty in respect of a Subsurface Resource; and
- (b) any other amount that is payable for a right to explore for or exploit a Subsurface Resource or a right of entry or user relating to a right to explore for or exploit a Subsurface Resource;

“Termination” means 5 years following permanent cessation of mineral production in saleable quantities by all Persons in the Voisey’s Bay Area, but, in any event, Termination shall not occur until a period of 30 years has elapsed from the commencement of mineral production in saleable quantities in the Voisey’s Bay Area.

“Undertaking” means the Undertaking as defined in the Environmental Management Agreement.

“Voisey’s Bay Area” means the area within the black line on the map attached to this chapter as Schedule 1;

“Voisey’s Bay Impacts and Benefits Agreement” means the agreement noted in Part 5 hereof, between the Developer and the Innu Nation, and amendments thereto;

“Voisey’s Bay Nickel Company Limited” means the corporation organized and existing

under the *Corporations Act* of the Province, a wholly owned subsidiary of Inco; and

“Voisey’s Bay Project” means the activities carried out by the Developer and Subsequent Developer in and physical infrastructure located within the Voisey’s Bay Area associated with exploration, mining, extracting, milling concentrating and producing Subsurface Resources located within the Voisey’s Bay Area. These activities and physical infrastructure in the Voisey’s Bay Area include, without limiting the generality of the foregoing, construction, exploration, mining, milling, concentrating, quarrying, transportation and shipping of the concentrate, operation of the port at Anaktalak Bay, airstrips, roads, other infrastructure and related facilities, reclamation, Rehabilitation, and all aspects of Closure.

- 1.2 In this MOA, “land” includes lands under waters.
- 1.3 For the purposes of this MOA, “Successors” or “Assigns” means any Person authorized by the Province to undertake all or any part of the Voisey’s Bay Project;
- 1.4 In this MOA, words importing gender include the masculine, feminine and neuter genders and the singular number includes the plural and the plural number includes the singular where the context so requires;
- 1.5 Except where otherwise specifically provided, cited legislation refers to legislation as amended from time to time and includes replacement or successor legislation.
- 1.6 References to a section, subsection, paragraph or schedule shall be construed as references to a section, subsection, paragraph or schedule to this MOA unless the context otherwise requires.
- 1.7 Where a word is defined in the Agreement, other parts of speech, and tenses, or the same word that begins with a capital letter have a corresponding meaning.

Part 2 General

- 2.1 In consideration of the rights, benefits and undertakings in favour of the Innu set out in this MOA, and for greater certainty including the rights and benefits in section 4.1, the Innu Nation agree not to assert or exercise, including an agreement not to assert in any cause of action, action for a declaration, claim or demand, of whatever kind or nature which the Innu had, now have, or may hereafter have, any aboriginal claims, rights, titles and interests, if any, that the Innu may hold, in and to the lands, water, and resources, including Subsurface Resources, in the Voisey’s Bay Area against any Person.
- 2.2 The Parties agree to submit this MOA to their respective decision making-bodies for

ratification and execution upon ratification. Ratification by the Innu Nation shall be evidenced by a resolution of its Board of Directors, to take place after the Directors have sought the views of the members of the Innu Nation, in a way to be determined by the Innu Nation, and consistent with its customary procedures for such matters. Ratification by the Province shall be by Order-in-Council.

- 2.3 Following ratification and execution by the Parties pursuant to section 2.2, this MOA shall come into force on the earlier of either the point in time that is immediately prior to the effective date of the Voisey's Bay Impacts and Benefits Agreement or the Effective Date, and this MOA shall terminate upon the Closure of the Voisey's Bay Project.
- 2.4 If there are any inconsistencies between this MOA and the Agreement, the Parties agree that the Agreement shall prevail to the extent of any such inconsistencies. For greater certainty, the provisions relating to certainty in the Agreement will supercede the provisions of 2.1.
- 2.5 This MOA and the rights of Innu under this MOA may be amended with the agreement of the Parties to reflect the provisions of any Overlap Agreement.
- 2.6 For the purposes of this MOA, the Innu Government, if and when it comes into existence, will assume the duties and responsibilities and have the rights and benefits provided to the Innu Nation set out herein. The Innu Government shall have the duties and responsibilities and have the rights and benefits set out herein upon the Innu Government coming into existence.

Part 3 Revenue sharing - Voisey's Bay Project

- 3.1 Subject to section 3.2, the Innu Government is entitled to receive, and the Province shall pay to the Innu Government an amount equal to 5 % of any Revenue received by the Province from the Voisey's Bay Project. These amounts shall be transferred to the Innu Government on a quarterly basis.
- 3.2 Unless and until the Innu Government comes into existence, at which time the Innu Government shall be entitled to payment of the amounts in 3.1, or the Innu Nation notifies the Province that the recipient or recipients entitled to the amounts in 3.1 should be the two Indian bands in Labrador established under the *Indian Act* (the "Innu Bands") as represented by their two Innu Band Councils, if the Innu Bands exist:
 - (a) The amounts in 3.1 will be paid to the Innu Nation, or to the two Innu Bands as represented by their two Innu Band Councils if the Innu Bands exist, or to a combination of these three entities, in accordance with the process set out in 3.2
 - (b);

- (b) Innu Nation shall notify the Province in writing prior to payment of the first amount paid pursuant to 3.1 and from time to time thereafter, as to the recipient or recipients entitled to amounts in 3.1 and the proportions of the amounts in 3.1 to which the recipients are entitled, which notification shall be determinative of the recipients entitled to payment of the amounts in 3.1 and the proportions of amounts in 3.1 to which the recipients are entitled.

3.3 If the Province amends, repeals, replaces or suspends any legislation that establishes Revenue which pursuant to section 3.1 is to be shared with the Innu Nation, and if the Revenue received by the Innu Nation under section 3.1 would be reduced below the amount that the Innu Nation would have received under section 3.1 based upon the legislation that was in effect at the time this MOA came into force as a result of the amendment, repeal, replacement or suspension, the Innu Nation shall remain entitled to, and shall be paid, the same level of Revenue it would have received if the legislation establishing the Revenue shared with the Innu Nation under section 3.1 had not been amended, repealed, replaced or suspended.

Part 4 Status of Lands in the Voisey's Bay Area

4.1 In the Voisey's Bay Area, for the duration of the Voisey's Bay Project:

The Innu are entitled to undertake non-commercial hunting, trapping, fishing and gathering activities and may camp in the Voisey's Bay Area. These activities may be restricted or limited by legislation of the Province only to the extent necessary to provide for public health, safety, or conservation. Restrictions or limitations imposed for reasons of public health and safety shall be in place only as long as the land is in actual use and only to the extent necessary to permit the Voisey's Bay Project to be carried out without conflict. Restrictions or limitations must be justified, and the Innu Nation must be Consulted before any restrictions or limitations are imposed.

Unless otherwise agreed between the Innu Nation and the Labrador Inuit Association:

- (a) if a total allowable catch or total allowable harvest is established for a particular species, then any reduction for reasons of conservation in the harvest of that particular species by the Innu and Inuit will be made in proportion to the apportionment of the total allowable catch or total allowable harvest between the Innu and Inuit before the reduction; or
- (b) if no total allowable catch or total allowable harvest exists for a particular species, then any reduction for reasons of conservation in the harvest of that particular species by the Innu and Inuit will be made in proportion to the respective actual

harvest levels of that species by the Innu and the Inuit, in the five year period preceding that reduction in the harvest.

If in either of the situations referred to (a) or (b), the Innu and the Inuit cannot agree to the apportionment of the reduced harvest between themselves, the dispute may be submitted by either party to arbitration under the terms of the Overlap Agreement, to be decided in accordance with the apportionment principles in (a) or (b) as applicable.

- 4.2 Innu rights pursuant to this MOA shall be exercised in a manner consistent with the purpose of this MOA.
- 4.3 For greater certainty, and except as provided in 4.4 (1) and 4.6, the areas of land and water and the resources, including Subsurface Resources, in the Voisey's Bay Area are not and will not become, unless a transfer under 4.4 (1) or a designation under 4.6 is effected, Labrador Innu Lands or part of the Labrador Innu Settlement Area; but upon such a transfer or designation those lands, shall be in addition to
- (a) the quantum of Labrador Innu Lands, as set out in the Agreement, if a section 4.4 (1) transfer is effected, and
 - (b) the area that comprises the Labrador Innu Settlement Area as set out in the Agreement, if a section 4.4 (1) transfer or a 4.6 designation is effected.
- 4.4 (1) After Termination and the Agreement has been concluded, the Province shall offer, upon a Site Closure, and the Innu Government, within six months of that Site Closure or such longer period of time as may be agreed to in writing between the Province and the Innu Government, shall have the right to obtain without condition and without fee or charge, title to any part of the parcel of land which is the subject of that Site Closure as Labrador Innu Lands, if that parcel of land is exclusively allocated to the Innu Government under an Overlap Agreement as Labrador Innu Lands. Each time such an offer has been made, the Innu Government may accept either the whole parcel or any part of the parcel that is on offer as Labrador Innu Lands.
- (2) After Termination and the Agreement, and the Inuit Final Agreement have been concluded, the Province shall offer jointly to the Innu Government and Nunatsiavut Government, upon a Site Closure, and the Innu Government and the Nunatsiavut Government within six months of that Site Closure or such longer period of time as may be agreed to in writing between the Province and the Innu Government, shall have the right to obtain without condition and without fee or charge, a form of co-ownership title, the nature of which will be established in the Agreement and Inuit Final Agreement, to any part of the parcel of land which is the subject of that Site Closure as Labrador Inuit and Innu Lands, if that parcel of

land is allocated to be held in co-ownership by the Innu Government and the Nunatsiavut Government under an Overlap Agreement as Labrador Innu and Inuit Lands. Each time such an offer has been made, the Innu Government and the Nunatsiavut Government jointly may accept either the whole parcel or any part of the parcel that is on offer as Labrador Inuit and Innu Lands.

- 4.5 Lands held by the Innu Government as a result of a transfer under section 4.4 (1) shall cease to be the Voisey's Bay Area and shall be Labrador Innu Lands and shall be subject to all provisions of the Agreement applicable to Labrador Innu Lands.
- 4.6 After Termination and the Agreement has been concluded, the Province shall offer upon a Site Closure and the Innu Government has the right to have all or any part of the parcel of land which is the subject of that Site Closure designated, within 6 months of that Site Closure or such longer period of time as may be agreed to in writing between the Province and the Innu Government, as Labrador Innu Settlement Area, provided that parcel of land or the relevant part thereof has not been transferred under section 4.4, and that area or the relevant part thereof has been allocated exclusively as Labrador Innu Settlement Area under an Overlap Agreement. Such designated areas will not be Labrador Innu Lands, but will be Labrador Innu Settlement Area, and shall be subject to all provisions of the Agreement applicable to the Labrador Innu Settlement Area outside Labrador Innu Land.
- 4.7 After Termination, and if the Agreement and the Inuit Final Agreement have all been concluded; the Province shall offer jointly to the Innu Government and Nunatsiavut Government upon Site Closure and the Innu Government has the right jointly with the Nunatsiavut Government, to have all or any part of the parcel of land which is the subject of that Site Closure designated, within 6 months of that Site Closure or such longer period of time as may be agreed to in writing between the Province and the Innu Government, as Labrador Innu and Inuit Settlement Area, provided that parcel of land or relevant part thereof has not been not transferred under section 4.4 or designated under 4.6 and that parcel of land or the relevant part thereof has been allocated as Labrador Innu and Inuit Settlement Area under an Overlap Agreement. The rights and management regimes that shall apply to the Labrador Innu and Inuit Settlement Area will be determined, if the Labrador Inuit Association agrees, by the process for such determination set out in the Voisey's Bay Chapter of the Agreement. If the Labrador Inuit Association does not agree with the process set out in the aforementioned Chapter, then these rights and management regimes may be negotiated as part of the Agreement and Inuit Final Agreement.
- 4.8 The Innu Government and the Province may agree from time to time that a Site Closure may take place with respect to a particular parcel of land within the Voisey's Bay Area prior to Termination. If such an agreement is reached, then sections 4.4 through 4.7 are hereby amended in respect of that Site Closure so that Termination is not a condition precedent to the triggering of the rights and other provisions in those sections, but all the

remaining provisions of sections 4.4 through 4.7 shall remain unchanged.

- 4.9 In the absence of an Overlap Agreement the Province shall not be obliged to comply with a request made pursuant to the rights under sections 4.4 to 4.8, inclusive, which would affect any rights that the Labrador Inuit may have under section 35 of the *Constitution Act*, 1982, without their consent.
- 4.10 Subject to 4.9, the Province shall comply with any request made pursuant to the rights of the Innu Government and the Nunatsiavut Government under sections 4.4 to 4.8, inclusive, within six months.
- 4.11 Except for purposes of the Voisey's Bay Project, prior to Closure, the Province shall not alienate or transfer land in the Voisey's Bay Area to any Person other than the Innu Government without the written consent of the Innu Nation.
- 4.12 Following Closure, land in the Voisey's Bay Area may not be transferred or alienated to any Person other than the Innu Government or the Nunatsiavut Government unless neither of them wants the land. Nothing in this section derogates from section 4.15.
- 4.13 Notwithstanding any other provision of this Part 4, where there is infrastructure in the Voisey's Bay Area that belongs to the Developer, the Parties acknowledge that the Innu Government or the Innu Government jointly with another Person may acquire that infrastructure by agreement with the Developer. If any infrastructure is acquired from the Developer by the Innu Government or the Innu Government jointly with another Person and is to be retained on lands in the Voisey's Bay Area, the lands on which the infrastructure are located may only be transferred pursuant to section 4.4 and the following shall apply:
 - (a) No liability attaches to the Province as a result of a transfer made pursuant to section 4.4.
 - (b) If the Innu Government or the Innu Government jointly with another Person no longer intends to retain the infrastructure referred to in this section the lands transferred under section 4.4 and the infrastructure acquired under this section shall be Rehabilitated by the Innu Government or the Innu Government jointly with another Person as the case may be, in conformity with the Closure requirements applicable to the Developer with respect to those lands and infrastructure prior to such transfer, unless Innu Government and the Province otherwise agree.
- 4.14 A transfer pursuant to 4.4 or a designation under 4.6 or any Labrador Innu and Inuit Settlement Area arising under 4.7 shall not derogate from, abridge, remove, terminate, void, or in any manner affect the obligations of the Developer under the Voisey's Bay

Impacts and Benefits Agreement or of any Subsequent Developer under the Subsequent Impacts and Benefits Agreement to the Innu Nation with respect to the Voisey's Bay Area, and any law of general application.

- 4.15 For greater certainty any lands within the Voisey's Bay Area which are not alienated or transferred under section 4.4 or designated under section 4.6 or arising as a Labrador Inuit and Innu Settlement Area pursuant to 4.7, within 5 years of Closure or such longer period as the Province and the Innu Government may agree in writing, shall no longer be subject to this MOA and shall remain provincial Crown lands under laws of general application.
- 4.16 The Developer or Subsequent Developer shall not be granted title in fee simple to land or Subsurface Resources in the Voisey's Bay Area.

Part 5 Voisey's Bay Impacts and Benefits Agreement

- 5.1 (a) The Voisey's Bay Project shall not commence, except for exploration, until the Voisey's Bay Impacts and Benefits Agreement has been executed by the Innu Nation and the Developer.
- (b) The Innu are entitled to preferences with respect to training, employment and contracting opportunities related to the Voisey's Bay Project. These preferences shall be established under and set out in the Innu Voisey's Bay Impacts and Benefits Agreement. The Province's obligations under this section are limited to those set out in section (c).
- (c) Upon execution of the Voisey's Bay Impacts and Benefits Agreement and subject to disclosure to the Province of the provisions of the Innu Voisey's Bay Impacts and Benefits Agreement respecting training, employment and contracting preferences, the Province shall, if it concludes that such preferences are reasonable, if necessary introduce legislation to ensure that the provisions are lawful under provincial law. For purposes of this section preferences shall be considered reasonable if Non-Aboriginal Persons have opportunities to participate in training, employment and contracting opportunities related to the Voisey's Bay Project.
- 5.2 The Voisey's Bay Impacts and Benefits Agreement or a Subsequent Impacts and Benefits Agreement shall be a contract between the Innu Nation and the Developer, or the Innu Nation and a Subsequent Developer, as the case may be, and may be amended by agreement between them.
- 5.3 If a Subsequent Developer applies for a mining lease under the *Mineral Act* the Province shall require the Subsequent Developer to execute a Subsequent Impacts and Benefits

Agreement with the Innu Nation in accordance with sections 5.4 to 5.10 before issuing that mining lease.

- 5.4 When the Province is ready to issue a mining lease under the *Mineral Act* with respect to Subsurface Resources in the Voisey's Bay Area and a surface rights lease under the *Lands Act* with respect to lands in the Voisey's Bay Area to a Subsequent Developer, the Province shall give written notice to the Innu Nation and the Subsequent Developer that the leases are ready for delivery to the Subsequent Developer.
- 5.5 The negotiation of any Subsequent Impacts and Benefits Agreement shall be guided by the following principles:
- (a) the nature and extent of benefits shall be related to the nature, scale, cost and profitability of the Subsequent Development as well as its impacts on the Innu;
 - (b) benefits shall not undermine the viability of the Subsequent Development;
 - (c) benefits shall not preclude the ability of other residents to obtain benefits from the Voisey's Bay Project or Subsequent Development;
 - (d) benefits shall be consistent with and promote Innu cultural goals;
 - (e) negative impacts on the environment and Innu rights under this MOA shall be avoided, mitigated or compensated in a manner consistent with the nature, scale, cost and profitability of the Subsequent Development;
 - (f) mechanisms shall be provided to foster effective communication, consultation and co-operation between the parties to the Subsequent Impacts and Benefits Agreement;
 - (g) benefit arrangements shall provide for capacity-building and sustainable development for the Innu;
 - (h) benefit arrangements shall, in keeping with the above principles, facilitate Innu business and employment opportunities in a manner which will contribute to the economic and social development of the Innu.
- 5.6 If a Subsequent Impacts and Benefits Agreement has not been concluded by the Innu Nation and the Subsequent Developer within 120 days of the date of the notice under section 5.4, those matters in dispute between the Innu Nation and the Subsequent Developer and any relevant documentation shall be referred to an arbitration panel within

5 days of the establishment of the arbitration panel pursuant to section 5.7 and the arbitration panel then shall resolve the dispute taking into account the factors set out in subsections 5.5 (a) to (h).

- 5.7 The arbitration panel referred to in section 5.6 shall consist of one individual nominated by the Innu Nation and one individual nominated by the Subsequent Developer. The Innu Nation and the Subsequent Developer will nominate their respective arbitrator within 125 days of the date of the notice under section 5.4, if arbitration under section 5.6 is required. These two nominees shall then select a third arbitrator by mutual agreement within 5 days following the nomination of the second nominated arbitrator. These three arbitrators will comprise the arbitration panel.
- 5.8 Unless otherwise agreed by the Innu Nation and the Subsequent Developer, an arbitration decision shall be made within 90 days of the comprising of the arbitration panel and receipt of relevant documentation.
- 5.9 If an arbitration decision is not made within the 90 day period referred to in section 5.8, or any other period agreed by the Innu Nation and Subsequent Developers under section 5.8, and subject to section 5.10, the applicable provincial Minister, after Consultation with the Innu Nation, may issue any authorizations required to permit the Subsequent Development to commence, including the authorizations referred to in section 5.4:
- (a) if the Subsequent Developer and the Innu Nation agree; or
 - (b) if the delay in completing the arbitration would, in the opinion of the Minister of Mines and Energy, jeopardize the viability of the Subsequent Development.
- 5.10 If, under section 5.9, the Subsequent Development commences prior to the making of an arbitration decision under section 5.8, the arbitration panel shall ensure that benefits received by Innu Nation under the arbitration decision include compensation, which may be in the form of replacement benefits, for the benefits lost through the commencement of the Subsequent Development prior to the making of an arbitration decision under section 5.8.
- 5.11 The Voisey's Bay Impacts and Benefits Agreement and any Subsequent Impacts and Benefits Agreement are binding only upon the Innu Nation and the Developer and any Subsequent Developers respectively. The entitlement of the Innu Nation to any benefits which may be negotiated as part of the Voisey's Bay and Subsequent Impacts and Benefits Agreements are distinct from, and independent of, any rights of the Innu Nation pursuant to the Agreement, the Environmental Management Agreement, or this MOA. Unless otherwise agreed by the Parties, completion or satisfaction of the terms and conditions of the Voisey's Bay Impacts and Benefits Agreement or Subsequent Impacts and Benefits

Agreements does not qualify, limit, discharge or otherwise relieve any Party of any of its obligations under the Agreement, the Environmental Management Agreement, or this MOA.

- 5.12 Subject to the provisions of this Part 5, the arbitration provided for in Part 5 will be conducted in accordance with the Arbitration Act, RSN, 1990, c. A-14, as amended.

Part 6 Environmental Management

- 6.1 The environmental management of all or part of the Voisey's Bay Project that is part of the Undertaking shall be conducted in accordance with the provisions of the Environmental Management Agreement.
- 6.2 The Province shall consult with the Innu Nation about measures to be taken to conserve, protect and rehabilitate the environment in relation to the Voisey's Bay Project including the implementation of measures:
- (a) pertaining to the administrative enforcement of all regulatory requirements, and the terms and conditions of all permits in relation to the Voisey's Bay Project;
 - (b) to ensure that the Developer prevents or mitigates adverse environmental effects of the Voisey's Bay Project; and
 - (c) to consider Innu knowledge, scientific information and the precautionary principle in environmental management of the Voisey's Bay Project.

Part 7 Consultation with Respect to the Voisey's Bay Project

- 7.1 With respect to the Voisey's Bay Project or any activity in the Voisey's Bay Area, the Province shall provide to the Innu Nation, on a timely basis, a copy of all applications made by the Developer or Subsequent Developer for any lease, license, permit, approval or other authorization required by provincial law, as well as any plans, reports, or other documents submitted by the Developer or Subsequent Developer with respect to the application that are required by provincial law and which the Developer or Subsequent Developer has consented to release to the Innu Nation or which are otherwise publicly available pursuant to provincial law, where such applications have not been provided to the Innu Nation under the provisions of the Environmental Management Agreement.
- 7.2 The Province shall Consult the Innu Nation prior to deciding any application, except for those applications covered by the Environmental Management Agreement, for any lease, license, permit, approval or other authorization required by provincial law or issuing any

order pertaining directly but with a significant impact on the matters addressed in this MOA to the Voisey's Bay Project or to any activity in the Voisey's Bay Area, including any proposed conditions to be attached thereto or any amendment thereof.

- 7.3 The Province shall provide to the Innu Nation, on a timely basis, a copy of all leases, licences, permits, approvals or other authorizations required by provincial law pertaining to the Voisey's Bay Project and Voisey's Bay Area, except where provided to the Innu Nation under the provisions of the Environmental Management Agreement. The Province, as of the date of execution of this MOA, shall provide to the Innu Nation a copy of all of the above, as of 31 March 1999.
- 7.4 For greater certainty in relation to sections 7.1 and 7.2, on any proposed project in the Voisey's Bay Area that requires environmental assessment pursuant to provincial legislation and which is outside the scope of the Undertaking, the Province shall Consult the Innu Nation prior to making any decision in accordance with the *Environmental Assessment Act*. As well, the Province will provide for one Innu Nation representative on any public review panel that may be established for any such proposed project.
- 7.5 For greater certainty in relation to sections 7.1 and 7.2, the Province will Consult the Innu Nation following the environmental assessment of any proposed project described in section 7.4 in relation to permits, leases, licences, and all other provincially issued authorizations required with respect to that proposed project.

Part 8 Consultation Regarding Shipping

- 8.1 With respect to shipping activities within the Voisey's Bay Area, the Province shall provide the Innu Nation on a timely basis, subject to legislation relating to the disclosure of information and the consent of the Developer or Subsequent Developer:
- (a) a copy of all applications made by the Developer or Subsequent Developer for any lease, license, permit, approval or other authorization required by legislation of the Province, as well as any plans, reports or other documents submitted by the Developer or Subsequent Developer with respect to the application that are required by legislation of the Province; and
 - (b) a copy of all leases, licenses, permits, approvals or other authorizations issued pursuant to such applications under legislation of the Province

except where provided to the Innu Nation under the provisions of the Environmental Management Agreement. As of the execution of the MOA, the Province shall provide to the Innu Nation a copy of all such leases, licenses, permits, approvals or other authorizations issued under legislation of the Province as of March 31, 1999.

8.2 With respect to shipping activities within the Voisey's Bay Area and without limiting the generality of section 8.1, the Province shall Consult with the Innu Nation in relation to the following matters:

- (a) the establishment by the Province of marine navigation services;
- (b) hydrographic surveys within the Voisey's Bay Area,

unless such matters are subject to consideration by the board established under the provisions of the Environmental Management Agreement.

8.3 In the case of matters referred to in section 8.2, Consultation will not be required in the event of an emergency, but the Innu Nation shall be provided with notice thereof as soon as possible after the establishment by the Province of marine navigation services or the conduct of hydrographic surveys.

8.4 The Province shall Consult the Innu Nation prior to providing advice to the Developer or Subsequent Developer regarding:

- (a) all significant elements of the marine transportation management plan relating to the Voisey's Bay Project, including but not limited to winter shipping, shipping routes, oil spill emergency response plans, search and rescue plans, concentrate loading procedures, navigational aids and pilotage requirements; and
- (b) any voluntary agreements which may be reached in relation to shipping by the Developer or Subsequent Developer,

unless such matters are subject to consideration by the board established under the provisions of the Environmental Management Agreement.

8.5 Subject to legislation relating to the disclosure of information and the consent of the Developer or Subsequent Developer, the marine transportation management plan and any other voluntary agreements shall be provided to the Innu Nation, except where provided to the Innu Nation under the provisions of the Environmental Management Agreement.

Part 9 Archaeology

9.1 The Province shall transfer title to the Innu Nation of all artifacts of Innu origin, including Innu human remains which have been or may be found in the Voisey's Bay Area.

- 9.2 Any known burial site or other site of potential religious or spiritual significance to the Innu discovered by the Developer or Subsequent Developer or any other Person in the Voisey's Bay Area shall not be disturbed except in accordance with a permit issued by the Province after Consultation with the Innu Nation or, if the Archaeology chapter of the Agreement is in effect, pursuant to the requirements of that Chapter.
- 9.3 Except as provided in this section, the Province shall not issue any permit authorizing a Person to carry on an archaeological investigation in the Voisey's Bay Area without first Consulting the Innu Nation. In circumstances where the Minister believes on reasonable grounds that an emergency exists, the Province may authorize a Person to carry out an archaeological investigation in the Voisey's Bay Area without first Consulting the Innu Nation and in such a case the Province shall, at the earliest possible opportunity, notify the Innu Nation and provide it with appropriate information. For purposes of this section, an emergency shall be deemed to exist where:
- (c) there is an unplanned critical situation that has the potential to result in the destruction of or significant injury or damage to an historic resource; and
 - (d) reasonable steps to Consult the Innu Nation have been taken and have proved unsuccessful, or the time required to Consult would exacerbate the potential for such destruction or damage.
- 9.4 The costs of any conservation, removal and/or preservation of Innu artifacts, or in the case of burial sites, relocation and reburial in accordance with the requirements of the Innu Nation, shall be the responsibility of the Developer or Subsequent Developer.

Part 10 Without Prejudice

- 10.1 For greater certainty, except as provided for in this MOA, this MOA is without prejudice to any position that the Innu have taken, may take, or may in the future take with respect to any aboriginal or treaty rights or title relating to the Innu of Labrador before any court, or other tribunal, in any forum, or in any negotiation, including the negotiation of a treaty or land claim or otherwise.
- 10.2 For greater certainty, nothing contained in this MOA, including the negotiations leading to its creation, its terms, and its implementation shall be construed as a conferral or recognition by the Province of any aboriginal or treaty rights or title; and is without prejudice to any position that the Province has taken, may take, or may in the future take with respect to any aboriginal or treaty rights or title relating to the Innu of Labrador before any court, or other tribunal, in any forum, or in any negotiation, including the negotiation of a treaty or land claim or otherwise.

10.3 This Agreement is not and will not be deemed, construed or interpreted to be a treaty or a land claims agreement within the meaning of sections 25 or 35 of the Constitution Act, 1982.

Part 11 Governing Law

11.1 This MOA is a legally binding contract and is subject to laws of general application and shall be interpreted in accordance with the laws of the Province, as amended from time to time, and the Parties to this MOA agree that the law will be interpreted by the Supreme Court of Newfoundland and Labrador or any appellate court therefrom in accordance with the laws of the Province.

Part 12 Heirs, Successors and Assigns

12.1 This MOA is binding on the heirs, successors, and assigns of the Parties, including any Innu Government arising from the Agreement.

Part 13 Entire Agreement

13.1 This MOA constitutes the entire agreement between the Parties. There are no other written or verbal agreements, representations, warranties, or undertakings between the Parties and this MOA may not be amended except by written instrument signed by the Parties.

Part 14 Waivers

14.1 A waiver by either Party hereto of the strict performance by the other of any covenant or provision of this MOA shall not itself constitute a waiver of any subsequent breach of that covenant or provision or any other covenant or provision thereof. The failure of a Party to require the fulfilment of any obligation, or to exercise any rights herein contained shall not constitute a waiver or surrender of those obligations or rights.

Part 15 Termination and Severability of this MOA

15.1 Notwithstanding section 2.3, should either section 2.1 or 3.1 terminate for whatever reason, or be found to be void, voidable, invalid, illegal, or unenforceable for whatever reason, this MOA will terminate in its entirety at the time of such termination or finding of voidness, voidability, invalidity, illegality, or unenforceability.

- 15.2 Subject to 15.1, if any provision, part of a provision, or provisions of this MOA, except for sections 2.1 and 3.1, is found to be void, voidable, invalid, illegal, or unenforceable for whatever reason, then the particular provision, part of a provision, or provisions shall be deemed to be severed from the remainder of this MOA and all other provisions of this MOA shall remain in full force and effect in accordance with the terms of this MOA.
- 15.3 If a severance occurs under section 15.2, the Parties will use their best efforts to negotiate in good faith an enforceable replacement provision to this MOA that to the greatest extent possible captures the intent of the severed material.

Signed, Sealed and Delivered for the Province

The Honourable Ernest McLean
Minister of Labrador and Aboriginal Affairs

Signed, Sealed and Delivered for the Innu Nation

Peter Penashue
President of the Innu Nation

Jim Nui
Vice President of the Innu Nation