

## **FIRST AMENDMENT TO VOISEY'S BAY INDUSTRIAL AND EMPLOYMENT BENEFITS AGREEMENT**

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

**BETWEEN:**

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

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

and

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

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

**WHEREAS:**

- A. The Parties entered into the Voisey's Bay Industrial and Employment Benefits Agreement dated 30 September 2002 (the "**IEBA**");
- B. The Parties entered into an Agreement-in-Principle dated 29 January 2009, and wish to amend the IEBA in accordance with the principles in the Agreement-in-Principle as more particularly set forth in this First Amendment Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

### **Article 1 - DEFINITIONS AND INTERPRETATION**

- 1.1 **Capitalised terms.** All capitalised terms not defined herein shall have the same meaning ascribed thereto in the IEBA.

- 1.2 **Interpretation.** The provisions of Articles 1.2 to 1.13 of the IEBA are hereby incorporated by reference into this First Amendment Agreement, and references therein to "this Agreement" shall be construed to include "this First Amendment Agreement".

## **Article 2 - REPRESENTATIONS AND WARRANTIES**

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

- 2.1.1 each is a corporation which has been duly incorporated or organized, as applicable, under the laws of its jurisdiction of incorporation or organization, as applicable, and is validly existing under such laws;
- 2.1.2 Vale Inco is extra-provincially registered in the Province;
- 2.1.3 each has all necessary corporate power, authority and capacity to enter into this First Amendment Agreement and to perform its respective obligations herein;
- 2.1.4 the execution and delivery of this First Amendment Agreement and the consummation of the transactions contemplated herein, by each of them, have been duly authorized by all necessary corporate action on the part of each of them;
- 2.1.5 neither is a party to, bound or affected by, or subject to, any indenture, mortgage, lease, agreement, instrument, charter or by-law provision, which, with or without the giving of notice or the lapse of time, or both, would be violated, contravened or breached by, or under which default would occur as a result of, the execution, delivery or performance of this First 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 First 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 First 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 their capacity or power to execute and deliver this First 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 First Amendment Agreement shall, upon execution and delivery, constitute legal, valid and binding obligations of each of them enforceable against them in accordance with their respective terms, except as limited by (a) applicable bankruptcy laws or laws affecting the enforcement of creditors' rights generally, and (b) the general principles of equity;
- 2.1.10 all references to estimates made by Vale Inco and Vale NL in this First Amendment Agreement have been determined by them based upon information available at the date of this First Amendment Agreement, and have been estimated by each of them *bona fide* and reasonably and neither of them has any reason to believe that any such estimate is unreasonable or unfounded at the date of this First Amendment Agreement; and
- 2.1.11 Vale NL and Vale Inco is each a wholly owned subsidiary of Vale.
- 2.2 **Government Acknowledgments.** The Government acknowledges that none of Vale NL, Vale Inco or any Person for whom either of them may be responsible in law have made any representations and warranties with respect to this First Amendment Agreement except the representations and warranties expressly made in this First 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 First Amendment Agreement and the consummation by the Government of the transactions contemplated herein 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 First Amendment Agreement or the consummation of any of the transactions provided for herein; and
- 2.3.3 this First Amendment Agreement upon execution and delivery, constitute legal, valid and binding obligations of it enforceable against it in accordance with its terms, except as it may be limited by the general principles of equity.
- 2.4 **Proponent Acknowledgements.** Each of Vale Inco and Vale NL acknowledges that neither the Government nor any Person for whom it may be responsible in law has made any representations and warranties with respect to this First Amendment Agreement except the representations and warranties expressly made in this First Amendment Agreement.

### **Article 3 - AMENDMENTS**

- 3.1 **Article 1 (Definitions and Interpretation)**. Article 1 of the IEBA is amended by the addition of the following provisions:

"**Actual Engineering Employment**" has the meaning set forth in Section 15.4.

"**Actual Total Employment**" has the meaning set forth in Section 15.4.

"**Construction and Fabrication Work**" means any and all construction and fabrication activities required for the building, installation, erection, completion, testing, and commissioning of the Processing Plant and shall include but not be limited to:

- (a) preparation, welding and assembly of structural materials and piping;
- (b) installation of structural materials and piping;

- (c) installation of electrical, instrumentation, communications, heating, ventilating and air conditioning systems, mechanical equipment, insulation and architectural finishes;
- (d) provision of management and administration to support the contractors' and subcontractors' work;
- (e) integration of prefabricated skids and other prefabricated subcomponents; and
- (f) all infrastructure and temporary works supporting anything described in paragraphs (a) to (f).

**"Engineering Work"** means any and all engineering and design work required in connection with the design, Construction and Fabrication, installation, erection, testing and commissioning of the Processing Plant including but not limited to front end and detailed design and engineering, and shop/field engineering, and engineering and design related to the preparation of 3-D models and drawings, detailed piping and instrumentation diagrams, and plans and documents to be approved for fabrication.

**"Person Hours"** means hours spent by any person actively engaged in work in furtherance of the engineering and construction of the Processing Plant.

**"Research and Development"** means:

- (a) any scientific research and experimental development that is:
  - (i) research and development activity in the Province; or
  - (ii) increased research and development capacity in the Province;

and, in respect of research and development referenced in paragraphs (a)(i) and (a)(ii) above, includes the systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis and that is:

- (a) basic research;
- (b) applied research; or

- (c) experimental development; and
- (b) local investments in new and evolving technologies in the Province;  
relating to mining, mineral exploration, mineral processing and production, mining engineering, metallurgy, product research, or environmental, safety and health initiatives.

**"Target Engineering Employment"** has the meaning set forth in Section 15.2.

**"Target Total Employment"** has the meaning set forth in Section 15.2.

3.2 **Quarterly Reporting.** Section 11.1 of the IEBA is amended by the addition of the following provisions, immediately following subsection 11.1.6:

11.1.7 total Person Hours of work performed during engineering and construction within the Province and outside of the Province, including total Person Hours of:

- (a) Engineering Work;
- (b) work performed by the Proponent's owner's team;
- (c) total construction management and project management work; and
- (d) Construction and Fabrication Work.

3.3 **Enhanced Industrial and Employment Benefits.** The IEBA is amended by the addition of the following provisions, immediately following Article 14:

## **ARTICLE 15**

### **ENHANCED INDUSTRIAL AND EMPLOYMENT BENEFITS**

15.1 **Enhanced Industrial and Employment Benefits.** The Proponent estimates that during engineering and construction of the Processing Plant:

15.1.1 **800,000 Person Hours** of construction management, project management, procurement, Engineering Work and other work by the Proponent's owner's team;

15.1.2 **500,000 Person Hours** of total construction management and project management work; and

15.1.3 **7,100,000 Person Hours** of Construction and Fabrication Work;

will be performed in the Province.

15.2 **Targets.** The Proponent shall in accordance with the principles in this Agreement, and subject to Section 15.4, meet the following targets during the engineering and construction of the Processing Plant:

15.2.1 **8.9 million Person Hours** of work, or 77% of the total Person Hours of work employed during engineering and construction of the Processing Plant, whichever is greater, performed in the Province ("**Target Total Employment**"), including,

15.2.2 **460,000 Person Hours** of Engineering Work or 35% of the total Person Hours of Engineering Work (excluding any and all Engineering Work performed by the Proponent's owner's team), whichever is greater ("**Target Engineering Employment**").

15.3 **EPCM Offices in the Province.** The Proponent shall establish and maintain the:

15.3.1 Proponent's project office for overseeing the engineering, procurement and construction management of the Processing Plant in the Province immediately after the award and execution of the EPCM contract; and

15.3.2 EPCM contractor's main contracts and procurement office in the Province.

15.4 **Research & Development Remedy.**

15.4.1 The Proponent shall, following the Construction Completion Date, submit a final report to the Government confirming:

- (a) the total Person Hours employed in the Province and outside the Province during the engineering and construction of the Processing Plant (the "**Actual Total Employment**"), and
- (b) the total Person Hours employed in Engineering Work in the Province during the engineering and construction of the Processing Plant (the "**Actual Engineering Employment**").

15.4.2 If, following the Construction Completion Date:

- (a) the Actual Total Employment is less than the Target Total Employment, or
- (b) the Actual Engineering Employment is less than the Target Engineering Employment,

then the Government shall direct the Proponent to fund Research and Development in the Province on projects approved by the Government, in an amount equal to the greater of:

- (i)  $\$15 \times (\text{Target Total Employment less Actual Total Employment})$ ; and
- (ii)  $\$15 \times (\text{Target Engineering Employment less Actual Engineering Employment})$ ;

(the "**R&D Funding Amount**").

15.4.3 In satisfaction of the Proponent's obligation to fund Research and Development in the Province under Section 15.4.2, if any, the Proponent shall, within twelve (12) months of the Construction Completion Date establish a fund in an amount equal to the R&D Funding Amount, and upon such terms as are acceptable to the Government.

15.4.4 The sole obligation of the Proponent for a failure to meet the Target Total Employment or Total Engineering Employment in accordance with Section 15.2 shall be to fund Research and Development as directed by the Province in



accordance with this Section 15.4 and the Province shall have no other remedy in those circumstances.

15.4.5 Nothing in this Article 15 shall derogate from any of the rights or remedies of the Government arising from any breach by the Proponent of any other provision of this Agreement or the Development Agreement.

#### **Article 4 – GENERAL MATTERS**

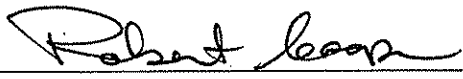
- 4.1 **Entire Agreement.** This First Amendment Agreement comprises the complete and exclusive agreement of the Parties regarding the subject matter of this First Amendment Agreement and supersedes all oral and written communications, negotiations, representations or agreements in relation to that subject matter made or entered into before the date hereof.
- 4.2 **IEBA Agreement Clauses.** The provisions of Article 13 (Confidential Information) and Article 14 (General Matters) are hereby incorporated by reference into this First Amendment Agreement, and references therein to "this Agreement" shall be construed to include "this First Amendment Agreement".
- 4.3 **No Third Party Benefits.** This First Amendment Agreement is solely for the benefit of the Proponent and the Government, and this First Amendment Agreement does not, and shall not be deemed to, confer upon or give to any other Person any benefit, remedy, claim, entitlement, reimbursement, cause of action or other right in relation to any of the Parties, nor is it the intent of the Parties that third parties have any right to claim benefits from, or to compel performance by, any of the Parties to this First Amendment Agreement.
- 4.4 **No Further Amendments.** Save as expressly set forth in this First Amendment Agreement, the terms and conditions of the IEBA remain unchanged and in full force and effect.

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

  
THE HONOURABLE THE MINISTER OF  
NATURAL RESOURCES

VALE INCO NEWFOUNDLAND & LABRADOR LIMITED

By: 

VALE INCO LIMITED

By: 