

FIFTH AMENDMENT TO VOISEY'S BAY DEVELOPMENT AGREEMENT

THIS FIFTH AMENDMENT AGREEMENT is made on 28 March 2013.

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:

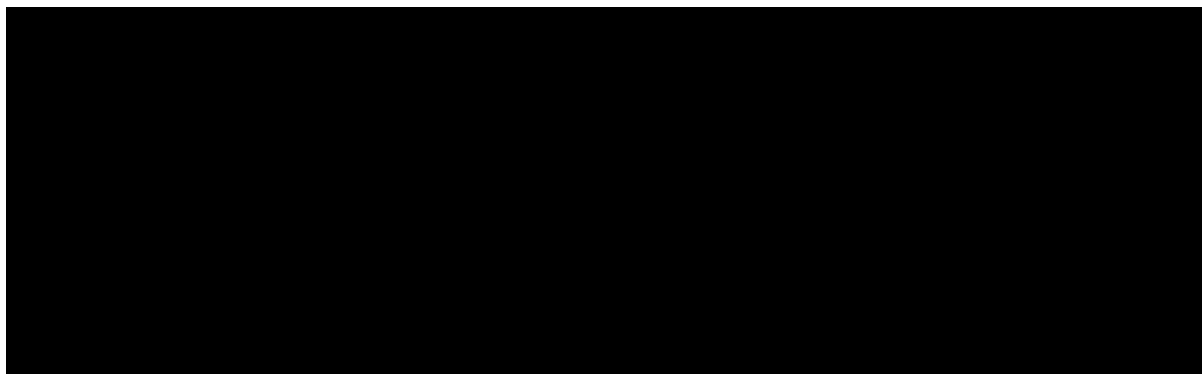
- A. The Voisey's Bay Development Agreement sets forth the framework for a staged development of (a) an open-pit mine and concentrator plant (completed in 2005), (b) a hydrometallurgical processing plant (to be completed by 28 February 2013) and (c) subject to certain conditions, an eventual underground mine. The Proponent is permitted to ship up to 440,000 tonnes of Nickel-in-Concentrate from the Province, pending the completion of the Processing Plant, subject to a requirement to return an equivalent amount of Nickel-in-Concentrate to the Province for processing at the Processing Plant.
- B. While significant progress has been made on the Processing Plant, it has become clear that the Processing Plant will not be completed in accordance with the originally agreed schedule.
- C. Accordingly, the Proponent has requested certain amendments to the Agreement in order to obtain (a) additional time to complete the construction of the Processing Plant and (b) additional exemptions from the primary processing requirement under the Mineral Act over the next three years, in order to enable the continuity of production at the Mine and Concentrator Plant while the construction and commissioning of the Processing Plant is completed.
- D. In consideration for such amendments, the Government has requested certain additional undertakings by the Proponent, including (a) a commitment to develop the Underground Mine on the terms and conditions set forth herein, and (b) certain financial compensation to the Government for the additional exemptions from the primary processing requirement.

- E. The Underground Mine would cover the combined Reid Brook and Eastern Deeps deposits, which are adjacent to the existing open pit mine at Voisey's Bay, Labrador. Based on the second-stage feasibility study completed by the Proponent in accordance with the terms of the Agreement, the Underground Mine would have the capacity to produce approximately 40,000 tonnes per annum of Nickel-in-Concentrate for processing at the Processing Plant.
- F. The Parties acknowledge their mutual intention for the Proponent to develop the Underground Mine on a schedule that would ensure the continuous operation of the Concentrator Plant during the transition from open-pit operations to underground mining operations. Accordingly, the Proponent is prepared to commit to certain milestones, including starting the required engineering studies immediately upon the amendment of the Agreement, sanctioning the construction of the Underground Mine in 2015 and starting production in 2019.
- G. Accordingly, the Parties wish to amend the Agreement to incorporate the improvements noted above and to consolidate and restate the Agreement to incorporate such amendments.

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 Fifth Amendment Agreement 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 Fifth Amendment Agreement, and references therein to "this Agreement" shall be construed as "this Fifth Amendment Agreement".
- 1.3 **Schedules.** The following schedules attached to this Fifth Amendment Agreement form an integral part of this Fifth Amendment Agreement:
 - (a) Schedule A - Form of Nickel Concentrate Exemption Order (2013) and Copper Concentrate Exemption Order (2013).
 - (b) Schedule B - Contents of Benefits Plan.



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 Canada 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 Canada is extra-provincially registered in the Province;
 - 2.1.3 each has all necessary corporate power, authority and capacity to enter into this Fifth Amendment Agreement and to perform its respective obligations herein;
 - 2.1.4 the execution and delivery of this Fifth 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 Fifth 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 Fifth 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 Fifth 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 Fifth Amendment Agreement or to consummate the transactions contemplated herein or which could materially adversely affect their respective assets, financial condition or future prospects, except for the judicial review application in the Federal Court of Canada initiated by The Sandy Pond Alliance for the

Protection of Canadian Waters Inc. (Federal Court File Number T-888-10);

2.1.9 this Fifth 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 Fifth Amendment Agreement have been determined by them based upon information available at the date of this Fifth 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 Fifth 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 Fifth Amendment Agreement except the representations and warranties expressly made in this Fifth 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 Fifth Amendment Agreement and the Nickel Concentrate Exemption Order (2013) 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 Fifth Amendment Agreement or the Nickel Concentrate Exemption Order (2013) or the consummation of any of the transactions provided for therein; and

2.3.3 this Fifth Amendment Agreement and the Nickel Concentrate Exemption Order (2013) 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 the Government nor any Person for whom the Government may be responsible in law has made any representations and

warranties with respect to this Fifth Amendment Agreement or the Nickel Concentrate Exemption Order (2013) except the representations and warranties expressly made in this Fifth 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:

“2014 Option” has the meaning set forth in Section 4.2A.2.

“Additional Exemption” has the meaning set forth in Section 6.4.3.

“Amended Surface Lease” means the Amended Surface Lease No. 105 (9584M) dated March 22, 2010 between the Government and Vale NL in respect of the Leased Lands, which supersedes the original Surface Lease between the Government and VBNC (now Vale NL) dated 15 August 2003.

“Benefits Plan” has the meaning set forth in Section 4.7A.2.

“Collateral Realty Mortgage” has the meaning set forth in Section 16.1(b).

“Copper Concentrate Exemption Order (2013)” means the *Copper-in-Concentrate Exemption Order* in the form set forth in Schedule A to this Fifth Amendment Agreement.

“Contingent Unprocessed Nickel Charge” has the meaning set forth in Section 4.3A.1.

“Definitive Unprocessed Nickel Charge” has the meaning set forth in Section 4.4A.

“Engineer’s Assessment” means an assessment made by the Engineer in a report delivered pursuant to Section 15.2 or 15.4.

“Exemption Order Termination Date” has the meaning set forth in Section 6.4.7.

“FEL 3” means the third stage of front end engineering and design work for the development of underground mines as determined by the Proponent in accordance with its standard methodologies and assumptions in effect from time to time, which will result in the delivery of a feasibility study setting out a final assessment of the technical and economic viability of the proposed project. The FEL 3 study: (a) optimizes the best alternative approach to the project; (b) develops details to a level of confidence to declare the project viable; (c) covers all economic, environmental and engineering aspects of the project at a more detailed level than the FEL 2 study, providing a more accurate

estimate and a higher level of confidence in the probability of success for the project; (d) fully describes the complete project and the installations to be built; (e) fully assess all risks; and (f) contains refined estimates of the project benefits, capital costs of construction, annual costs of operation and maintenance, and the economic parameters for evaluation (i.e., net present value and internal rate of return).

“Fifth Amendment Agreement” means the Fifth Amendment Agreement dated 28 March 2013 entered into by the Government, Vale NL and VCL amending the terms of the Agreement.

“GSA” has the meaning set forth in Section 16.1(b).

“Letters of Credit” has the meaning set forth in Section 16.1(a).

“Liquidated Damages” has the meaning set forth in Section 15.9.1.

“Melting Grade Nickel Products” means finished nickel products produced at the Processing Plant having a nickel content of approximately 97%.

“Nickel Concentrate Exemption Order (2013)” means the *Nickel-in-Concentrate Exemption Order* in the form set forth in Schedule A to this Fifth Amendment Agreement.

“Notice” has the meaning set forth in Section 11.15.

“Overall Progress” means the percentage completion of the engineering, procurement, fabrication, construction, commissioning and start of mining scope of work for the Underground Mine, measured from: (a) the Sanction of the Underground Mine, to (b) the completion of the Underground Mine, with the baseline for such measurement being the resource-loaded, execution-detailed “Integrated Project Schedule” and associated “progress S-curve”, as developed pursuant to the FEL 3 study for the Underground Mine and as may be amended from time to time by the Proponent acting reasonably.

“PPSA” means the *Personal Property Security Act* (Newfoundland and Labrador) and the regulations thereunder.

“PTVI Matte” means high-purity nickel matte produced by Vale Canada’s subsidiary, PT Vale Indonesia Tbk, containing approximately 80% nickel.

“QA Review” means a review of a FEL 3 study completed in accordance with the QA Review Guidelines.

“QA Review Guidelines” means the “QA Review Guidelines” under Vale’s Project Delivery System, as amended from time to time, a copy of which has been delivered to the Government.

“Revised Implementation Plan” has the meaning set forth in Section 4.1A.1.

“Sanction of the Underground Mine” means formal sanction of the Underground Mine by the Board of Directors of Vale, which sanction shall approve the estimated budget for the engineering and construction of the Underground Mine and authorize the Proponent to commence construction and further engineering.

“Substitute Letters of Credit” has the meaning set forth in Section 16.4.

“Term Sheet” means the term sheet dated as of 26 February 2013 between Government, Vale Canada and Vale NL.

“Underground Mine” has the meaning set forth in Section 4.5A.1.

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

(a) 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 and the Fifth 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.

(b) the definition of **“Agreement-in-Principle”** is deleted.

(c) the definition of **“Concentrator Plant”** is deleted and replaced by the following:

“Concentrator Plant” means the mill/concentrator plant constructed by the Proponent on the Leased Lands, which is capable of processing 6,000 tonnes of ore per day.

(d) the definition of **“Copper Concentrate Exemption Order”** is deleted and replaced by the following:

“Copper Concentrate Exemption Order” means the *Voisey’s Bay Nickel Company Limited Copper Concentrate Exemption Order* NLR 64/02 under the Mineral Act dated 7 October 2002, which was

amended and replaced by the Copper Concentrate Exemption Order (2009).

- (e) the definition of “**Copper Concentrate Exemption Order (2009)**” is deleted and replaced by the following:

“**Copper Concentrate Exemption Order (2009)**” means the *Voisey’s Bay Nickel Company Limited Copper-in-Concentrate Exemption Order, 2009* NLR 10/09 under the Mineral Act dated 28 February 2009, which shall be amended and replaced by the Copper Concentrate Exemption Order (2013).

- (f) the definition of “**Event of Default**” is amended by deleting subsection (d) of that definition and substituting the following:

(d) subject to an Event of Force Majeure and/or Section 6.5.2, an Engineer’s Assessment indicates that the Proponent is not proceeding diligently to complete the Processing Plant as required by Section 4.1A.1.

- (g) the definition of “**Exemption Orders**” is deleted and replaced by the following:

“**Exemption Orders**” means, collectively, the Nickel Concentrate Exemption Order, the Nickel Concentrate Exemption Order (2009), the Nickel Concentrate Exemption Order (2013), the Copper Concentrate Exemption Order, the Copper Concentrate Exemption Order (2009), Copper Concentrate Exemption Order (2013) and the Matte Plant Exemption Order.

- (h) the definition of “**IEBA**” is deleted and replaced by the following:

“**IEBA**” means the Industrial and Employment Benefits Agreement between the parties dated 30 September 2002, as amended by the First Amendment thereto dated 28 February 2009.

- (i) the definition of “**Implementation Plan**” is amended by deleting the words “which is consistent with the requirements set forth in Schedule A to the Fourth Amendment Agreement” and replacing them with the following:

delivered by the Proponent to the Government in March 2009.

- (j) the definition of “**Innovation Centre**” is deleted and replaced by the following:

“**Innovation Centre**” means the Vale Inco Innovation Centre (now the Bruneau Centre for Research and Innovation), a world-class education, research and training centre related to the mining industry located at the University.

- (k) the definition of “**Matte Plant Exemption Order**” is deleted and replaced by the following:

“**Matte Plant Exemption Order**” means the *Voisey’s Bay Nickel Company Limited Matte Plant Exemption Order* NLR 65/02 under the Mineral Act dated 7 October 2002.

- (l) the definition of “**Milestone**” is deleted and replaced by the following:

“**Milestone**” means an action or event leading to the completion of the Processing Plant or the Underground Mine, as set forth in Section 4.1A or Section 4.6A, respectively.

- (m) the definition of “**Milestone Date**” is deleted and replaced by the following:

“**Milestone Date**” means the deadline for completion of a Milestone.

- (n) the definition of “**Mine**” is deleted and replaced by the following:

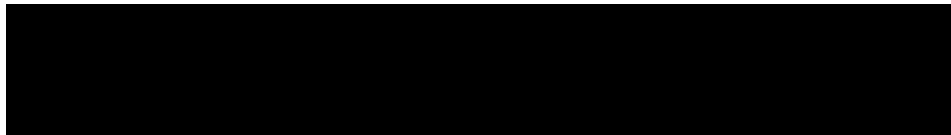
“**Mine**” means collectively (a) the open pit mine or mines to be developed or developed by the Proponent for the extraction of the mineral ores located on the Leased Lands, and (b) the Underground Mine.

- (o) the definition of “**Mining Lease**” is deleted and replaced by the following:

“**Mining Lease**” means the Mining Lease between the parties dated 30 September 2002.

- (p) the definition of “**Mining Tax Act**” is deleted and replaced by the following:

“**Mining Tax Act**” means Part VII (Mining and Mineral Rights Tax) of the *Revenue Administration Act* (Newfoundland and Labrador), and the regulations thereunder.

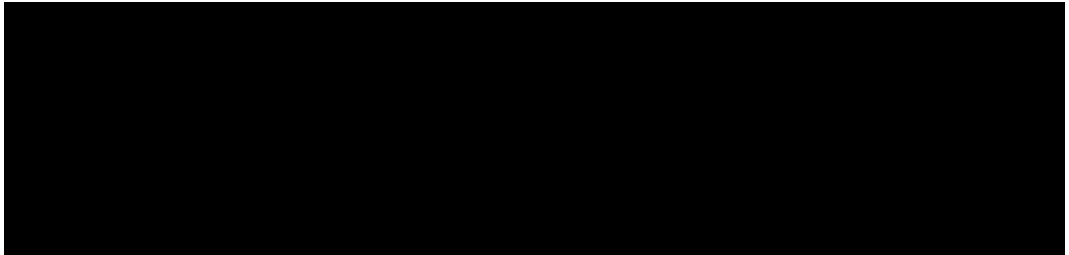


- (s) the definition of “**Nickel Concentrate Exemption Order**” is deleted and replaced by the following:

“**Nickel Concentrate Exemption Order**” means the *Voisey’s Bay Nickel Company Limited Nickel Concentrate Exemption Order* NLR 66/02 under the Mineral Act dated 7 October 2002, which was amended and replaced by the Nickel Concentrate Exemption Order (2009).

- (t) the definition of “**Nickel Concentrate Exemption Order (2009)**” is deleted and replaced by the following:

“**Nickel Concentrate Exemption Order (2009)**” means the *Nickel-in-Concentrate Exemption Order, 2009* NLR 11/09 under the Mineral Act dated 28 February 2009, as amended by the *Nickel-in-Concentrate Exemption Order, 2009 (Amendment)* NLR 34/13, which shall be amended and replaced by the Nickel Concentrate Exemption Order (2013).



- (v) the definition of “**Primary Production Order**” is deleted and replaced by the following:

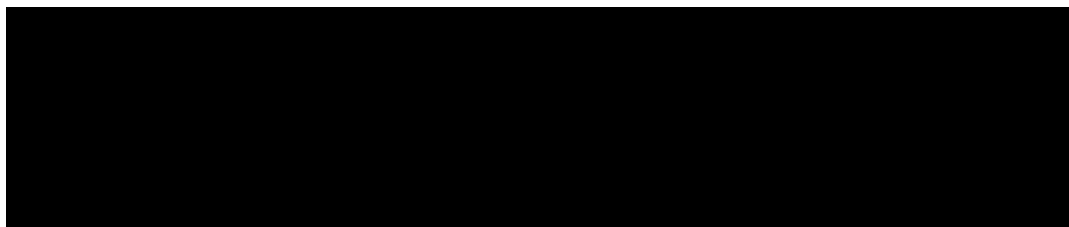
“**Primary Production Order**” means the *Voisey’s Bay Nickel Company Limited Primary Production Order* NLR 63/02 dated 7 October 2002.

- (w) the definition of “**Processing Plant**” is deleted and replaced by the following:

“**Processing Plant**” means a hydrometallurgical processing plant having a design capacity to produce annually approximately 50,000 tonnes of Finished Nickel Products, together with associated cobalt and copper products, which shall be capable of processing the Nickel Concentrate, as well as nickel concentrate and other nickel intermediate products from other sources worldwide, giving such processing plant the capability of operating well beyond the life of the Mine.

- (x) the definition of “**R&D Program**” is deleted and replaced by the following:

“**R&D Program**” means a comprehensive research and development program undertaken by the Proponent intended to establish the commercial, technical and economic feasibility of hydrometallurgical process technology to process the Nickel Concentrate.



(aa) the definition of “**Suspension Notice**” is amended by replacing “Section 12.3” with “Section 15.5”.

(bb) the definition of “**Tax Agreement**” is deleted and replaced by the following:

“**Tax Agreement**” means the Tax Agreement between the parties dated as of 30 September 2002.

(cc) the definition of “**Underground Exploration Program**” is deleted and replaced by the following:

“**Underground Exploration Program**” means an underground exploration program undertaken by the Proponent on the Leased Lands intended to identify reserves at depth under the Leased Lands.

(dd) the definition of “**University Agreement**” is deleted and replaced by the following:

“**University Agreement**” means the agreement among Vale NL, Vale Canada and the University, dated 31 March, 2003, setting forth (among other things) the Proponent’s commitments relating to the Innovation Centre.

(ee) the definition of “**Vale**” is deleted and replaced by the following:

“**Vale**” means Vale S.A. (formerly Companhia Vale do Rio Doce), a corporation incorporated under the laws of Brazil.

(ff) the definition of “**Vale Inco**” is deleted and replaced by the following:

“**Vale Canada**” or “**Vale Inco**” or “**Inco**” means 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.

and the instances where “Vale Inco” or “Inco” is used shall be updated accordingly.

(gg) the definition of “**Vale Inco NL**” is deleted and replaced by the following:

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

and the instances where “Vale Inco NL” or “VBNC” is used shall be updated accordingly.

- (hh) the following definitions (formerly used in Article 4 (Proponent's Undertakings) are deleted: **“Commercial Production Date”**, **“Construction Completion Date”**, **“Decision”**, **“Decision Date”**, **“Decision Materials”**, **“Demonstration Plant Completion Date”**, **“Experts”**, **“Experts’ Report”**, **“Feasibility Study”**, **“Government Decision”**, **“Matte”** and **“Matte Plant”**.
- (ii) the following definitions (formerly used in Article 10 (Conditions, Closing and Termination) are deleted: **“Closing Date”**, **“Closing Notice”** and **“Time of Closing”**.
- (jj) the following definitions (formerly used in Article 12 (Milestones and Remedies) are deleted: **“Milestone Notice”** and **“Cure Period”**.
- (kk) the following definitions (formerly used in Article 13 (Financial Assurances)) are deleted: [REDACTED]
“Agreement-in-Principle”, [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3.1.3 Section 1.2 of the Agreement is deleted and replaced with the following:

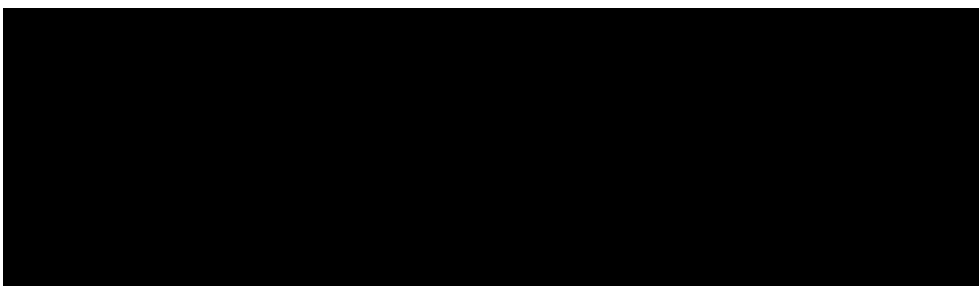
1.2 **Schedules.**

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

- Schedule 4.13.2 - Assaying Procedures.
- Schedule 6.10 - Primary Production Order.
- Schedule 8.1 - Dispute Resolution Procedures.

In addition, the documents identified below, which are attached to the Fifth Amendment Agreement, shall form an integral part of this Agreement:

- Schedule A – Form of Nickel Concentrate Exemption Order (2013).
- Schedule B – Contents of Benefits Plan.



- 3.2 **Article 2 (Representations and Warranties).** The Parties acknowledge and agree that the representations and warranties set forth in Article 2 of the Agreement merged on the Closing. Accordingly, Sections 2.1 to 2.4 of the Agreement are hereby deleted.
- 3.3 **Article 3 (Description of the Project and Related Facilities).** The Parties agree that Sections 3.1 to 3.5 of the Agreement are hereby deleted and replaced by the following:
- 3.1 **The Project.** The “**Project**” will comprise collectively the Underground Exploration Program, the Mine (including the Underground Mine), the Concentrator Plant, the R&D Program, the Demonstration Plant and the Processing Plant.
- 3.6 **Acknowledgement of Completion of Certain of the Proponent’s Undertakings.** The parties acknowledge and agree that, as at the effective date of the Fifth Amendment Agreement, the Proponent has completed and satisfied a number of its undertakings in relation to the Project. In particular, the Proponent has:
- (a) completed the infrastructure and initial work program in relation to the Project (per Section 4.1);
 - (b) entered into the IEBA (per Section 4.9), the IBAs (per Section 4.10), the Tax Agreement (per Section 4.12), the Mining Lease (Section 4.17) and the University Agreement (per Sections 4.8);
 - (c) developed the Mine and the Concentrator Plant, which commenced production of Nickel Concentrate and Copper Concentrate in late 2006 and currently provides direct and contractor employment for approximately 475 people (per Section 4.3);
 - (d) completed the Underground Exploration Program on the Leased Lands, with aggregate expenditures of over \$95 million over the 2002 to 2012 period (per Section 4.4.);
 - (e) completed certain FEL 1 and FEL 2 studies in relation to the potential for underground mining at Voisey’s Bay based on the results of the Underground Exploration Program (per Section 4.4A);
 - (f) provided funding for the Innovation Centre (per Section 3.4);
 - (g) completed the R&D Program, including the construction and operation of the Demonstration Plant (per Sections 3.5 and 4.2);

- (h) developed a technically and economically feasible hydrometallurgical process technology for processing the Nickel Concentrate in the Province (per Section 4.6);
- (i) confirmed its decision to construct a processing plant in the Province using such hydrometallurgical process technology rather than conventional matte technology (per Section 4.7); and
- (j) completed the design and engineering of the Processing Plant and delivered to the Government the Implementation Plan for completion of the Processing Plant on or before 28 February 2013 (per Sections 4.6 and 4.7).

Notwithstanding the foregoing, the parties acknowledge that the Proponent has not completed the construction of the Processing Plant by 28 February 2013, as required under of the terms of this Agreement applicable at such time, and that the Government has waived its right to exercise any remedies available to it in respect of such delay pursuant to the Term Sheet.

3.7 Acknowledgement of Completion of Certain of the Government's Undertakings. The parties acknowledge and agree that, as at the effective date of the Fifth Amendment Agreement, the Government has completed and satisfied a number of its undertakings in relation to the Project. In particular, the Government has:

- (a) issued the Mining Lease (per Section 6.3), the Exemption Orders (other than the Nickel Concentrate Exemption Order (2013)) (per Section 6.4) and the Primary Production Order (per Section 6.10);
- (b) entered into the Tax Agreement (per Section 6.8) and the IEBA (per Section 6.11); and
- (c) amended the Mining Tax Act (per Section 6.9).

3.4 Article 4 (Proponent's Undertakings). In view of the completion and satisfaction of a number of the Proponent's undertakings in relation to the Project, as set forth in Section 3.6 of the Agreement, and in consideration of the covenants and agreements set forth in this Fifth Amendment Agreement, the Parties agree that Sections 4.1 to 4.10 (excepting Section 4.6.1 and 4.6.3), 4.12, 4.17 and 4.18 of the Agreement are hereby deleted and replaced with the provisions set forth below, and Section 4.13 is amended as set forth below. For greater certainty, Section 4.6.1, Section 4.6.3, Section 4.11 and Sections 4.14 through 4.16 of the Agreement shall remain in full force and effect, unamended.

4.1A Processing Plant Completion.

4.1A.1 Revised Implementation Plan. In order to mitigate further schedule growth, contain capital costs, and prioritize the start-up of commercial production at the Processing Plant, the Proponent has prepared and delivered to the Government a revised implementation plan

setting forth a “phased approach” for the completion of the Processing Plant and the bringing of the Processing Plant into full production, under cover of a letter delivered and accepted as of 1 March 2013 (the “**Revised Implementation Plan**”). The Proponent hereby undertakes to proceed diligently to complete the Processing Plant in accordance with the Revised Implementation Plan. The Proponent’s revised budget for the Processing Plant is now \$4.25 billion, representing a substantial increase in the investment in the Province from that which was originally contemplated.

4.1A.2 Milestones for Processing Plant Completion. In connection with the completion of the Processing Plant, the Proponent shall meet each of the following Milestones by the corresponding Milestone Dates set forth below:

| <u>Milestone</u> | <u>Milestone Date</u> |
|--------------------|-----------------------|
| [Redacted Content] | |

4.2A Import of PTVI Matte to Assist in Commissioning.

4.2A.1 Initial Import of PTVI Matte. Following the completion of “Phase 1” under the Revised Implementation Plan, the Proponent shall start the Commissioning of the Processing Plant using either PTVI Matte (~80% nickel content) or a combination of PTVI Matte and Nickel Concentrate (~20% nickel content), to produce Melting Grade Nickel Products. In this regard, the Proponent shall import to the Province 10,000 tonnes of nickel contained in PTVI Matte by 30 June 2014 for processing in the Processing Plant. The Proponent acknowledges and agrees that the PTVI Matte does not constitute Replacement Concentrate for the purpose

of satisfying the Proponent's return of concentrate obligations under Section 4.13 of the Agreement.

4.2A.2 2014 Option to Import Additional PTVI Matte. To the extent that additional PTVI Matte is required for processing at the Processing Plant in 2014 (e.g., where the Commissioning of the Processing Plant proceeds at a slower-than-expected rate or the Processing Plant is otherwise not able to consume Nickel Concentrate in the quantities expected), and in order to ensure continuity of operations and avoid a significant layoff of workers at the Mine, the Proponent shall have the option of importing to the Province up to an additional 5,000 tonnes of nickel contained in PTVI Matte for processing at the Processing Plant and producing and shipping from the Province an equivalent amount of nickel contained in Nickel Concentrate (the "**2014 Option**"). The Proponent shall provide the Government with notice of its intention to exercise the 2014 Option, together with its proposed production plan for the Processing Plant and the Mine and the operational rationale for the exercise of the 2014 Option in accordance with the above considerations. For greater certainty, the Proponent shall not be entitled to ship any such additional Nickel Concentrate from the Province until the Government has amended the Nickel Concentrate Exemption Order (2013) in accordance with Section 6.4.6.

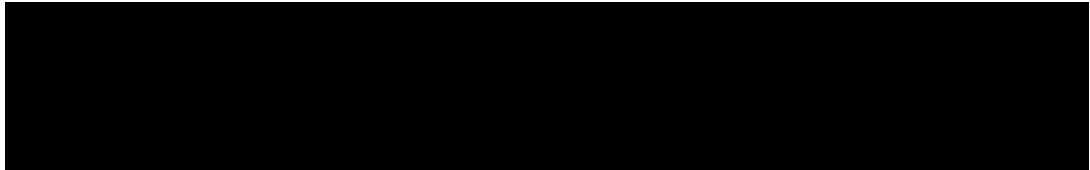
4.3A Contingent Unprocessed Nickel Charge.

4.3A.1 Build-up. For every tonne of the Additional Exemption utilized by the Proponent, the parties shall compute a contingent unprocessed nickel charge payable by the Proponent to the Government [REDACTED], subject to reduction under Section 4.3A.2 (the "**Contingent Unprocessed Nickel Charge**"); provided that the aggregate maximum amount above shall increase proportionately with the amount of any Additional Exemption granted pursuant to the 2014 Option.

4.3A.2 Reduction. The amount of the Contingent Unprocessed Nickel Charge and the corresponding security granted under Section 16.1 shall each be reduced according to the Overall Progress of the Underground Mine, on a schedule determined as follows:

| Overall Progress | Reduced Amount of Contingent Unprocessed Nickel Charge |
|--|--|
| Achievement of the Sanction of the Underground Mine Milestone set forth in Section 4.6A(d) (being 0% Completion) | [REDACTED] |
| 15% Completion | |
| 30% Completion | |

| Overall Progress | Reduced Amount of Contingent Unprocessed Nickel Charge |
|---|--|
| 45% Completion | |
| 60% Completion | |
| Achievement of the "Start of Mining" Milestone set forth in Section 4.6A(h) (being ~70% Completion) | |



Where the Proponent believes that Overall Progress has reached a percentage completion that would trigger the reduction of the amount of the Contingent Unprocessed Nickel Charge, the Proponent shall so indicate in its monthly progress report delivered to the Government under Section 15.3 and the Contingent Unprocessed Nickel Charge shall be reduced in accordance with this Section 4.3A.2 only following confirmation of such assessment by the Engineer in the applicable Engineer's Assessment.

4.3A.3 Payment Triggers. The outstanding balance of the Contingent Unprocessed Nickel Charge shall become due and payable, within 30 days following a written demand from the Government to the Proponent, upon the occurrence any of the following events:

- (a) the Proponent failing to achieve first production ore from the Reid Brook deposit by [REDACTED]; or
- (b) the Proponent having abandoned or being deemed to have abandoned the Underground Mine project (per Section 4.3A.4).

In the event of non-payment in accordance with the written demand, the Government shall be entitled to realize on the Security in accordance with Section 16.6.

4.3A.4 Definition of Abandonment or Deemed Abandonment. For the purposes of Section 4.3A.3(b), the abandonment or deemed abandonment of the Underground Mine project shall occur: (a) when the Vale Board of Directors has finally and conclusively determined not to proceed with the Underground Mine, or (b) when "Activity" respecting the Underground Mine has ceased.

4.3A.5 Definition of Activity. For the purposes of Section 4.3A.4, "Activity" means:

- (a) over the initial 18-month period commencing after the completion of the Sanction of the Underground Mine Milestone set forth in Section 4.6A(d), [REDACTED]; and
- (b) over any 24-month period thereafter, [REDACTED]

provided that, in the event that the Overall Progress has advanced by less than the applicable percentage above, and the Proponent believes that the shortfall in such Overall Progress is attributable to the discovery of any subsurface or latent physical conditions at the Underground Mine site (including without limitation excessive water ingress and fractured ground) which differ materially from those expected at the time that the project schedule was established and which have caused an increase in the time required to perform a portion of the work, then the Proponent shall so indicate in its monthly progress report submitted to the Government under Section 15.3 and, subject to confirmation by the Engineer, the relevant period for calculating the Overall Progress shall be extended by the number of additional months required to perform such portion of the work attributable to the discovery of such physical conditions at the Underground Mine site. If the Engineer fails to confirm the Proponent's assessment regarding the shortfall in Overall Progress, in whole or in part, as outlined in the Proponent's monthly progress report described above in this Section 4.3A.5, then the Proponent may request that the issue be resolved in accordance with Section 8 (Dispute Resolution).

4.4A **Definitive Unprocessed Nickel Charge.** In addition to the Contingent Unprocessed Nickel Charge, Vale NL shall pay to the Government a special charge in relation to the Additional Exemption utilized in each fiscal year, as set forth below (the "**Definitive Unprocessed Nickel Charge**"). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Definitive Unprocessed Nickel Charge shall be calculated and paid by Vale NL within three months of the end of each fiscal year. Vale NL hereby covenants and agrees that it shall not include the Definitive Unprocessed Nickel Charge as a “deduction” when calculating its taxes payable to the Government under the Mining Tax Act.

4.5A Underground Mine Development – FEL Studies

4.5A.1 Optimized FEL 2 Study. The Proponent has completed and delivered to the Government a revised FEL 2 study in connection with the construction and operation of a potential underground mine covering both the Reid Brook and Eastern Deeps deposits on the Leased Lands (the “**Underground Mine**”).

4.5A.2 FEL 3 Study. The Proponent hereby undertakes to complete a FEL 3 study in connection with the Underground Mine, at an estimated cost of approximately \$20 million. The Proponent confirms that the budget and funding for such FEL 3 study have received all necessary corporate approvals. The Proponent further confirms that it has completed and delivered the terms of reference for such FEL 3 study to the Government. [REDACTED]

4.5A.3 FEL 3 Engineering within the Province. The Proponent shall establish the project office for the FEL 3 study in the Province. The Proponent shall require that the engineering work for the FEL 3 study be undertaken in the Province (including without limitation mechanical, civil, electrical and environmental engineering), provided that underground mining engineering and any other specialized engineering work (which for greater certainty have been identified in the terms of reference for the FEL 3 study) may be undertaken outside of the Province. The parties acknowledge that all engineers engaged on the FEL 3 study shall be qualified suppliers in accordance with the Proponent’s standards (including in terms of excellence in health and safety). Any disagreement regarding the subject matter of this Section shall be subject to Article 8 (Dispute Resolution).

4.5A.4 Economic Opportunities for Provincial Firms. The Proponent shall require the suppliers of underground mining engineering and any other specialized engineering services that are engaged in connection with the FEL 3 study to: (a) provide engineering firms in the Province with “full and fair opportunity and first consideration” to supply services in relation to the FEL 3 study, and (b) ensure that qualified engineers from the Province are provided with employment and experience opportunities, in accordance with the principles set forth in Article 4 of the IEBA.

Further, the Proponent shall require that such suppliers shall work in full collaboration with such engineering firms in the Province, and that such engineering firms shall be integrated into the overall engineering effort as soon as practicable. Any disagreement regarding the subject matter of this section shall be subject to Article 8 (Dispute Resolution).

4.6A **Underground Mine Development - Project Execution.** The parties have acknowledged their mutual desire for the Proponent to develop the Underground Mine, on the terms and conditions set forth herein, and in a manner that would ensure the continuous operation of the Concentrator Plant during the transition from open-pit operations to underground mining operations. Accordingly, the Proponent undertakes to proceed diligently with the development of the Underground Mine, on the basis of the Milestones and corresponding Milestone Dates set forth below:

| | <u>Milestone</u> | <u>Milestone Date</u> |
|-----|---|-----------------------|
| | | |
| (d) | Completion of the FEL 3 study, delivery of the FEL 3 study to the Government and Sanction of the Underground Mine | 30 June 2015 |
| | | |
| (h) | Start of Mining (i.e., first production ore from the Reid Brook deposit and confirmation by the Engineer that the Proponent is proceeding diligently with Overall Progress on | 31 December 2019 |

| | <u>Milestone</u> | <u>Milestone Date</u> |
|--|--|-----------------------|
| | the Underground Mine (including with respect to construction on the Eastern Deeps deposit) | |

4.7A Underground Mine Development – Enhanced Industrial & Employment Benefits.

4.7A.1 **IEBA.** The parties acknowledge and agree that the IEBA is applicable to the development, construction and operation of the Underground Mine.

4.7A.2 **Benefits Plan to be Agreed.** Taking into account the results of the FEL 3 study and in consultation with the Government, the Proponent shall prepare a draft “Enhanced Industrial and Employment Benefits Plan” that specifies how the commitments in the IEBA shall be implemented in connection with the Underground Mine project (the “**Benefits Plan**”). The parties agree that the Benefits Plan shall include the components set forth in Schedule B to the Fifth Amendment Agreement. The Proponent and the Government shall use their best efforts to negotiate and agree upon the final terms of the Benefits Plan by [REDACTED], failing which the terms of the Benefits Plan shall be determined in the manner provided for in Article 8 (Dispute Resolution). For greater certainty, the parties agree that the Benefits Plan shall be based on industry standards applicable at the given time and the parties acknowledge that the terms of the Benefits Plan shall be consistent with the Proponent’s responsibility to conduct its affairs in a commercially reasonable manner while meeting its obligations hereunder. The parties agree that the Benefits Plan shall apply to the implementation phase of the Underground Mine project and that, after the start of underground mining (i.e., first production ore from the Reid Brook deposit), the Benefits Plan will apply to all of the Proponent’s operations on the Leased Lands (including the Mine, the Concentrator Plant, the port and ancillary facilities).

4.7A.3 **IBAs.** The parties acknowledge that the Proponent has entered into the IBAs with each of the Labrador Inuit and the Labrador Innu, which apply to the Proponent’s present and future operations located in Labrador (including the Underground Mine). The parties acknowledge and agree that the terms and conditions of the IBAs take precedence over the IEBA, including the Benefits Plan.

4.8A **Annual Report Regarding the Project.** The Proponent shall, on or before March 31st of each year, provide the Government with a report on the Project for the preceding calendar year, which report shall include production figures, quantities shipped, actual capital expenditures and operating expenditures, forecast capital expenditures and operating expenditures for the calendar year immediately following, and other costs associated with mining, concentrating and processing for the Project.

4.13 **Return of Concentrate.** Section 4.13.1 is hereby amended by deleting the words “and otherwise than under the provisions of an Exemption Order” and replacing them by the following:

“and any subsequent amendments thereto, including without limitation under Sections 6.4.5 and 6.4.6 of the Agreement, and otherwise than under the provisions of any exemption from the Primary Production Order.”

3.5 **Article 6 (Government Undertakings).** The Parties agree that Sections 6.3 and 6.8 through 6.11 of the Agreement are hereby deleted. Sections 6.1 and 6.4 of the Agreement are hereby deleted and replaced with the provisions set forth below. Section 6.7 is hereby amended by deleting the words “The Government shall” and replacing them with: “If requested by the Proponent, the Government shall”. For greater certainty, Sections 6.2, 6.5 and 6.6 of the Agreement shall remain in full force and effect, unamended.

6.1 **Aboriginal Agreements.**

The Government represents and warrants that it has entered into:

- (a) the Voisey's Bay Interim Measures Agreement (the “**IMA**”) with the Inuit of Labrador as represented by the LIA and Her Majesty The Queen in Right of Canada, which was made 31 July 2002 and which has, in accordance with section 4(a) of the IMA, been superseded by the Labrador Inuit Land Claims Agreement;
- (b) the Labrador Inuit Land Claims Agreement with the Inuit of Labrador as represented by the LIA and Her Majesty The Queen in Right of Canada, which was made 22 January 2005 at Nain in the Province;
- (c) the Memorandum of Agreement (the “**MOA**”) Concerning the Voisey's Bay Project with the Innu of Labrador as represented by the Innu Nation which was made on 22 July 2002 at St. John's in the Province, and that the relationship between the MOA and any binding final land claims agreement with the Innu Nation shall be in accordance with the MOA, and in particular in accordance with section 2.4 of the MOA;
- (d) the Land Claims and Self Government Agreement-in-Principle with Her Majesty The Queen in Right of Canada and the Innu of Labrador represented by the Innu Nation signed on 18 November 2011 in Natuashish in the Province, which is not a binding final land claims agreement; and
- (e) the EMA.

6.4 **Exemption Orders.**

- 6.4.1 As at the date of the Fifth Amendment Agreement, the Nickel Concentrate Exemption Order (2009), the Copper Concentrate Exemption Order (2009) and the Matte Plant Exemption Order remain in full force and effect.
- 6.4.2 Effective immediately following the effectiveness of this Fifth Amendment Agreement, and in order to ensure continuity of operations and avoid a significant layoff of workers at the Mine pending the completion of the Processing Plant, the Government shall issue the Nickel Concentrate Exemption Order (2013) (which by its terms shall terminate the Nickel Concentrate Exemption Order (2009)). Further, as an administrative matter, the Government shall also issue (a) the Copper Concentrate Exemption Order (2013) (which by its terms shall terminate the Copper Concentrate Exemption Order (2009)), and (b) an order terminating the Matte Plant Exemption Order.
- 6.4.3 The Nickel Concentrate Exemption Order (2013) shall serve to increase the maximum aggregate amount of permitted shipments of Nickel-in-Concentrate from the Province by 94,000 tonnes over and above the 440,000 tonnes which were permitted under the Nickel Concentrate Exemption Order (2009) (such additional permitted shipments of Nickel-in-Concentrate, the “**Additional Exemption**”).
- 6.4.4 The Nickel Concentrate Exemption Order (2013) shall also provide that: (a) no more than 61,000 tonnes of Nickel-in-Concentrate shall be shipped from the Province in 2013 (of which 41,700 tonnes are part of the Additional Exemption); and (b) no more than 38,000 tonnes of Nickel-in-Concentrate shall be shipped from the Province in 2014.
- 6.4.5 The amount of the Additional Exemption has been determined based on the Proponent’s planned production levels at the Mine over the 2013-2015 period and planned consumption rates of Nickel Concentrate at the Processing Plant during “Phase 2” under the Revised Implementation Plan, as set forth in Section 4.2A.1. If the Proponent does not import into the Province some or all of the expected 10,000 tonnes of nickel contained in PTVI Matte by 30 June 2014 for processing at the Processing Plant as required by Section 4.2A.1 (whether because the Commissioning of the Processing Plant during such “Phase 2” proceeds at a faster-than-expected rate or because such PTVI Matte is not available due to production interruptions at PT Vale Indonesia tbk or otherwise), then the Government may amend the Nickel Concentrate Exemption Order (2013) in order to reduce the Additional Exemption on a tonne-for-tonne basis.
- 6.4.6 If the Government receives notice of exercise of the 2014 Option pursuant to Section 4.2A.2, then the Government may ask the Engineer to verify the proposed production plan and the

operational rationale for the exercise of the 2014 Option supplied by the Proponent. The Engineer shall complete such work and report to the Government within 15 calendar days following receipt of such notice. Within 15 calendar days following the receipt by the Government of the Engineer's report verifying the validity of the operational rationale and proposed production plan for exercise of the 2014 Option, the Government shall amend the Nickel Concentrate Exemption Order (2013) to provide a corresponding increase in the maximum exemption in 2014 (up to 43,000 tonnes) and in the Additional Exemption (up to 99,000 tonnes).

6.4.7 Subject to Section 6.4.5 and 6.4.6, the Exemption Orders shall permit the Proponent to ship an aggregate maximum of 534,000 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 534,000 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 2015 (the "**Exemption Order Termination Date**").

6.4.8 For greater certainty, considering the importation of the PTVI Matte, the Additional Exemption shall never exceed 84,000 tonnes of nickel-in-concentrate on a "net" basis. Further, the Additional Exemption and the 2014 Option shall be subject to the Proponent's obligations under Section 4.1.3 (Return of Concentrate).

3.6 **Article 7 (Proponent's Default)**. Section 7.2 of the Agreement is amended by deleting the words "or Section 7.4". Sections 7.4 and Section 7.5 of the Agreement are deleted.

3.7 **Article 8 (Dispute Resolution)**. Section 8.1 (Dispute Resolution) of the Agreement is amended by deleting Section 8.1.3, by deleting the word "or" from Section 8.1.10, and by adding the following:

8.1.12 under Section 4.3A.5, as to the number of additional months (if any) that were required to perform work in relation to the construction of the Underground Mine due to the discovery (if any) of subsurface or latent physical conditions at the Underground Mine site which differ materially from those expected at the time that the project schedule was established;

8.1.13 under Section 4.5A.3, as to any disagreement regarding the subject matter of that section;

8.1.14 under Section 4.5A.4, as to any disagreement regarding the subject matter of that section; or

8.1.15 under Section 4.7A.2, as to the terms of the Benefits Plan.

3.9 **Article 10 (Conditions, Closing and Termination).** Given that the Closing has occurred, Article 10 is hereby deleted.

3.10 **Article 11 (General Matters).**

3.10.1 Article 11.3 is hereby amended by deleting Section 11.3 and replacing it with the following:

11.3 **Notice.** Any notice, request, demand, consent, approval or other communications required or permitted to be given in connection with this Agreement (in this Section 11.3, a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

(a) to Vale NL at:

Vale Newfoundland & Labrador Limited
Suite 700, Baine Johnston Centre
10 Fort William Place
St. John's, Newfoundland
A1C 1K4

Attention: General Counsel

Fax No.: (709) 758-8820

(b) to VCL at:

Vale
Corporate Office - Base Metals
200 Bay Street, Royal Bank Plaza
Suite 1600, South Tower, P.O. Box 70
Toronto, Ontario
M5J 2K2

Attention: EVP, Legal

Fax No.: (416) 361-7734

(c) to the Government at:

Government of Newfoundland and Labrador
Department of Natural Resources

Natural Resources Building, 7th Floor
50 Elizabeth Avenue
St. John's, Newfoundland
A1A 1W5

Attention: The Minister

Fax No.: (709) 729-0059

Any Notice delivered or transmitted to a party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a business day then the Notice shall be deemed to have been given and received on the next business day. Any party may, from time to time, change its address by giving Notice to the other parties in accordance with the provisions of this Section 11.3.

3.10.2 Article 11 is further amended by adding the following provision:

11.15 **Consultation.** At any time during the term of this Agreement, either the Government or the Proponent may request a meeting with the other party to discuss any issues in relation to this Agreement, in which case the parties shall meet within 20 days of the date of such meeting request.

11.16 **No Third Party Benefits.** This Agreement is solely for the benefit of the Proponent and the Government and this 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 Agreement.

3.11 **Articles 12, 13 and 14.** Article 12 (Milestones and Remedies), Article 13 (Financial Assurances) and Article 14 (Reporting Requirements) of the Agreement (which were added pursuant to the Fourth Amendment Agreement) are hereby deleted.

3.12 **Articles 15 and 16.** The following new provisions shall be added to the Agreement:

**ARTICLE 15
PROJECT COMPLETION - PROGRESS REPORTS,
ENGINEER'S ASSESSMENTS & REMEDIES**

15.1 **Processing Plant Completion - Proponent's Monthly Progress Reports.**

(a) The Proponent shall provide the Government with a monthly progress report indicating the progress of the engineering, procurement,

fabrication, construction and Commissioning of the Processing Plant in the preceding calendar month, in a form and with such level of detail as is satisfactory to the Government, acting reasonably.

(b) Among other things, the monthly progress report shall indicate the progress toward completion of the applicable Milestones set forth in Section 4.1A.2. Where the Proponent believes that a Milestone has been achieved, the monthly progress report shall include a certificate to such effect and reasonable documentation to evidence the completion of such Milestone. If a Milestone is not expected to be completed by the applicable Milestone Date, or has not been completed by the applicable Milestone Date, then the Proponent shall include in the next monthly progress report a schedule recovery plan and the estimated date on which the Milestone is expected to be achieved based on reasonable assumptions.

(c) The foregoing monthly progress reports shall be delivered on or before the 21st day of each month, from the date that the Proponent has submitted the Implementation Plan to the Government until the completion of "Phase 2" under the Revised Implementation Plan. The Proponent shall meet to brief the Government on such monthly progress reports as may be requested by the Government from time to time, acting reasonably.

15.2 **Processing Plant Completion - Engineer's Assessments.** The Engineer shall issue an Engineer's Assessment in relation to the Processing Plant:

- (a) semi-annually as at February 28th and August 31st of each year, from 31 August 2009 until the completion of "Phase 2" of the Revised Implementation Plan, unless otherwise agreed by the parties; and
- (b) otherwise as requested by the Government or the Proponent from time to time, which request shall be in writing and given to the Engineer and the other party.

Such Engineer's Assessment shall include (among other things) the Engineer's independent assessment as to: (i) whether the Proponent is proceeding diligently to complete the Processing Plant as required by Section 4.1A.1; and (ii) whether the Proponent has met or failed to meet any of the Milestones for the completion of the Processing Plant set forth in Section 4.1A.2 by the applicable Milestone Date. Such Engineer's Assessment shall be delivered to the Government and the Proponent within 30 days of: (1) the dates referred to in subparagraph (a), or (2) the date of a request made under subparagraph (b). The Proponent shall make available to the Engineer all such data concerning the Processing Plant project as may be required to permit the Engineer to issue such Engineer's Assessment (including the Proponent's monthly progress reports) and shall provide a copy of the same to the Government, if so requested.

15.3 Underground Mine Development - Proponent's Monthly Progress Reports.

(a) The Proponent shall provide the Government with a monthly progress report indicating the progress of the engineering, procurement, fabrication, construction, commissioning and start of mining at the Underground Mine, in a form and with such level of detail as is satisfactory to the Government, acting reasonably.

(b) Among other things, the monthly progress reports shall indicate the progress toward completion of the applicable Milestones set forth in Section 4.6A. Where the Proponent believes that a Milestone has been achieved, the monthly progress report shall include a certificate to such effect and reasonable documentation to evidence the completion of such Milestone. If a Milestone is not expected to be completed by the applicable Milestone Date, or has not been completed by the applicable Milestone Date, then the Proponent shall include in the next monthly progress report a schedule recovery plan and the estimated date on which the Milestone is expected to be achieved based on reasonable assumptions.

(c) The monthly progress reports shall also indicate the Overall Progress on the Underground Mine project as at the relevant month-end. Where the Proponent believes that Overall Progress has reached a percentage completion that would trigger the reduction of the amount of the Contingent Unprocessed Nickel Charge in accordance with Section 4.3A.2, the Proponent shall include a certificate to such effect and reasonable documentation to evidence such percentage completion.

(d) The foregoing monthly progress reports shall be delivered on or before the 21st day of each month, from the date of the Fifth Amendment Agreement until the start of mining at the Underground Mine (per Section 4.6A(h)). The Proponent shall meet to brief the Government on such monthly progress reports as may be requested by the Government from time to time, acting reasonably.

15.4 Underground Mine Completion - Engineer's Assessments. The Engineer shall issue an Engineer's Assessment in relation to Underground Mine:

(a) semi-annually as at February 28th and August 31st of each year until the start of mining at the Underground Mine, unless otherwise agreed by the parties; and

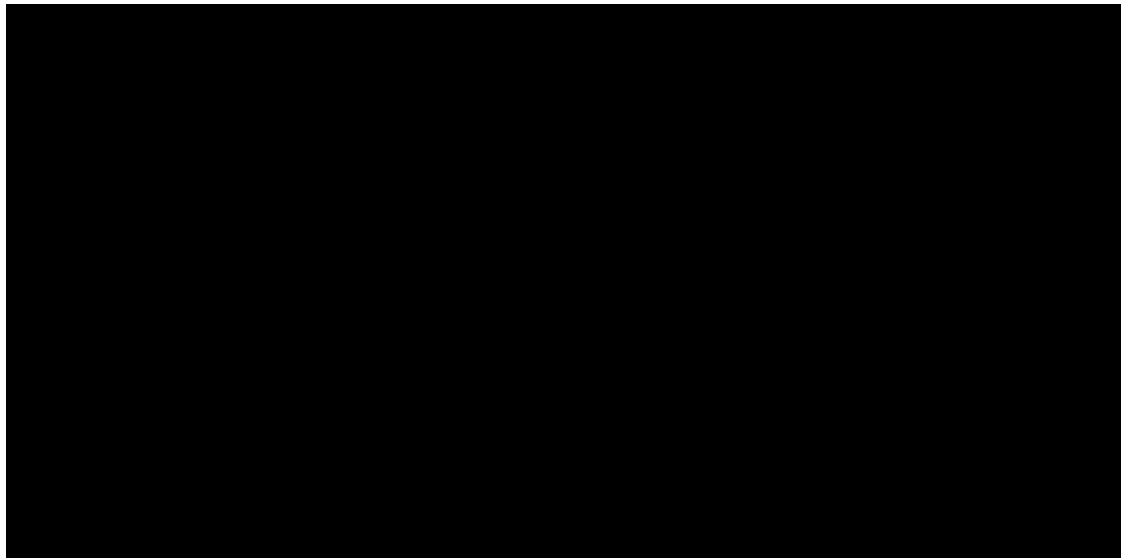
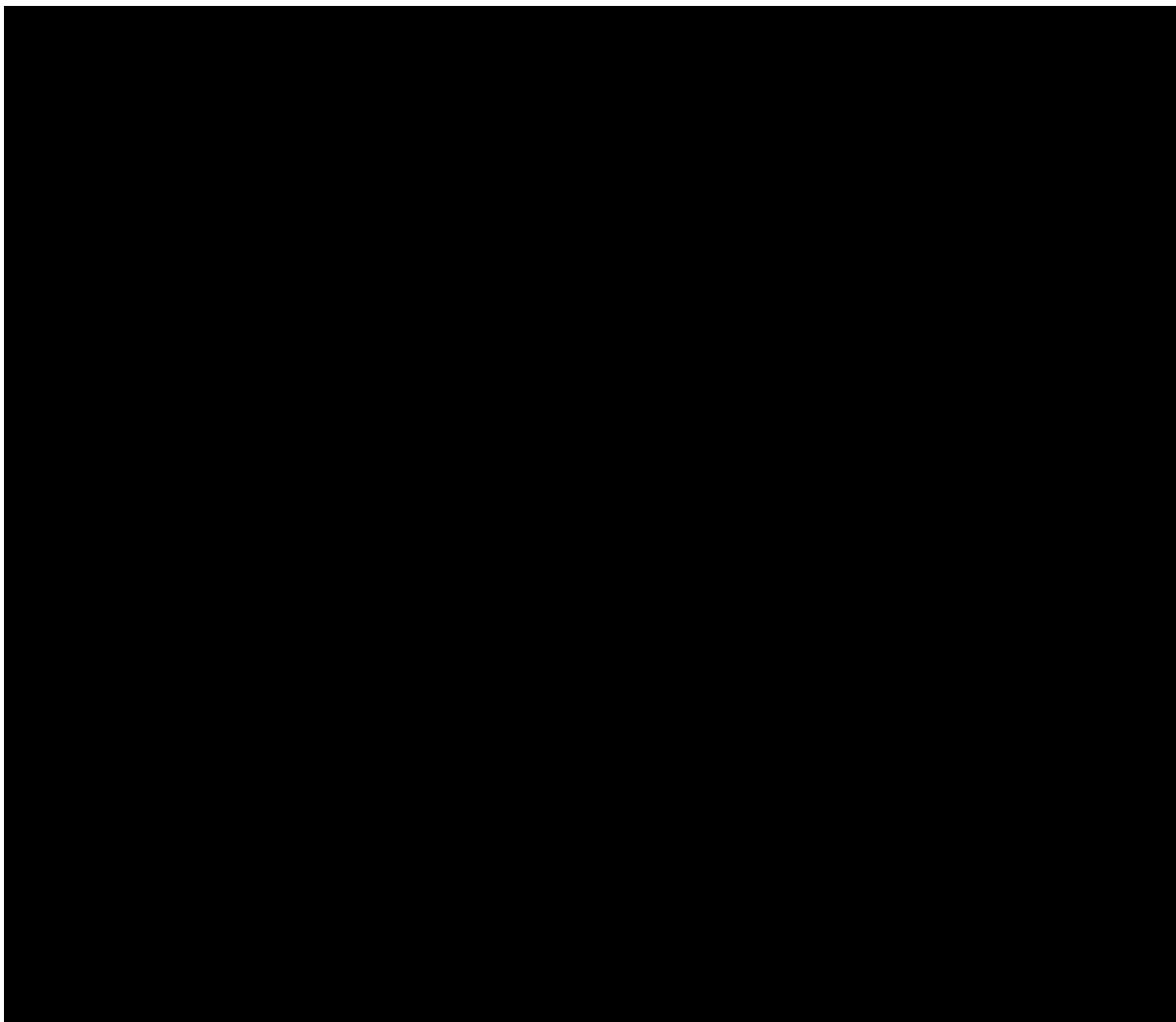
(b) otherwise as requested by the Government or the Proponent from time to time, which request shall be in writing and given to the Engineer and the other party.

Such Engineer's Assessment shall include (among other things) the Engineer's independent assessment as to: (i) whether the Proponent is proceeding diligently with the completion of the FEL 3 study with the

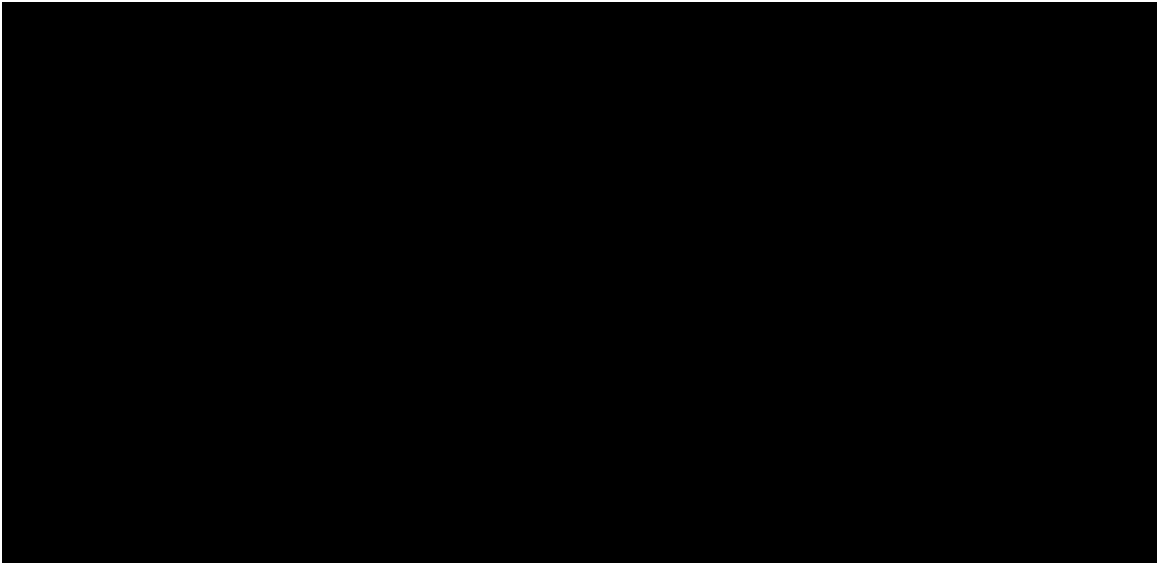
intent of meeting the Milestone set forth in Section 4.6A(d), (ii) whether the Proponent is proceeding diligently with the Overall Progress on the Underground Mine, with the intent of achieving the start of mining by 31 December 2019 and, if not, the Engineer's assessment of the date on which the start of mining would likely occur, based on reasonable assumptions, (iii) whether the Proponent has met or failed to meet any of the Milestones set forth in Section 4.6A by the applicable Milestone Date, and (iv) whether Overall Progress has reached a percentage completion that would trigger the reduction of the Contingent Unprocessed Nickel Charge in accordance with Section 4.3A.2. Such Engineer's Assessment shall be delivered to the Government and the Proponent within 30 days of (1) the dates referred to in subparagraph (a), or (2) the date of a request made under subparagraph (b). The Proponent shall make available to the Engineer all such data concerning the engineering and construction of the Underground Mine as may be required to permit the Engineer to issue such Engineer's Assessment (including the Proponent's monthly progress reports) and shall provide a copy of the same to the Government if so requested.

15.5 Suspension of Exemption Orders [REDACTED]

[REDACTED]



15.6 **Cessation of Suspension.** [Redacted]
[Redacted]
[Redacted]
[Redacted]



15.7 **Extension of Time for the Engineer’s Assessment.** Notwithstanding any other provision in this Agreement, if the Engineer is unable to deliver an Engineer’s Assessment by the time prescribed in this Article 15 due to circumstances beyond the control of the Engineer, notwithstanding the exercise of due diligence, then the period of time for delivery of such Engineer’s Assessment shall be extended by such period of time as is reasonable in the circumstances and all the other applicable times shall be extended accordingly.

15.8 **Appointment of the Engineer.** The parties shall select an Engineer in relation to each of the Processing Plant and the Underground Mine. If the parties are unable to agree upon the appointment of the Engineer, or if the Engineer resigns (and the parties have not agreed on the appointment of a replacement Engineer within 30 days of the resignation), then the appointment of the Engineer shall be submitted to arbitration in accordance with the provisions of Schedule 8.1 (Dispute Resolution Procedures) without first referring the matter to the Joint Committee or Mediation Procedure referred to therein. The Proponent and the Government shall each pay 50% of the fees and expenses of the Engineer.

15.9 **Liquidated Damages for Delays in Underground Mine Project.**

15.9.1 **Availability of Liquidated Damages.** The parties acknowledge that the failure to commence mining at the Underground Mine by the prescribed Milestone Date (i.e., 31 December 2019) would cause substantial loss to the Province and the economy of the Province such that the Government would suffer actual damages of types and in amounts which are extremely difficult to quantify. Accordingly, the parties agree that the Government may claim liquidated damages from the Proponent in the circumstances and amounts described below, [REDACTED] (the “Liquidated Damages”):

| <u>Triggering Events</u> | <u>Amount Payable</u> |
|--|--|
| <p><u>Part A</u> - Upon a determination in the semi-annual or annual Engineer's Assessment (delivered as at February 28th and August 31st) that the Proponent is not "proceeding diligently" with the completion of the Underground Mine and that the date on which the start of mining would likely occur is later than the applicable Milestone Date (i.e., 31 December 2019).</p> | <p>[REDACTED]</p> |
| <p><u>Part B</u> - Upon the Proponent failing to achieve the following Milestones by the applicable Milestone Dates: (i) Sanction of the Underground Mine by 30 June 2015; [REDACTED]</p> | <p>[REDACTED]</p> <p>[REDACTED] Liquidated Damages required to be paid under Part B shall be non-refundable.</p> |

15.9.2 Payment of Liquidated Damages. The Proponent shall pay the Liquidated Damages, in cash, not later than 30 days after delivery of a written demand by the Government to the Proponent. Upon the completion of the "Start of Mining" Milestone set forth in Section 4.6A(h), the Engineer shall determine the definitive amount of the Liquidated Damages referred to in Part A of Section 15.9.1 (if any) and the parties shall determine whether any over-payments or under-payments of such Liquidated Damages may have occurred and shall settle such amounts in cash within 30 days after delivery of a written demand by the Government to the Proponent, or by the Proponent to the Government, as the case may be. For greater certainty, the Liquidated Damages referred to in Part B of Section 15.9.1 are non-refundable and shall not be subject to such final settlement.

15.9.3 Liquidated Damages a Genuine Pre-Estimate of Loss. The parties acknowledge and agree that: (a) the Liquidated Damages referred to in Part A of Section 15.9.1 are a genuine pre-estimate by the parties of the loss to the Government in the event of a breach of the Proponent's obligation to commence mining at the Underground Mine by the prescribed Milestone Date (i.e., 31 December 2019); (b) the Liquidated Damages referred to in Part B of Section 15.9.1 are a genuine pre-estimate by the parties of the loss to the Government due to a delay in

the start of construction activities caused by a breach of the Proponent's obligation to meet the Milestones noted in Part B of Section 15.9.1 by the prescribed Milestone Dates; and (c) the Contingent Unprocessed Nickel Charge is a genuine pre-estimate by the parties of the loss to the Government in the event that the Proponent has not achieved first production ore from the Reid Brook deposit by [REDACTED]. The parties further acknowledge and agree that the Liquidated Damages and the Contingent Unprocessed Nickel Charge are not intended to be, nor shall they be interpreted as, a penalty, and that upon payment of the Liquidated Damages and if applicable the Contingent Unprocessed Nickel Charge, the Proponent shall not be liable for any further damages or under any other cause of action in tort, equity or otherwise in relation to such breach. Each of the parties expressly waives any right to, and agrees not to, claim or argue that the Liquidated Damages and the Contingent Unprocessed Nickel Charge are not a genuine pre-estimate of the loss to the Government in the event of any such breach of the Proponent's obligations hereunder.

**ARTICLE 16
SECURITY FOR OBLIGATIONS
REGARDING UNDERGROUND MINE**

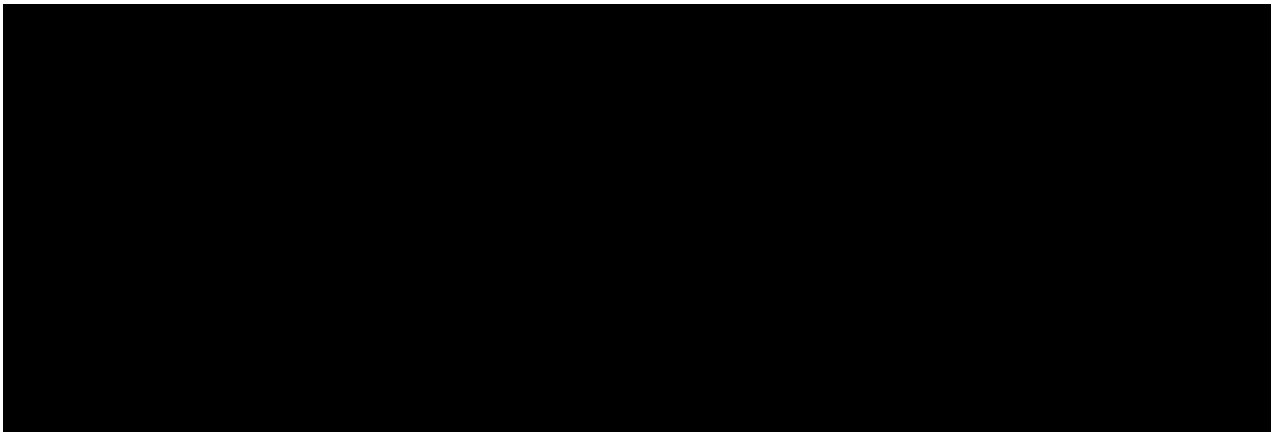
16.1 **Grant of Security.** As security for the payment of the Contingent Unprocessed Nickel Charge and the Liquidated Damages, the Proponent shall provide the Government with the following security:

- (a) prior to each shipment of Nickel Concentrate from the Province pursuant to the Additional Exemption, the Proponent shall deliver to the Government letters of credit, [REDACTED] (the "**Letters of Credit**") [REDACTED] of estimated Additional Exemption utilized in connection with such shipment, provided that the aggregate maximum amount of the Letters of Credit outstanding at any given time [REDACTED] and shall be reduced progressively upon the achievement of certain Milestones, as set forth in Section 16.5; and
- (b) Vale NL shall execute and deliver a general security agreement [REDACTED] (the "**GSA**") and a collateral realty mortgage [REDACTED] (the "**Collateral Realty Mortgage**"), together with an opinion of legal counsel for Vale NL as to the due execution, delivery and enforceability of the GSA and the Collateral Realty Mortgage.

The Letters of Credit, the GSA and the Collateral Realty Mortgage, and any amendments thereto and replacements thereof, are referred to collectively as the "**Security**".

- 16.2 **GSA and Collateral Realty Mortgage.** The Proponent shall file a verification statement under the PPSA with respect to the GSA and register the Collateral Realty Mortgage at the registry of deeds for the Province. The aggregate amount of monies secured by the GSA and the Collateral Realty Mortgage at any given time (the “**Secured Amount**”) shall be equal to: [REDACTED]
[REDACTED] The GSA and Collateral Realty Mortgage shall create a valid and enforceable security interest, mortgage and charge against the property secured thereunder, subject only to the Permitted Encumbrances.
- 16.3 **Reduction of Security.** Any reductions in the amount of the Contingent Unprocessed Nickel Charge under Section 4.3A.2 shall be applied first to reduce the aggregate outstanding amount under the Letters of Credit and then to reduce the Secured Amount under the GSA and the Collateral Realty Mortgage.
- 16.4 **Issuance and Substitution of Letters of Credit.** The Letters of Credit shall be issued by a Canadian Chartered Bank, unless otherwise agreed to in writing by the parties, and shall be subject to such comments and changes as may reasonably be requested by such Canadian Chartered Bank. The Proponent shall maintain such Letters of Credit in effect and may from time to time substitute one or more Letters of Credit previously provided to the Government with other Letters of Credit in an amount no less than the previously provided Letters of Credit (the “**Substitute Letters of Credit**”). Upon the Proponent’s delivery to the Government of such Substitute Letters of Credit, in a form satisfactory to the Government, acting reasonably, the original Letters of Credit shall be cancelled or discharged (and the Government shall deliver to the Proponent the original Letters of Credit and all such other documents or instruments required for the cancellation or discharge, unused, of the original Letters of Credit) and the provisions of this Article 16 with respect to Letters of Credit shall apply *mutatis mutandis* to such Substitute Letters of Credit.
- 16.5 **Letters of Credit to be Maintained in Effect.** Where the Proponent fails to maintain a Letter of Credit in effect, by delivering a Substitute Letter of Credit at least three business days prior to the expiration date of such Letter of Credit, then the Government may demand payment of the amount outstanding under such Letter of Credit, in which case: (a) the cash received by the Government shall be held as and form part of the Security; (b) no interest shall accrue or be payable by the Government on such cash; (c) notwithstanding Section 16.6, the Government shall claim and retain such cash prior to realizing on any other form of Security; and (d) the Government shall return and release such cash to the Proponent upon the earlier of (i) delivery of a Substitute Letter of Credit; (ii) any reduction in the amount of the Contingent Unprocessed Nickel Charge under Section 4.3A.2, in which case, notwithstanding Section 16.3, any such reduction shall be applied to such cash prior to any other form of Security; and (iii) the final release of the Security under Section 16.7.

- 16.6 **Right to Realize on the Security.** If all or any part of the Liquidated Damages or the Contingent Unprocessed Nickel Charge is not paid by the Proponent within 30 days of a written demand being delivered by the Government to the Proponent pursuant to Section 15.9.2 or 4.3A.3, then the Government may realize on the Security in accordance with the terms thereof. The Government shall first realize on the Letters of Credit, followed by the GSA, followed by the Collateral Realty Mortgage.
- 16.7 **Discharge and Release of Security.** The Government shall, within 30 days of a written request by the Proponent, execute and deliver to the Proponent all deeds, documents and instruments required to release and discharge the Security (or any part thereof, as applicable) in the following circumstances: (a) where the conditions have been met for the reduction of the maximum amount outstanding under the Letters of Credit under Section 16.3; (b) where the applicable Engineer's Assessment indicates that the "Start of Mining" Milestone set forth in Section 4.6A(h) has been achieved, and the parties have agreed that any and all "final" Liquidated Damages have been calculated and paid under Section 15.9.2, or (c) following the payment of the Contingent Unprocessed Nickel Charge.



- 16.9 **Government Consent.** Pursuant to section 14(ii) of Schedule C to the Amended Surface Lease, the Government hereby consents to the mortgage and charge created pursuant to the Collateral Realty Mortgage.
- 16.10 **Additional Rights.** The rights and remedies of the Government under this Article 16 are in addition to any rights and remedies of the Government under Article 7 of this Agreement.

ARTICLE 4 - GENERAL MATTERS

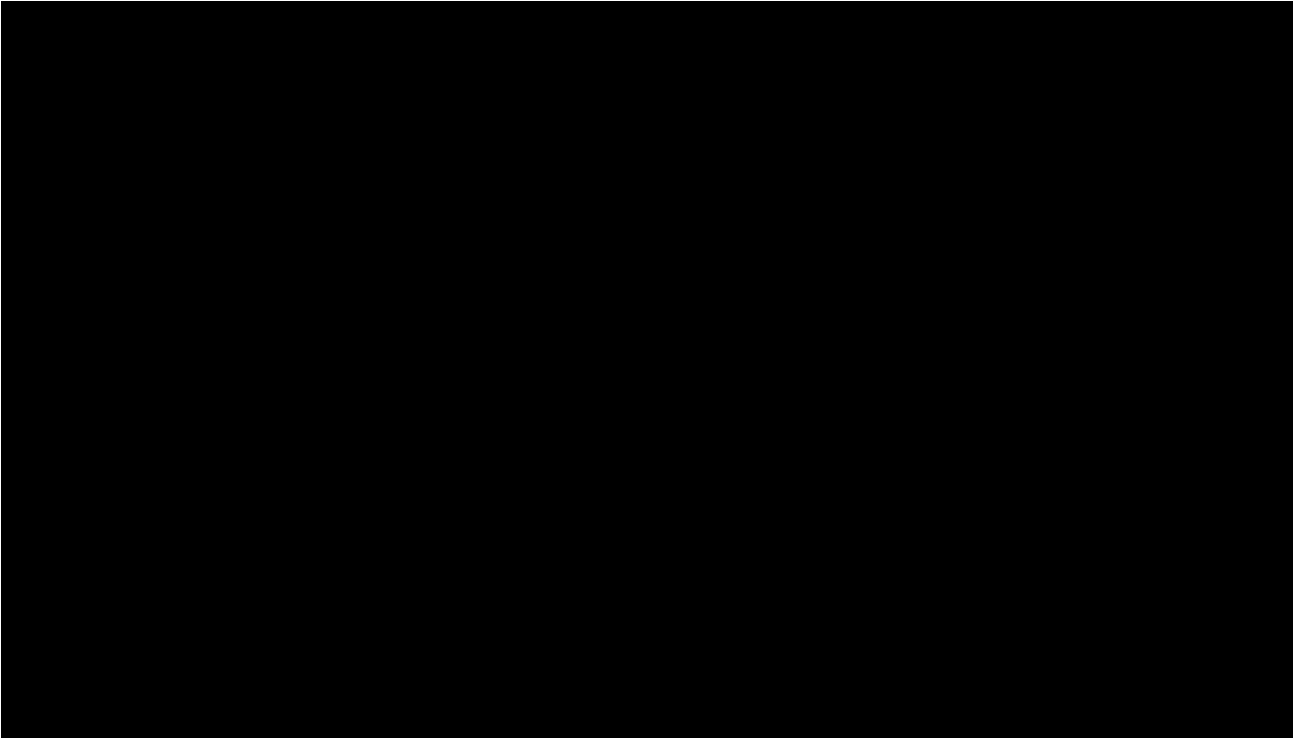
- 4.1 **Waiver.** In consideration for the obligations and undertakings of the Proponent in this Fifth Amendment Agreement, the Government hereby acknowledges and agrees that it has: (a) expressly waived the right to exercise any of the remedies arising from any Event of Default that may have occurred up to the effective date of this Fifth Amendment Agreement, and (b) amended the *Nickel-in-Concentrate Exemption Order, 2009 NLR 11/09* under the Mineral Act dated 28 February 2009, by the *Nickel-in-Concentrate Exemption Order, 2009 (Amendment) NLR 34/13*.

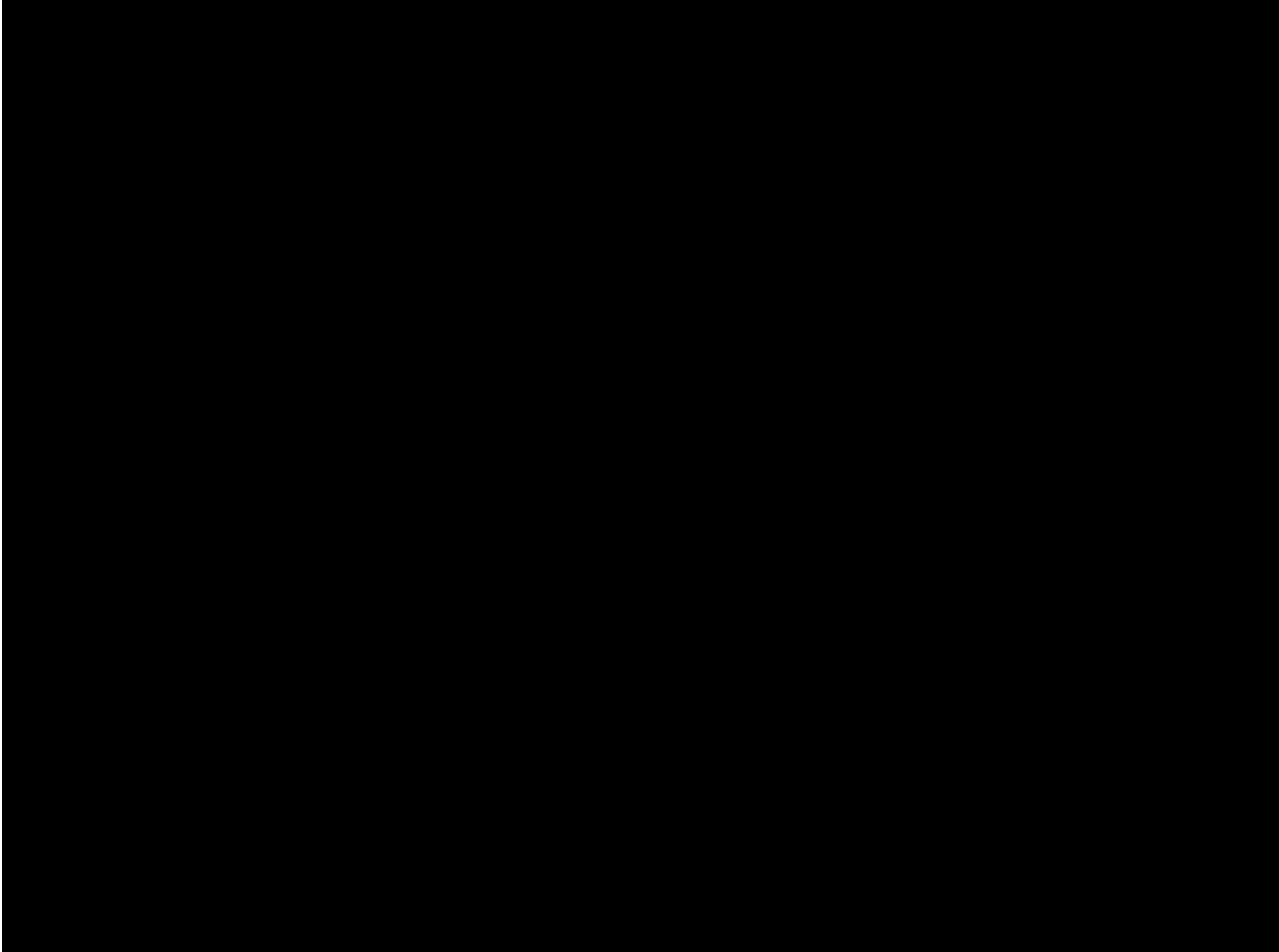
4.2 **Condition Precedent and Effective Date.** This Fifth Amendment Agreement shall be subject to the satisfaction of the following condition precedent (which is acknowledged to be for the exclusive benefit of the Government), i.e., the execution, delivery and filing/registration of the GSA and the Collateral Realty Mortgage and delivery of the related opinion of counsel, pursuant to Section 16.1(b). If the forgoing condition precedent has not been fulfilled by 31 March 2013, then this Agreement shall terminate automatically.

4.3 **Entire Agreement.** This Fifth Amendment Agreement comprises the complete and exclusive agreement of the Parties regarding the subject matter of this Fifth 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) the waiver letter from the Province to the Proponent dated as of 28 February 2013, and (b) the Term Sheet.

4.4 **No Further Amendments.** This Fifth 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 Fifth 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.





4.7 **Counterparts.** This Fifth 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 Fifth 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 Fifth Amendment Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**THE HONOURABLE THE MINISTER OF
NATURAL RESOURCES**

VALE NEWFOUNDLAND & LABRADOR LIMITED

By: _____
Name: Jeff McLaughlin
Title: President

VALE CANADA LIMITED

By: _____
Name: Peter Poppinga
Title: President and Chief Executive Officer

Schedule A

**Nickel Concentrate Exemption Order, 2013
and Copper Concentrate Exemption Order, 2013**

[See attached]

Schedule B

Components of Benefits Plan

The Benefits Plan shall include the following components:

- a) The Proponent shall establish and maintain the office for the project execution phase of the Underground Mine project in the Province. All general engineering work required for the project execution phase (including without limitation mechanical, civil, electrical and environmental engineering) shall be undertaken in the Province. In addition, the Proponent shall require the suppliers of underground mining engineering services that are engaged in connection with the Underground Mine project to use all reasonable efforts to undertake at least 50% of all underground mining engineering work required for the project execution phase in the Province, including: (a) paying commercially reasonable costs of relocating required personnel to the Province, and (b) providing wages and benefits that are competitive with those paid in jurisdictions from which the required expertise or experience is obtained. In the event that the 50% target is not achieved, the Proponent agrees that it shall consult with and demonstrate to the Government why the 50% target was not capable of being met. All engineers engaged on the project shall be qualified suppliers in accordance with the Proponent's standards (including in terms of excellence in health and safety). In addition, the Proponent shall conduct all of its procurement and construction management activity from its office in the Province;
- b) The Proponent shall ensure that all contractors and subcontractors used on the Underground Mine project shall be required to adhere to the same commitments as set forth in the Benefits Plan;
- c) The Proponent shall require any suppliers of underground mining engineering and other specialized engineering services based outside of the Province that may be engaged in connection with the execution phase of the Underground Mine project to: (a) provide engineering firms in the Province with "full and fair opportunity and first consideration" for to supply services in relation to the Underground Mine project, and (b) ensure that qualified engineers from the Province are provided with employment and experience opportunities, in accordance with Article 4 of the IEBA. Further, the Proponent shall ensure that such suppliers shall work in full collaboration with such local engineering firms, and that such local engineering firms shall be integrated into the overall engineering effort as soon as practicable;
- d) the Proponent shall aim to maximize the amount of work to be completed within the Province for all phases of the Underground Mine project;
- e) further to Article 5.3 of the IEBA, the Proponent shall make specific recommendations to, and assist the Government to develop, initiatives to improve the capacity of Provincial suppliers to provide goods and commercial services for the construction and operation of the Underground Mine;
- f) further to Article 8.2 of the IEBA, the Proponent shall ensure that full and fair opportunity and first consideration for employment and training in relation to the construction and

operation of the Underground Mine will operate on the basis of Labrador residents receiving first priority and the residents of the rest of the Province receiving next priority, in accordance with the “Adjacency Principle” used under the initial phase of the Voisey’s Bay mine project;

- g) further to Articles 8.2.3 and 8.3 of the IEBA, the Proponent shall develop a human resources plan that will identify the specific training initiatives that will be developed and implemented to prepare Provincial residents to be employed in each phase of the construction and operation of the Underground Mine and the Government shall cooperate with the Proponent through its local educational facilities to assist in preparing Provincial residents to avail themselves of training opportunities to be employed in each phase of the construction and operation of the Underground Mine;
- h) further to Articles 8.2.4, 8.2.5 and 8.4 of the IEBA, the Proponent shall develop and implement a gender and diversity plan for the planning, construction and operation phases of the Underground Mine, which shall: (i) include provisions that meet or exceed the provisions previously established for the Voisey’s Bay mine site, having regard for provisions established under Part IV, Article 5 of the “Lower Churchill Construction Projects Benefits Strategy”; (ii) describe the management resources, policies, practices and initiatives that will be used to promote gender equity and diversity on the Underground Mine project, including how they will be implemented throughout the project value chain; (iii) establish measurable quantitative targets for employment of women and other under-represented groups; and (iv) include a process for the monitoring and reporting to the Government of success in achieving targets, as well as an associated adaptive management process aimed at continuous improvement; and
- i) a dispute resolution and remedy section.

