

**TREASURY BILL PURCHASE AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF MONGOLIA**

**AND**

**IVANHOE MINES MONGOLIA INC LLC**

## **Treasury Bill Purchase Agreement between the Government of Mongolia and Ivanhoe Mines Mongolia Inc LLC**

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This Treasury Bill Purchase Agreement (“**this Agreement**”) is made on this 6<sup>th</sup> day of October 2009 between:

**The Government of Mongolia**, acting through its authorized representative, the Minister of Finance (hereinafter referred to as the “**Government**”);

and

**Ivanhoe Mines Mongolia Inc LLC**, a company duly organized in Mongolia with the state registration certificate of incorporation # 2657457 and foreign investor’s certificate # 00-218, possessing mining licenses 6709A, 6708A and 6710A (hereinafter referred to as the “**Investor**”);

**having regard to the following:**

The Investor and the Government, and others, have entered into an Investment Agreement (the “**Investment Agreement**”) on or about the date of this Agreement which memorializes and regulates a relationship between them for the development and operation of the Oyu Tolgoi Project.

The Government requires the Investor to enter into this Agreement as a condition of the Government’s entry into the Investment Agreement.

The purpose of this Agreement is to record the terms and conditions on which the Investor has agreed to purchase from the Government three discounted Treasury Bills with an aggregate face value of USD \$287,500,000.

### **1. GENERAL**

1.1. Capitalized terms used in this Agreement, if not defined in this Agreement, shall have the meanings given to them in the Investment Agreement provided that “**Parties**” as used in this Agreement shall mean the Government as that term is defined in this Agreement and the Investor (and “**Party**” shall mean either the Government or the Investor, individually), and provided further that:

1.1.1. “**Taxes**” for the purposes of this Agreement shall mean the taxes listed in Article 7 of the General Taxation Law.

1.1.2. “**Treasury Bill**” means a bill issued by the Government in respect of the First TBill, Second TBill or Third TBill, denominated in USD and substantially in the form set out in Schedule 1, each having a term of five (5) years from the date of issue and in all respects ranking equally with and be payable pari passu with other priority sovereign debt of Mongolia (and in no circumstances inconsistent with the terms of this Agreement).

1.2. A term not defined in this Agreement and which is defined in the Investment Agreement shall have the meaning given to it in the Investment Agreement. The rules of interpretation contained in Chapter 16 (Definitions) of the Investment Agreement shall apply to this Agreement, and this Agreement forms part of the Investment Agreement.

1.3. This Agreement shall enter into force at such time as the Investment Agreement shall have been signed by all the parties thereto, and such execution shall constitute a

condition precedent to this Agreement. This Agreement shall remain in effect from the aforesaid date of signing for so long as any amount of the Outstanding Balance remains unpaid by the Government, provided however, that Clause 7 shall survive so long as any taxable year of the Investor or any of its Affiliates to which any Tax may relate shall remain open for audit or adjustment by the Government.

## 2. PURCHASE OF TREASURY BILLS

- 2.1. Subject to the terms and conditions of this Clause 2 in its entirety, the Investor shall purchase at a discount three (3) Treasury Bills to be issued by the Government having an aggregate face value of USD \$287,500,000:
  - 2.1.1. Within fourteen (14) days after the Investment Agreement has been signed by all parties thereto, the Investor will purchase a Treasury Bill in the principal amount of USD \$115,000,000 by paying the Government USD \$100,000,000 ("**First TBill**")
  - 2.1.2. Within fourteen (14) days after the Effective Date (as defined in the Investment Agreement), the Investor will purchase a Treasury Bill in the principal amount of USD \$57,500,000 by paying the Government USD \$50,000,000 ("**Second TBill**").
  - 2.1.3. Within fourteen (14) days after drawdown, pursuant to full project financing, of all the funds required for construction of the open pit mine and underground mine for the Oyu Tolgoi Deposit contemplated in the Investment Agreement and all associated infrastructure (as contemplated by the associated feasibility studies for the open pit mine and underground mine) or no later than 30 June 2010 if such drawdown has not occurred by 30 June 2010, the Investor will purchase a Treasury Bill in the principal amount of USD \$115,000,000 by paying the Government USD \$100,000,000 ("**Third TBill**").

The aggregate of the face value of the First TBill (being USD \$115,000,000), the Second TBill (being USD \$57,500,000) and the Third TBill (being USD \$115,000,000) is hereinafter referred to as the "**Principal Amount**".

## 3. OUTSTANDING BALANCE

- 3.1. The "**Outstanding Balance**", which shall always be in USD, shall mean, at any point in time:
  - 3.1.1. the Principal Amount outstanding at that time;
  - 3.1.2. less any amounts repaid by the Government to the Investor in accordance with Clauses 4.1, 6.1 or 6.3;
  - 3.1.3. less any amounts applied by the Investor in reduction of the Tax liability of the Investor and its Affiliates in accordance with Clause 4.1;
  - 3.1.4. plus the amount of any interest under Clause 6.2.1.

## 4. APPLICATION OF OUTSTANDING BALANCE AGAINST TAX LIABILITY

- 4.1. If the entirety of the then current Outstanding Balance has not been paid on a Repayment Date in accordance with Clause 6.1, then the Investor may, at its discretion, notify the Government in writing through the relevant taxation authority in

Mongolia that any Tax owed by the Investor or any of its Affiliates has been satisfied in whole or in part by being offset against the Outstanding Balance. Promptly following the provision of such written notice, the Government shall, through the relevant taxation authority, provide to the Investor a receipt or voucher acceptable to the Investor (acting reasonably) as evidence of payment by the Investor (or, where applicable, its Affiliates) of the Tax liability described in the notice. Neither the Investor (nor, where applicable, its Affiliates) shall be liable or subject to any penalties or interest which might otherwise have been imposed on the Investor (or, where applicable, its Affiliates) in respect of a Tax liability satisfied by a written notice under this Clause 4.1. The Outstanding Balance shall not be reduced by the amount of a Tax liability specified by the Investor in a notice under this Clause 4.1 until the Investor has received all receipts and vouchers required under this Clause 4.1.

- 4.2. If the Investor issues a written notice under Clause 4.1 to satisfy a VAT liability of the Investor or its Affiliates by application of the VAT amount against the Outstanding Balance, then the Government shall ensure that any entitlement the Investor or its Affiliates may have to a VAT refund under the laws or regulations of Mongolia shall not be affected by the VAT liability having been satisfied by such notice.
- 4.3. Except as provided in Clause 6, the Government may repay the Outstanding Balance in whole or in part at any time.
- 4.4. For the purposes of calculating the VAT refund amount to be applied as a credit in accordance with Clauses 2.1.2 or 2.1.3 and for applying a Tax liability against the Outstanding Balance under Clause 4.1, the VAT credit or Tax liability (as applicable) shall be converted by the Investor to USD using the average official Mongolian togrog / USD exchange rate published by Reuters during the week immediately preceding the payment in accordance with Clause 2.1.2 or 2.1.3 or Investor's written notice under Clause 4.1 (this shall be calculated as the simple arithmetic average of the last published exchange rate for each day during that week).

## 5. SCOPE

- 5.1. For the avoidance of doubt, other than as provided in Clauses 4.1 and 6.3, nothing in this Agreement shall affect the manner in which any Tax liability shall be calculated and, without limiting the foregoing, nothing in this Agreement shall limit the ability of the Investor to treat any offset of Tax liability by amounts prepaid hereunder as a deductible expense from the taxable income of the Investor if otherwise permitted by the Investment Agreement or any applicable treaty, law or regulation.
- 5.2. Any income that arises from this Agreement, or which may be derived as a result of the issue or redemption of the Treasury Bills or in any other way whatsoever as a result of the implementation of this Agreement shall not be subject to any form of taxation.

## 6. REPAYMENT

- 6.1. The Government must immediately repay to the Investor the whole of the then current Outstanding Balance on the earliest to occur of each of the following events (the date of each such event constituting a "**Repayment Date**"):
  - 6.1.1. the Government or SHC fails to fulfil any material and significant obligations under the Investment Agreement or the Shareholders' Agreement respectively for a period of 6 (six) months;

- 6.1.2. the termination of the Investment Agreement or the Shareholders' Agreement;
  - 6.1.3. if the conditions precedent in Clause 15.7 of the Investment Agreement are not satisfied or waived by the time required under the Investment Agreement and, accordingly, the Investment Agreement does not come into force and effect (as contemplated by the final paragraph in Clause 15.7 of the Investment Agreement); and
  - 6.1.4. each date which is five (5) years after the date of purchase by the Investor of each Treasury Bill.
- 6.2. If the Government does not repay the then current Outstanding Balance in accordance with Clause 6.1, then the obligation to pay for the Treasury Bills remaining to be purchased by the Investor shall be cancelled and:
- 6.2.1. the then current Outstanding Balance for the purposes of Clause 3 shall bear interest at a rate of 9.9% per annum calculated daily on the basis of a year comprising 360 days (but after allowing for the notional interest incorporated in the discount at which each Treasury Bill is issued) and added to the Outstanding Balance at the end of each Calendar Quarter; and
  - 6.2.2. the Government and SHC agree that the Investor may, without limiting any of its other rights, apply any freely available dividends or other amounts which may become due and payable by the Investor to SHC towards reduction of the Outstanding Balance.
- 6.3. The Government must repay the Principal Amount of each Treasury Bill in accordance with its terms.
- 6.4. Repayment of the Principal Amount and the Outstanding Balance must be made in USD.
- 6.5. On repayment of the whole of the Principal Amount owing in respect of a Treasury Bill the Investor shall surrender to the Government the applicable Treasury Bill.
- 6.6. Nothing in this Clause 6 limits the Investor's right to commence arbitration proceedings to recover the Outstanding Balance.
- 6.7. As consideration for the Investor's purchase of the First TBill, the Government shall in good faith draw on sources of revenue other than the First TBill revenue until such time as the conditions precedent to the Investment Agreement have been satisfied and, to the extent possible, will not commingle Treasury Bill revenues with other sources of Government revenue.

## **7. DISPUTE RESOLUTION**

Chapter 14 (Dispute Resolution) of the Investment Agreement relating to dispute resolution shall apply to this Agreement as if set out in full in this Agreement, and as if references in that clause to the 'Parties' were references to the Parties to this Agreement.

## **8. ASSIGNMENT**

- 8.1. The Investor shall be entitled to assign its rights and obligations under this Agreement and the Treasury Bills. The Investor may charge, mortgage or grant other forms of security over its rights and obligations under this Agreement and the Treasury Bills and the Government shall provide all necessary support (including providing written consent and signing necessary documents) to register and perfect the security in Mongolia.
- 8.2. The Government shall not be entitled to assign or encumber its rights and obligations under this Agreement or the Treasury Bills.
- 8.3. No assignment will expand or alter the rights and obligations of either Party under this Agreement.

## **9. MISCELLANEOUS**

- 9.1. The provisions of this Agreement contain the entire agreement between the Parties with respect to the subject matter of this Agreement.
- 9.2. Notices or other communications under this Agreement between the Parties shall be given in accordance with the notice provisions contained in clause 15.32 of the Investment Agreement.
- 9.3. This Agreement shall be governed by and interpreted in accordance with the laws of Mongolia and international treaties to which Mongolia is a party.
- 9.4. Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.
- 9.5. Upon mutual consent recorded in writing, the Parties may amend or modify this Agreement.
- 9.6. The issuer of the Treasury Bills is the Government of Mongolia and the Treasury Bills constitute sovereign debt.
- 9.7. Each Party warrants to each other Party that at the date of this Agreement it has full power and lawful authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to complete the transactions contemplated by this Agreement. The Government further warrants to the Investor that at the date of this Agreement and at the date that each Treasury Bill is issued:
  - 9.7.1. it has all requisite power and authority and has all necessary approvals, licences, permits and authorizations to issue the Treasury Bill;
  - 9.7.2. it has taken all requisite action to issue the Treasury Bill, and the Treasury Bill concerned constitutes a valid and binding obligation of the Government, enforceable against the Government in accordance with its terms, without regard to the principles of sovereign immunity;
  - 9.7.3. that the Treasury Bills are legally binding, valid and enforceable obligations of and against the Government;
  - 9.7.4. there are no facts or circumstances existing, except current liabilities incurred and obligations entered into in the usual and ordinary course, none of which

(individually or in the aggregate) could have a material adverse effect on the Government's ability to perform its obligations under this Agreement and under the Treasury Bills.

- 9.8. If any provision of this Agreement is found to be unenforceable for whatever reason, that provision will be severed from the Agreement, and the remainder of this Agreement shall remain in force.
- 9.9. The Government agrees that any change to the laws or regulations of Mongolia (including the passing of any new laws or regulations), or any other requirements that would, but for this Clause 9.9, be required to be complied with in connection with this Agreement that take effect after the date of this Agreement, and which discriminates against the Investor (taking into account the principles of non-discrimination in clause 2.3 of the Investment Agreement), shall not apply in relation to this Agreement.
- 9.10. Expiration or earlier termination of this Agreement does not affect the monetary rights and obligations of the Parties which have accrued prior to the date of such expiry or termination and which remain undischarged at that date.
- 9.11. This Agreement will be provided and executed in the Mongolian and English languages each in two original copies, with each Party retaining one copy in each language and the Parties agree that the Mongolian and English versions will be treated equally except that, in the event of any legal dispute in the interpretation between the two-language versions, the English version shall prevail.

**SCHEDULE 1**

Form of Treasury Bill

(the Form of Treasury Bill omitted)





**SIGNING PAGE**

IN WITNESS WHEREOF, this Agreement is executed and signed on this 6<sup>th</sup> day of October 2009 in the City of Ulaanbaatar.

**For and on behalf of the Government of Mongolia:**

Minister of Finance  
S. Bayartsogt

Signature: *"Signed"*

Date: 6 October 2009

**For and on behalf of Ivanhoe Mines  
Mongolia Inc LLC:**

Keith Marshall  
Managing Director

Signature *"Signed"*

Date: 6 October 2009