

MODEL

HOST GOVERNMENT

AGREEMENT

Between/Among

THE GOVERNMENT OF STATE [...]

AND

THE PROJECT INVESTORS

CONCERNING

THE [*insert Project name*] PIPELINE SYSTEM

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PREAMBLE

THIS AGREEMENT, entered into [in the city of *[insert City name]* in *[insert state]* as of this *[insert date of execution]*] between:

The government (the “**Host Government**”) acting on behalf of [OR representing] the state of *[insert name of State]* (the “**State**”)

and

[insert name of company], a corporation organised and existing under the laws of *[insert name of state]*;

[insert name of company], a corporation organised and existing under the laws of *[insert name of state]*;

such companies being, together with their successors and permitted assignees, the **Project Investors**.

WHEREAS, this Agreement is entered into in furtherance of the Intergovernmental Agreement among *[insert name of States]* concerning the *[insert project name]* Pipeline System, dated *[insert date]*;

WHEREAS, the Project Investors wish to develop, [own]¹ and [operate] an efficient and secure Pipeline System employing generally recognised international technical and environmental standards for the Transport of [Petroleum] [Natural Gas]² in and across the Territory of *[insert name of the State]*;

WHEREAS, the Project Investors wish to invest in the construction of the Pipeline System, [as well as to operate and utilise capacity in the Pipeline System], on the terms and conditions of this Agreement and relevant Project Agreements.

WHEREAS, the Host Government agrees to promote and protect investment in the Pipeline System and to safeguard the efficient and secure development, [ownership] and operation of such system within its Territory, in accordance with the express obligations in this Agreement, the Intergovernmental Agreement, the Energy Charter Treaty and any relevant Project Agreement it enters into.

THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

Comment [CR1]: LATF

It is suggested that the place and date of execution be recorded either here, as shown, or at the execution page.

The parties should bear in mind any local legal requirements as to the place of execution, as well as the feasibility of evidencing compliance with these.

Another issue to be considered is whether the HGA is to be executed as a single document (in a certain number of copies) or by exchanging executed counterparties.

Comment [GC2]: LATF

Where a single corporate project vehicle (PV) is to be created, this Agreement may be used in two ways: (a) each of the shareholders of the PV may be a Project Investor; or (b) the PV may be the only Project Investor, and each shareholder may in addition negotiate its own direct agreement with the Host Government.

Comment [CR3]: LATF

Depending on the role of the Project Investor. A financial institution would not necessarily have an interest in operating the Pipeline System.

Comment [CR4]: LATF

Leave the paragraph as an option in [...]? Potential difficulties in paraphrasing obligations in the Preamble.

¹ This and every reference to “own” or “ownership” should of course be deleted where ownership is not permitted under the local law. References to ownership are accordingly included in square brackets.

² Choice between Petroleum and Natural Gas to be specified by the parties to the agreement.

PART I

INTERPRETATION AND SCOPE OF THE

AGREEMENT

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalised terms used in this Agreement (including the Preamble), and not otherwise defined herein, shall have the following meaning:

“Affiliate” shall mean, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with that Person. For purposes of this definition, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of a majority or other controlling interest in the voting securities, equity or other ownership interest in an Entity, by law, or by agreement between Persons conferring such power or voting rights.

“Agreed Interest Rate” shall mean, for each day of an Interest Period with respect to any amount due and payable under or pursuant to this Agreement, interest at the rate per annum equal [to [...] percent (%) plus LIBOR] OR [LIBOR plus 25% of LIBOR] for the relevant currency in effect on the Business Day immediately preceding the first day of the Interest Period. For the purposes of this definition, **“Interest Period”** shall mean a period of [...] days, beginning the first day after the date on which any such amount becomes due and payable and ending [...] days thereafter, with each succeeding Interest Period beginning on the first day after the last day of the Interest Period it succeeds.

“Agreement” shall mean this Host Government Agreement, including any Appendices attached hereto, as amended, supplemented or otherwise modified from time to time.

“Best Available Terms” shall mean, at any time with respect to any goods, works, services or technology to be rendered or provided at any location, the prevailing rates then existing in the ordinary course of business between unrelated Persons for goods, works, services or technology which are of a similar kind and quality provided at the same location and under terms and conditions comparable to those applicable to the subject goods, works, services or technology.

“Business Day” shall mean any day on which clearing banks are customarily open for business in [*insert name of city and state*].

“Contractor” shall mean any Person supplying directly or indirectly, whether by contract, sub-contract or otherwise, goods, work, technology or services, including financial services (including *inter alia*, credit, financing, insurance or other financial accommodations) to the Project Investors or their Affiliates in connection with the Pipeline System.

“Double Tax Treaty” shall mean any treaty or convention, to which the State is a party, with respect to Taxes for the avoidance of double taxation of income or capital.

“Effective Date” is defined in Article 2.

“Energy Charter Treaty” shall mean the Energy Charter Treaty as opened for signature in Lisbon on 17 December 1994 and in force as of 16 April 1998.

“Entity” shall mean any company, corporation, limited liability company, partnership, limited partnership, joint venture, unincorporated joint venture, association, trust or other juridical entity, organisation or enterprise duly organised under the laws of any state or any subdivision thereof.

“Insurer” shall mean any insurance company or other Person providing insurance cover for all or a portion of the risks in respect of the Pipeline System, Project Activities, or any Project Participant, and any successors or permitted assignees of such [insurance company or] Person.

“Interest Holder” shall mean, at any time, any Person holding any form of equity or other ownership interest in a Project Investor or an Operator, together with all Affiliates, successors and permitted assignees of that Person.

“Intergovernmental Agreement” shall mean that agreement among [*insert state names*] concerning the [*insert Project name*] Pipeline System dated [*insert date of execution of the Intergovernmental Agreement*], together with its appendices as set forth therein, as such agreement may be extended, renewed, replaced, amended or otherwise modified from time to time in accordance with its terms.

“Land Rights” shall mean all those rights of examination, testing, evaluation, analysis, inspection, construction, use, possession, occupancy, control, [ownership,] assignment and enjoyment with respect to land in the Territory as are required to carry out the Project Activities, including those rights set forth in Appendix [...]. The term is used in its broadest sense to refer not only to the Pipeline System Corridor within, over or under which the Pipeline System, as completed, will be located, but also such other and additional lands (including sea beds) and land rights within the Territory as the Project Investors may reasonably require for purposes of evaluating and choosing the particular routing and location(s) desired by the Project Investors for the Pipeline System.

“Lender” shall mean any financial institution or other Person providing any indebtedness, loan, financial accommodation, extension of credit or other financing to any Project Investor or any of its Affiliates, or any Interest Holder or any of its Affiliates in connection with the Pipeline System (including any refinancing thereof), and any successor or permitted assignee of any of them.

“LIBOR” shall mean, for any day on which clearing banks are customarily open for business in London, the London interbank fixing rate for [12-months] [*insert relevant currency*] deposits, as quoted on Reuter’s LIBOR page on that day or, if the Reuter’s LIBOR page ceases to be available or ceases to quote such a rate, then as quoted in the London Financial Times, or if neither such source is available or both cease to quote such a rate, then such other source, publication or rate selected by the Parties.

Comment [GC5]: LATF
Consider including referral to expert if Parties fail to agree.

“Loss or Damage” shall mean any loss, cost, injury, liability, obligation, expense (including interest, penalties, attorneys’ fees and disbursements), litigation, proceeding, claim, charge, penalty or damage suffered or incurred by a Person.

“Natural Gas” shall mean any hydrocarbons or mixture of hydrocarbons consisting essentially of methane in a gaseous state which is extracted from the sub-soil in its natural state, separately or together with liquid hydrocarbons..

“Non-State Land” shall mean those lands in the Territory, and any and all rights and privileges of every kind and character, however arising, and however characterised with respect thereto, which are [owned,] controlled, used, possessed, enjoyed or claimed by any Person, other than the State (including any municipality or other local government or authority).

“Operator” shall mean the Person or Persons responsible from time to time for implementing, managing, coordinating and/or conducting for or on behalf of the Project Investors or their Affiliates all or any portion of the day-to-day Project Activities including serving as an operator of all or any portion of the Pipeline System, whether as an agent for or Contractor to the Project Investors or their Affiliates or otherwise, and any successor or permitted assignee of any such Person. For the avoidance of doubt, where no Person or Persons has or have been appointed by the Project Investors or their Affiliates in this capacity, the Project Investors shall be the Operator.

“Other Host Government” shall mean the central or federal government of any state other than [insert name of the State] which is a party to the Intergovernmental Agreement.

“Party” shall mean each of the parties to this Agreement.

“Permanent Establishment” shall have the meaning set out in the relevant Double Tax Treaty. If no such treaty exists then “Permanent Establishment” shall have the same meaning as in the most recent version as at the date of execution hereof of the Model Tax Convention on Income and Capital of the Organisation for Economic Co-operation and Development.

“Person” shall mean any natural person or Entity.

“Petroleum” shall mean any liquid hydrocarbon, including crude oil, condensate, unfinished oils, refined products obtained from the processing of crude oil, and natural gas plant liquids.

“Pipeline System” shall mean the [Petroleum] [Natural Gas] pipeline intended to run from [insert name] to [insert name], as described in Appendix [...].

“Pipeline System Corridor” is defined in Appendix [...].

“Profit Tax” is to be defined in accordance with the Host Government’s Tax law, as modified (as among the parties thereto) by the Profit Tax Agreement.

“Profit Tax Agreement” shall mean an agreement to which, on the one hand, the Host Government or any of the State Authorities and, on the other hand, any Project Investor are or later become a party relating to Profit Tax with respect to any Project Activities.

“Project” shall mean the evaluation, development, design, construction, installation, financing, insuring, [ownership,] operation (including the Transport by any or all of the Shippers of [Petroleum] [Natural Gas] through the Pipeline System), repair, replacement, refurbishment, maintenance, expansion, extension (including laterals) of the Pipeline System.

“Project Activities” shall mean the activities conducted by the Project Participants and Interest Holders in connection with the Project.

“Project Agreement” shall mean any agreement, contract, licence, concession or other document, other than this Agreement and the Intergovernmental Agreement to which, on the one hand, the Host Government, any State Authority or State Entity and, on the other hand, any Project Participant are or later become a party relating to the Project Activities, as any such agreement, contract or other document may be extended, renewed, replaced, amended or otherwise modified from time to time in accordance with its terms.

“Project Land” shall mean any interest in land, either State Land or Nonstate Land granted to the Project Investors for the conduct of Project Activities.

“Project Participant” shall mean any Project Investor, any Affiliate thereof, any Operator, Contractor, Shipper, Lender or Insurer.

“Shipper” shall mean any Person which has a legal entitlement (whether arising by virtue of any contract or otherwise) to Transport [Petroleum] [Natural Gas] through all or any portion of the Pipeline System.

“State Authority” shall mean any organ of a State at each level of authority, whether the organ exercises legislative, executive, judicial or any other state functions, and including, without limitation, all central, regional, municipal, local and judicial organs or any consistent element of such organs having the power to govern, adjudicate, regulate, levy or collect taxes, duties or other charges, grant licences or permits or approvals or otherwise affect the rights and obligations of any Project Participants, their successors and permitted assignees, in respect of Project Activities.

“State Entity” shall mean any Entity in which, directly or indirectly, the State has a controlling equity or ownership interest or similar economic interest, or which the State directly or indirectly controls. For purposes of this definition, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of a majority or other controlling interest in the voting securities, equity or other ownership interest in an Entity, by law, or by agreement between Persons conferring such power or voting rights.

“State Land” shall mean any lands in the Territory, and any and all rights and privileges of every kind and character, however arising, and however characterised with respect thereto, which are [owned,] controlled, [used, possessed, enjoyed or claimed] by the State (including any State Authority) [or a State Entity].

Comment [GC6]: LATF
As now drafted, this definition includes Shippers in the traditional sense (i.e. Persons who have concluded transport agreements with the project company) and also Project Investors who have a legal right to use the Project merely by virtue of their investment (e.g. in the case of own-use pipelines in countries without TPA and open season requirements). But it also includes Persons who acquire capacity via secondary contracts.

“Taxes” shall mean all existing and future levies, duties, customs, imposts, payments, fees, penalties, assessments, taxes (including value added tax or sales taxes), charges and contributions payable to or imposed by a state, any organ or any subdivision of a state, whether central or local, or any other body having the effective power to levy any such charges within the Territory of a state, and **“Tax”** shall mean any one of them.

“Tax Administration Agreement” shall mean an agreement to which, on the one hand, the Host Government [or any of the State Authorities] and, on the other hand, any Project Investor are or later become a party relating to the administration and application of any provision of this Agreement regarding Taxes and the Profit Tax Agreement.

“Territory” shall mean, with respect to any state, the land territory of such state, its territorial sea and the air space above each of them, as well as the maritime areas over which such state has jurisdiction or exercises sovereign rights in accordance with public international law.

“Transport” shall mean carriage, shipping or other transportation of [Petroleum] [Natural Gas] via any legal arrangement whatsoever, including Transit as defined in Article 7(10)(a) of the Energy Charter Treaty³.

“VAT” shall mean, value added tax and any other similar Tax applicable to the provision of goods and services, Land Rights, works, services or technology, within the Territory of a state.

“Year”, “Calendar Year” and **“Fiscal Year”** shall mean a period of twelve (12) consecutive months, according to the Gregorian calendar, starting on 1 January, unless another starting date is indicated in the relevant provisions of this Agreement.

1.2 Interpretation

1.2.1 The division of this Agreement into articles, sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.2.2 Unless otherwise indicated, all references to an "Article" or "Section" followed by a number or a letter refer to the specified Article or Section of this Agreement.

1.2.3 The terms "this Agreement," "hereof," "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof.

1.3 Construction

Unless otherwise specifically indicated or the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders, and "include," "includes" and "including" shall be deemed to be followed by the words "without limitation."

³ To be included in case the Host Government is or becomes a Transit State.

1.4 Knowledge

References in this Agreement to “knowledge” and synonymous terms shall, unless the context indicates the contrary, be deemed to refer to actual rather than to constructive knowledge.

ARTICLE 2 EFFECTIVE DATE AND DURATION

1. This Agreement shall enter into force on the date (the “Effective Date”) on which the Intergovernmental Agreement has entered into force in accordance with its Article 2.
2. This Agreement shall be effective until this Agreement is terminated pursuant to its Article [38].

ARTICLE 3 AUTHORITY

Each of the undersigned representatives of the Host Government and of the Project Investors represents and warrants that he, she or it has the necessary legal authority to make all commitments contained in this Agreement.

ARTICLE 4 RELATIONSHIP TO OTHER AGREEMENTS

1. The Parties agree that the Project Participants shall be regarded as “Investors” in the sense of Article 1 (7) of the Energy Charter Treaty and that the Project shall be regarded as an “Investment” in the sense of Article 1 (6) of the Energy Charter Treaty.
2. The Parties agree that Article 7 (1) of the Energy Charter Treaty shall apply to the Project as if the State were a Contracting Party to the Energy Charter Treaty and all Transport in connection with the Project were “Transit” within the meaning of the Energy Charter Treaty. In particular, the Host Government agrees to permit (except as specifically provided otherwise in this Agreement or any Project Agreement) free flow of [Petroleum] [Natural Gas] via the Pipeline System or any part thereof consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such [Petroleum] [Natural Gas], and without imposing any [unreasonable] delays or restrictions.
3. Nothing in this Agreement or any of the Project Agreements shall deprive any Project Participant of its rights or any remedy to which it may be entitled under the Energy Charter Treaty, any other international treaty or any other agreement.

ARTICLE 5
EVIDENCE OF RIGHTS

The Host Government agrees that, if reasonably requested by any Project Participant, it shall in a timely fashion evidence the grant of rights under this or any Project Agreement to that Project Investor in a written instrument to such effect in form sufficient and appropriate to facilitate the carrying out of the Project or Project Activities or any part thereof.

PART II

GENERAL OBLIGATIONS

ARTICLE 6

CO-OPERATION

1. The Host Government shall co-operate fully in connection with all Project Activities.
2. The Host Government shall consult promptly with the Project Investors and with Other Host Governments concerning any measures, including measures taken in conjunction with Project Investors and/or Other Host Governments, by which the Host Government can make cross-border Project Activities more effective, timely and efficient, including streamlined and coordinated customs, Transport procedures, tariffs and practices, and the use of common measurement and metering facilities within the Territory in order to monitor the Transport of [Petroleum] [Natural Gas].
3. Except under Article [37] of this Agreement, the Host Government shall abstain from any action having as its purpose or effect the frustration, impediment or delay of the Project or of any Project Activities.

ARTICLE 7

COMMITMENTS WITH RESPECT TO PROJECT AGREEMENTS ENTERED INTO BY STATE AUTHORITIES AND/OR STATE ENTITIES

1. The Host Government shall procure the timely performance of the obligations⁴ arising from any Project Agreements entered into by State Authorities and/or State Entities. The obligation of the Host Government in that respect shall be an independent guarantee separately enforceable from the obligations of State Authorities and/or any State Entity under the relevant Project Agreement.
2. The Host Government shall, in a timely fashion, issue, give or cause to be given, in writing, all decrees, enactments, orders, regulations, rules, interpretations, authorisations, approvals and consents necessary or appropriate to evidence and perform the foregoing procurement obligation to enable and require the State Authorities and/or State Entities to perform in a timely manner all of their obligations as provided by the Project Agreements.
3. The Host Government shall procure that State Authorities and/or State Entities make the payment in a timely manner of any and all sums of money which may become due and owing by such State Authorities and/or State Entities under or pursuant to the indemnification provisions of any Project Agreement.

Comment [GC7]: LATF
Consider coordination with
dispute resolution provisions.

Comment [CR8]: LATF
This provision effectively makes
the Host Government a financial
guarantor of the Local Authorities'
obligations.
It should be checked in each case
whether this guarantee constitutes
an unlawful state aid under the
law of the Host State.
The same point applies regarding
Article 7.4(b).

⁴ In the context of certain transactions, it may be appropriate to exclude certain obligations (specifically certain commercial obligations).

4.

- (a) The privatisation, insolvency, liquidation, reorganisation or any change in the viability, ownership, organisational structure or legal existence of any State Authority or State Entity party to any Project Agreement shall not affect the obligations of the Host Government hereunder.
- (b) The Host Government shall, throughout the entire term of said Project Agreement to which any State Authority or State Entity is a party, ensure that the obligations of that State Authority or State Entity under the Project Agreement are always vested in and undertaken by an Entity authorised to perform and capable of performing such obligations, failing which, the Host Government itself shall perform directly all such obligations of such State Authority or State Entity.

ARTICLE 8

HOST GOVERNMENT'S REPRESENTATIONS AND WARRANTIES

The Host Government represents and warrants that:

- (a) it has the power to make and carry out this Agreement and to perform its obligations under this Agreement and all such actions have been duly authorised by all necessary procedures on its part;
- (b) the execution, delivery and performance of this Agreement will not conflict with, result in the material breach of or constitute a material default under any of the terms of any agreement, decree or order to which it is a party or by which it or any of its assets is bound or affected;
- (c) this Agreement has been duly and validly executed and delivered by it and constitutes a legal, valid and binding obligation upon it, enforceable in accordance with its terms;
- (d) no representation or warranty by it contained in this Agreement omits to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made, which material fact, at the date of execution hereof, is known or should reasonably be known to the Host Government.

Comment [CR9]: LATF
The parties may wish to consider including a representation and warranty as to the legal status of the HGA.

Comment [CR10]: LATF
This representation and warranty could be considered unduly onerous in certain situations.

Comment [CR11]: LATF
The appropriateness of this representation and warranty should be considered in light of which (if any) other representations and warranties are made by the Host Government.

ARTICLE 9

PROJECT INVESTORS' REPRESENTATIONS AND WARRANTIES

Each of the Project Investors represents and warrants severally and in respect of itself only that:

- (a) it is duly organised, validly existing and in good standing in accordance with the legislation of the jurisdiction of its formation or organisation, has the lawful power to engage in the business it presently conducts and contemplates conducting, and is duly licensed or qualified and in good standing as a foreign corporation in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary;
- (b) it has the power to make and carry out this Agreement and to perform its obligations under this Agreement and all such actions have been duly authorised by all necessary procedures on its part;
- (c) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its formation or organisational documents or any agreement, decree or order to which it is a party or by which it or any of its assets is bound or affected;
- (d) this Agreement has been duly and validly executed and delivered by it and constitutes a legal, valid and binding obligation upon it, enforceable in accordance with its terms, except and to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganisation or other similar legal process affecting the rights of creditors generally [or by general principles of equity];
- (e) there are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it or any of its Affiliates, before any court, arbitral tribunal or any governmental body which individually or in the aggregate may result in any material adverse effect on its business or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Agreement. Such Project Investor has no knowledge of any violation or default with respect to any order, decree, writ or injunction of any court, arbitral tribunal or any governmental body which may result in any such material adverse effect or such impairment;
- (f) it has complied with all laws applicable to it such that it has not been subject to any fines, penalties, injunctive relief or criminal liabilities which in the aggregate have materially affected or may materially affect its business operations or financial condition or its ability to perform its obligations under this Agreement;
- (g) no representation or warranty by it contained in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made.

ARTICLE 10 AUDIT

Each Project Investor undertakes to keep, for a period of [...] Years after the end of the financial period to which they relate, copies of books of account, originals or copies of contracts and copies of other files and records reasonably necessary to the Project Activities.

Such files and records shall be available for inspection and audit by representatives of the Host Government on an annual basis.

Unless otherwise mutually agreed, such inspection and audit shall take place at the Project Investor's principal office in *[insert city and state name]* (or if it does not have a principal office, at the office of the Operator in *[insert State name]*) on [...] days' prior written notice.

All such books or accounts and other records shall be maintained in the currency of account for the relevant transaction as determined by the relevant legal agreement, in the *[insert language name]* language, and in accordance with generally accepted international accounting standards.

Any books of accounts, originals or copies of contracts and copies of other files and records kept by each Project Investor shall be deemed to have been approved by the Host Government at the end of the [...] th Calendar Year following the end of the period to which they relate unless the Host Government has prior to this date notified the Project Investor that it has an objection to such books, records or accounts. Such notice shall contain reasonable details for such objection.

ARTICLE 11 INSURANCE

1. With regard to insurance, the Project Investors and/or their Affiliates shall effect and maintain insurances and shall cause the Contractors and Operators to effect and maintain insurance, in such amounts and in respect of such risks related to the Project, in accordance with the internationally accepted standards and business practices of the [Petroleum] [Natural Gas] industry; such insurance may include [duly certified self-insurance] (consistently with internationally accepted standards [and business practices of the [Petroleum] [Natural Gas] industry?]) and may be obtained outside the State. The said insurance shall, without prejudice to the generality of the foregoing, cover:

- (a) loss of or damage to all installations, equipment and other assets used in or in connection with the Project Activities;
- (b) loss, damage or injury caused by pollution or adverse environmental impact in the course of or as a result of the Project Activities;
- (c) the cost of removing wrecks and cleaning-up operations following any accident in the course of or as a result of the Project Activities;

- (d) loss or damage of property or bodily injury suffered by any third party in the course of or as a result of the Project Activities; and
 - (e) [health, [life] and accident insurance for [foreign] employees and other individuals engaged by the Project Investors in connection with the Project Activities] **OR** [the Project Investor's liability to its [foreign] employees engaged in Project Activities.]
2. Prior to the commencement of the Project Activities, the Project Investors and/or their Affiliates shall provide the Host Government with copies of certificates of insurance and other statements from brokers or underwriters confirming any such insurance. In the case of self-insurance in accordance with paragraph 1 of this Article, this requirement shall be deemed to be satisfied by the delivery to the Host Government of certified statements of the financial condition of the relevant Project Investors and/or Affiliates reasonably satisfactory to the Host Government.

ARTICLE 12

GOVERNMENT FACILITATION

1. Without prejudice to Article [7.2], the Host Government shall ensure the prompt taking of all reasonable measures and promulgation of all laws and decrees that are or may become necessary under its laws to enable the Project Participants to implement the terms of this Agreement and all Project Agreements and to authorise, enable and support the activities and transactions contemplated by this Agreement and all Project Agreements.
2. The Host Government shall promptly consult with and keep the Project Investors informed in respect of the development of any necessary laws or regulations and the status of all actions which are or may be necessary in order to comply with Article [11.1].

ARTICLE 13

LAND RIGHTS

1. The Host Government shall perform the obligations under this Article within the limits of its authority and in accordance with its obligations under public international law and its national laws and regulations.
2. The Host Government shall grant, and the Project Investors shall exercise, the rights set out in paragraph 3 of this Article only in so far as, and to the extent that, they are required for the expeditious and economically viable implementation of the Project.

3. In respect of Project Land and subject to paragraph 1 and 2 of this Article, the Host Government shall:

- (a) make available, or cause the relevant State Authorities to make available, to the Project Investors, in accordance with this Article and Appendix [...], Land Rights in any Project Land;
- (b) identify all Persons having or claiming any form of ownership or other property, occupancy, construction or possessory interest in any Project Land subject to the Land Rights, and notify them of the Land Rights granted to the Project Investors and of the authorisation of the Project Investors to conduct Project Activities on such land;
- (c) assist, and procure that the relevant State Authorities assist the Project Investors in respect of the acquisition and exercise of Land Rights in all Project Land and when necessary from time to time during the term of this Agreement, as provided in this Article and in Appendix [...];
- (d) [exercise] or assist the Project Investors in exercising] any applicable powers of taking, compulsory acquisition, eminent domain or other similar sovereign powers to enable the Project Investors to acquire and exercise the Land Rights in all the Project Land as provided in this Article and Appendix [...];
- (e) issue, or cause to be issued, all necessary permits, authorisations and land registration certificates required under applicable national laws and regulations for the Project Investors to [acquire and] exercise the Land Rights in all Project Land and to provide public notice of the rights of the Project Investors to such Land Rights;
- (f) ensure that the Project Investors enjoy the exclusive and unrestricted right to [own,] use, occupy, possess, control and construct upon and/or under the land within the Pipeline System Corridor for the purpose of conducting the Project Activities and to restrict or allow (at the Project Investors' sole discretion) the [ownership,] use, occupation, possession and control of, and construction upon and/or under, the Pipeline System Corridor by any other Persons;
- (g) defend and indemnify each of the Project Investors from and against any Loss or Damage in respect of the Land Rights and any and all third-party claims or demands arising from or related to the Project Investors' lawful exercise of their Land Rights or the State Authorities' obligations under this Article.
- (h) [in respect of State Land which is also Project Land, settle with or pay such compensation to those Persons referred to in Article [13.3(b)] as may be required under applicable laws and regulations and indemnify the Project Investors against the costs associated with the payment of compensation by the Project Investors to such Persons, where required by and in accordance with Appendix .]

Comment [CR12]: LATF Article 13.4 only addresses the obligations of the Project Investors in respect of the resettlement and compensation of Persons on Non State Land. What about State Land?

If it is the intention that the State would be responsible for the compensation and indemnification process, then 13.3(h) should be used.

4. In respect of Nonstate Land which is also Project Land, the Project Investors shall :
- (a) settle with or pay compensation to those Persons referred to in paragraph 3 (b) of this Article as may be required under applicable national laws and regulations, and
 - (b) indemnify the State and the relevant State Authorities against the costs, if any, associated with the payment of compensation by the State or relevant Local [State] Authorities to such Persons, in accordance with Appendix [...].
5. The Host Government shall not, without the prior written consent of the Project Investors, grant to any Person other than the Project Investors any rights (of ownership, occupation, use or otherwise) that are inconsistent or conflict with, or that may interfere with, the lawful exercise or enjoyment by the Project Investors of their rights granted under this Article.

ARTICLE 14

QUALITY ASSURANCE

1. The Operator shall not be required to accept any [Petroleum] [Natural Gas] to be transported in the Pipeline System if the [Petroleum] [Natural Gas] is of a quality that is incompatible with technical specifications as agreed between the Parties
2. In the event that the Host Government, any State Authority and/or any State Entity causes, without the consent of the Operator, the Transport in any part of the Pipeline System, of any [Petroleum] [Natural Gas] of a quality that is incompatible with technical specifications as agreed between the Parties, the Host Government shall ensure that the Project Investors, the Shippers and the Operator are indemnified for all Loss or Damage resulting therefrom.

Comment [GC13]: LATF
Although the present text would be incorporated to the HGA, the present draft has the disadvantage of leaving an important issue to be agreed later – what happens if the parties cannot agree?

In that case, one could add either of the followings texts:
“1. The Operator shall in its absolute discretion determine from time to time the technical specifications of the [Petroleum] [Natural Gas] to be transported in the Pipeline System.”
Or
“1. The Operator shall determine from time to time the technical specifications of the [Petroleum] [Natural Gas] to be transported in the Pipeline System and shall in so doing have due regard to the interests of all Parties.”

Also the present paras. 1 and 2 would become 2 and 3, and the references to “technical specifications as agreed between the Parties” and “technical specifications in Appendix [...]” would become “technical specifications so determined”.

ARTICLE 15

ENVIRONMENTAL PROTECTION AND SAFETY

1. The environmental and safety standards applicable to the Project shall be as set forth in Appendix [...]. The Host Government agrees to the standards set forth in Appendix [...] and consents to any action taken by or on behalf of the Project Investors and other Project Participants in conformity therewith.
2. The Project Investors shall observe the standards referred to in paragraph 1 of this Article.
3. If a spillage or release of [Petroleum] [Natural Gas] occurs from the Pipeline System, or any other event occurs which is causing or likely to cause material environmental damage or material risk to health and safety, the Project Investors shall immediately take all necessary action to:

(a) prevent further environmental damage, and;

(b) restore the environment by returning the damaged natural resources to the baseline conditions that would have existed if the damage had not occurred including compensatory measures to restore interim losses of natural resources and/or services that occur from the date of damage occurring until the complete restoration,

without prejudice to the Project Investors' liability pursuant to Article [31] and - solely for purposes of this Article - irrespective of the presence or absence of fault or negligence on the part of the responsible Project Investor(s).

4. On request from the Project Investors, the Host Government shall, in addition to any indemnification obligations the State Authorities and/or the State Entities may have under the Project Agreements, use all lawful and reasonable endeavours to make available promptly and in reasonable quantities, any labour, materials and equipment not otherwise immediately available to the Project Investors to assist in any remedial or repair effort in respect of any event to which paragraph 3 of this Article applies.
5. Without prejudice to the Project Investors' obligations under paragraph 3 of this Article, if, and to the extent, the Project Investors fail to comply with their obligations under this Article, the Host Government shall be entitled to take all necessary preventive or restorative measures itself and to recover the costs there for from the responsible Project Investor.

ARTICLE 16 PERSONNEL

1. The Operator or any Contractor shall have the right to employ or enter into contracts with, for the purpose of conducting Project Activities, such Persons and their respective personnel (of whatever nationality) as, in the opinion of such Operator or Contractor, possess the requisite knowledge, qualifications and expertise to conduct such activities.
2. Except as otherwise provided in this Agreement and subject to the domestic laws of [*insert name of the State*], the Host Government shall permit the free movement within its Territory of the Persons referred to in the preceding paragraph, of their property intended for their private use and of all other assets of such Persons relating to the Project Activities.
3. The Host Government shall ensure that the State Authorities shall not cause or permit to exist any restriction on the ingress or egress of any personnel with respect to the Project, subject only to the enforcement of immigration (including visa and residence permit regulations), customs, criminal and other relevant laws of the State.

ARTICLE 17
LABOUR STANDARDS

1. All employment programmes and practices applicable to citizens of the State working on the Project in the Territory, including hours of work, leave, remuneration, fringe benefits and occupational health and safety standards, shall not be less beneficial than is provided by [*insert name of the State*] labour legislation generally applicable to its citizenry.
2. The Project Participants shall be required to follow the employment practices or standards set out in Appendix [...] but no requirements in this regard shall be imposed on the Project Participants in addition to those set out in that Appendix.

ARTICLE 18
TRAINING AND TECHNOLOGY TRANSFER

1. With a view to advancing the objectives of Article 8 of the Energy Charter Treaty, the [Project Investors] shall conduct, in the normal course of business, employee training programmes from time to time, including training in each of the skills used in the planning, construction, operation and maintenance of the Pipeline System and training in management for those employees qualified for management training. The training programmes shall from time to time focus both on technical and administrative matters, including contract administration. The cost of such employee training will be a normal cost of business included in operating and maintenance expenses.
2. The [Project Investors] shall submit reports annually to the [Joint Committee] describing in detail its employee training programmes, the implementation of such training programmes and the amounts spent on such training programmes.

ARTICLE 19
EMPLOYMENT OF LOCALS

1. The Parties recognise that training citizens of the State in the design, construction, installation, operation, maintenance and management of the Pipeline System and maximising technology transfer are central to the interests of the Host Government. The [Project Investors] shall therefore employ, and shall cause the Operator and any Contractors to employ, citizens of the State, as far as practicable, for the construction, installation, operation, maintenance and management of the Pipeline System, taking into consideration availability, profitability and required skills.
2. The [Project Investors] shall submit reports annually to [the Joint Committee] detailing the progress made toward meeting the objectives set forth in paragraph 1 of this Article.

ARTICLE 20
SOCIAL IMPACT STANDARDS

1. The applicable social impact standards, practices and programmes for the Project shall be as set forth in Appendix [...]. The Host Government agrees to the standards and practices set forth therein and consents to any action taken by or on behalf of any Project Investor or other Project Participant in conformity therewith.
2. The Project Investors shall observe the standards referred to in paragraph 1 of this Article.

ARTICLE 21
TECHNICAL STANDARDS

1. The technical standards applicable to the Project shall be as set forth in Appendix [...]. The Host Government agrees to the standards set forth therein and consents to any action taken by or on behalf of any Project Investor or other Project Participant in conformity therewith.
2. The Project Investors shall observe the standards referred to in paragraph 1 of this Article.

ARTICLE 22
ACCESS TO RESOURCES AND FACILITIES

1. The Host Government shall provide and/or make available to the Project Investors and, on their reasonable request, to other Project Participants on Best Available Terms all goods, works and services as may be necessary or appropriate for the Project in the reasonable opinion of the requesting Project Investors and that are owned or controlled by the State Authorities and/or State Entities (including raw materials, electricity, water (other than the water referred to in paragraph 2 (a) of this Article), gas, communication facilities, other utilities, onshore construction and fabrication facilities, supply bases, vessels, import facilities for goods and equipment, warehousing and means of transportation, all with respect to the Project).
2. The Host Government shall ensure that the State Authorities and/or State Entities exert all lawful and reasonable endeavours to assist the Project Participants at the request of Project Investors in obtaining on Best Available Terms with respect to the Project:
 - (a) readily available water of sufficient quality and quantity located proximate to the Pipeline System in order to perform hydrostatic and other testing of the Pipeline System, together with the right to dispose of same at location(s) proximate to said Pipeline System upon completion of such testing;

Comment [GC14]: LATF
This language, importing as it does an *obligation de résultat*, would be onerous for the Host Government in the context of a federal system where considerable freedom is enjoyed by state or regional governments.
It may be appropriate to modify the language to read: "The Host Government shall use its best endeavours to ensure...."
Also, check appropriateness of term "Project Participants".

- (b) with respect to jurisdictions and authorities outside the Territory, those rights, licenses, visas, permits, approvals, certificates, authorisations and permissions necessary or appropriate for the Project, including in respect of :
 - i. storage and staging of [Petroleum][Natural Gas], lines of pipe, materials, equipment and other supplies destined for or exiting from the Territory;
 - ii. all marine vessels sailing to or from the Territory in connection with the export of [Petroleum][Natural Gas];
 - iii. the import and/or export or re-export of any goods, works, services or technology necessary for the Project; and
- (c) all goods, works, services and technology as may be necessary or appropriate for the Project in the reasonable opinion of the requesting Project Investors that are not owned, controlled or customarily provided by the State Authorities and/or State Entities (including raw materials, electricity, water (other than the water referred to in paragraph 2 (a) of this Article), gas, communication facilities, other utilities, onshore construction and fabrication facilities, supply bases, vessels, import facilities for goods and equipment, warehousing and means of transportation).

ARTICLE 23 SECURITY

1. Commencing with the initial Project Activities relating to route identification and evaluation and continuing throughout the life of the Project, the Host Government shall endeavour to ensure the safety and security of the Land Rights, the Pipeline System and all Persons within the Territory involved in Project Activities.
2. In order to avoid or mitigate harm to the Project, the Host Government shall, on request by and in consultation with the Project Investors, exert all lawful and reasonable endeavours to enforce any relevant provisions of its law relating to threatened and/or actual instances of Loss or Damage caused by third parties (other than Project Participants) to the Land Rights, the Pipeline System or loss or injury to Persons within the Territory involved in Project Activities.

ARTICLE 24 ACCESS TO AVAILABLE CAPACITY

[Subject to *[insert name of the State]* laws and regulations, the Project Investors shall ensure that the Project Investors or the Shippers or the Operator negotiate in good faith access to the

Comment [CR15]: LATF 30.06.06
The LATF is aware that an obligation to negotiate access to available capacity is not suitable for all projects. Nevertheless, it seems to the LATF important that the Parties (particularly the Host Government) should be aware of the issue and of the various options. As an alternative, some Project Investors may wish to ensure that they have the **right** to negotiate access to available capacity with third parties.

Pipeline System with any third parties, should there be available capacity in the Pipeline System.]

OR

[Subject to [*insert name of the State*] laws and regulations, the Project Investors, the Shippers and the Operator shall be entitled to negotiate and agree access to the Pipeline System with any third parties on any mutually acceptable terms, should there be available capacity in the Pipeline System.]

PART III

TAXES, IMPORT & EXPORT AND

CURRENCY

ARTICLE 25

TAXES

1. The Host Government shall ensure that the tax treatment of Project Investors, Interest Holders and any other Project Participants with respect to any part of specific Project Activities will be no less favourable than that applying to its nationals [or nationals of any other state] under its general tax legislation, in similar circumstances.
2. With respect to measures regarding any relevant taxes or other payments, irrespective of their names and origin, the Host Government shall co-operate with other states to ensure a fair and transparent application of taxes on the Project Investors, Interest Holders and any other Project Participants with respect to any part of specific Project Activities.
3. Except as otherwise specifically provided in this Agreement, no Project Investors, Interest Holders, or other Project Participants or their employees shall be subject to any Taxes or any Tax compliance or filing obligations arising from or related, directly or indirectly, to any part of specific Project Activities, the Land Rights, [Petroleum] [Natural Gas] that is transported through the Pipeline System or any related assets or activities, whether before, on or after the Effective Date.
4. It is acknowledged that, notwithstanding any other provisions in this Agreement to the contrary, Double Tax Treaties shall have effect to give benefits with respect to Taxes related to any part of specific Project Activities. Moreover, any Project Investor, Interest Holder or any other Project Participant that is not entitled to the benefits of such a treaty shall be entitled to the benefits that would have been available if a treaty equivalent to the Organisation for Economic Cooperation and Development Model Tax Convention on Income and Capital were applicable. In either event, no further administrative action shall be necessary to enable the Project Investors, Interest Holders and any other Project Participants to take advantage of such benefits. With respect to any Activities that are not related to Project Activities, no account shall be taken of such Activities in determining whether a Permanent Establishment of a Project Participant or Interest Holder exists. In no case shall a Double Tax Treaty be treated as imposing a charge to Tax.
5. The provisions of this Article shall at all times prevail over all conflicting provisions of the Tax Code of [*insert name of the State*], [any relevant Double Tax Treaty] or any other [*insert name of the State*] law.
6. To the extent any provisions of this Article are or could be construed as being inconsistent with the other provisions of this Agreement, the provisions of this Article shall prevail.
7. Subject to paragraph 14 of this Article, profit tax shall be imposed on the profit of a Project Investor and/or Contractors for a calendar year or a respective fiscal year. With respect to any Project Activities such Tax shall be limited to the profit which is attributable to such Activities in the territory of the [*insert name of the State*] for such calendar year or a respective fiscal year. The Host Government will grant relief from double taxation either by exemption from tax or credit against tax. Taxes shall generally be recognised and credited

through the application of the respective Double Tax Treaty. In the event that there is a choice between the exemption and the credit method, the tax payer may make the choice best suited to its circumstances.

8. For the purpose of computing taxes, the aggregate amount of revenues, costs and expenses shall be allocated between the Host Government and Other Host Governments. For the determination of the tax assessment basis, the principles of the OECD (Double Tax Treaty Model), especially concerning transfer pricing and the allocation of income and expenditure within a legal entity and/or between related entities (i.e. determination of the business profits of any Project Investor or Contractor or Permanent Establishment thereof, and the valuation of the transfer of goods, services, royalties and license fees) and the provisions of Article [12.4] of the Intergovernmental Agreement apply in the implementation of this Agreement.
9. In order to give effect to the principles of this Agreement, the Intergovernmental Agreement, the matters listed in Appendix [...] and any other matters that the Parties consider it necessary to include, they shall within six months of the execution of this Agreement execute an agreement (the “Profit Tax Agreement”) which shall set forth any necessary modification to the generally applicable corporate income tax charged upon the business profits of legal entities in the State. Such agreement shall be construed as an integral part of this Agreement.
10. In addition to the tax chargeable under paragraph 7 of this Article, a supplementary tax may be charged to the Project Investors being the excess, if any, in respect of each fiscal year, of an amount calculated as the product of [insert amount and currency] multiplied by the total number of [unit of measurement] of the [Petroleum] [Natural Gas] measured in accordance with Appendix [...] during a fiscal year in the Pipeline System comprising the Pipeline System located in the territory of the State, over the tax payable in accordance with paragraph 8 of this Article above in respect of the fiscal year. The Host Government shall take all necessary measures to ensure that the supplementary tax is objective, reasonable, transparent and does not discriminate on the basis of origin or destination or ownership of energy materials and products in transit. If a Project Investor so requests, the Host Government shall use all reasonable endeavours to secure that such tax is agreed to be a creditable tax by the competent authority of the country of residence of such Project Investor under the Double Tax Treaty between the State and the country of tax residence of such Project Investor.
11. The Profit Tax as set forth under paragraphs 7 and 10 of this Article, on each Project Investors and/or Contractors for a Year shall fully satisfy the liability of such Project Investors and/or Contractors for [insert name of the State] Profit Tax or any other Taxes which may be imposed on or with respect to income or profit of such Project Investors and/or Contractor in connection with Project Activities for the Year.

12. The Host Government confirms that there is no withholding tax or other taxes on cash or other property transfers to the Project Investors, Interest Holders or any other Project Participants as far as they are not paid into the stated capital of a legal entity.
13. Project Investors or Shippers with respect to all or any part of such Project Activities shall not be subject to any Taxes levied on the asset value, equity value or stated capital of the entity or Permanent Establishment located or domiciled in the Territory. Except as specifically provided elsewhere in this Article, no Taxes shall be levied on the value of the Pipeline System, on the [Petroleum] [Natural Gas] transported through the Pipeline System or on the value of any project assets.
14. No Taxes shall be imposed or withheld with respect to payments (including, *inter alia*, Taxes on payments of interest, royalties, fees for services and dividends or other distributions or remittances of profit) or deemed payments (including, *inter alia*, Taxes on undistributed profit after imposition of any Taxes on profit under paragraphs 7 and 10 above) that are associated, directly or indirectly, with the Project Activities or any related assets or activities by all or any of the Project Investors, Interest Holders or any other Project Participants with respect to all or any part of such Project Activities, or any branch or Permanent Establishment thereof, to any Entity.
15. No Taxes shall be imposed on or with respect to any assignment, transfer or pledge of, or any other adjustment in, all or any of the rights or obligations of Project Investors, Interest Holders or a predecessor or Affiliate of any of the foregoing arising under any Project Agreement or in connection with the Project or the Pipeline System. No Taxes (including any import Taxes) shall be imposed on or with respect to any contribution of assets or any loan to or by any Project Investors, Interest Holders or any payment or other transfer to any Project Participant in connection with the Project.
16. Administrative provisions with respect to Tax shall be agreed and shall form the “Tax Administration Agreement” (Appendix [...]). Such Agreement shall contain detailed rules regarding the administration and application of the provisions of this Article and may not be amended without the written consent of its parties. It shall have the status of being an Appendix, and shall be construed as a part of this Agreement, and shall be executed within [...] months of the date of execution of this Agreement.
17. Except as otherwise provided within the Tax Administration Agreement, Project Investors, Interest Holders and any other Project Participants or their employees shall not be subject to any interest, penalties or fines (including financial sanctions and administrative penalties) with respect to Taxes related to all or any part of Project Activities.

Comment [GC16]: LATF
It may be appropriate to include a provision for expert determination in case of failure to agree (in the absence of any such provision, any dispute would fall for determination by arbitration pursuant to Article 42 – Settlement of Disputes).

18. [Option 1]

The Host Government acknowledges that value added taxes ("VAT") should not be a cost to the Project, because the purpose of the Project is not to provide goods works or services for domestic consumption within the State, but to provide international transportation services,

which it is customary in VAT systems to treat as zero rated export-like supplies. Accordingly, the Host Government agrees that:

- (a) The Transport shall be considered to be an international transportation service subject to VAT at a zero percent rate.
- (b) All VAT incurred by the Operator shall, in accordance with paragraph 22 below, be treated as input VAT incurred by the Project Investors directly and individually in respect of the share allocated to each Project Investor.
- (c) All VAT suffered by the Project Investors in connection with Project Activities, whether directly, or through the Operator, shall be refundable.
- (d) Such VAT shall be refunded within 30 working days of an application for its refund being made. Unrefunded VAT shall accrue interest at a rate which, after any Tax that may ultimately be incurred in respect of such interest, shall leave in the hands of the Project Investor an amount of interest calculated at a rate of the higher of inflation according to the [name index] plus 12% or four times [specify bank rate].
- (e) VAT refunds shall be made in the currency in which the VAT was paid.
- (f) Any amounts of VAT that are overdue for refund, may be offset, at the option of the Project Investor, against any other amounts due to be paid by the Project Investor to the State. Alternatively, at the Project Investor's option, the right to a refund of overdue VAT may be sold by the Project Investor to any Contractor, who shall then be entitled to recover an amount of VAT equal to the right purchased, as if such Contractor had itself suffered that amount of input VAT. Such sale shall have no other tax consequences, and shall be treated as if it were a refund of VAT so far as the Project Investor is concerned, and the incurring of input VAT so far as the Contractor is concerned.
- (g) All imports in connection with Project Activities, whether by Project Investors, an Operator, or Contractors, whether of goods works or services shall be treated as exempt from VAT and also as exempt from any customs duties. Any subsequent re-exports shall be treated as zero rated for VAT purposes, and exempt from customs duties.

[Option 2]

The Host Government shall ensure that there will be no value added taxes ("VAT") or sales taxes on imports, exports, goods, works or services with respect to all or any part of Project Activities. In particular, VAT shall not be a net economic burden (as defined herein) to any Project Participant or Interest Holder. A mechanism to give effect to this provision shall be included in the Tax Administration Agreement. If such an agreement is not concluded within [...] days of the Effective Date of this Agreement, the Project Investors shall be entitled to issue a certificate to any Contractor specifying any contract to which this exemption applies. For a Person receiving such a certificate, it shall be conclusive proof of the obligation not to

charge VAT on supplies under the contract to which the certificate relates. VAT shall be considered to be a “net economic burden” to an Entity if it does not collect VAT in respect of supplies that it makes, but it incurs VAT in making those supplies, and it does not obtain a cash refund or an offset against other Taxes equal in value to that VAT within 6 Calendar months of incurring that VAT.

19. All employees of a Project Investor, Shipper, pipeline operator and foreign Contractor, who are not citizens of [*insert name of the State*] shall for the term of this Agreement be exempt from payments of any form of income tax, derived from any activity relating to Project Activities in the State. OR [All employees shall be subject to income tax as it is generally applicable in the State, subject to any relevant Double Tax Treaty.] For such activity, the pipeline operators and foreign Contractors shall not be required to make contributions to any social insurance fund operating within the State or similar payments for employees who are not citizens of [*insert name of the State*].
20. Project Investors, Interest Holders and any other Project Participants, and their respective employees, shall have no liability or responsibility to the State Authorities for any failure of Contractors to comply with [*insert name of the State*] law regarding Taxes relating to any part of specific Project Activities.
21. The Host Government shall endeavour to minimise the incidence and complexity of Tax formalities and to decrease and simplify Tax documentation requirements.
22. An Operator shall be considered to be the agent of the Project Investors in respect of all Project Activities that they delegate to it. Accordingly for all Tax purposes its transactions shall be treated as transactions directly undertaken by the Project Investors, and not as transactions of the Operator. Such transactions shall be divided between the Project Investors in proportion to their funding of the transactions concerned. This shall apply for all Tax purposes, notwithstanding that individual items of documentation, such as invoices, will have been addressed only to the Operator and not to the Project Investors. Any and all payments made by the Projector Investors to the Operator to finance its activities on their behalf shall have no tax consequences other than to determine the division between the Project Investors of expenditures incurred by the Operator.
23. Without limiting the application of Article [36], the provisions of this Article shall not be changed during the period of this Agreement, without the consent of both Parties. In no event shall any changes to this Article be retroactive.
24. Without limiting the application of Article [36], the provisions of this Article shall survive the termination of this Agreement. If a Project Investor or Shipper ceases to have that status, the provisions of this Article shall continue to apply to Taxes or any Tax compliance or filing obligations arising from or related, directly or indirectly, to the Project Investor's assets or activities pursuant to this Agreement for all periods in which the Project Investor had such status.

25. In the event that the Host Government is unable to secure the compliance with this Agreement of any other body having the lawful authority to levy Taxes in the State (“a Defaulting Authority”), any Project Participant shall have the right to offset any amount required to be paid to a Defaulting Authority in contravention of the provisions of this Agreement against any amounts due to the Host Government. This provision is without prejudice to any other remedy available to such a Project Participant under this Agreement.
26. Any dispute in respect of this Article in connection with Project Activities may be submitted at any time by the relevant Project Investors [or any of them] for resolution pursuant to Article [42], even if the dispute has already been submitted (by the relevant Project Investors or any of them or by the Host Government or any State Authority or State Entity) for resolution by a court, tribunal or administrative body of the State. For the avoidance of doubt, Article 26(3)(b)(i) and (c) of the Energy Charter Treaty shall not, as between the Parties, apply in respect of any such dispute.

ARTICLE 26

IMPORT AND EXPORT

1. The Host Government shall accord [Petroleum] [Natural Gas] and other goods and services associated, directly or indirectly, with the Project Activities, treatment no less favourable than that which would be accorded to like goods and services of like origin which are not associated with the Project.
2. No prohibitions or restrictions, irrespective of their names and origin, other than the duties, taxes or other charges set forth in this Agreement, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by the Host Government on the importation or on the exportation of [Petroleum] [Natural Gas], other goods or services with respect to Project Activities.
3. No fees, charges or other levies of whatever character imposed by the Host Government on or in connection with importation or exportation with respect to [Petroleum] [Natural Gas], other goods or services with respect to any part of Project Activities shall represent an indirect protection to domestic products or services or a taxation of imports or exports for fiscal purposes. Such fees shall be a fair approximation of the actual cost of conducting the administrative procedures that are generally adopted by governments in respect of importation and exportation of goods.
4. The Host Government shall endeavour to minimise the incidence and complexity of import and export formalities and to decrease and simplify import and export documentation requirements.
5. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by the Host Government and/or State Authorities in connection with importation

and exportation with respect to any Project Activities, including, but not limited to those relating to consular transactions, such as consular invoices and certificates; quantitative restrictions; licensing; exchange control; statistical services; documents, documentation and certification; analysis and inspection; and quarantine, sanitation and fumigation.

ARTICLE 27 FOREIGN CURRENCY

Comment [GC17]: LATF
The necessity for this provision should be reviewed in each case. Where the currency of the State is an extra-national currency (e.g. the euro), its utility is debatable. In other cases, a State with exchange control may wish to preserve some control over the overseas use of its local currency. In this case definitions might be added to this article: "Local Currency" means [*] and "Foreign Currency" means any other currency.

1. The Host Government confirms that, for the duration of and in order to conduct Project Activities, the Project Investors [and any other Project Participants] shall have the right with respect to Project Activities:
 - (a) to bring into or take out of the Territory Foreign Currency and to utilise, without restriction, Foreign Currency accounts in the Territory and to exchange any currency at market rates;
 - (b) to open, maintain and operate Local Currency bank and other accounts inside the Territory and Foreign Currency bank and other accounts both inside and outside the Territory;
 - (c) to purchase and/or convert Local Currency with and/or into Foreign Currency;
 - (d) to transfer, hold and retain Foreign Currency outside the Territory;
 - (e) to be exempt from all mandatory conversions, if any, of Foreign Currency into Local Currency or other currency;
 - (f) to pay abroad, directly or indirectly, in whole or in part, in Foreign Currency, the salaries, allowances and other benefits received by any foreign employees;
 - (g) to pay Contractors and foreign Contractors abroad, directly or indirectly, in whole or in part, in Foreign Currency, for their goods, works, technology or services supplied to the Project; and
 - (h) to make any payments provided for under any Project Agreement in Foreign Currency.
2. Where it is necessary for the purposes of this Agreement that a monetary value or amount be converted from one currency to another, the conversion rate of exchange to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund ("IMF") or on the rate of exchange recognised by the IMF, or on the par value established in accordance with a special exchange agreement entered into pursuant to Appendix [...]. Where no such

established par value and no such recognised rate of exchange exist, the conversion rate shall reflect effectively the current value of such currency in commercial transactions.

PART IV

IMPLEMENTATION

ARTICLE 28 AUTHORISED REPRESENTATIVES

1. The Host Government shall appoint promptly upon or before entry into force of this Agreement by written notice to the Project Investors an authorised representative, agency or other body by or through which the Project Investors may request and secure:
 - (a) issuance of any and all rights, licenses, visas, permits, certificates, authorisations, approvals and permissions provided in this Agreement;
 - (b) information, documentation, data and other materials specified by this or any other Project Agreement or appropriate to evidence any grants of rights hereunder;
 - (c) the submission and receipt of notifications, certifications and other communications provided herein; and
 - (d) the taking of such other actions with respect to the State Authorities appropriate to facilitate the implementation of the Project.
2. The Project Investors shall appoint promptly upon or before entry into force of this Agreement one or more representatives, committees, or other organisational or functional bodies by or through whom the Project Investors may act, which will facilitate the method and manner of the Project Investors' timely and efficient exercise of their rights and/or performance of their obligations hereunder (the "Project Investor Representative (s)").
3. Upon the appointment of the Project Investor Representative(s), the Host Government shall be entitled to rely upon the communications, actions, information and submissions of an Project Investor Representative, in respect of that Project Investor Representative's notified area of authority, as being the communications, actions, information and submissions of the Project Investors. The Parties further acknowledge that the Project Investors shall have the right, upon reasonable written notice to the Host Government, to remove, substitute or discontinue the use of one or more specified Project Investor Representative(s).
4. The Project Investors and the Host Government shall, at the request of either of them, review from time to time the status of Project Activities and confer together on any issues arising with respect thereto.

ARTICLE 29 OPERATOR

Subject only to any requirement under [*insert name of the State*] law that any Operator register to conduct business within the Territory, the Project Investors shall have the right to establish, own and control one or more Operators, and/or appoint or select one or more

Comment [CR18]: LATF
Add a possibility for the Host Government to object to the Operator whom the Project Investors propose to appoint?

Add criteria for the appointment of the Operator?

Operators, that have been organised in any jurisdiction, whether inside or outside the Territory. The Project Investors shall have the right to appoint jointly any Operator :

- (a) to enforce on behalf of the Project Investors any or all obligations of the State Authorities and/or any State Entity under any Project Agreement; and
- (b) to exercise on behalf of the Project Investors any or all rights of the Project Investors arising under any Project Agreement. To the extent authorised by the Project Investors, any and all Operators may act as the Project Investors' agent or independent contractor, as the Project Investors may indicate, in respect of any and all Project Activities.

Comment [GC19]: LATF
Consider inserting arbitration
clause (or reference thereto).

ARTICLE 30

APPLICATION REQUIREMENTS

1. Upon request by any Project Investor or such other Project Participants as the Project Investors may designate, the Host Government shall provide or cause the relevant State Authorities to provide a complete and proper list of all documentation necessary to obtain a specific license, visa, permit, certificate, authorisation, approval or permission (the "Application Requirements") on the part of the Project Investors and such other Project Participants as the Project Investors may designate in order to carry out Project Activities. The Project Investor or other Project Participants may rely on such listing of the particular Application Requirements as complete and proper, and the same shall be the only Application Requirements required for the relevant request. Subject only to the submission of the Application Requirements therefor, the State Authorities shall, on a priority basis within [...] days of the submission of the relevant Application Requirements,, provide each license, visa, permit, certificate, authorisation, approval and permission necessary or appropriate in the opinion of the Project Investors to enable them and all other designated Project Participants to carry out all Project Activities in a timely, secure and efficient manner and/or to exercise their rights and fulfil their obligations in accordance with the Project Agreements, including:
 - (a) use and enjoyment of the Land Rights (subject to the provisions of Article [13] and Appendix [...]);
 - (b) customs clearances;
 - (c) import and export licenses;
 - (d) visas and residence permits;
 - (e) rights to open and maintain bank accounts;

- (f) rights to lease or, where appropriate, acquire office space and employee accommodations;
 - (g) rights and licenses, in accordance with relevant [*insert name of the State*] law, to operate communication and telemetry facilities (including the dedication of a sufficient number of exclusive radio and telecommunication frequencies as requested by the Project Investors to allow the uniform and efficient operation of the Pipeline System within and without the Territory) for the secure and efficient conduct of Project Activities;
 - (h) rights to establish such branches, Permanent Establishments, Affiliates, subsidiaries, offices and other forms of business or presence in the Territory as may be reasonably necessary in the opinion of any Project Participant to properly conduct Project Activities, including the right to lease or, where appropriate, purchase or acquire any real or personal property required for Project Activities or to administer the businesses or interests in the Project;
 - (i) rights to operate vehicles and other mechanical equipment, and in accordance with relevant [*insert name of the State*] law, the right to operate aircraft, ships and other water craft in the Territory; and
 - (j) environmental and safety approvals (subject to the provisions of Appendix [...]).
2. With respect to all such rights, licenses, visas, permits, certificates, authorisations, approvals and permissions, including those customarily issued by the Host Government, and all renewals and extensions thereof, the Project and all Project Participants shall be exempt, directly and indirectly, from all costs, fees, charges or assessments thereof and from all requirements for any certification, opinion or other evidence of authority or expertise in connection with the issuance thereof and from any other conditions or requirements, except as otherwise expressly provided in this Agreement or in the Project Agreements.

PART V

LIABILITY

ARTICLE 31
LIABILITY OF THE PROJECT INVESTORS

1. Subject to paragraphs 2, 3 and 5 of this Article, and without prejudice to the right of the Host Government to seek full performance by the Project Investors of the Project Investors' obligations under this Agreement or any Project Agreement, the Project Investors shall be liable to the Host Government for any Loss or Damage caused by or arising from any breach by them of their obligations under this Agreement.
 2. The Project Investors shall have no liability under paragraph 1 if, and to the extent, the Loss or Damage is caused by or arises from any breach by the Host Government or any State Authority and/or State Entity of any duty arising under this Agreement or any Project Agreement or otherwise.
 3. The Project Investors' liability to any third party (other than the Host Government or the State Authorities and/or any State Entity) for Loss or Damage suffered by such third party as a result of the Project Investors' conduct of any Project Activities shall be as provided in the applicable laws.
 4. The liability of the Project Investors under this Agreement (other than liability in respect of Taxes) shall be joint and several.
 4. The Project Investors shall have no liability in accordance with this Article for Loss or Damage arising from or in connection with a spillage or release of [Petroleum] [Natural Gas] from the Pipeline System or for Loss or Damage arising from or in connection any other event which is causing or likely to cause material environmental damage or material risk to health and safety, if they prove that, despite there being in place appropriate safety standards in accordance with Article [15], the loss or damage was:
 - (a) The result of an act of armed conflict, hostilities, civil war or insurrection;
 - (b) The result of a natural phenomenon of exceptional, inevitable, unforeseeable and irresistible character;
 - (c) Wholly the result of compliance with a compulsory measure of the Host Government, the State Authorities and/or the State Entities where the spillage or release has occurred; or
 - (d) Wholly the result of the wrongful intentional conduct of a third party.
- If the person who has suffered the damage or a person for whom he or she is responsible under the applicable laws has by his or her own fault caused the damage or contributed to it, the compensation may be reduced or disallowed having regard to all the circumstances.
5. The Project Investors shall not be liable to the Host Government or to any State Authority and/or State Entity for any punitive or exemplary damages.

Comment [CR20]: LATF
The fact that the liability of the Project Investors is expressed to be "joint and several" could be problematic for project sponsors.

6. Subject to Article [38] of this Agreement, the Host Government shall not have the right to seek or declare any cancellation or termination of this Agreement or any Project Agreement it has entered into as a result of any breach by the Project Investors or their Contractors except in accordance with the provisions of Article [34] of this Agreement.

ARTICLE 32

LIABILITY OF THE HOST GOVERNMENT

1. Without prejudice to the right of the Project Investors to seek full performance by the Host Government, or by any of its State Authorities and/or any State Entity of obligations under this Agreement or any Project Agreement, the Host Government shall provide monetary compensation as provided in this Article for any Loss or Damage to any Project Investor which is caused by or arises from, and for the cost incurred by any Project Investor of remediating (so far as possible) any damage to the environment which is caused by or arises from:
 - (a) any failure of the Host Government, any State Authority and/or any State Entity, whether as a result of action or inaction, to fully satisfy or perform all of its obligations under this or any Project Agreement;
 - (b) any misrepresentation by the Host Government, any State Authority and/or any State Entity in any Project Agreement;
 - (c) any breach of duty by the Host Government, any State Authority and/or any State Entity.
2. In the event and to the extent any Project Investor suffers any Loss or Damage of the kind described in paragraph 1 of this Article, the Host Government shall provide full compensation for all such Loss or Damage.
3. Any award or claim for payment (granted, with respect to a claim for payment, such claim is not disputed by the State Authorities and/or any State Entity) shall be paid by the Host Government on or before [...] days after receipt of the related award or claim for payment.
4. With respect to all monetary relief under this Article, all amounts shall be expressed and paid in any Foreign Currency, on the basis of the market rate of exchange for that currency at the close of business of the [London Money Market] on the date of payment.
5. In no event shall the Host Government's obligation to provide compensation under this Article or otherwise include any punitive or exemplary damages.
6. The Host Government liability under this Article shall be several, independent, absolute, irrevocable and unconditional.

7. [Notwithstanding any other provision of this Agreement, the Host Government's liability hereunder shall not extend to any obligation of a State Entity under a Project Agreement which has been assumed by such State Entity in the same capacity as a Project Investor.]

Comment [CR21]: LATF
This provision is designed to ensure that the State support under this Agreement (especially in Article 7) does not extend to the obligations which any State Entity assumes as a commercial participant in the Project. Whether or not this provision is appropriate will depend upon the terms and circumstances of the relevant Project.

ARTICLE 33

NATURE OF HOST GOVERNMENT OBLIGATIONS

The obligations undertaken by the Host Government under this Agreement shall be several, independent and irrevocable and, except as otherwise provided, absolute and unconditional, and shall each constitute an independent covenant of the Host Government, separately enforceable from all other obligations of the State Authorities and/or any State Entity under the Project Agreements, without regard to the non-performance, invalidity or unenforceability of any of those other obligations.

ARTICLE 34

FORCE MAJEURE

1. Any Party liable for non-performance or delay in performance with respect to any obligation or any part thereof under this Agreement, other than an obligation to pay money, shall be excused liability for such non-performance or delay in performance if it is caused or occasioned by *Force Majeure*, as defined in this Agreement.
2. *Force Majeure* with respect to the Host Government shall be limited to:
 - (a) natural disasters (earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences),
 - (b) wars between sovereign states where [*insert name of the State*] has not initiated the war under the principles of international law, acts of terrorism, rebellion or insurrection and
 - (c) international embargoes against sovereign states other than [*insert name of the State*];

provided, in every case, that the specified event or cause, of the type set forth in (a), (b) and/or (c) above and any resulting effects preventing the performance by the Host Government, the State Authorities and/or any State Entity of their obligations, or any part thereof, are beyond their control; and provided, concerning those events or causes of the type set forth in (a), (b) and/or (c) above which are reasonably foreseeable, that these are not

caused or contributed to by the negligence of the Host Government, the State Authorities and/or any State Entity or by their breach of this Agreement or any other Project Agreement.

3. *Force Majeure* with respect to the Project Investors shall be limited to those events or causes and any resulting effects that prevent the performance of the obligations of the Project Investors or any part thereof, are beyond its (or their) control, and, concerning events or causes which are reasonably foreseeable, are not caused or contributed to by the negligence of any Project Investor, Operator or Contractor or by the breach by any such person of this Agreement or any Project Agreement. *Force Majeure* under this paragraph shall include the following events and causes to the extent they otherwise satisfy the requirements of this Article: natural disasters (earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences), wars, strikes or other labour disputes, rebellions, acts of terrorism, international embargoes, the inability to obtain necessary goods, materials, services or technology, the inability to obtain or maintain any necessary means of transportation, [the application of laws, treaties, rules, regulations and decrees,] the actions or inactions of the State Authorities and other events or causes, whether of the kind enumerated or otherwise, which are beyond the control of the Project Investors.
4. If a Party is prevented from carrying out its obligations or any part thereof under this Agreement (other than an obligation to pay money) as a result of *Force Majeure*, it shall promptly notify in writing the other affected Party or Parties to whom performance is owed. The notice must:
 - (a) specify the obligations or part thereof that the Party cannot perform;
 - (b) fully describe the event of *Force Majeure*;
 - (c) estimate the time during which the *Force Majeure* will continue; and
 - (d) specify the measures proposed to be adopted by it (or them) to remedy or abate the *Force Majeure*. Following this notice, and for so long as the *Force Majeure* continues, any obligations or parts thereof which cannot be performed because of the *Force Majeure*, other than the obligation to pay money, shall be suspended.
5. Any Party that is prevented from carrying out its obligations or parts thereof (other than an obligation to pay money) as a result of *Force Majeure* shall take such actions as are reasonably available to it and expend such funds as necessary and reasonable to remove or remedy the *Force Majeure* and resume performance of its obligations and all parts thereof as soon as reasonably practicable.
6. Where the Host Government is prevented from carrying out its obligations or any part thereof (other than an obligation to pay money) as a result of *Force Majeure*, it shall take, and shall also procure that relevant State Authorities and/or State Entities take, such action as is reasonably available to it or them to mitigate any loss suffered by any Project Investor

or other Project Participant during the continuance of the *Force Majeure* and as a result thereof.

7. Any Project Investor that is prevented from carrying out its obligations or any part thereof (other than an obligation to pay money) as a result of *Force Majeure* shall take such action as is reasonably available to it to mitigate any loss suffered by the Host Government, any State Authority, State Entity or Project Investor during the continuance of the *Force Majeure* and as a result thereof.

PART VI

FINAL PROVISIONS

ARTICLE 35 AMENDMENT

Except as may be expressly provided therein, the Host Government shall not amend, rescind, terminate, declare invalid or unenforceable, or otherwise seek to avoid or limit this Agreement or any Project Agreement without the prior written consent of the Project Investors, and/or any other Project Participants which are parties to such agreements.

ARTICLE 36 CHANGE OF LAW

1. For the purposes of this Article, a **“Change of Law”** shall mean, in relation to *[insert name of the State]*:
 - a) any international or domestic agreement, legislation, directive, order, promulgation, issuance, enactment, decree, regulation, commitment, policy, pronouncement, permission, permit, licence, authorisation or similar act of the Host Government, a State Authority or a State Entity;
 - b) any change to any of the foregoing (including changes resulting from amendment, repeal, withdrawal, termination or expiration);
 - c) any interpretation or application (whether by the courts, executive or legislative authorities, or administrative or regulatory bodies) of any of the foregoing or any request by the Host Government, any State Authority or any State Entity in relation to any of the foregoing; or
 - d) any decision, policy, other similar action, or failure or refusal to take action, exercise authority or enforce, by any judicial body, tribunal, court or State Authority, in relation to any of the foregoing, or jurisdictional alteration in relation to any such body

which arises or comes into effect after the [date of execution of this Agreement/Effective Date].

2. For the purposes of this Article, **“Costs”** shall mean, in relation to any Change of Law, any new or increased cost or expense, or any reduction in revenue, resulting from, or otherwise attributable to, that Change of Law, which is incurred or suffered (whether directly or through the intermediary of any Operator) by any Project Investor. Such costs or expenses may include:
 - a) capital costs;
 - b) financing costs;
 - c) costs of operation and maintenance; or

- d) costs of taxes, royalties, duties, imposts, levies or other charges imposed on or payable by the Project Investor.
3. For the purposes of this Article, “**Savings**” shall mean, in relation to any Change of Law, any savings or reduction of cost or expense, or increase in revenue, resulting from, or otherwise attributable to, that Change of Law, which is enjoyed or realised (whether directly or through the intermediary of any Operator) by any Project Investor. Such costs or expenses may include:
- a) capital costs;
 - b) financing costs;
 - c) costs of operation and maintenance; or
 - d) costs of taxes, royalties, duties, imposts, levies or other charges imposed on or payable by the Project Investor.
4. If any Change of Law has the effect of impairing, conflicting or interfering with the implementation of the Project, or limiting, abridging or adversely affecting the value of the Project or any of the rights, indemnifications or protections granted or arising under this Agreement or any Project Agreement, or of imposing (directly or indirectly) any Costs on any Project Investor, the Host Government shall take all actions available to it to reverse the effect of that Change of Law upon the Project, the value of the Project or the relevant rights, indemnifications or protections. The foregoing obligation shall include the obligation to take all appropriate measures to resolve promptly by whatever means may be necessary, including by way of exemption, legislation, decree and/or other authoritative acts, any conflict or anomaly between this Agreement and any Project Agreement and [*insert name of the State*] law.
5. If any Project Investor incurs, directly or indirectly, any Costs as a result of any Change of Law, the Host Government shall (without prejudice to any obligations it may have pursuant to the preceding paragraph), upon request in writing by that Project Investor, promptly compensate that Project Investor for those Costs. Such compensation shall, at the option of the Project Investor, take the form of:
- a) a lump sum payment;
 - b) a periodic payment; or
 - c) a reduction in the amount of any Tax otherwise payable under Article [25] hereof.
6. If any Project Investor realises any Savings, directly or indirectly, as a result of any Change of Law, the Host Government shall be entitled, upon written notice to the Project Investor, to set off the amount of those Savings against any amount payable to that Project Investor pursuant to the preceding paragraph.

Comment [GC22]: LATF
It may be appropriate to include a provision for expert determination of any dispute (in the absence of any such provision, any dispute would fall for determination by arbitration pursuant to Article 42 Settlement of Disputes).

ARTICLE 37 EXPROPRIATION

[Option 1 – suitable only where the Host Government is a Contracting Party/Signatory and each Project Investor is an Investor of a Contracting Party/Signatory]

The provisions of Article 13 of the Energy Charter Treaty shall apply *mutatis mutandis* to this Agreement and to all aspects of the Project.

[Option 2]

No Investment (within the meaning of the Energy Charter Treaty) owned or enjoyed, directly or indirectly, by any Project Participant in relation to the Project shall be nationalized, expropriated or subjected to a measure or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "Expropriation") except where such Expropriation is:

- (a) for a purpose which is in the public interest;
- (b) not discriminatory;
- (c) carried out under due process of law; and
- (d) accompanied by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation or impending Expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the "Valuation Date").

Such fair market value shall at the request of the Project Participant be the currency of the Project Participant's choice, provided that that currency is widely traded in international foreign exchange markets, on the basis of the rate of exchange for that currency determined in accordance with [Article 27(2) hereof]. Compensation shall also include interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment.

The Project Participant affected shall have a right to prompt review, under the law of the State, by a judicial or other competent and independent authority of the State, of its case, of the valuation of its Investment, and of the payment of compensation, in accordance with the principles set out in this paragraph.

For the avoidance of doubt, Expropriation shall include situations where the Host Government expropriates the assets of a company or enterprise in the State of which a Project Participant is an Interest Holder.

ARTICLE 38

TERMINATION

1. If the Project Investors have not taken steps to commence the construction phase respecting the Pipeline System by not later than [6] months after the Effective Date or if there is a delay of more than [24] months in the construction of the Pipeline System (as determined by reference to the agreed construction milestones) for any reason other than Force Majeure and the Project Investors are not using all reasonable endeavours to complete the Pipeline System as quickly as possible, the Host Government shall have the right to give written notice to the Project Investors of the termination of this Agreement. Such termination shall become effective [15] days after actual receipt by the Project Investors of said termination notice unless within said [15] day period the Project Investors take steps to commence the construction phase respecting the Pipeline System. If within [15] days of the above-referenced [6] month period the Host Government has not given any such termination notice, the Host Government's right to terminate hereunder shall expire and this Agreement shall continue in full force and effect in accordance with its terms. In addition, the above referenced [6] month period shall be extended if and to the extent of any delays caused by the failure or refusal of any State Authorities to perform timely any obligations they may have respecting Project Activities.
2. If this Agreement has not been earlier terminated pursuant to this Article, this Agreement shall terminate and be of no further force or effect on the date on which all Project Activities have permanently ceased, [as provided for in the relevant Project Agreements].
3. If the performance by a Party of substantially all of its obligations under this Agreement or any Project Agreement is materially prevented, hindered or delayed for a period of more than [...] consecutive [days/weeks/months], whether by Force Majeure or otherwise, the other Party may terminate this Agreement with immediate effect by notice to the affected party on or at any time after the expiry of such [...] [days/weeks/months] period.
4. Termination of this Agreement shall be without prejudice to:
 - (a) the rights of the Parties (including those which are no longer Parties) respecting the full performance of all obligations accruing prior to termination; and
 - (b) the survival of all waivers and indemnities provided herein in favour of a Party (or former Party).

ARTICLE 39

SUCCESSORS AND PERMITTED ASSIGNEES

1. The Host Government agrees that the rights and obligations of each Project Investor under this Agreement include the right to transfer its rights under this Agreement in accordance with the provisions of this Article [39].

2. Each Project Investor shall have the right to assign by way of security to any Lender the whole of its rights and obligations under this Agreement provided that such Lender agrees via a direct agreement with the Host Government that upon enforcement by such Lender of its rights pursuant to such assignment, the Lender will accept, vis-à-vis the Host Government, all of the obligations of the Project Investor pursuant to this Agreement.
3. Each Project Investor shall have the right to transfer in whole its rights and obligations under this Agreement to an Affiliate provided that such Affiliate has the necessary financial and technical capability to perform that Project Investor's obligations under this Agreement. Each such transfer to an Affiliate shall be effective upon the Host Government's receipt of written notification. In these circumstances, the transferring Project Investor will remain liable for its obligations under this Agreement after the effective date of the transfer.
4. Each Project Investor can only transfer its rights and obligations under this Agreement to an entity to which it is not an Affiliate with the prior written consent of the Host Government (which shall not be unreasonably withheld or delayed). Each such transfer shall be effective upon the issuance by the Host Government of its written consent. In these circumstances, the transferring Project Investor will cease to have any liability for its obligations under this Agreement after the effective date of the transfer (other than with respect to any existing breach of such obligations).

ARTICLE 40 WAIVER OF IMMUNITY

To the extent that the Host Government may in any jurisdiction or before any judicial, quasi-judicial or arbitral body be entitled to claim for itself, its assets, its revenues or its property immunity from suit, jurisdiction, enforcement, execution, attachment or any other legal process in relation to this Agreement, the Host Government hereby agrees irrevocably not to claim and hereby irrevocably waives such immunity.

ARTICLE 41 DECOMMISSIONING

1. Following the expiry of the Agreement under Article 2.2 of this Agreement, the Project Investors shall decommission the Project according to the terms of the Decommissioning Plan referred to in paragraph 2 of this Article, unless the Host Government agrees to have

all rights transferred to it. The Project Investors shall have no other obligations in relation to the decommissioning of the Project than those provided for in this paragraph.

2. No later than [...] years before the expiry of this Agreement according to Article [38.2], the Project Investors shall provide to the Host Government a written plan describing the proposed actions to be taken by them associated with the decommissioning or other disposition of the Pipeline System (the “Decommissioning Plan”). The Decommissioning Plan shall conform to the general principles set out in Appendix [...] and shall otherwise be in accordance with best [PETROLEUM] [NATURAL GAS] industry practice. The Decommissioning Plan shall be subject to the approval of the Host Government which shall not be unreasonably withheld.

ARTICLE 42

SETTLEMENT OF DISPUTES

1. Any dispute arising under this Agreement, or in any way connected with this Agreement, and/or arising from Project Activities (including this Agreement’s formation and any questions regarding arbitrability or the existence, validity or termination of this Agreement), between:
 - (a) The Host Government, and/or any relevant State Entity and/or relevant State Authority, on the one hand, and
 - (b) one or more of the Project Investors, on the other hand,may be submitted to arbitration pursuant to this Article.
2. [Where there are multiple parties, whether as Claimant or as Respondent, and where the dispute is to be referred to three arbitrators, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall nominate or appoint, as the case may be, an arbitrator.
3. In the absence of such a joint nomination and where all parties are unable to agree to a method for the constitution of the Arbitral Tribunal, the relevant institution or appointing authority, as the case may be – selected pursuant to Article 26(3) of the Energy Charter Treaty – [if it considers it appropriate,] may appoint each member of the Arbitral Tribunal and shall designate one of them to act as Chairman.]
4. The Party seeking arbitration pursuant to this Article shall provide notice of the dispute to all other Parties at the latest when it submits the dispute to arbitration.
5. Unless the Parties expressly agree otherwise, the provisions of Article 26 (3), (4) and (5) of the Energy Charter Treaty shall apply *mutatis mutandis* to the arbitration pursuant to this Article. Accordingly, the Project Investors give their unconditional consent to the submission of the dispute to arbitration in accordance with these provisions.

6. [Any Project Investor may enforce any right enjoyed by that Project Investor hereunder, by any means lawfully available to it including the initiation of arbitration proceedings pursuant to this Article , either severally or, at its option, jointly with any or all other Project Investors. Similarly, the Host Government may enforce any right enjoyed by the Host Government hereunder, by any means lawfully available to the Host Government including the initiation of arbitration proceedings pursuant to this Article, against all Project Investors jointly or against any one or more Project Investors.] OR [Arbitration proceedings pursuant to this Article may only be initiated by all Project Investors jointly against the Host Government or by the Host Government against all Project Investors jointly.]
7. The Parties agree that the seat of any arbitration held pursuant to this Agreement shall be [insert seat of arbitration].¹
8. The provisions of this Article shall be valid and enforceable notwithstanding the illegality, invalidity, or unenforceability of any other provisions of this Agreement.

Comment [GC23]: LATF
Caution should be used in employing or recommending the second alternative, as this may leave an individual Project Investor without remedy if that Project Investor has a dispute with the Host Government but is unable to persuade the other Project Investors (or even one other Project Investor) to join in initiating arbitration proceedings against the Host Government. Arbitral jurisprudence views such a situation with disfavour (e.g. the 1998 interim award in Gaz de France & Ruhrgas AG v MarathonPetroleum Company (Norway) (chairman A. Philip)).

ARTICLE 43 APPLICABLE LAW

This Agreement (including its formation and any questions regarding the existence, validity or termination of this Agreement) shall be governed by and construed in accordance with the substantive law of [*]⁵.

Comment [CR24]: LATF
Care must be taken in the case of multi-party arbitration to select a jurisdiction which allows multiple claimants or respondents to renounce their individual rights to name an arbitrator prior to the occurrence of a dispute. Failing this, the provision inserted between the existing Article 42.1 and 42.2 should be considered.

Comment [CR25]: LATF
This provision shall be reviewed by the Parties in light of the context of each agreement.

ARTICLE 44 NOTICES

1. A notice, approval, consent or other communication given under or in connection with this Agreement (in this clause known as a "Notice");
 - (a) must be in writing in the [insert language] language;
 - (b) must be deemed to have been duly given or made when it is delivered by hand, or by internationally recognised courier delivery service, or sent by telex or facsimile transmission to the party to which it is required or permitted to be given or made at such party's address, telex or facsimile number specified below and marked for the

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⁵

attention of the person so specified, or at such other address, telex or facsimile number and/or marked for the attention of such other person as the relevant party may from time to time specify by Notice given in accordance with this clause.

- (c) for the avoidance of doubt, a Notice sent by electronic mail will not be considered as valid.

- 2. The relevant details of each party at the date of this Agreement are:

[Party 1]

Address:

Facsimile:

Attention:

[Party 2]

Address:

Facsimile:

Attention:

- 3. In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with paragraph 3 of this Article.
- 4. Subject to paragraph 4 of this Article, a Notice is deemed to be received:
 - (a) in the case of a notice delivered by hand at the address of the addressee, upon delivery at that address;
 - (b) in the case of internationally recognised courier delivery service, when an internationally recognised courier has delivered such communication or document to the relevant address and collected a signature confirming receipt;
 - (c) in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 5. A Notice received or deemed to be received in accordance with paragraph 3 of this Article above on a day which is not a Business Day or after 5 p.m. on any Business Day, according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.
- 6. A Notice given or document supplied to [Mr X or such other party as relevant shall nominate by Notice in accordance with this clause] [any or more of the] [Other Parties] shall be deemed to have been given or supplied to all of the Other Parties.
- 7. Each party undertakes to notify all of the other parties by Notice served in accordance with this clause if the address specified herein is no longer an appropriate address for the service of Notice.

ARTICLE 45
MISCELLANEOUS

1. Ex Ante modification of, amendment of and/or addition to this Agreement shall only be in force and effective if made in writing and agreed by both Parties, included accordingly in this Agreement under Appendix [...]
2. If any provision of this Agreement is or becomes ineffective or void, the effectiveness of the other provisions shall not be affected. The Parties undertake to substitute for any ineffective or void provision an effective provision, which achieves economic results as close as possible to those of the ineffective or void provision.
3. No waiver of any right, benefit, interest or privilege under this Agreement shall be effective unless made expressly and in writing. Any such waiver shall be limited to the particular circumstances in respect of which it is made and shall not imply any future or further waiver.

The Parties have caused this Agreement to be executed by their duly authorised representatives:

THE GOVERNMENT OF [*add name of State*]

By :

Title: _____

THE PROJECT INVESTORS

[*add name of Company*]

By :

Title: _____

[*add name of Company*]

By :

Title: _____

[*add name of Company*]

By :

Title: _____

[*add name of Company*]

By :

Title: _____