

**MODEL**

**INTERGOVERNMENTAL**

**AGREEMENT**

Between/Among

*[Insert the name of STATES]*

**CONCERNING**

**THE *[insert Project name]* PIPELINE SYSTEM**

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## PREAMBLE

The State of [*insert State name*], the State of [*insert State name*] and the State of [*insert State name*], parties to this Agreement,

[WHEREAS, the States are Contracting Parties [Signatories] to the Energy Charter Treaty;]

**Comment [CR1]:** LATF  
To be included if model used by ECT member States.  
It is also envisaged that the models will be used by non-member States.

WHEREAS, the States wish to co-operate in facilitating the development, construction and operation of the [*name of the Project*] Pipeline System for the carriage of [Petroleum] [Natural Gas]<sup>1</sup> in and across their Territories;

WHEREAS, the States wish to enter into this Agreement in order to promote and protect investment in the Pipeline System and safeguard the efficient and secure development, [ownership]<sup>2</sup> and operation of such Pipeline System within their Territories;

THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

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<sup>1</sup> Choice between Petroleum and Natural Gas to be specified by parties to the agreement.

<sup>2</sup> 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.

**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.

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

**“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 a State is a party, with respect to Taxes for the avoidance of double taxation of income or capital.

**“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, enterprise, 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.

**“Host Government”** shall mean the central or federal government of a State.

**“Host Government Agreement”** shall mean each agreement entered into between a Host Government, on the one hand, and Project Investors, on the other hand, relating to the Pipeline System.

**“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.

**“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 any Territory as are required to carry out the Project Activities.

**“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.

**“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.

**“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.

**“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 signature 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 [...].

**“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, and 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 any Host Government Agreement, to which, on the one hand, a Host Government, any State Authority or State Entity and, on the other hand, any Project Participant are or later become a party relating to 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 Investor”** shall mean any party to any Host Government Agreement other than a State.

**“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.

**“States”** shall mean each of the parties to this Agreement and **“State”** shall mean any of them.

**“State Authority”** shall mean any organ of a State at any level of authority, which exercises any 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 or permitted assignees, in respect of Project Activities.

**“State Entity”** shall mean any Entity in which, directly or indirectly, a State has a controlling equity or ownership interest or similar economic interest, or which that 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.

**“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 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.

**“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 whatever, including Transit as defined in Article 7(10)(a) of the Energy Charter Treaty<sup>3</sup>.

**“VAT”** shall mean value added tax and any other similar Tax applicable to the provision of goods or services, Land Rights as defined in any Host Government Agreement, 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."

## **ARTICLE 2 ENTRY INTO FORCE**

1. The rights and obligations under this Agreement shall enter into force upon the exchange of instruments of ratification by all the States, save in respect of Article 2.2 and Article 3 which shall come into force upon the signing of this Agreement by each of the States.
2. Within [60/90 days] each State shall submit this Agreement for ratification by its relevant duly authorised organ of government.

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<sup>3</sup> To be included in case any Host Government is a Transit State.



**ARTICLE 3**  
**NO CONFLICT WITH THIS AGREEMENT**

1. Each State confirms and warrants that it is not a party to any domestic or international agreement or commitment, or bound to observe or enforce any domestic or international law, regulation, or agreement that conflicts with, violates, impairs, interferes with, limits, abridges or adversely affects the ability of such State to implement this Agreement or to enter into or implement the applicable Host Government Agreement and any Project Agreement to which such State is a party (an “incompatible law, regulation or agreement”).
2. No State shall enact, amend, make, change or enter into any incompatible law, regulation or agreement subsequently to the signature of this Agreement.

**PART II**  
**GENERAL OBLIGATIONS**

**ARTICLE 4**  
**PERFORMANCE AND OBSERVANCE OF THIS**  
**AND OTHER RELATED AGREEMENTS**

1. Each State undertakes to fulfil and perform each of its obligations under this Agreement, any Host Government Agreement to which it is a party and any Project Agreement to which it is a party from time to time.
2. Each State shall fully support the implementation and execution of the Project Activities contemplated by this Agreement and shall ensure that its State Authorities and/or State Entities take all actions necessary for such implementation and execution.

**ARTICLE 5**  
**CO-OPERATION**

1. The States shall co-operate in order to establish and maintain necessary and favourable conditions for the implementation of the Project Activities.
2. Each State undertakes to meet in good faith at all reasonable times and as often as reasonably required for the purposes of negotiating and entering into such other multilateral or bilateral agreements as may be appropriate between and among the States, or with any other states, international institutions and authorities, including full consultation with the Project Investors, in order to authorise, enable and support the implementation of Project Activities.
3. Each State shall co-operate in supporting all financing efforts by Project Investors within the framework of Project Activities, including, upon the reasonable request of any Project Investor, confirming or repeating in writing to any financial institution, multilateral lending agency or export credit agency of any representation, warranty, guaranty, agreement or undertaking contained in any Host Government Agreement or any Project Agreement entered into by such State.

**ARTICLE 6**  
**RIGHTS TO LAND**

Each State undertakes to grant and maintain such Land Rights as may be reasonably necessary for the conduct of Project Activities under fair, transparent, legally enforceable and clear commercial terms and conditions to the extent provided in Article 10 of and Appendix [...] to the Host Government Agreement entered into by such State.

**ARTICLE 7**  
**[TITLE TO OR OWNERSHIP OF [PETROLEUM] [NATURAL GAS]**  
**IN THE PIPELINE SYSTEM**

No State shall impose any requirement with respect to title to or ownership of [Petroleum] [Natural Gas] in the Pipeline System or any part thereof, other than through a commercial shipping or transportation agreement to which it is a party.]

**ARTICLE 8**  
**NON-INTERRUPTION OF PROJECT ACTIVITIES**

1. If any event occurs or any situation arises which there are reasonable grounds to believe threatens to interrupt, curtail or otherwise impede Project Activities (a “threat” for the purpose of this article), the State in, or in respect of whose Territory, the relevant threat has arisen, shall use all lawful and reasonable endeavours to eliminate the threat.
2. If any event occurs or any situation arises which interrupts, curtails, or otherwise impedes Project Activities ( an “interruption” for the purpose of this article) the State in, or in respect of whose Territory the relevant interruption has arisen, shall immediately give notice to the other States and relevant Project Investors of the interruption, give reasonably full details of the reasons therefor and shall use all lawful and reasonable endeavours to eliminate the reasons underlying such interruption and to promote restoration of such Project Activities at the earliest possible opportunity.
3. Subject to Article 8.4, no State shall, except as specifically provided in the applicable Host Government Agreement, interrupt, curtail, delay or otherwise impede the Project Activities in its Territory.
4. Notwithstanding Article 8.3, where there are reasonable grounds to believe that the continuation of the Project Activities in the Territory of a State creates or would create an unreasonable danger or hazard to public health and safety, property or the environment, the State may interrupt the Project Activities in its Territory but only to the extent and for the length of time necessary to remove such danger or hazard.

**ARTICLE 9**  
**ENVIRONMENTAL AND SAFETY STANDARDS**

1. Each State shall:
  - (a) establish environmental and safety standards appropriate to the conditions and environment prevailing, the relevant biosphere and in each particular geographic

area traversed by the Pipeline System, which standards shall be internationally compatible and acceptable. These standards shall be at least as stringent as the World Bank Group Environmental, Health, and Safety Standards and Guidelines;

(b) ensure compliance with such standards;

(c) consult with the other States as often as necessary in order to comply with (a) and (b).

2. Without prejudice to the obligations of each State under its relevant Host Government Agreement, in the event of spillage of [Petroleum] [Natural Gas] from any part of the Pipeline System, or any other occurrence causing or which there are reasonable grounds to believe will cause material environmental damage or risk to health and safety, and, at the request of any affected State, the other States shall provide assistance to the greatest extent possible as reasonably requested by such affected State. The affected State shall indemnify upon written demand to the other States the costs reasonably incurred by them in providing such assistance.

#### **ARTICLE 10 HARMONISATION OF TECHNICAL STANDARDS**

The States shall endeavour to harmonise their respective technical standards applicable to Project Activities.

#### **ARTICLE 11 SECURITY**

Each State shall endeavour to ensure the security of the personnel associated with Project Activities and of the Pipeline System, in each case to the extent located within its Territory, and all [Petroleum] [Natural Gas] from time to time transported within its Territory through the Pipeline System.

**PART III**  
**TAXES**  
**AND**  
**NON - DISCRIMINATION**

**ARTICLE 12**  
**TAXES**

1. Each State shall ensure that the tax treatment of Project Investors, Interest Holders, Shippers or Contractors with respect to any part of Project Activities will be no less favourable than that applicable to its nationals under its general tax legislation, in similar circumstances.
2. Each State shall ensure that there will be no VAT or sales taxes on imports, exports or the supply of goods, works or services with respect to all or any part of specific Project Activities. No customs duties or other levies shall be imposed or withheld with respect to Project Activities.
3. With respect to measures regarding any relevant Taxes or other payments, irrespective of their names and origin, each State shall co-operate with the other States to ensure a fair and transparent application of Taxes with respect to Project Investors, Shippers or Contractors with respect to any part of specific Project Activities.
4. If any Tax is imposed on the profit of a Project Investor or Contractor for a Calendar Year or a harmonised Fiscal Year with respect to Project Activities, such Tax shall be limited to the profits of such Project Investor or Contractor which is attributable to such Project Activities in each State for such Calendar Year or harmonised Fiscal Year. Each State will grant relief from double taxation of such profit either by exemption from Taxes or credit against Taxes. Taxes shall generally be recognised and credited through the application of the relevant Double Tax Treaty.
5. For the purpose of computing Taxes, the aggregate amount of revenues, costs and expenses shall be allocated between the States. For the determination of the tax assessment basis, the principles of the Organisation for Economic Co-operation and Development (Double Tax Treaty Model), especially concerning transfer pricing within a legal entity and/or between related entities (i.e. transfer of goods, services, royalties and license fees) shall apply. For each of the revenues and costs of the Project, uniform and appropriate allocation keys to be determined jointly by the Project Investors and the States shall be used to allocate revenues and costs between the States, so that the total of the revenues and the costs of the Project recognised for purposes of Taxes individually by each Host Government equals the total of such revenues and costs. Such allocation keys shall be applied consistently from Year to Year. In the event that the States and the Project Investors fail to agree upon the allocation keys referred to in this paragraph within [...] days of the signature of this Agreement, the keys to be used shall be determined by an expert appointed by [*insert name of the appointing authority*].
6. No State shall impose withholding tax or other Taxes on cash transfers to bring liquidity to the Project Investor, Interest Holder, Shipper or Person who provides goods, works, technology or services (including *inter alia*, credit, financing, insurance or other financial accommodations) as far as they are not paid into the stated capital of a legal entity.

7. Except as otherwise provided under the relevant Host Government Agreement for particular Project Activities, and without limiting the express terms thereof, no Project Investor, Interest Holder or Shipper, with respect to all or any part of such Project Activities shall 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 host State. No Taxes shall be levied on the value of the Pipeline System, on any [Petroleum] [Natural Gas] that is transported through the Pipeline System [or on the value of any Project Activities related assets].
8. Except as otherwise provided under the applicable Host Government Agreement and without limiting the express terms thereof, 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 other Taxes on profit) that are associated, directly or indirectly, with the Project Activities or any related assets or activities by all or any of the Project Investors, Shippers or Persons who provide goods, works, technology or services (including, *inter alia*, credit financing, insurance or other financial accommodation) with respect to all or any part of such Project Activities, or any branch or Permanent Establishment thereof, to any Entity.
9. Except as provided in this Article or in the relevant Host Government Agreement, no Taxes or associated obligations shall be imposed by any State on any Project Investor, Shipper or Person who provides goods, works, technology or services (including *inter alia*, agency services, credit, financing, insurance or other financial accommodations) or any of their employees or on any aspect of Project Activities.

### **ARTICLE 13**

#### **NON-DISCRIMINATION [AND NATIONAL TREATMENT]**

1. Each State shall accord all goods, works, technology and services associated, directly or indirectly, with any Project Activities treatment no less favourable than that which would be accorded to like goods, works, technology and services of like origin, which are not associated with Project Activities.
2. A State that has granted a commercial advantage with respect to any part of Project Activities including without limitation, Transport of [Petroleum] [Natural Gas], procurement and importation of supplies to any other state (whether or not a party to this Agreement) hereby undertakes promptly to grant the same advantage to all other States.
3. No State shall in its Territory subject any Project Participant to treatment less favourable than that which it accords to its own nationals or companies (or other entities) incorporated or constituted under the law in force in that State (or any part thereof).



**PART IV**  
**FINAL PROVISIONS**

**ARTICLE 14**  
**JOINT COMMISSION**

1. A commission shall be established consisting of two (2) representatives from each State to oversee compliance with and facilitate the implementation of this Agreement (“Joint Commission”). Each Project Investor shall also be entitled to appoint two observers to the Joint Commission.
2. Within [...] days after the entry into force of this Agreement in accordance with Article 2.1, each State shall designate in writing to the other States its representatives on the Joint Commission. Subject to Article 14.1, each State may change its representatives, effective upon delivery of written notice to the other States and to the Project Investors.
3. Within [...] days after the entry into force of this Agreement, in accordance with Article 2.1, each Project Investor shall designate in writing to the States its observers to the Joint Commission. The observers appointed by the Project Investors shall participate at the invitation of any of the States. Each Project Investor may change its observers, effective upon delivery of written notice to the States and to the other Project Investors.
4. The Joint Commission shall meet according to a timetable agreed by all States and/or at the written request of any of the States on giving [...] days notice. To the extent possible, the States shall co-operate with and consult each other through the Joint Commission in order to provide prompt and effective assistance on the implementation of Project Activities as well as to resolve in good faith any complications, issues, problems or complaints that may arise in connection with this Agreement or Project Activities, or to discuss any matter relating to the application and interpretation of this Agreement. In particular, any amendment to this Agreement shall be put before the Joint Commission for [approval].
5. In addition to the matters above and to others which may be agreed from time to time, between the State representatives to the Joint Commission, the Joint Commission shall facilitate the following in respect of Project Activities:
  - (a) in accordance with Articles [8, 9, 10 and 11] of this Agreement, the unimpeded movement of goods, materials, supplies, technology and personnel to the Pipeline System and in and between each of the Territories including, in particular, instances where the periodic and recurring crossing of international boundaries is involved in Project Activities;
  - (b) the identification and implementation of standards and procedures pertaining to the interconnection of the Pipeline System at the borders of the Territories; and.

**ARTICLE 15**  
**ISOLATION OF ANY BOUNDARY OR TERRITORIAL DISPUTES**

1. Each State agrees that its obligations under this Agreement and its commitment to the Project Activities subsists notwithstanding any dispute, difference, claim, demarcation, fixing, change or other modification regarding the location of any of its boundaries or the composition or extent of its Territory that may exist now or may arise in the future or take place between or amongst it and any other state(s) (for the purposes of this Article, “Boundary or Territorial Dispute”).
2. No Boundary or Territorial Dispute between or amongst any of the States shall interfere in any manner with any Project Activities. In particular, the obligations of the States described in this Agreement and the Host Government Agreements shall not be altered or varied by reason of any Boundary or Territorial Dispute (whether arising before or after the date of this Agreement) or by reason of the settlement of any Boundary or Territorial Dispute.

**ARTICLE 16**  
**STATE SUCCESSION**

If any State is replaced or succeeded to by one or more other states in relation to the responsibility for the international relations of its Territory, any successor state shall be considered as a party to this Agreement.

**ARTICLE 17**  
**EXPROPRIATION**

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

**ARTICLE 18**  
**FORCE MAJEURE**

1. Responsibility for non-performance or delay in performance on the part of any State with respect to any obligations or any part thereof under this Agreement, other than an obligation to pay money, shall be suspended if such non-performance or delay in performance is caused or occasioned by *Force Majeure*, as defined in this Agreement.
2. *Force Majeure* with respect to [any State] 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 the relevant State has not initiated the war under the principles of international law; and
  - (c) international embargoes or sanctions against states other than the relevant 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 relevant State of its obligations, or any part thereof, are beyond the relevant State's 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 relevant State or of any State Authority or any State Entity of the relevant State or by any breach by any of the foregoing of this Agreement or of any Host Government Agreement or Project Agreement.
3. If a State 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 State or States to which performance is owed. The notice must:
  - (a) specify the obligations or part thereof that the State 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 the State 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.
4. Any State 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 actions as are reasonably available to it and expend such funds as are 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.

5. Any State that is prevented from carrying out its obligations (other than an obligation to pay money) as a result of *Force Majeure* shall take, and shall also procure that relevant State Authorities and/or State Entities take, all such action as may be reasonably required 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.

#### **ARTICLE 19 RESPONSIBILITY**

1. Any failure of, or refusal by, a State to fulfil or perform its obligations, take all actions and grant all rights and benefits as provided in this Agreement, any Host Government Agreement to which it is a party or any Project Agreement to which it is a party shall constitute a breach of such State's obligations under this Agreement.
2. The responsibility of a State under Article 19.1 above shall, in accordance with the general principles of international law, extend to the acts and omissions of its State Authorities and Entities.

#### **ARTICLE 20 DISPUTE SETTLEMENT**

3. The States shall endeavour initially to settle disputes concerning the application or interpretation of this Agreement through the Joint Commission under Article 14.
4. If, [in the sole discretion of a State and regardless of the status of consultations undertaken pursuant to this Agreement,] a dispute has not been settled in accordance with Article 20.1 within a reasonable period of time, any State may, upon written notice to the other State(s), submit the matter for final and binding resolution to an arbitral tribunal under this Article.
5. Such an arbitral tribunal shall be constituted and shall conduct proceedings in accordance with the dispute resolution provisions contained in Article 27(3) of the Energy Charter Treaty, applying those dispute resolution provisions *mutatis mutandis* to this Agreement. The arbitral tribunal shall be entitled, without limitation, to order the payment of damages, inclusive of legal and other costs and interest, in internationally convertible currency.

**ARTICLE 21**  
**TERMINATION OF THIS AGREEMENT**

This Agreement shall terminate upon the latter of the termination or expiration of all Host Government Agreements [and Project Agreements.]

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Done this *[add date]* day of *[add month and year]* at *[add city and state]*, in *[add number of originals]* in the *[add language]* language.

**STATE OF** *[add state]*

**STATE OF** *[add state]*

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**STATE OF** *[add state]*

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