

**SECOND EDITION
OF THE
MODEL
INTERGOVERNMENTAL
AND
HOST GOVERNMENT
AGREEMENTS
FOR
CROSS-BORDER PIPELINES**

The Model Agreements (including the appendices) (MAs) offer a set of texts which represent some of the possible drafting approaches that can be used on a voluntary basis and to the extent desired, by a state or investor involved in the negotiation of a pipeline project. They have been developed by the Energy Charter Secretariat with the support of the Legal Advisory Task Force (LATF), which currently consists of over 40 senior legal experts from 23 leading energy companies and international law firms.

The MAs package includes a model Intergovernmental Agreement (IGA) – an international treaty between the States involved in the pipeline project – and a model Host Government Agreement (HGA) – one or more separate agreements between each of the respective States involved and the project investors. Whether or not these Models will be used either in full or in part and the extent to which the model texts may be adapted depends entirely upon the agreement of the parties.

Cross-border pipeline projects are subject to numerous specific legal requirements, including requirements arising from international law and relevant supra-national and national legal systems. Whilst the utmost has been done to develop texts which meet these multiple requirements, legislative frameworks are inevitably complex and varied and it is recommended that specialized advice be obtained in this regard in relation to any specific project and the jurisdictions to which it relates.

It is clear that all parties should fully understand the rights and obligations established in any agreements they conclude and that neither the Energy Charter Conference, nor any of its members, nor the Energy Charter Secretariat, nor any member of the LATF accepts any liability to any person for any consequence arising from any use of the Model Agreements.

INTRODUCTORY NOTE

Second Edition of the Intergovernmental and Host-Government Model Agreements

1. This note introduces the attached Second Edition of the Intergovernmental (“IGA”) and Host-Government (“HGA”) Model Agreements for cross-border pipelines. The note begins with a brief explanation of the idea behind developing model agreements in general. Secondly, it recalls the background for developing the attached IGA and HGA Models. Thirdly, the note provides a brief account of the purpose, nature and overall structure of the present package comprising the IGA and HGA Models.

Background

2. The idea of devising model agreements is not a new one. Various intergovernmental organisations and other specialised private institutions (e.g. OECD,¹ UNCITRAL,² AIPN³ and FIDIC⁴) have been actively involved in devising and developing model laws and agreements that may be utilised in regulating a particular economic activity.
3. Generally speaking, model agreements are developed for the purpose of assisting parties to negotiate a final agreement within a particular field of activity. A model agreement therefore is meant to provide a template of prescriptive clauses that are designed to reflect the generally accepted practices within a given field.
4. Model agreements are evolutionary by design: they are designed to be revised and updated in due time in order to reflect the most recent accepted practices within their field of concern.
5. An important feature of any successful model agreement is its underlying assumption of neutrality; it thus aims to reflect the various interests of the parties who will be using it as a starting point for their prospective negotiations. In identifying the crucial issues concerning a particular field of activity, a successful model agreement will contain relevant clauses aiming to maximize the optimal benefit of all parties concerned. Addressing these issues is essential in order to ensure that the resulting binding agreement will endure and continue to operate smoothly during its lifetime.
6. It is with the above understanding that the attached Model Agreements have been developed.

¹ Organisation for Economic Co-operation and Development.

² United Nations Commission on International Trade Law.

³ Association of International Petroleum Negotiators.

⁴ International Federation of Consulting Engineers.

The First Edition

7. In the last few years, there has been a marked increase in both interest and need for interstate or cross-border pipelines for hydrocarbons. This has been accentuated by various factors, including the emergence of new energy markets and the wider policy objective of security of energy supply.
8. However, a prospective cross-border pipeline project for the transportation of oil or gas raises a multitude of complex political, commercial, fiscal, environmental, technical and legal issues. The complexity of these issues frequently poses an unnecessary barrier to the realisation of a much needed energy pipeline project. For example, there is the issue of individual states with different political and economic interests, each with its own separate jurisdiction. There is also the issue of various entities, both public and private, taking part in the project. Furthermore, cross-border pipeline projects are normally financed by both private and public financial institutions which require certain guarantees regarding the economic feasibility and the ultimate legal security of the prospective project.
9. Whilst all parties concerned may be genuinely interested in seeing a particular cross-border pipeline project succeed, conflicting interests and the lack of compromise over some of the complex issues involved could result in long delays, enormous expense and even the failure of the project.
10. The need to develop comprehensive and usable legal structures that will facilitate and guide prospective negotiations for the construction and operation of cross-border pipelines is therefore of a significant operational value.
11. Based on an initial proposal from Azerbaijan,⁵ the Energy Charter Conference, at its 4th Meeting,⁶ acknowledged the importance of model instruments in addressing the concerns of governments and industry regarding the need for a swift solution in realising new cross-border energy projects, with the ultimate aim of securing investments in cross-border pipeline projects. At its 5th Meeting, the Conference approved the establishment of an Expert Group on Model Agreements in which representatives from governments and industry were to be invited to participate.⁷
12. To assist the Expert Group in developing balanced and legally coherent drafts of model agreements, the Energy Charter Secretariat established an ad-hoc Legal Advisory Task Force on Model Agreements ("LATF") comprising expert senior lawyers, which has met regularly three times a year since it was established in 2001. It is to be noted that all LATF members rendered their advice on a pro bono basis.
13. In light of the Expert Group's findings and recommendations, the LATF reviewed earlier draft Models, which were found wanting in terms of balance and coverage by the Expert Group. After comprehensive discussions, it was decided not to pursue the original idea of developing a transportation agreement model in addition to the

⁵ cf. document, (CS (99) 369 TRS 9).

⁶ cf. Summary Record (CS (00) 454 CC162) pp.7-8.

⁷ cf. Summary Record (CS (00) 506 CC173) p. 3.

IGA and HGA Models, but to concentrate solely on developing the IGA and HGA Model Agreements.

14. Since its establishment, the Expert Group has met five times and at its last meeting on 30-31 October 2003 it discussed both the IGA and HGA drafts submitted by the Secretariat. The First Edition of the IGA and HGA Models took into account the comments made by the Expert Group in October 2003 and was submitted to the Charter Conference at its 13th meeting in December 2003.
15. At this meeting, the Charter Conference took positive note of the First Edition of the Model Agreements and asked the Secretariat and the LATF to update and review the Model Agreements.

The Second Edition

16. Work on updating the Agreements began in January 2006, with the continued assistance of the Legal Advisory Task Force, now including new members from industry and private practice. The Legal Advisory Task Force met on thirteen occasions during 2006-2007 in order to update the agreements.
17. In addition, the Energy Charter Secretariat organised a two-day workshop on the Model Agreements in Brussels in October 2006, and presented the drafts for discussion with member states at a meeting of the Expert Group on Model Agreements in June 2007.
18. The Second Edition of the Model Agreements as well as the accompanying explanatory notes is attached.

Purpose and nature

19. In general terms, both the IGA and HGA Models aim to assist in:
 - Facilitating project-specific negotiations;
 - Providing transparency regarding present practices in the areas of cross-border pipeline construction, operation and investment;
 - Shortening lead-times for the mobilisation of project specific investment;
 - Reducing the cost of project implementation.
20. It is important to emphasise that neither of the Model Agreements is meant to be (i) exhaustive, in terms of the issues and provisions addressed within it, or (ii) legally binding until entered into by each of the parties thereto. Each Model represents a template and thus serves only as a guideline. Whether or not these Models will be used either in full or in part depends entirely upon the agreement of the parties who are in the process of negotiating a prospective agreement.

Basic assumptions

21. The structure of the attached Second Edition of the IGA and HGA Models is based on the following assumptions:

- Both the IGA and HGA Models are designed to be used in respect of any specific, identified infrastructure project;
- Both Models are interdependent and are designed to represent a single ‘package’;
- The IGA represents a ‘treaty model’ which is governed by public international law;
- Both the project and the project investors are assumed to have been already identified;
- The entry into force of the HGA is conditioned on that of the IGA.

Both Models will be updated periodically in light of evolving practice in the field.

Structure

22. Together, the attached Second Edition of the two Models aims to identify key areas of interest to the parties involved in a cross-border infrastructure projects whether state or private entities.

23. It is also to be noted that the two Models have been structured with the aim of striking a reasonable balance between the obligations of a state wishing to attract essential and/or competitive investment and the rights of private investors prepared to invest. The underlying idea is therefore a sustainable allocation of risk and the equitable distribution of the overall benefits between public and/or private parties engaged in the project.

IGA Model

24. The IGA Model is a template for an international agreement or treaty among the states through whose territories an identified pipeline system is to be constructed and operated.

25. The IGA Model deals mainly with *horizontal* issues that concern the pipeline infrastructure as a whole. It is therefore intended to facilitate the realisation of the project within the territories of the states collectively. Issues dealt with by the IGA Model include co-operation, the provision of land rights, the harmonisation of tax structures applicable to the project and issues relevant to the implementation of the project.

HGA Model

26. The HGA Model is a template for an agreement between each within whose territory the pipeline system is to be realised and the project investor(s).

27. The HGA Model deals mainly with *vertical* issues that concern the project activity within the territory of each State. The HGA Model expands on some of the issues identified in the IGA Model. Issues dealt with in the HGA Model include various governmental obligations, investor duties, environmental and other relevant standards, liability, termination and issues relevant to the implementation of the project in each specific territory.

Appendices

28. It is envisaged that both Models will contain a number of appendices, each of which (when applicable) is referred to in a specific Article in both Models. These appendices therefore constitute an integral part of the Models, and should be developed in light of the circumstances of each specific project. For this reason, it was impractical to spell out fully the contents of the appendices in a model of this nature. However, to facilitate the negotiations of their contents, each appendix identifies the main issues that may be included in similar appendices to the final agreement.

Conclusion

29. The operational value of the attached non-binding Second Edition of both the IGA and HGA is to facilitate the efficient realisation of prospective cross-border pipeline systems for the transportation of petroleum or natural gas, as the case may be. Furthermore, the Second Edition will be revised and updated as necessary in order to reflect the ongoing developments in the field.

30. Accordingly, at its 18th Meeting the Charter Conference

- (1) welcomed the work of the Secretariat, with the valuable assistance of the Legal Advisory Task Force, in updating the Energy Charter's Model Agreements on Cross-Border Pipelines,
- (2) welcomed the Second Edition of the Model Agreements as a set of non-legally-binding guidelines for the negotiation of cross-border pipeline projects, it being understood that these models can be used on a voluntary basis, in whole or in part, by States and investors seeking to conclude agreements for cross-border oil or gas pipeline projects, and
- (3) called for any further comments to be made to the Secretariat without delay prior to the publication of the Second Edition of the Model Agreements, and for the Secretariat to facilitate their constant review and updating as appropriate through the Expert Group on Model Agreements.

MODEL

INTERGOVERNMENTAL

AGREEMENT

Between/Among

[Insert the name of STATES]

CONCERNING

THE *[insert Project name]* PIPELINE SYSTEM

TABLE OF CONTENTS

	Page
PART I INTERPRETATION AND SCOPE OF THE AGREEMENT	10
ARTICLE 1 DEFINITIONS AND INTERPRETATION	11
ARTICLE 2 ENTRY INTO FORCE	16
ARTICLE 3 RELATIONSHIP BETWEEN THIS AGREEMENT AND OTHER INTERNATIONAL AND DOMESTIC OBLIGATIONS	16
PART II GENERAL OBLIGATIONS	18
ARTICLE 4 PERFORMANCE AND OBSERVANCE OF THIS AND OTHER RELATED AGREEMENTS	19
ARTICLE 5 CO-OPERATION	19
ARTICLE 6 LAND RIGHTS	20
ARTICLE 7 TRANSPORT OF [PETROLEUM] [NATURAL GAS]	20
ARTICLE 8 [TITLE TO OR OWNERSHIP OF [PETROLEUM] [NATURAL GAS] IN THE PIPELINE SYSTEM	20
ARTICLE 9 NON-INTERRUPTION OF PROJECT ACTIVITIES	21
ARTICLE 10 ENVIRONMENTAL AND SAFETY STANDARDS	22
ARTICLE 11 HARMONISATION OF TECHNICAL STANDARDS	22
ARTICLE 12 SECURITY	22
PART III TAXES AND NON - DISCRIMINATION	24
ARTICLE 13 TAXES	25
ARTICLE 14 NON-DISCRIMINATION [AND NATIONAL TREATMENT]	27
PART IV FINAL PROVISIONS	28
ARTICLE 15 ISOLATION OF ANY BOUNDARY OR TERRITORIAL DISPUTES	29
ARTICLE 16 STATE SUCCESSION	30
ARTICLE 17 FORCE MAJEURE	30
ARTICLE 18 RESPONSIBILITY	32
ARTICLE 19 DISPUTE SETTLEMENT	32
ARTICLE 20 TERMINATION	35
ARTICLE 21 TERMINATION OF HOST GOVERNMENT AGREEMENT	35

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;][1]

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][2] 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][3] and operation of such Pipeline System within their Territories;

THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

Explanatory notes

- [1] To be included if the IGA model is used by ECT member States. It is also envisaged that the models will be used by non-member States.
- [2] Choice between Petroleum and Natural Gas to be specified by parties to the agreement.
- [3] This and every reference to “own” or “ownership” should be deleted where ownership is not permitted under local law. References to ownership are accordingly included in square brackets. Parties to the agreement may wish to add a specific provision on “ownership” in the relevant IGA and HGA.

PART I

INTERPRETATION AND SCOPE OF THE

AGREEMENT

ARTICLE 1 DEFINITIONS AND INTERPRETATION

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 [Operator] Project Investors or their Affiliates in connection with the Pipeline System to an annual contractual value of at least [\$100,000], excluding however any physical person acting in his or her role as an employee of any other Person.

“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 by treaty or 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 authorised to provide and providing insurance cover for all or a portion of the risks in respect of the Pipeline

System and, Project Activities, and any successors or permitted assignees of such insurance company or Person.

“Interest Holder” shall mean

- (a) any Project Investor or Operator;
- (b) any Person holding any form of equity or other ownership interest in any Project Investor or Operator; or
- (c) any Affiliate, successor or permitted assignee of any Person referred to in (a) or (b) above.

“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 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 Interest Holder in connection with the Pipeline System (including any refinancing thereof), and any successor or permitted assignee of any such financial institution or other Person.

“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 which are extracted from the sub-soil in their natural state and are gaseous at normal temperature and pressure.

“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 (“OECD”).

“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 system intended to run from [insert name] to [insert name], as described in Appendix I, Part I.

“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 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 Interest Holder, 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. [4]

“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 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 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 or entitlement, including Transit as defined in Article 7(10)(a) of the Energy Charter Treaty.^[5]

“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 expressly indicated in the relevant provisions of this Agreement.

2. Interpretation

- (a) 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.
- (b) 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.
- (c) 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.

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."

4. Knowledge

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

Explanatory notes

[4] As 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). However, it also includes Persons who acquire capacity via secondary contracts. Parties may wish to consider whether this is desirable.

[5] To be included in case any State is a Transit State.

**ARTICLE 2
ENTRY INTO FORCE**

1. 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.

**ARTICLE 3
RELATIONSHIP BETWEEN THIS AGREEMENT AND OTHER
INTERNATIONAL AND DOMESTIC OBLIGATIONS**

Option 1

1. Each State confirms and warrants that the execution and performance of this Agreement is within the powers of its Host Government. Each State further confirms and warrants that it is not [, so far as it is actually aware or ought through reasonably diligent enquiry to be aware,] 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. Nothing in this Agreement shall derogate from the rights or obligations of any State under the Energy Charter Treaty or any other relevant international treaty or rule of international law.

Option 2 : add paragraph 3

3. [No State shall enact, amend, make, change or enter into any incompatible law, regulation or agreement subsequently to the signature of this Agreement [except in the context of a change of legislative policy which:
 - (i) is intended to advance a fundamental policy objective not specifically related to the Project;
 - (ii) is of general application; and
 - (iii) is non-discriminatory][6].

Explanatory note

- [6] The minimalist version of Article 3 (i.e. omitting all language within square brackets) provides an optimal level of security for Project Investors, but also imposes far-reaching obligations (including in relation to future legislative action) on Host Governments, which should take specialised advice prior to entering into such obligations.

The language within square brackets is intended to provide users of the MAs with a variety of options, which may be used together or separately, in order to mitigate the obligations imposed on Host Governments.

In paragraph 1, which concerns existing legislation, the option is intended to reduce the obligation of absolute compatibility to an obligation of reasonable due diligence.

In paragraph 3, which concerns future legislation, the option is included as a general carve-out intended to reserve Host Governments the liberty to make general, non-Project-specific legislative changes without incurring liability pursuant to Article 3.

All of these options, whilst removing some of the more onerous Host Government obligations, also reduce the level of security for Project Investors and thus render the Project less bankable.

PART II
GENERAL OBLIGATIONS

ARTICLE 4
PERFORMANCE AND OBSERVANCE OF THIS
AND OTHER RELATED AGREEMENTS

1. Subject to the other provisions hereof, 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 Authority and/or State Entity take all actions necessary for such implementation and execution.
3. To the extent permitted by applicable law, this Agreement shall evidence, without further action on the part of any State, the granting of any right, approval, or power, to any State Authority and/or State Entity, as may be necessary for any such State Authority and/or State Entity to fulfil the relevant State's commitments under Articles 4.1 and 4.2.

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
LAND RIGHTS**

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 14 of Host Government Agreement and Appendix I, Part II, entered into by such State.

**ARTICLE 7
TRANSPORT OF [PETROLEUM] [NATURAL GAS]**

1. Each State shall take the necessary measures to facilitate the Transport of [Petroleum] [Natural Gas] in connection with the Project, consistent with the principle of freedom of transit, and without distinction as to the origin, destination or ownership of such [Petroleum] [Natural Gas] or discrimination as to pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.
2. In particular, each State shall permit (except as specifically provided otherwise in this Agreement, the relevant Host Government Agreement or any Project Agreement) the Transport 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.

**ARTICLE 8
[TITLE TO OR OWNERSHIP OF [PETROLEUM] [NATURAL GAS]
IN THE PIPELINE SYSTEM [7]**

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.

Explanatory note

[7] This provision may be deleted or modified where the petroleum or natural gas transport regime of one or more States includes requirements with respect to title or ownership.

ARTICLE 9
NON-INTERRUPTION OF PROJECT ACTIVITIES

1. Subject to Article 9.3, no State shall, except as specifically provided in the applicable Host Government Agreement or specifically authorised by a competent dispute settlement authority, interrupt, curtail, delay or otherwise impede the Project Activities in its Territory.
2. For the avoidance of doubt, a State through whose Territory the [Petroleum] [Natural Gas] transits shall not, in the event of a dispute over any matter arising from that Transport, interrupt or reduce, permit any State Entity to interrupt or reduce, or require any State Entity to interrupt or reduce the existing flow of Petroleum] [Natural Gas] prior to the conclusion of the dispute resolution procedures set out in Article 19 of this Agreement, except where this is specifically provided for in a contract or other agreement governing such Transport.
3. Notwithstanding Article 9.1, 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.
4. 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.
5. 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.

ARTICLE 10
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/constitute or lead to a breach of the standards referred to in paragraph 1(a) hereof], 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 11
HARMONISATION OF TECHNICAL STANDARDS

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

ARTICLE 12
SECURITY

1. Commencing with the initial Project Activities relating to route identification and evaluation and continuing throughout the life of the Project, each State shall use its best endeavours to ensure the security of the Land Rights, the Pipeline System and all Persons within the Territory of that State involved in Project Activities [and of

all [Petroleum] [Natural Gas] from time to time transported within its Territory through the Pipeline System].

2. In order to avoid or mitigate harm to the Project, each State shall, on request by any other State and in consultation with the other States, 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 to the Land Rights, the Pipeline System or loss or injury to Persons within the Territory of that State involved in Project Activities (except where it is reasonable for the Project Investors to deal with such threatened and/or actual instances of Loss or Damage by enforcing their contractual rights).

PART III
TAXES
AND
NON - DISCRIMINATION

ARTICLE 13
TAXES [8]

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 in the same circumstances under its general tax legislation on income and capital.
2. Each State shall ensure that there will be no non-recoverable 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 the extent possible and in accordance with existing supranational and domestic legal instruments] 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 be recognised and credited through the application of the relevant Double Tax Treaty or according to the relevant domestic legislation [subject to the provisions of paragraph 1] if a Double Tax Treaty is not applicable.
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, 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 [consistent with the relevant Double Tax Treaty clauses on determination of business profits] to be determined jointly by the Project Investors and the States, as agreed in the HGA, 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 [unless such withholding tax or other Tax is explicitly admitted by a relevant Double Tax Treaty].
7. [The provisions of this Agreement shall not be construed so as to oblige any State to extend to any Project Investor, Interest Holder, Shipper or Contractor [with respect to any part of Project Activities] the benefits of any treatment, preference or privilege resulting from any existing or future tax agreement or granted by one State, under a multilateral agreement, to a resident or national of another state by reason of the specific economic relationship between those states.
8. 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].
9. 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.
10. 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.

Explanatory note

[8] Users of the Model Agreements are advised to research the existence and relevance of Double Tax Treaties among the States in relation to this provision.

**ARTICLE 14
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 or applies 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 subject, in its Territory, 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

Explanatory note

JOINT COMMISSION [9]

The article on the Joint Commission (formerly article 14 of the First Edition of the IGA) has been removed from the text of the IGA following comments made at the October 2006 Workshop and discussions at a meeting of the LATF.

The LATF noted that a certain number of elements would be necessary for the Joint Commission provision to be effective from the States' perspective. First, the provision would need to indicate how the Joint Commission would be seized of a dispute. It would also need to indicate that the procedure was aimed at reaching an amicable settlement of any dispute and, to that effect, it should provide for a reasonable amount of time to negotiate. The provision would also need to ensure that State representatives would be empowered to take the necessary decisions. Members agreed that a provision allowing for pre-arbitral resolution of a dispute was necessary, but that the Joint Commission should not become an alternative to arbitration, which must remain as a last resort when all other possibilities were exhausted.

The LATF noted a fundamental dichotomy between the conception of the Joint Commission as a conciliatory body which could only operate by consensus, and that of the Joint Commission as a body with real powers to resolve disputes. The members also took note that the Joint Commission had originally been conceived as a body to deal with commercial disputes rather than disputes which would potentially be dealt with in a State to State arbitration.

The members of the LATF suggested two options: a short provision simply imposing an obligation for the Joint Commission to meet upon notice by any party; or a longer provision creating a detailed procedure for the Joint Commission. It was generally agreed that it would be difficult to ensure that the second option covered all issues and that both options might lead to difficulties of interpretation and application.

The Chairman concluded that, considering the difficulties created by the article on the Joint Commission, the text should be removed and referred to as an option in the Explanatory Notes to the IGA.

**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.
3. This Article shall be without prejudice to the application of Article 17 in circumstances of *Force Majeure*.

ARTICLE 16 STATE SUCCESSION [10]

If any State is replaced or succeeded to by one or more other states in relation to the responsibility for the international relations of all or part of its Territory, any successor state shall be considered as a party to this Agreement as from the date of the replacement or succession, provided that the successor state, within a reasonable period from that date, notifies the other States of its desire to become a party to this Agreement.

Explanatory note

[10] As a matter of public international law, as a general rule, state succession to treaty obligations is based upon the requirement of consent of the successor state. However, this provision is intended to offer a willing successor state the opportunity to become a party to the Agreement immediately from the date of succession.

ARTICLE 17 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 to the extent that 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, acts of terrorism, rebellion or insurrection and
 - (c) international embargoes 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 Authority and/or State Entity take, all such action as may

ARTICLE 18 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 18.1 above shall, in accordance with the general principles of international law, extend to the acts and omissions of any State Authority or State Entity.

ARTICLE 19 DISPUTE SETTLEMENT

1. The States shall endeavour initially to settle any disputes concerning the application or interpretation of this Agreement through diplomatic channels.
2. If a dispute has not been settled in accordance with Article 19.1 within [* days/weeks/months/a reasonable period of time] **[11]**, any State may, upon written notice to all other States, submit the matter for final and binding resolution to an arbitral tribunal under this Article. The notice shall specify which of the other States are respondent(s) to the arbitral proceedings and shall include a statement of the general nature of the claim and the relief or remedy (including declaratory relief) sought, including an indication of any financial amount involved.
3. Within 60 days of receipt of the written notice referred to in paragraph (2), the respondent(s) shall provide a written notice of defence to all other States. The notice shall include a statement of the general nature of the defence and any relief or remedy (including declaratory relief) sought by way of counterclaim, including an indication of any financial amount involved.
4. At any time prior to the Closure Date (as defined below), any State not already a party to the proceedings may by written notice to all other States become a party to the proceedings. The notice shall specify the general nature of the joining State's interest in the proceedings and any relief or remedy (including declaratory relief)

sought by the joining State, including an indication of any financial amount involved.

5. At any time prior to the Closure Date, any State party to the proceedings may by written notice to all other States join any other State not already a party to the proceedings. The notice shall specify the grounds of joinder and the relief or remedy (including declaratory relief) sought against the State thus joined, including an indication of any financial amount involved.
6. The Closure Date shall be the first day upon which 60 days have elapsed after the date of receipt of the last notice under paragraph (3), (4) or (5).
7. Following the Closure Date, the arbitral tribunal shall be constituted as follows:
 - (a) If there are two parties to the dispute:
 - (i) The tribunal shall consist of three members;
 - (ii) The State instituting the proceedings shall within 30 days of the Closure Date by notice in writing to the other State party to the dispute appoint one member of the tribunal;
 - (iii) Within 60 days of receipt of the Closure Date, the other State party to the dispute shall by notice in writing to the State instituting the proceedings appoint one member of the tribunal. If the appointment is not made within the time limit prescribed, the State having instituted the proceedings may, within 90 days of the Closure Date, request that the appointment be made by the Secretary-General;
 - (iv) A third member, who may not be a national or citizen of a State party to the dispute, shall be appointed by both States parties to the dispute. That member shall be the President of the tribunal. If, within 150 days of the Closure Date, the States are unable to agree on the appointment of a third member, that appointment shall be made by the Secretary-General at the request of either State submitted within 180 days of the Closure Date.
 - (b) If there are more than two parties to the dispute:
 - (i) The tribunal shall consist of [three/five] members;
 - (ii) Any party to the dispute may in writing request the Secretary-General to appoint all members of the tribunal and designate one member to be President of the tribunal. The President of the tribunal may not be a national or citizen of a State party to the dispute.
 - (c) In the case of requests made in accordance with subparagraph (a), the Secretary-General shall use best efforts to comply with the request within

- (d) Appointments made by the Secretary-General shall be made with regard to the qualifications and experience, particularly in matters covered by this Agreement, of the members to be appointed;
8. In the absence of an agreement to the contrary between the States, the Arbitration Rules of UNCITRAL shall govern, except to the extent modified by the States parties to the dispute or by the arbitrators. The tribunal shall take its decisions by a majority vote of its members.
 9. The tribunal shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law.
 10. The arbitral award shall be final and binding upon the States parties to the dispute.
 11. A copy of the award shall be deposited with the Energy Charter Secretariat which shall make it generally available.
 12. The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the States parties to the dispute. The tribunal may, however, at its discretion direct that a higher proportion of the costs be paid by one of the States parties to the dispute.
 13. Unless the States parties to the dispute agree otherwise, the tribunal shall sit in The Hague, and use the premises and facilities of the Permanent Court of Arbitration.
 14. “Secretary-General” shall mean the Secretary-General of the Permanent Court of International Arbitration; or, if the Secretary-General is prevented from discharging any task under this Agreement, the First Secretary of the Bureau; or, if the latter, in turn, is also prevented from discharging any task under this Agreement, the most senior Deputy of the Bureau.

Explanatory note

[11] IGA Article 19 is based upon ECT Article 27, *mutans mutandis*. The latter provision refers to a reasonable period of time rather than to a specific cooling-off period. This is because disputes vary greatly in complexity and sensitivity, so that it is difficult to imagine a single cooling-off period which could be appropriate for all disputes, whereas a reference to a reasonable period of time is unlikely to create difficulties in practice. Nonetheless, users of the Model Agreements are free to refer here to whatever period they consider appropriate.

**ARTICLE 20
TERMINATION**

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

**ARTICLE 21
TERMINATION OF HOST GOVERNMENT AGREEMENT**

1. No State may terminate a Host Government Agreement to which it is a party pursuant to Article 39 of such Host Government Agreement other than pursuant to the procedure set out in this Article 21.
2. If any State, [acting reasonably,] has grounds, pursuant to Article 39 of a Host Government Agreement to which it is a party, to terminate such Host Government Agreement (the "Proposing State"), it shall as soon as possible notify, in writing, all other States of its grounds for termination and request their collective consent to such termination (the "Proposed Termination").
3. If any State receives a notice pursuant to Article 21.2 above, it may:
 - (a) consent to the Proposed Termination, by notifying all States of the same in writing; or
 - (b) call a meeting of all States to discuss and conclusively decide upon the Proposed Termination; or
 - (c) reject the Proposed Termination, by notifying all States of the same in writing.
4. If a meeting is called under Article 21.3(b) above, and if at such meeting the States agree to give their collective consent to the Proposed Termination, such consent will be recorded in writing and signed by all States.
5. If and when all States have notified the Proposing State of their consent to the Proposed Termination, whether by letter or following a meeting of States, the Proposing State may then terminate the relevant Host Government Agreement via the termination procedure therein and pursuant to its terms and conditions.
6. Any disputes or disagreements between States arising out of or in connection with this Article 21 shall be dealt with in accordance with the requirements of Article 19.

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]*

STATE OF *[add state]*

MODEL

HOST GOVERNMENT

AGREEMENT

Between/Among

THE GOVERNMENT OF STATE [...]

AND

THE PROJECT INVESTORS

CONCERNING

THE *[insert Project name]* PIPELINE SYSTEM

TABLE OF CONTENTS

	Page
PREAMBLE.....	40
PART I INTERPRETATION AND SCOPE OF THE AGREEMENT	42
ARTICLE 1 DEFINITIONS AND INTERPRETATION.....	43
ARTICLE 2 EFFECTIVE DATE AND DURATION	48
ARTICLE 3 AUTHORITY	48
ARTICLE 4 RELATIONSHIP TO OTHER AGREEMENTS	49
ARTICLE 5 TRANSPORT OF [PETROLEUM] [NATURAL GAS]	49
ARTICLE 6 EVIDENCE OF RIGHTS.....	50
PART II GENERAL OBLIGATIONS.....	51
ARTICLE 7 CO-OPERATION.....	52
ARTICLE 8 COMMITMENTS WITH RESPECT TO PROJECT AGREEMENTS ENTERED INTO BY STATE AUTHORITIES AND/OR STATE ENTITIES	52
ARTICLE 9 HOST GOVERNMENT’S REPRESENTATIONS AND WARRANTIES	53
ARTICLE 10 PROJECT INVESTORS’ REPRESENTATIONS AND WARRANTIES.....	54
ARTICLE 11 AUDIT.....	55
ARTICLE 12 INSURANCE	56
ARTICLE 13 GOVERNMENT FACILITATION	57
ARTICLE 14 LAND RIGHTS.....	58
ARTICLE 15 QUALITY ASSURANCE.....	61
ARTICLE 16 ENVIRONMENTAL PROTECTION AND SAFETY	61
ARTICLE 17 PERSONNEL	62
ARTICLE 18 LABOUR STANDARDS	63
ARTICLE 19 TRAINING	63
ARTICLE 20 TECHNOLOGY TRANSFER.....	64
ARTICLE 21 SOCIAL IMPACT STANDARDS.....	64
ARTICLE 22 TECHNICAL STANDARDS.....	64
ARTICLE 23 ACCESS TO RESOURCES AND FACILITIES.....	65
ARTICLE 24 SECURITY	66
ARTICLE 25 ACCESS TO AVAILABLE CAPACITY	67
PART III TAXES, IMPORT & EXPORT AND CURRENCY	68
ARTICLE 26 TAXES	69
ARTICLE 27 IMPORT AND EXPORT	75
ARTICLE 28 FOREIGN CURRENCY	76

PART IV IMPLEMENTATION	78
ARTICLE 29 AUTHORISED REPRESENTATIVES	79
ARTICLE 30 OPERATOR	80
ARTICLE 31 APPLICATION REQUIREMENTS	80
PART V LIABILITY	82
ARTICLE 32 LIABILITY OF THE PROJECT INVESTORS.....	83
ARTICLE 33 LIABILITY OF THE HOST GOVERNMENT	84
ARTICLE 34 NATURE OF HOST GOVERNMENT OBLIGATIONS.....	86
ARTICLE 35 FORCE MAJEURE	86
PART VI FINAL PROVISIONS	89
ARTICLE 36 AMENDMENT	90
ARTICLE 37 CHANGE OF LAW	90
ARTICLE 38 EXPROPRIATION	94
ARTICLE 39 TERMINATION	95
ARTICLE 40 SUCCESSORS AND PERMITTED ASSIGNEES	96
ARTICLE 41 WAIVER OF IMMUNITY	97
ARTICLE 42 DECOMMISSIONING	98
ARTICLE 43 DISPUTE SETTLEMENT	98
ARTICLE 44 EXPERT DETERMINATION	100
ARTICLE 45 APPLICABLE LAW	103
ARTICLE 46 NOTICES	104
ARTICLE 47 MISCELLANEOUS	105

PREAMBLE

THIS AGREEMENT, entered into [in the city of *[insert City name]* in *[insert state]*] as of this *[insert date of execution]* [1] 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**. [2]

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] [3] and [operate] [4] an efficient and secure Pipeline System employing generally recognised international technical and environmental standards for the Transport of [Petroleum] [Natural Gas] [5] 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.] [6]

THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

Explanatory notes

- [1] 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.
- [2] Where there are several independent investors and it is intended that they become shareholders in a single corporate project vehicle (PV), it may be appropriate for both the independent investors and the PV to be Project Investors under the HGA (assuming that the PV exists at the date of execution of the HGA; otherwise provision may be made for it to join later). This protects the investors against the PV's possible insolvency; from the Host Government's political viewpoint, the investors may be more appropriate co-contractants than a single-purpose PV. Alternatively, the PV may be the only Project Investor, and each shareholder may in addition negotiate its own direct agreement with the Host Government.
- [3] This and every reference to "own" or "ownership" should be deleted where ownership is not permitted under the local law. References to ownership are accordingly included in square brackets.
- [4] Depending on the role of the Project Investor (a financial institution would not necessarily have an interest in operating the Pipeline System).
- [5] Choice between Petroleum and Natural Gas to be specified by the parties to the agreement.
- [6] As the paraphrasing of substantive obligations in recitals can have unintended consequences under some legal systems, local legal advice should be taken if this recital is to be included. It should be noted that the HGA does not oblige either the Host Government or the Project Investors to proceed with the Project. Such an obligation will normally be imposed by the Project Agreements. The HGA purports only to provide a legal framework for the Project if it proceeds.

PART I

INTERPRETATION AND SCOPE OF THE

AGREEMENT

ARTICLE 1
DEFINITIONS AND INTERPRETATION

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 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 Operator] the Project Investors or their Affiliates in connection with the Pipeline System to an annual contractual value of at least [\$100,000], excluding however any individual acting in his or her role as an employee of any other Person.

“Convertible Currency” shall mean a currency which is widely traded in international foreign exchange markets (as determined, in the absence of agreement between all the parties hereto, by expert determination in accordance with Article 44 hereof).

“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 by treaty or under the laws of any state or any subdivision thereof.

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

“Interest Holder” shall mean

- (a) any Project Investor or Operator;
- (b) any Person holding any form of equity or other ownership interest in any Project Investor or Operator; or
- (c) any Affiliate, successor or permitted assignee of any Person referred to in (a) or (b) above.

“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 the Territory as are required to carry out the Project Activities, including those rights set forth in Appendix I, part II. 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 Interest Holder in connection with the Pipeline System (including any refinancing thereof), and any successor or permitted assignee of any such financial institution or other Person.

“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 which are extracted from the sub-soil in their natural state and are gaseous at normal temperature and pressure.

“Non-State Land” shall mean any land in the Territory, and any all right or privilege with respect thereto, of any kind or character, however arising, and however characterised, other than State Land.

“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 (“OECD”).

“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 system intended to run from [*insert name*] to [*insert name*], as described in Appendix I, Part I.

“Pipeline System Corridor” is defined in Appendix I, Part II.

“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 State Authority and, on the other hand, any Interest Holder 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, 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 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 the pipeline route and all the land included that is necessary for implementation of the Project

“Project Participant” shall mean any Interest Holder, 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.^[7]

“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 land in the Territory, and any right or privilege with respect thereto, of any kind or character, however arising, and however characterised, which is [owned or] controlled by the State, by any State Authority or by any State Entity.

“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 State Authority] 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 Treaty.^[8]

“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 expressly indicated in the relevant provisions of this Agreement.

2. Interpretation

- (a) 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.
- (b) 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.

- (c) 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.

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."

4. Knowledge

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

Explanatory notes

[7] As 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. However, it also includes Persons who acquire capacity via secondary contracts. Parties may wish to consider whether this is desirable.

[8] To be included in case the Host Government is or becomes a Transit State

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 39.

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 power and authority to make all commitments contained in this Agreement. The Host Government

further confirms and warrants that execution and performance of this Agreement is within its powers.

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.]**[9]**
2. Nothing in this Agreement or any of the Project Agreements shall deprive any Party of its rights or any remedy to which it may be entitled, or affect any obligations it may have from time to time, under the Energy Charter Treaty, any other international treaty or any other agreement.

Explanatory note

[9] The text in square brackets is to be included if the Host Government is an ECT member. It is also envisaged that the models will be used by non-member States; in this case, however, the provision will have to be amended.

ARTICLE 5 TRANSPORT OF [PETROLEUM] [NATURAL GAS]

1. The Host Government shall take the necessary measures to facilitate the Transport of [Petroleum] [Natural Gas] in connection with the Project, consistent with the principle of freedom of transit, and without distinction as to the origin, destination or ownership of such [Petroleum] [Natural Gas] or discrimination as to pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.
2. In particular, the Host Government agrees to permit (except as specifically provided otherwise in this Agreement or any Project Agreement) the transit 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, restrictions or charges.

ARTICLE 6
EVIDENCE OF RIGHTS

1. This Agreement shall evidence, without need for any further consent, approval, document, agreement, or instrument, the right of any Project Investor to take such action as may be explicitly authorized herein.
2. The Host Government agrees that, if reasonably requested by any Project Investor, 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 7
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 38 and Article 39 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 8
COMMITMENTS WITH RESPECT TO PROJECT AGREEMENTS ENTERED
INTO BY STATE AUTHORITIES AND/OR STATE ENTITIES [10]**

1. The Host Government shall [use its best endeavours to] procure the timely performance of the obligations [11] arising from any Project Agreements entered into by any State Authority and/or State Entity. The obligation of the Host Government in that respect shall be an independent guarantee enforceable pursuant to Article 43 separately from the obligations of any State Authority 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 any relevant State Authority and/or State Entity to perform in a timely manner all of its obligations as provided by the Project Agreements.
3. The Host Government shall [use its best endeavours to] procure that any State Authority and/or State Entity make the payment in a timely manner of any and all sums of money which may become due and owing by such State Authority and/or State Entity under or pursuant to the indemnification provisions of any Project Agreement.

4. 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.
5. The Host Government shall, throughout the entire term of the above-mentioned 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.

Explanatory notes

[10] 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 minimalist version of Article 8 (i.e. omitting all language within square brackets) provides an optimal level of security for Project Investors, but also imposes far-reaching obligations (including in relation to future legislative action) on Host Governments, which should take specialised advice prior to entering into such obligations.

The language within square brackets is intended to provide users of the MAs with a variety of options, which may be used together or separately, in order to mitigate the obligations imposed on Host Governments.

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

ARTICLE 9
HOST GOVERNMENT'S REPRESENTATIONS AND WARRANTIES [12]

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 treaty, agreement, decree or order to which it is a party or by which it or any of its assets is bound or affected, including any EU or WTO treaty **[13]**;

- (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 [14]

Explanatory notes

- [12] The parties may wish to consider including a representation and warranty as to the legal status of the HGA.
- [13] This representation and warranty could be considered unduly onerous in certain situations.
- [14] 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 10
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 11

AUDIT

1. Each Project Investor undertakes to keep [within the territory of the State], 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.
2. Such files and records shall be available for inspection and audit by representatives of the Host Government on an annual basis.
3. 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.

4. 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 the [International Financial Reporting Standards].
5. Any objections to the books of accounts, originals or copies of contracts and copies of other files and records kept by any Project Investor shall be notified by the Host Government to that Project Investor by the end of the [*]th Calendar Year following the end of the relevant accounting period. Such notice shall contain reasonable details for such objection. The relevant Parties shall endeavour to resolve any such objection through amicable negotiations. Failing such resolution within [a reasonable period of time/14 days/one month/three months],**[15]** any affected Party may submit the matter to the dispute settlement procedure provided at Article 43 hereof.

Explanatory note

[15] This provision refers to a reasonable period of time rather than to a specific cooling-off period. This is because disputes vary greatly in complexity and sensitivity, so that it is difficult to imagine a single cooling-off period which could be appropriate for all disputes, whereas a reference to a reasonable period of time is unlikely to create difficulties in practice. Nonetheless, users of the Model Agreements are free to refer here to whatever period they consider appropriate.

ARTICLE 12 INSURANCE

1. With regard to insurance, the Project Investors and/or their Affiliates shall effect and maintain insurances and/or 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 having due regard to the location, size and technical specifications of the Project Activities. The said insurance shall, without prejudice to the generality of the foregoing, cover, subject to availability, at commercially reasonable terms:
 - (a) physical loss of or physical damage to all installations, equipment and other assets used in or in connection with the Project Activities for the replacement cost during construction and not less than the estimated maximum loss during operation with due consideration given to consequential financial loss arising out of such physical loss or damage;
 - (b) loss, damage or injury caused by seepage, pollution or contamination or adverse environmental impact in the course of or as a result of the Project Activities;

- (c) the cost of removing debris or wreckage and cleaning-up operations (including seeping, polluting or contaminating substances) 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) risks required to be covered by law or for which there is a contractual requirement.
2. Such insurance shall be placed with Insurer(s) in accordance with the regulations of the Host Government and, in respect of insurance listed under paragraph 1 (a), (b), (c) and (d) above any Insurer with a Standard & Poor's rating of less than A- (or the equivalent rating with a comparable rating agency) shall be subject to reinsurance arrangements to the largest degree possible allowable by law with Insurer(s) enjoying a Standard & Poor's rating of A- or better and where possible, access to such reinsurance security shall be provided by assignments of reinsurance proceeds.
 3. 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 Insurers confirming any such insurance, and shall do likewise at the renewal of each insurance. If such insurances outlined in 1 above are not available at commercially reasonable terms, notice shall be given as soon as practical to the Host Government together with details of alternative measures to cover the risk such as guarantees or self-insurance mechanisms and the commercial insurance market shall be tested not less than every six months in case the position has changed. Any dispute as to the interpretation or application of the preceding sentence shall, notwithstanding the provisions of Article 43 hereof, be settled by the expert determination procedure provided in Article 44 hereof.
 4. Insurance for physical loss or physical damage to installations, equipment and other assets used in or in connection with the Project Activities and third party liabilities shall name the Host Government as an additional insured and a waiver of subrogation from Insurers under each insurance. Such insurances shall also contain non-vitiating provisions and notice of materially adverse alterations or cancellation or non-renewal shall be supplied to the Host Government by the Insurer(s) or via any broker through whom insurance is arranged.

ARTICLE 13
GOVERNMENT FACILITATION [16]

1. Without prejudice to Article 8.2, the Host Government shall [use its best endeavours to] ensure the taking, within a reasonable period of time, 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, to the extent possible, 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 the foregoing.

Explanatory note

[16] The minimalist version of Article 15 (i.e. omitting the language within square brackets) provides an optimal level of security for Project Investors, but also imposes far-reaching obligations (including in relation to future legislative action) on Host Governments, which should take specialised advice prior to entering into such obligations.

The language within square brackets is intended to provide users of the MAs with an option which may be used in order to mitigate the obligations imposed on Host Governments.

ARTICLE 14 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 and taking into consideration any pre-existing rights and reasonable user requirements.
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 Authority to make available, to the Project Investors, in accordance with this Article and Appendix I, Part II, 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 Authority 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 I, Part II;
- (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 I, Part II;
- (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) [17] 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 assuming such Land Rights have been acquired pursuant to the applicable law or the State Authority's obligations under this Article and which are material in the context of the Project Activities, provided that this obligation shall only apply to the extent that the relevant Loss or Damage, claims and demands suffered by the relevant Project Investor exceeds in cumulative total during the term of this Agreement the amount of [\$1,000,000].
- (h) in respect of State Land which is also Project Land, settle with or pay such compensation to those Persons referred to in paragraph 3 (b) of this Article 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 I, Part II.

4. In respect of Non-State 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 Authority 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 I, Part II.**[18]**
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.
6. Without limiting the generality of the foregoing, in the event such Land Rights are subject to the further grant, recognition and/or registration by State Authority or completion of other procedural prerequisites within the discretion of the State Authority (collectively, "Prerequisites"), then where required to ensure the timely implementation and execution of Project Activities, Project Investors shall proceed, subject to an adverse decision, during the pendency of any application to or consideration by the State Authority in relation to any such Prerequisites on the presumption such Land Rights will be timely granted and maintained, and each State shall indemnify and hold harmless the relevant Project investor(s) in relation to any act taken in reliance on such presumption.

Explanatory notes

[17] This paragraph could bring about in effect a division of the Territory of the State into hermetically sealed parts; it also raises the issue of pre-existing rights. Article 14(2) attempts to address this issue, but a specifically negotiated solution will probably be necessary for each Authorities to such Persons, in accordance with Appendix I, Part II.

[18] The issue of ultimate financial responsibility for the cost of acquiring Non-State Land from third parties will naturally be a subject of commercial negotiation between the Host Government(s) and the Project Investors. Different solutions are of course possible in this regard. This paragraph should only be included if it is intended that the Project Investors should assume full operational and financial responsibility for acquiring all Non-State Land relevant to the Project from third parties.

ARTICLE 15
QUALITY ASSURANCE

1. The Project Investors 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.**[19]**
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 in writing 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.

Explanatory note

[19] As the quality specifications play an important part in the operation of the pipeline and in determining its potential role within the hydrocarbon transportation system as a whole, it is recommended that the specifications be agreed, at the latest, prior to signature of the Project Agreements.

ARTICLE 16
ENVIRONMENTAL PROTECTION AND SAFETY

1. The environmental and safety standards applicable to the Project shall be as set forth in Appendix III, Part II. The Host Government agrees to the standards set forth in Appendix III, Part II and consents to any action taken by or on behalf of the Project Participants in conformity therewith, provided however that the Host Government shall be entitled to vary the standards set forth in Appendix III, Part II, following due consultation with the Project Investors, and in line with the relevant environmental protection and safety standards applicable to similar projects.
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 in relation to the Project 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 and safety damage, and;

- (b) restore, so far as reasonably possible, 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, [20]

without prejudice to the Project Investors' liability pursuant to Article 32 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 Authority and/or the State Entity 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 reasonable costs therefor from the responsible Project Investor.

Explanatory note

[20] This provision has been included and drafted with a view to achieving a balance between the parties' rights and obligations. However, the effect of paragraph 3(b) in particular could vary dramatically depending on the law of the host State. The language therefore needs to be carefully reviewed and, if appropriate, negotiated in each case.

**ARTICLE 17
PERSONNEL**

- 1. The Project Investors shall employ and shall cause the Operator and any Contractors to employ citizens of the State, as far as reasonably practicable and appropriate, for the construction, installation, operation, maintenance and management of the Pipeline System, taking into consideration availability, profitability and required skills.
- 2. Subject to paragraph 1, any Project Participant 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 that Project Participant, possess the requisite knowledge, qualifications and expertise to conduct such activities.

3. 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.
4. The Host Government shall ensure that the State Authority 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 18 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 III, Part IV but no requirements in this regard shall be imposed on the Project Participants in addition to those set out in that Appendix III, Part IV, provided however that the Host Government shall be entitled to vary the standards set forth in Appendix III, Part IV, following due consultation with the Project Investors, and in line with the relevant labour standards applicable to similar projects.

ARTICLE 19 TRAINING

The Parties recognise that training citizens of the State in the design, construction, installation, operation, maintenance and management of the Pipeline System is central to the interests of the Host Government. Having regard to this, 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, training in energy technology 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 Project Investors may in fulfilling their obligations hereunder take reasonable measures to protect any relevant intellectual property rights. The cost of such employee training will be a normal cost of business included in operating and maintenance expenses.

ARTICLE 20 TECHNOLOGY TRANSFER

The Parties recognise that maximising technology transfer is central to the interests of the Host Government. Having regard to this and with a view to advancing the objectives of Article 8 of the Energy Charter Treaty, the Parties to this Agreement agree to promote access to and transfer among themselves energy technology to the extent relevant to the Project and necessary or desirable for its efficient and effective execution. The energy technology referred to in the preceding sentence is more precisely described in Appendix [*]. The Parties may in fulfilling their obligations hereunder take reasonable measures to protect any relevant intellectual property rights and shall take such measures in relation to any such right in which any third party has an interest. The Parties shall endeavour to negotiate in good faith a separate agreement on the terms and conditions of the access to and transfer of energy technology.

ARTICLE 21 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 Participant in conformity therewith, provided however that the Host Government acting reasonably shall be entitled to vary the standards set forth in Appendix [*], following due consultation with the Project Investors, and in line with the relevant social impact standards applicable to similar projects.
2. The Project Investors shall observe the standards referred to in paragraph 1 of this Article.

ARTICLE 22 TECHNICAL STANDARDS

1. The technical standards applicable to the Project shall be as set forth in Appendix III, Part I. The Host Government agrees to the standards set forth therein and

2. The Project Investors shall observe the standards referred to in paragraph 1 of this Article.

ARTICLE 23 ACCESS TO RESOURCES AND FACILITIES

1. The Host Government shall endeavour to make available to the Project Investors and, on the reasonable request of any of them, to any Operator, Shipper or Contractor on Best Available Terms all goods, works and services (excluding labour or human resources) as may be necessary or appropriate for the Project in the reasonable opinion of the requesting Project Investor and that are owned or controlled by the State Authority and/or State Entity (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 Authority and/or State Entity exercise all lawful and reasonable endeavours to assist any Interest Holder at the request of any Project Investor in obtaining on Best Available Terms with respect to the Project: **[21]**
 - (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;
 - (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 Authority and/or State Entity (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).

Explanatory note

[21] 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....”

**ARTICLE 24
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, in accordance with the provisions of Appendix [*], [use its best endeavours to] ensure the 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 to the Land Rights, the Pipeline System or loss or injury to Persons within the Territory involved in Project Activities (except where it is reasonable for the Project Investors to deal with such threatened and/or actual instances of Loss or Damage by enforcing their contractual rights contained outside of this Agreement).

ARTICLE 25
ACCESS TO AVAILABLE CAPACITY

[Subject to [*insert name of the State*] laws, regulations and relevant international obligations, 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.]**[22]**

Explanatory note

[22] The LATF is aware that an obligation to negotiate access to available capacity is not suitable for all projects. For this reason, no such obligation has been provided here. 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. This is reflected in the Model HGA.

PART III

TAXES, IMPORT & EXPORT AND

CURRENCY

ARTICLE 26

TAXES

1. The Host Government shall ensure that the tax treatment of 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 Participants with respect to any part of specific Project Activities.
3. Except as otherwise specifically provided in this Agreement, no 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 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 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 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 pursuant to the Intergovernmental Agreement is determined to be 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. In calculating the profits on which profits tax is payable, the expenses to be deducted in any fiscal year shall not exceed [*]% of the gross income earned. To the extent that the expenses exceed such limitation, the expenses shall be deemed to be expenses incurred in the following fiscal year. The meaning of “gross income” shall be determined in accordance with the laws of the State. “Expenses” shall have the meaning that it has under Article 7 of the Organisation for Economic Cooperation and Development Model Tax Convention on Income and Capital.

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 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 II, Part I 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. An advanced payment of profit tax shall be made by 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 profit tax payable in accordance with paragraph 7 of this Article in respect of the fiscal year. The State shall credit such payments against subsequent profits tax liabilities under paragraph 7 above as such liabilities fall due. Project Investors shall not be liable to make payments under this paragraph 10 after the first fiscal year in which no payment is to be made under this paragraph 10. To the extent that any such payments have not been credited against profit tax liabilities at the termination of this Agreement, the State shall promptly refund such amount to the Project Investors.

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 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 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 any Interest Holder or predecessor thereof 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 Interest Holder 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 II, Part II). 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. Should the Parties fail to agree on the terms of the Tax Administration Agreement, such terms shall, notwithstanding the provisions of Article 43 hereof, be settled by the expert determination procedure provided in Article 44 hereof, and

the Parties hereby agree to execute, within [*] days of such expert determination, a Tax Administration Agreement on the terms thereby settled.

17. Except as otherwise provided within the Tax Administration Agreement, neither Project Participants nor their employees shall 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.

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 person (the "Refund Purchaser"), who shall then be entitled to recover an amount of VAT equal to the right purchased, as if the Refund Purchaser 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 Refund Purchaser is concerned. **[23]**

- (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 Participants, and their respective employees, shall have no liability or responsibility to the State Authority 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 39.1, 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 39.1, 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 Participants [or any of them] for resolution pursuant to Article 43 (which Article shall for the purposes of disputes in respect of this Article be read as if every reference to “Project Investor” were a reference to “Project Participant”), even if the dispute has already been submitted (by the relevant Project Participants 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.

Explanatory note

[23] As assignments of VAT refund rights are legally problematic in numerous jurisdictions, specific local legal advice should be taken in relation to this provision

ARTICLE 27
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 in connection with their import into and/or export out of the State(as the case may be) 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 be imposed except to the extent that they are 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. No such fees, charges or levies may be imposed by way of an indirect protection to domestic products or services or a taxation of imports or exports for fiscal purposes.
4. The Host Government shall use best endeavours to minimise the incidence and complexity of import and export formalities and to decrease and simplify import and export documentation requirements in connection with the goods and/or services referred to above.
5. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by the Host Government and/or State Authority 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 28
FOREIGN CURRENCY[24]

1. The Host Government confirms that, for the duration of and in order to conduct Project Activities, the Project [Investors/Participants] with respect to Project Activities inter alia:
 - (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 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 [*].

Explanatory note

[24] 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. If it is nevertheless desired to retain the provision, the following definitions might be added to this article: “Local Currency” means any currency which is legal tender within the territory of [State] and “Foreign Currency” means any currency which is issued by any authority not constituted solely by the Host Government. Under these definitions, the euro would be both a Local Currency and a Foreign Currency in eurozone countries.

PART IV
IMPLEMENTATION

ARTICLE 29
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 if necessary 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 Authority 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, request their representatives to review from time to time the status of Project Activities and confer together on any issues arising with respect thereto.

**ARTICLE 30
OPERATOR**

1. 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, subject to the agreement of the Host Government which shall not be unreasonably withheld or delayed, to establish, own and control one or more Operators, and/or appoint or select one or more Operators, that have been organised in any jurisdiction, whether inside or outside the Territory.
2. The Project Investors shall have the right to appoint jointly any Operator to exercise as directed by the Project Investors any or all rights of the Project Investors arising under any Project Agreement, including any right to initiate dispute resolution proceedings, and to enforce as directed by the Project Investors any or all obligations of the State Authority and/or any State Entity under any Project Agreement.

**ARTICLE 31
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 Authority 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 Authority 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 14 and Appendix I, Part II);
 - (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 III, Part II).
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 32
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 or obligation arising under this Agreement or any Project Agreement.
3. The Project Investors' liability to any third party (other than the Host Government or the State Authority 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 and/or under the terms of any application agreement.
4. The liability of the Project Investors under this Agreement (other than liability in respect of Taxes) shall be joint and several. **[25]**
5. 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 with any other event which is causing or likely to cause material environmental damage or material risk to health and safety, if , despite there being in place appropriate safety standards in accordance with Article 16, 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) the result of compliance with a compulsory measure of the Host Government, the State Authority and/or the State Entity where the spillage or release has occurred; or
 - (d) the result of the wrongful intentional conduct of a third party.

If the person or Entity who has suffered the damage or a person or Entity for whom it is responsible under the applicable laws has by its own fault caused the damage or contributed to it, the compensation may be reduced or disallowed having regard to all the circumstances.

6. All monetary relief payable under this Article shall, if the Host Government so requires, be paid in Convertible Currency.
7. 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 in any circumstances as a result of any breach of a provision of this Agreement.
8. Subject to Article 39 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 39 of this Agreement.

Explanatory note

[25] The fact that the liability of the Project Investors is expressed to be "joint and several" could be problematic for Project Investors, particularly where one or more is a State Entity.

**ARTICLE 33
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 State Authority and/or any State Entity of obligations under this Agreement or any Project Agreement, the Host Government shall provide monetary compensation for any Loss or Damage to any Interest Holder which is caused by or arises from, and for the cost incurred by any Interest Holder 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. The Host Government 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 any Interest Holder of any duty arising under this Agreement or any Project Agreement.

3. The Host Government shall indemnify the Interest Holders against any liability to any third party 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 with any other event which is causing or likely to cause material environmental damage or material risk to health and safety, if, despite there being in place appropriate safety standards in accordance with Article 16, 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) the result of compliance with a compulsory measure of the Host Government, the State Authority and/or the State Entity where the spillage or release has occurred; or
 - (d) 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.

4. Any award or claim for payment (granted, with respect to a claim for payment, such claim is not disputed by the State Authority 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.
5. All monetary relief payable under this Article shall, if the relevant Project Investor so requires, be paid in Convertible Currency.
6. The Host Government shall not be liable to any Project Investor for any punitive or exemplary damages.
7. The Host Government liability under this Article shall be several, independent, absolute and irrevocable.
8. [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.]**[26]**

Explanatory note

[26] 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 34
NATURE OF HOST GOVERNMENT OBLIGATIONS**

The obligations undertaken by the Host Government under this Agreement shall be several and independent and, except as otherwise provided, irrevocable, absolute and unconditional, and shall each constitute an independent covenant of the Host Government, separately enforceable from all other obligations of the State Authority 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 35
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 to the extent that 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 Authority 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 Authority 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 which 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 not limited to the employees of the Project Investors or of any Contractor or Operator, 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 Authority 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 Authority and/or State Entity 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 Participant during the continuance of the *Force Majeure* and as a result thereof.

PART VI
FINAL PROVISIONS

ARTICLE 36 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 37 CHANGE OF LAW

[Option 1]

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, policy, 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, by the courts, executive or legislative authorities, or administrative or regulatory bodies, of 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]*.**[27]**

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 or return, directly resulting from, or otherwise directly attributable to, that Change of Law, which is incurred or suffered (whether directly or through the intermediary of any Operator) in connection with the Project by any Project Investor**[28]**.

Such costs or expenses may include:

- (a) capital costs;

- (b) costs of operation and maintenance; or
 - (c) 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, directly resulting from, or otherwise directly 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, without limitation:
 - (a) capital costs;
 - (b) costs of operation and maintenance; or
 - (c) 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 Project Investor shall, within [one year] of the date when it could with reasonable diligence have become aware of the effect of the Change of Law upon the project as aforesaid, give notice thereof in writing to the Host Government. During the [90 days] following the Host Government’s receipt of this notice, the Project Investor and the Host Government shall endeavour to resolve the matter through amicable negotiations. Failing such a resolution, the Host Government shall, by the end of this [90-day] period, do one of the following:
 - (a) 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 State] law; or
 - (b) compensate the Project Investor for the Costs incurred by that Project Investor as a result of the Change of Law. Such compensation shall, if the relevant Project Investor so requires, be paid in Convertible Currency and shall, at the option of the Host Government, take the form of [29] :
 - i. reimbursement by the Host Government of the Costs incurred by the Project Investor as a result of the Change of Law, promptly as and when such Costs are incurred;

- ii. reimbursement by the Host Government of the Costs incurred by the Project Investor as a result of the Change of Law, in the form of equal annual payments to the Project Investor during the remaining expected life of the Project. In this case, such payments shall bear interest at a reasonable market rate which is not less than the rate at which such Project Investor is able itself to borrow funds. Such interest shall accrue from the date(s) when the relevant Costs are incurred by the Project Investor to the date(s) when payments are received from the Host Government;

provided however that the obligation to take one of the actions referred to above shall not apply in relation to a Change of Law if the Host Government establishes that that Change of Law reflects a change in standards generally applicable in relation to standards of environmental protection, safety, employment, training, social impact or security in the [petroleum] [gas] industry internationally.

5. If, as a result of any Change of Law, any Project Investor is able to realise Savings in connection with the Project, and that Project Investor (in its sole discretion) in fact realises such Savings, then the Project Investor shall if so requested in writing by the Host Government compensate the Host Government for one-half of the amount of such savings. Such compensation shall, if the Host Government so requires, be paid in Convertible Currency and shall, at the option of the Project Investor, take the form of:
 - (a) reimbursement to the Host Government of one-half of the Savings realised by the Project Investor as a result of the Change of Law, promptly as and when such Savings are realised; or
 - (b) reimbursement to the Host Government of one-half of the Savings realised by the Project Investor as a result of the Change of Law, in the form of equal annual payments to the Host Government during the remaining expected life of the Project. In this case, such payments shall bear interest at a reasonable market rate. Such interest shall accrue from the date(s) when the relevant Savings are realised by the Project Investor to the date(s) when payments are made to the Host Government.

6. [Notwithstanding anything in the preceding paragraphs of this Article, the Host Government shall have no liability to any Project Investor in relation to any Change of Law which is specifically authorised by Article 16(1), 18(2), 21(1) or 22 (1) hereof.]

[Option 2]

1. If any domestic or international agreement, any legislation, promulgation, enactment, decree or regulation; or any other form of commitment, policy or pronouncement or permission 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 other Project Agreement, it shall be deemed a Change in Law.

2. The Host Government shall take all actions available to it to restore the Economic Equilibrium established under this Agreement and any other Project Agreements if and to the extent the Economic Equilibrium is disrupted or negatively affected, directly or indirectly, as a result of any change (whether the change is specific to the Project or of general application) in [*insert name of the State*] law (including any laws regarding Taxes, health, safety and the environment) occurring after the Effective Date, as applicable, including changes resulting from the amendment, repeal, withdrawal, termination or expiration of [*insert name of the State*] law, the enactment, promulgation or issuance of [*insert name of the State*] law, the interpretation or application of [*insert name of the State Party to this Agreement*] law (whether by the courts, the executive or legislative authorities, or administrative or regulatory bodies), the decisions, policies or other similar actions of judicial bodies, tribunals and courts, the Local Authorities, jurisdictional alterations, and the failure or refusal of judicial bodies, tribunals and courts, and/or the Local Authorities to take action, exercise authority or enforce [*insert name of the State*] law (a “Change in Law”).
3. The foregoing obligation to take all actions available to restore the Economic Equilibrium 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 other Project Agreement and such [*insert name of the State*] law. At the option of [individual] Project Investors, Economic Equilibrium shall be achieved by a reduction in the amounts of Tax otherwise payable under Article 26.9 hereof.
4. [Notwithstanding anything in the preceding paragraphs of this Article, the Host Government shall have no liability to any Project Investor in relation to any Change of Law which is specifically authorised by Article 16(1), 18(2), 21(1) or 22 (1) hereof.]

Explanatory notes

[27] Where the State is a member of, or may in the foreseeable future become a member of, a supra-national organisation with binding legislative powers such as the European Union, the Host Government should consider whether this clause might require it to compensate Project Investors for actions which it is required to take by that supra-national organisation.

[28] Project Investor' should include any sole purpose vehicle set up by the project sponsors.

[29] As such compensation may in many jurisdictions constitute unlawful state aid, specific local legal advice should be obtained in relation to this provision.

ARTICLE 38 EXPROPRIATION

1. 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.
2. Such compensation shall amount to the fair market value [30] 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").
3. Such fair market value shall at the request of the Project Participant be expressed in Convertible Currency. Compensation shall also include interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment.
4. [Any dispute in respect of this Article may be submitted at any time by the relevant Project Participants [or any of them] for resolution pursuant to Article 43 (which Article shall for the purposes of disputes in respect of this Article be read as if every reference to "Project Investor" were a reference to "Project Participant". For

the avoidance of doubt, Article 26(3)(b)(i) and (c) of the Energy Charter Treaty shall not, as between the Parties and Project Participants, apply in respect of any such dispute.]

5. 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.

Explanatory note

[30] The calculation of the value of a long-term Investment can be extremely complex and problematic. The Parties may wish to consider including more detailed provisions in this regard. Project Investors may also wish to bear in mind the possibility that the value of the Project to them may exceed its fair market value.

ARTICLE 39
TERMINATION [31]

1. If the Project Investors have not taken steps to commence the construction phase respecting the Pipeline System as defined in [the relevant Project Agreements] by not later than [*] months after the Effective Date or if there is a delay of more than [*] months in the construction of the Pipeline System (as determined by reference to the agreed construction milestones under Appendix [*]) 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 [*] days after actual receipt by the Project Investors of said termination notice unless within said [*] day period the Project Investors take steps to commence the construction phase respecting the Pipeline System. If within [*] days of the above-referenced [*] month period the Host Government has not given any such termination notice, and the Project Investors subsequently take steps to commence the construction phase respecting the Pipeline System, 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 [*] month period shall be extended if and to the extent of any delays caused by the failure or refusal of any State Authority 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 either the Host Government or the Project Investors of substantially all of its or their obligations under this Agreement or any Project Agreement is materially delayed or prevented for a period of more than [*] consecutive [days/weeks/months], whether by Force Majeure or otherwise, the Project Investors together or the Host Government respectively 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).

Explanatory note

[31] The Parties may wish to consider including further provisions referring to any linked upstream or downstream projects, and to the effect with delays with the Project may have upon these and *vice versa*.

**ARTICLE 40
SUCCESSORS AND PERMITTED ASSIGNEES**

[Option 1]

1. The Host Government agrees that the rights, benefits and obligations of the Project Investor include the right to transfer their rights under this Agreement, and any agreement related to the Project.
2. Any assignment of rights and obligations under this Agreement by the Project Investors shall require the prior written consent of the Host Government. Said written consent shall not be unreasonably withheld or delayed. However, any Project Investor shall have the right to assign in whole its rights and obligations under this Agreement to an Affiliate provided such Affiliate has the necessary financial and technical capability to perform that Project Investor's obligations under this Agreement, or to assign its rights and/or obligations under this Agreement by way of security in favour of a Lender. Any such transfer to an Affiliate shall be effective upon the notification to the Host Government.
3. If an Affiliate to which the rights and obligations hereunder have been assigned ceases to be an Affiliate or is declared bankrupt and/or becomes insolvent, such Project Investor shall resume all rights and obligations assigned. If such assignor is no longer an Affiliate or is declared bankrupt or has become insolvent, then, in case

several assignments have taken place since the date hereof, the Agreement shall be reassigned to the preceding assignor, which shall take over any and all of the obligations of the assignee under the Agreement.

[Option 2]

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 40.
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 41
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 42
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 39.2, 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 I, Part III and shall otherwise be in accordance with best [oil] [gas] industry practice. The Decommissioning Plan shall be subject to the approval of the Host Government which shall not be unreasonably withheld.

**ARTICLE 43
DISPUTE SETTLEMENT**

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), involving:

- (a) The Host Government, and
- (b) one or more of the Project Investors,

shall, unless expressly referred to expert determination by Article 44 of this Agreement, be finally settled by arbitration pursuant to this Article to the exclusion of any other remedy. Each of the Parties hereto hereby gives its unconditional consent to any such submission to arbitration.

2. If the dispute arises between more than two Parties, the tribunal shall consist of three members who shall be appointed by any means which may be agreed between the parties to the dispute. Failing such agreement within [*] days of receipt of the written notice under paragraph 3, any party to the dispute may request the Secretary-General to appoint all members of the tribunal and designate one member to be President of the tribunal. “Secretary-General” shall mean the Secretary-

General of the Permanent Court of International Arbitration; or, if the Secretary-General is prevented from discharging any task under this Agreement, the First Secretary of the Bureau; or, if the latter, in turn, is also prevented from discharging any task under this Agreement, the most senior Deputy of the Bureau. The President of the tribunal may not be a national or citizen of a State party to the dispute. The Secretary-General shall use best efforts to comply with the request within 60 days of its receipt.

3. 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.
4. The Party initiating arbitration pursuant to this Article shall submit the dispute to, at its option:
 - (a) (i) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the "ICSID Convention"), if the state of which the Project Investor is a national and the State are both parties to the ICSID Convention; or
 - (ii) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention referred to in subparagraph (a)(i), under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as the "Additional Facility Rules"), if the state of which the Project Investor is a national or the State, but not both, is a party to the ICSID Convention;
 - (b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL"); or
 - (c) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce.
5. (a) The consent given in paragraph 1 shall be considered to satisfy the requirement for:
 - i. written consent of the parties to a dispute for purposes of Chapter II of the ICSID Convention and for purposes of the Additional Facility Rules;
 - ii. an "agreement in writing" for purposes of article II of the United Nations Convention on the Recognition and Enforcement of

Foreign Arbitral Awards, done at New York, 10 June 1958 (hereinafter referred to as the "New York Convention"); and

iii. "the parties to a contract [to] have agreed in writing" for the purposes of article 1 of the UNCITRAL Arbitration Rules.

(b) Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article I of the New York Convention.

6. The Parties agree that the seat of any arbitration held pursuant to this Agreement shall be [insert seat of arbitration].^[32]
7. The provisions of this Article shall be valid and enforceable notwithstanding the illegality, invalidity, or unenforceability of any other provisions of this Agreement.

Explanatory note

[32] 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.

**ARTICLE 44
EXPERT DETERMINATION**

1. Whenever any matter is referred to an Expert under Articles 1, 12.3 or 26.16 of this Agreement, the provisions of this Article 44 shall apply.
2. The procedure for the appointment of an Expert shall be as follows:
 - (a) either Party may notify the other in writing that it wishes a dispute to be referred to an Expert (a "Request for Expert Determination").
 - (b) the Request for Expert Determination shall contain;
 - i. a concise summary of the nature and background of the dispute and the issues arising;
 - ii. a statement of the relief claimed;
 - iii. copies of all documents which have an important and direct bearing on the issues; and

- iv. the name, address, contact numbers and qualifications of at least one and not more than three potential experts each of whom is ready, willing and able to act as the expert in the Expert Determination.
 - (c) The Party who receives a Request for Expert Determination shall within [*] Business Days of service of such Request, serve upon the other party a written response to the matters raised in the Request and copies of all documents not already included in the Request, which the responding Party considers have an important and direct bearing on the issues. Such response shall indicate which, if any, of the potential experts proposed by the Party serving the Request for Expert Determination is acceptable to the responding Party and, if none, include the name, address, contact numbers and qualifications of at least one and not more than three other potential experts each of whom is ready willing and able to act as the expert in the Expert Determination and who would be acceptable to the responding Party.
 - (d) If the Parties have not agreed upon the identity of an Expert within [*] Business Days of service of the Request for Expert Determination, either Party may apply to the appointing body specified in Article 44.2(e) ("Appointing Authority") to appoint an Expert, requesting that the appointment be made within 10 Business Days of receipt of the application.
 - (e) The Appointing Authority shall be as follows:
 - i. in relation to a dispute under Article 1, [...];
 - ii. in relation to a dispute under Article 12.3, [...];
 - iii. in relation to a dispute under Article 26.16, [...].
3. Prior to appointment, the Expert shall agree with the Parties, in writing, his terms of engagement, including fee rates, and shall sign a declaration to the effect that there are no circumstances known to him likely to give rise to justifiable doubts as to his independence and impartiality.
 4. The Expert may be an individual, association, partnership or body corporate and shall be generally recognized as an expert in the field or fields of expertise relevant to the matter in dispute.
 5. If the Expert shall die, or become unwilling, or become incapable of acting, or determines that he is not, or no longer is, independent or impartial, or does not in fact act in the matter for which he is appointed, the Parties shall appoint a new Expert by agreement or, if they have been unable to agree upon the identity of a new Expert within 15 Business Days of a written request by one Party to the other to do

so, either Party may apply for the appointment of a new Expert in accordance with Article 44.

6. The Parties shall agree with the Expert the procedure for the determination, insofar as it is not set out below. In the event that agreement cannot be reached, then the procedure shall be determined by the Expert, whose determination shall be conclusive and binding on the Parties.
7. The procedure of the Expert shall:
 - (a) give the Parties a reasonable opportunity to make written representations to him; and
 - (b) require that each Party supply the other with a copy of any written representations and documents at the same time as they are made to the Expert (save that any documentation that the providing Party and the Expert deem commercially sensitive or otherwise requiring confidential treatment shall be marked accordingly and provided only to the Expert who shall be required not to disclose it to the other party).
8. An Expert shall be entitled to seek such assistance (including that of technical and legal advisors) as he may deem necessary to reach his determination.
9. Unless agreed otherwise by the Parties, the Expert Determination will be held at the seat of arbitration selected pursuant to Article 43(9) of this Agreement.
10. The Expert Determination process is private and confidential.
11. The determination of the Expert pursuant to this Clause shall:
 - (a) be made in writing and made available for collection by the Parties within [*] Business Days of the date of appointment of the Expert (or by such later date as the Parties may agree); and
 - (b) unless otherwise agreed by the Parties include reasons for each relevant determination.
12. The Parties may agree on a procedural language to be used in relation to the Expert Determination process. In default of such agreement, all matters under this Article shall be conducted, and the Expert's determination shall be written, in the [English] language. Each document which is not in the procedural language of the Expert Determination shall, unless otherwise ordered by the Expert, be accompanied by a certified translation into that language.
13. The Parties shall co-operate with the Expert and comply with his reasonable requests made in connection with the conduct of the Expert Determination.

14. The Expert shall act as expert and not as arbitrator. The Expert shall determine the matter in dispute referred to him, which may include any issue involving:
- (a) the interpretation of any provision of this Agreement; and
 - (b) his jurisdiction to determine the matters referred to him.
- 15.
- (a) Except as provided in subparagraph (b) below, the Expert's determination of any matter referred to him shall be final and binding on the Parties to the Expert Determination and shall not be subject to any appeal. Each Party to the Expert Determination shall abide by and comply with the terms of the determination.
 - (b) The Expert's determination may be set aside by an arbitral tribunal constituted under Article 43 of this Agreement if the Party disputing the Expert's determination establishes that such determination was based on fraud, collusion or manifest error.
16. The fees and expenses of the Expert (including those of any legal or technical advice obtained by the Expert and including any fees of the Appointing Authority) shall be borne equally between the Parties.
17. Otherwise, each Party shall bear its own costs (including legal costs) in respect of the Expert Determination.

ARTICLE 45 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 [*]**[33]**.

Explanatory note

[33] This provision should be reviewed by the Parties in light of the context of each agreement.

ARTICLE 46
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 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 47
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. Without prejudice to Article 43.10, 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: _____

APPENDICES
TO THE MODEL AGREEMENTS

- I. Construction Planning
- II. Tax Agreements
- III. Code of Practice

APPENDIX I

CONSTRUCTION PLANNING

This Appendix I is attached to and makes part of the Intergovernmental Agreement dated [...] and of the Host Government Agreement dated [...]

PART I
MAP OF THE PIPELINE SYSTEM

[insert map of pipeline route]

PART II
LAND RIGHTS

1. Definitions

In this Appendix, the following terms shall have the following meanings:

"Construction Corridor" means an area of land (including exclusive control of the area above such land and rights to the land's subsurface) [*] metres wide and extending from the Entry Point to the Exit Point, within which the centreline of the Pipeline System Corridor will be located, and such other areas within which Land Rights required for the construction and installation phase as set forth under Section 3.2 of this Appendix shall be exercised, in each case as [notified by the Project Investors to the State Authorities] [agreed between the Project Investors and the State Authorities].**[1]**

"Corridor of Interest" means an area of land [ten (10)] kilometres wide and extending from the Entry Point to the Exit Point, as [notified by the Project Investors to the State Authorities] [indicated in Annex [] to the Agreement] [indicated in Annex [] to the Performance and Implementation Plan].

"Entry Point" means [*describe connection to upstream facilities if located in the Host State*] [the entry point of the Pipeline System into [*name of the Host State*] at a point on the border between [*name of Host State*] and [*name of adjacent State A*].

"Exit Point" means the exit of the Pipeline System at a point [to be selected by the Project Investors] [agreed between the Project Investors and the State Authorities] [on the border between [*name of Host State*] and [*name of adjacent State B*]] [*describe connection to any downstream facilities if located in the Host State*].

"Permanent Land" means in respect of State Land and Non-State Land (i) the Pipeline System Corridor and (ii) those other areas of land (contiguous or non-contiguous) acquired by and/or granted to the Project Investors in accordance with this Appendix and the Agreement for use for the purpose of the Project.

"Pipeline System Corridor" means an area of land within the Construction Corridor [] metres wide extending from the Entry Point to the Exit Point within, over or under which the Pipeline System is to be located (including exclusive control of the area above such land to a specified height and rights to the land's subsurface to a specified depth, in each case to be specified upon designation of the Construction Corridor), as [notified by the Project Investors to the State Authorities] [agreed between the Project Investors and the State Authorities].

"Preferred Route Corridor" means an area of land within the Corridor of Interest [five hundred (500)] metres wide and extending from the Entry Point to the Exit Point,

as [notified by the Project Investors to the State Authorities] [agreed between the Project Investors and the State Authorities].

"Specified Corridor" means an area of land within the Preferred Route Corridor [one hundred (100)] metres wide and extending from the Entry Point to the Exit Point, as [notified by the Project Investors to the State Authorities] [agreed between the Project Investors and the State Authorities].

2. Land Rights

2.1. This Appendix sets forth and provides for Land Rights which are required for the phased development of the Project.

2.2. [The Project Investors shall identify, and notify to the State Authorities, the Land Rights in accordance with Section 3 below as required by the phased implementation of the Project (including later repairs, replacements, capacity expansions and extensions of the Pipeline System).]

2.3. [The Host Government] [and] [the Project Investors] shall [each] compensate owners and occupiers of land subject to the Land Rights in accordance with Section 5 below. [2]

2.4. The State Authorities shall:

(a) [best/reasonable] endeavours to cause] [procure that] all owners and occupiers of affected properties and/or land rights [to] observe and respect all of the Land Rights held by the Project Investors, whether permanently or temporarily, to enable the construction and operation of the Pipeline System and the conduct of all other Project Activities;

(b) assist the Project Investors in avoiding and minimising any interference by third parties (including landowners and occupiers of affected properties and/or land rights) with the Project Investors' lawful exercise and enjoyment of the Land Rights, including any encroachments on Permanent Land.

3. Identification of Land Rights

3.1. Phase 1 – Preconstruction Phase (Route Selection)

3.1.1. Corridor of Interest

(a) Without limiting the rights which may be necessary in order to accomplish route selection, during the preconstruction phase the Land Rights shall include the following:

- i. rights to fly and land fixed wing or helicopter surveillance craft within and across the borders of the Territory;
 - ii. rights to record and map any property within the Corridor of Interest by video tape and by photographs;
 - iii. rights of access to and use of detailed maps and photographic records of the Corridor of Interest for, among other evaluations, desktop route study exercises;
 - iv. rights of free and safe access and passage on and off the public highways and other roadways and offshore areas within [and across the borders of] the Territory for vehicles and vessels to perform reconnaissance, including rights to make video/photographic records of such area.
- (b) [If the Project Investors determine in their [sole] [reasonable] discretion that construction and installation of the Pipeline System is not viable within any previously designated Corridor of Interest or portion thereof, the Project Investors will have the right to so notify the State Authorities [and to modify the existing or designate a new Corridor of Interest] [and the Project Investors and the State Authorities shall use [best/reasonable] endeavours to agree modifications to the existing Corridor of Interest or to agree a new Corridor of Interest] for further study. The provisions of this Appendix (including Section 3.1.1(a)) shall apply within such modified or new Corridor of Interest.]

3.1.2. Preferred Route Corridor

- (a) If the Corridor of Interest is assessed and confirmed by notice to the State Authorities, the State Authorities shall review the Corridor of Interest in light of the relevant provisions of the law of [Host State] concerning matters such as national security, defence, public safety and civil aviation, environmental protection, cultural heritage, public projects and other similar matters. The State Authorities shall notify the Project Investors of any areas where the requested grant of Land Rights for the Preferred Route Corridor, and any Specified Corridor and Construction Corridor contained within the Preferred Route Corridor, must be conditioned, limited or denied based on such considerations.
- (b) Subject to Section 3.1.2(a) and the relevant provisions of the law of [*Host State*] notified by the State Authorities to the Project Investors pursuant to Section 3.1.2(a), the Land Rights shall include the following with respect to the entire Corridor of Interest for purposes of the selection by the Project Investors of the Preferred Route Corridor:

- i. all rights listed in Section 3.1.1(a);
 - ii. vehicular access (including the right to create temporary and/or permanent access roads) on and off the public highways within [and across the borders of] the Territory as [reasonably] required by the Project Investors for detailed route reconnaissance; full access to all relevant and non-classified information held at the central, regional, district and local levels of the State Authorities respecting (without limitation):
 - a. geology;
 - b. hydrology and land drainage;
 - c. archaeology and areas of cultural, historical or religious significance;
 - d. ecology;
 - e. mining, mineral deposits and waste disposal;
 - f. urban and rural planning and development;
 - g. protection of the environment;
 - h. seismology;
 - i. highways and navigations;
 - j. utilities (including water, electricity and gas), including pipeline crossing arrangements;
 - k. agricultural, forestry and park lands;
 - l. current and prior land development, ownership, use and occupation;
 - m. meteorology; and
 - n. oceanography.
- (c) On the basis of the information gained pursuant to Sections 3.1.1 and 3.1.2(b), the Project Investors shall notify the State Authorities of their selected Preferred Route Corridor. [If, within [] days of notification of the Project Investors' selected Preferred Route Corridor, the State Authorities notify the Project Investors of any objection to the Preferred Route Corridor, the Project Investors and the State Authorities shall use

[best/reasonable] endeavours to agree the Preferred Route Corridor. If the State Authorities do not give such a notification, then the Preferred Route Corridor notified by the Project Investors shall, subject to Section 3.1.2(d), be the Preferred Route Corridor.]

- (d) If the Project Investors determine, in their [sole] [reasonable] discretion, that construction and installation of the Pipeline System is not viable within any previously designated Preferred Route Corridor or portion thereof, the Project Investors will have the right to so notify the State Authorities [and to modify the existing or designate a new Preferred Route Corridor]. [The Project Investors and the State Authorities shall meet and use [best/reasonable] endeavours to agree modifications to the existing Preferred Route Corridor or to agree a new Preferred Route Corridor for further study.] The provisions of this Appendix (including Section 3.1.2(b)) shall apply within such modified or new Preferred Route Corridor.

3.1.3. Specified Corridor

- (a) On the basis of the information gained pursuant to Sections 3.1.1 and 3.1.2 above, the Specified Corridor will be defined by the Project Investors [and notified to the State Authorities]. [If, within [] days of notification of the Project Investors' selected Specified Corridor, the State Authorities notify the Project Investors of any objection to the Specified Corridor, the Project Investors and the State Authorities shall use [best/reasonable] endeavours to agree the Specified Corridor. If the State Authorities do not give such a notification, then the Specified Corridor notified by the Project Investors shall, subject to Section 3.1.3(d), be the Specified Corridor.] Within this Specified Corridor the Project Investors and their Contractors will conduct further detailed studies as provided in this Section 3.1.3.
- (b) In respect of the Specified Corridor and subject to the relevant provisions of the law of [*Host State*] notified by the State Authorities to the Project Investors pursuant to Section 3.1.2(a), the Land Rights shall include, in addition to the rights defined in Sections 3.1.1 and 3.1.2 above, full right of access to and passage within the Specified Corridor for the purpose of carrying out the following activities:
 - i. topographical surveys in accordance with relevant topographical standards and criteria of [*name of the Host State*] requiring pedestrian and on/off highway vehicular access within [and across the borders of] the Territory as [reasonably] required by the Project Investors for the purpose of the Project. Such rights shall extend over the area

necessary to undertake the survey and may extend outside the Specified Corridor, [as notified by the Project Investors];

- ii. geotechnical survey rights, including rights for vehicles, vessels, equipment and service personnel to enter on to land [and offshore areas] to excavate trenches or boreholes and record information, including the right to remove such materials from the site as is necessary;
- iii. cathodic protection resistivity and soil sample surveys requiring vehicular and pedestrian access onto land to take and remove soil samples for further analysis; and
- iv. one or more land use surveys.

(c) The right to undertake surveys shall include the right to leave monitoring equipment on site to collect necessary data.

(d) If the Project Investors determine, in their [sole] [reasonable] discretion, that construction and installation of the Pipeline System is not viable within any previously designated Specified Corridor or portion thereof, the Project Investors will have the right to so notify the State Authorities [and to modify the existing or designate a new Specified Corridor]. [The Project Investors and the State Authorities shall meet and use [best/reasonable] endeavours to agree modifications to the existing Specified Corridor or to agree a new Specified Corridor for further study.] The provisions of this Appendix (including Section 3.1.3(b)) shall apply within such modified or new Specified Corridor.

3.2. Phase 2 – Facilities Construction and Installation Phase

3.2.1. If the Project Investors determine, in their [sole] [reasonable] discretion, that the construction and installation of the Pipeline System is viable within any previously designated Specified Corridor, the Project Investors shall, within [] days, so notify the State Authorities [and designate the Construction Corridor]. [If, within [] days of notification of the Project Investors' selected Construction Corridor, the State Authorities notify the Project Investors of any objection to the Construction Corridor, the Project Investors and the State Authorities shall use [best/reasonable] endeavours to agree the Construction Corridor. If the State Authorities do not give such a notification, then the Construction Corridor notified by the Project Investors shall be the Construction Corridor.]

3.2.2. During the construction phase Land Rights shall include the following:

- (a) the right to transport all construction material, plant and equipment within [and across the border of] the Territory by land or air without hindrance, including the right to construct and maintain temporary and permanent roads and to use such airfields as are [designated, from time to time, by the Project Investors for the purpose of the Project] [agreed between the Project Investors and the State Authorities];
- (b) the right to designate and use other areas of land, in the vicinity of or remote from the Pipeline System, for the conduct of Project Activities, including for pipe storage dumps, site compounds, construction camps, fuel storage dumps, parking areas, roads and other activity sites;
- (c) the right to install generation and transmission equipment and to connect to any existing electricity supply network and, where necessary, the right to lay cables from such supply to the Construction Corridor;
- (d) the right to enter land [and offshore areas] with all necessary materials and equipment to lay, construct, use, maintain, protect, repair, alter, renew, expand, inspect, remove, replace or decommission the Pipeline System as required for construction and installation of the Pipeline System, and the right to commence and undertake construction and installation;
- (e) the right to receive from the State Authorities details of land ownership and use, including names, addresses and other relevant details of landowners and occupiers [(including details of land holdings defined on plans)], for all property falling within [] metres on either side of the Construction Corridor;
- (f) all rights of access over any land required by the Project Investors and their Contractors for the purposes of conducting Project Activities, including rights of access (including the right to construct and use temporary or permanent roads) over other land between the public highway and the Construction Corridor not affected by the construction or operation of the Pipeline System, such routes to be [defined by notice from the Project Investors] [agreed between the Project Investors and the State Authorities] prior to road construction and/or use; and
- (g) the right, in accordance with the law of [*the Host State*], to extract and source appropriate local materials for construction purposes and to dispose of waste arising from Project Activities, including during the construction and any subsequent repair, replacement, capacity expansion or extension of the Pipeline System.

3.3. Phase 3 – Post Construction Phase

3.3.1. Following the completion of the Pipeline System, the Land Rights will include the following:

- (a) the exclusive use, possession and control of, and the right to construct upon and/or under, the Pipeline System Corridor and other Permanent Land;
- (b) all Land Rights described in Sections 3.1 and 3.2 to the extent applicable to the use and enjoyment of the Pipeline System once constructed, the construction and use of additional facilities as part of the Pipeline System within the Pipeline System Corridor and the future maintenance, protection, repair, alteration, renewal, capacity expansion, extension, inspection, removal, replacement or decommissioning of any such facilities;
- (c) the right to add any equipment required for the Project Activities as the Project Investors [reasonably] deem necessary;
- (d) the right, in accordance with the law of [*the Host State*], to fly along the route of the Pipeline System within [and across the borders of] the Territory and to land wherever necessary to ensure the safe and efficient operation of the Pipeline System;
- (e) the right to erect and maintain SCADA, marker posts, cathodic protection test posts and aerial marker posts or signalling equipment and any other equipment or installations required for the Project, in such locations and positions as [reasonably] deemed necessary by the Project Investors;
- (f) the right of access over any land between the public highway and the Pipeline System Corridor without prior notice in cases of emergency; provided, however, that the Project Investors shall give notice to the affected landowner(s) or occupant(s) as soon as reasonably practicable and shall pay reasonable compensation for any Loss or Damage occurring as a direct result of such emergency access; and
- (g) the right to allow the use of the Pipeline System by third parties for Project Activities under such terms and conditions as the Project Investors may elect.

4. Acquisition of Land Rights

4.1. Host Government Responsibility

4.1.1. The Host Government shall, or shall cause the relevant State Authorities to, obtain and secure (including by the exercise of any powers referred to in Article 14.3(d) of the Agreement where necessary) and grant to the Project Investors:

- (a) [the Land Rights in respect of the Corridor of Interest referred to in Sections 3.1.1(a) and 3.1.2(b);
- (b) the Land Rights in respect of the Preferred Route Corridor referred to in Section 3.1.2(d);
- (c) the Land Rights in respect of the Specified Corridor referred to in Section 3.1.3(b) and Section 3.1.3(d);
- (d) the Land Rights referred to in Sections [3.2.2(a), (c) and (e)] **[3]**;
- (e) [all [other] Land Rights in respect of all [State] [Project] Land].

4.1.2. The Land Rights referred to in Section 4.1.1 shall be subject to relevant provisions of the law of [the Host State] with respect to such matters as national security, defense, public safety, civil aviation and other similar matters.

4.1.3. The Land Rights granted to the Project Investors pursuant to Section 4.1.1 shall be enforceable by the Project Investors against all State Authorities and against all third parties.

4.2. Project Investor Responsibility

4.2.1. The Project Investors shall be responsible for obtaining and securing (in accordance with Section 4.2.2) all Land Rights [other than those referred to in Section 4.1.1] [in all [Non-State] [Project] Land].

4.2.2. The Project Investors shall exercise those powers granted to each of them pursuant to Article 14.3(d) of the Agreement in accordance with the law of [State] to obtain the Construction Corridor and to obtain and maintain the Permanent Land as necessary, in the [sole] [reasonable] opinion of the Project Investors, to undertake Project Activities for the duration of the Project.

5. Compensation

5.1. Host Government Responsibility

5.1.1. [Subject to Section 5.2.1,] the Host Government shall, and shall cause the relevant State Authorities to:

- (a) settle with or pay such compensation to those Persons referred to in Article 14.3(b) of the Agreement as may be required under applicable laws and regulations in respect of the acquisition of [those Land Rights referred to in Section 4.1.1] [Land Rights in all [State] [Project] Land; and
- (b) indemnify the Project Investors against any costs associated with the payment of any compensation by the Project Investors to any such Persons.

5.2. Project Investor Responsibility

5.2.1. [Where, on the date of the Agreement, any Person referred to in Article 14.3(b) of the Agreement has any interest referred to in that Article in any part of the Project Land [other than State Land], the Project Investors shall:

- (a) [prepare and submit to the relevant State Authorities a compensation plan that meets the requirements contained in Section 5.2.2;]
- (b) [in respect of State Land,] pay and indemnify the relevant State Authorities for any [actual and verifiable] costs incurred by them in relation to the acquisition of Land Rights in such land; and
- (c) [in respect of Non-State Land,] settle with or pay compensation to those Persons referred to in Article 14.3(b) of the Agreement as may be required under applicable national laws and regulations and in accordance with the provisions of the compensation plan prepared pursuant to Section 5.2.2, and indemnify the State and the relevant State Authorities against the costs associated with the payment of compensation by the State or relevant State Authorities to such Persons.][4]

5.2.2. *[Requirements for compensation plan to be set out, depending on particular local law requirements.]*

6. Other Rights and Obligations

6.1. Within [] days after the Effective Date of the Agreement, the Project Investors and the Host Government will designate to each other in writing those persons, agencies and regulatory bodies which each will be entitled to communicate with and rely on in giving the various notices and securing and confirming the various rights described in this Appendix. Such notified contact persons or bodies shall be subject to change, from time to time, on not less than [] days prior written notice (except for emergencies).

- 6.2. Subject to the provisions of Article [] of the Agreement, the Project Investors shall have the right to use, publicise and export any data and information obtained by the Project Investors and their Contractors in connection with the activities described in this Appendix.
- 6.3. Any reference to any access from a public highway means an access of not less than [...] metres in width suitable for use by construction plant and equipment.
- 6.4. All trial borings required to be made by the Project Investors prior to the commencement of construction work will be carried out with as little disturbance as is reasonably practicable after consultation with the landowners and occupiers of the affected land.
- 6.5. The Project Investors shall provide the landowners and occupiers of the land adjacent to the Construction Corridor and/or Permanent Land with a prior notice of not less than [x] days of their intention to commence the construction works within the Construction Corridor and/or Permanent Land. All movement of pipes, vehicles and machinery for construction purposes will be carried out as far as reasonably practicable in accordance with a programme [approved by the State Authorities] which shall be made available in advance in [*add language of Host State*] to such landowners and occupiers.
- 6.6. All means of access that are reasonably necessary shall be maintained by the Project Investors through construction and maintenance of suitable agreed temporary crossings reasonably required for access to land adjacent to the Construction Corridor and/or Permanent Land. Such temporary crossings shall be agreed prior to the commencement of construction. Following construction and to the extent reasonably practicable, the Project Investors shall restore roads and footpaths to the condition they were in immediately before the commencement of the construction, and shall make them available for use pursuant to the terms agreed with the Host Government (in the case of State Land) or with the relevant landowners and occupiers (in the case of Non-State Land) [and consistent with the need to maintain the security of the Pipeline System and conduct Project Activities].
- 6.7. The Project Investors shall provide facilities for maintaining and allowing means of communication and access between parts of any land which is adjacent to the Permanent Land that is temporarily or permanently disconnected as a direct result of the construction of any works by the Project Investors.
- 6.8. [*Set out other rights or obligations of the Host Government or the Project Investors in respect of the acquisition or exercise of Land Rights.*]

Explanatory notes

- [1] The process of defining the Pipeline System Corridor proceeds in stages, commencing with the Corridor of Interest and proceeding via the Preferred Route Corridor, the Specified Corridor and the Construction Corridor to arrive at the Pipeline System Corridor. Each corridor is narrower than the preceding one, and the rights granted in relation to it are more extensive and precise.

An initial question is whether the Project Investors will simply notify the Host Government of the required land rights. Alternatives (which may be more acceptable to the Host Governments) are to have the detail set out in a Performance and Implementation Plan which would require approval by the State Authorities or to require agreement by a State Authority to the land to be subject to Land Rights. The options in the definitions and certain other provisions of this Appendix reflect these different approaches.

In any event, it is assumed that the dispute resolution provisions of the HGA may not be invoked in order to settle disputes over route definition.

- [2] As stated in relation to Article 14.6, the issue of ultimate financial responsibility for the cost of acquiring Non-State Land from third parties will naturally be a subject of commercial negotiation between the Host Government(s) and the Project Investors. Different solutions are of course possible in this regard.
- [3] These sections 4.1.1(a) to (d) will need to be amended to reflect the respective powers of the State and the Project Investors to procure these rights. It may be appropriate for the Host Government to be responsible for providing some or all of these rights, whether they relate to State or Non-State Land.
- [4] Section 5.2.1 will be included where the Project Investors are responsible for the costs of some or all of the Project Land.

PART III
DECOMMISSIONING PLAN

1. In accordance with Article 42 of the Host Government Agreement, the Project Investors shall, by not later than thirty (30) days after any termination of this Agreement, provide to the Host Government with a written plan describing the proposed actions to be taken by them associated with the decommissioning or other disposition of the Facilities (the “Decommissioning Plan”).
 - (a) The Decommissioning Plan shall address, among other things:
 - (i) the removal of all surface installations;
 - (ii) the clearance of all waterways and marine areas of material and equipment posing a navigational hazard;
 - (iii) the drainage and proper disposition of any remaining Petroleum in the Facilities;
 - (iv) the filling of all trenches, holes, and other surface depressions left by the removal of surface installations and such underground pipelines and installations as are removed by the Project Investors for salvage; and
 - (v) the revegetation of the Pipeline Corridor consistent with the terrain features and other prevailing conditions in the subject area.
 - (b) In addition and to the extent the Project Investors do not plan to remove and salvage said pipelines, the disconnection from all sources and supplies of [Petroleum] [Natural Gas] to those buried pipelines or similar underground installations and either decommissioning of same in place or removal of same in those areas where decommissioning in place poses a substantial risk of demonstrable harm to the environment which is not reasonably susceptible to other remediation techniques, all as determined in accordance with the standards and practices generally prevailing in the international [Petroleum] [Natural Gas] pipeline industry;
 - (c) And, to the extent the Project Investors do not plan to remove and salvage said pipelines, the filling of all abandoned pipeline located offshore or underwater with water or inert material and the sealing of such pipelines at the ends.
2. The Decommissioning Plan shall be subject to approval by the Host Government, which approval shall not be unreasonably withheld or delayed.
3. The Decommissioning Plan shall be deemed approved by the Host Government if, within thirty (30) days after having been submitted to the Host Government, the Project Investors have received no written submission of concerns or questions.

4. If the Host Government submits specific concerns or questions, the Project Investors shall respond to same in writing and the Decommissioning Plan, as same may have been adjusted or modified by said response, shall be deemed approved if, within thirty (30) days after the response to such concerns or questions is submitted to the Host Government, the Project Investors have received no written submission of concerns or questions with respect to such response.
5. If the Host Government disapproves of the Decommissioning Plan and the Project Investors believe that the Host Government has unreasonably withheld its acceptance, then the Project Investors shall so notify the Host Government and the Parties shall attempt to amicably resolve any dispute. Failing resolution of any such dispute within thirty (30) days of receipt of such notice by the Host Government, the dispute shall be resolved in accordance with the provisions of Article 43 of the Host Government Agreement.
6. Once the Decommissioning Plan has been approved or all disputes respecting same resolved, by not later than thirty-six (36) months after the later of the date of termination of this Agreement or approval by the Host Government of the Decommissioning Plan, the Project Investors shall be obligated to accomplish the decommissioning of the Pipeline System in accordance with the Decommissioning Plan.

APPENDIX II

TAX AGREEMENTS

This Appendix II is attached to and makes part of the Intergovernmental Agreement dated [...] and of the Host Government Agreement dated [...].

PART I
PROFIT TAX AGREEMENT

In accordance with Article 26.9 of the Host Government Agreement, the Profit Tax Agreement shall include, but not be limited to, the following points:

1. Euro as the currency for tax accounting
2. Accrual basis of accounting
3. The extent of applicability of International Accounting Standards
4. Loss Carry forward period
5. Deductibility of all material costs of doing business
6. Deductibility of Interest and foreign exchange gains and losses
7. Capitalisation criteria
8. Pooling of assets for purpose of tax depreciation, and applicable depreciation rates for assets Accounting matters
9. Treatment of amounts received prior to the start up of operations
10. Storage media in which accounting records shall be kept
11. Statute of limitation
12. Audit rights
13. Timing of tax payments
14. Reporting obligations
15. Settlement of disputes in accordance with the dispute resolution mechanism in the Host Government Agreement
16. Criteria for creating a taxable presence/permanent establishment

PART II
TAX ADMINISTRATION AGREEMENT

Main Items of Tax Administration

ORGANIZATION AND MANAGEMENT TASKS	OPERATIONAL TASKS
Strategy and policy formulation	Registration of Taxpayers
Planning, budgeting, resource allocation	Taxpayer Services <ul style="list-style-type: none"> • Taxpayer education: • Taxpayer assistance: • Facilitation of voluntary compliance:
Monitoring and evaluation	Processing of Declarations and Payments
Coordination	Monitoring of tax withholders and collection agents
Financial management	Collection of information about taxable transactions: <ul style="list-style-type: none"> • Collection of information from third parties. • Intelligence operations. • Search and seizure and survey operations to obtain incriminating evidence.
Personnel management	Risk analysis and selection of cases for audit and investigation.
Information Technology Management	Audit and Investigation
Asset management	Recovery of Tax Arrears
Internal control	Legal and Judicial Matters: <ul style="list-style-type: none"> • Legislation • Appeals • Prosecution
Anti-corruption	Fiscal studies

APPENDIX III

CODE OF PRACTICE

This Appendix III is attached to and makes part of the Intergovernmental Agreement dated [...] and of the Host Government Agreement dated [...]

PART I
TECHNICAL STANDARDS

1. It is agreed that for purposes of construction or operation of any Pipeline System or the conduct of any Project Activities, the standards from time to time in effect of the following organisations shall be acceptable for all purposes:

- API - American Petroleum Institute
- ANSI - American National Standards Institute
- ASME - American Society of Mechanical Engineers
- ASNT - American Society of Non-destructive Testing
- ASTM - American Society for Testing and Materials
- AWWA - American Wood Preservers' Association
- AWS - American Welding Society
- GBE - British Gas Code of Practice
- BSI - British Standards Institution
- DIN - Deutsche Institut für Normung
- IEC - International Electrotechnical Commission
- IEEE - Institute of Electrical and Electronics Engineers (USA)
- IP - Institute of Petroleum (UK)
- ISA - Instrument Society of America
- ISO - International Standards Organisation
- NACE - National Association of Corrosion Engineers (USA)
- NEMA - National Electrical Manufacturers Association (USA)
- NFPA - National Fire Prevention Association (USA)
- SSPC - Steel Structures Painting Council
- UBC - Universal Building Code
- *[add any other organisation as relevant]*

2. The Project Investors and any other Project Participant shall maintain a copy (in English) of all standards applicable to the construction related Project Activities in the Territory at its offices in the *[insert name]* during the conduct of any such activities by or on behalf of the Project Investors or any other Project Participants.

PART II
ENVIRONMENTAL AND SAFETY
STANDARDS

[Article 10 IGA]

World Bank standards currently being updated

: <http://www.ifc.org/EHSGuidelinesUpdate>

PART III
SECURITY

1. Without limitation to the foregoing provisions of this Appendix, the Host Government shall (and shall cause the relevant State Authorities to):

- (a) [declare the Pipeline System Corridor a Security Zone in accordance with applicable national laws and regulations;][5]
- (b) [ensure that no settlement or construction of more than [] dwellings, other than those listed in Annex [] to the Performance and Implementation Plan, will be allowed in the Security Zone during the term of this Agreement without the prior written consent of the Project Investors];
- (c) ensure that no electricity lines or any network or current-inducing system will be allowed in the Security Zone during the term of this Agreement without the prior written consent of the Project Investors;[6]
- (d) (without prejudice to any contractual arrangement between the Project Investors and any landowner or occupier) procure that [no Person shall have the right] [it shall be unlawful for any Person], without the prior written consent of the Project Investors, to do any of the following except as part of the Project Activities:
 - i. use explosives within [the Security Zone] [an area of [] metres either side of the Pipeline System];
 - ii. undertake any pile-driving within [the Security Zone] [an area of [] metres either side of the Pipeline System];
 - iii. encroach on the Construction Corridor, the Pipeline System Corridor or other areas where land has been granted to the Project Investors to conduct Project Activities;
 - iv. cross or otherwise interfere with the Project Investors' Land Rights with any road, railway, power line, utility, pipeline or other public project ("Crossing Project") other than in accordance with Section 2 (c).

2. The consent of the Project Investors in accordance with Section 1:

- (a) may not be unreasonably withheld;
- (b) [may be withheld only on grounds that the specified action would be unsafe, compromise project security or unreasonably interfere with Project Activities;]

(c) shall not be required in respect of any Crossing Project unless and until the State Authorities have approved the proposed Crossing Project and the party proposing the Crossing Project has provided to the Project Investors:

- i. details of the proposed Crossing Project sufficient, in the [sole] [reasonable] opinion of the Project Investors, to enable the Project Investors to assess in their [sole] [reasonable] discretion the practicability of conducting the Crossing Project safely, efficiently, and without unreasonably interfering with Project Activities; and
- ii. a guarantee of compensation to the Project Investors for any costs incurred by the Project Investors to accommodate the Crossing Project.

Explanatory notes

- [5] This subparagraph and subparagraph (b) will only be appropriate if the local law contains a regime setting out restrictions on activities carried out in a Security Zone. If local law provides for a Security Zone, some of the remaining provisions of this Section 6 may not be required, depending on the scope of the legislation. If the local law is silent on this matter, the HGA should contain a specific list of restricted activities.
- [6] The parties may want to deal specifically with rights regarding optic cables along the route of the pipeline.

PART IV
LABOUR STANDARDS

The international labour standards mentioned in Article 13(a) shall refer to the Conventions and Recommendations of the International Labour Organisation (ILO) including, but not limited to, the following Conventions identified by the ILO's Governing Body as fundamental to the rights of human beings at work, irrespective of levels of development of individual member States.

1. Freedom of association :

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

2. The abolition of forced labour :

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)

3. Equality:

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Equal Remuneration Convention, 1951 (No. 100)

4. The elimination of child labour:

- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

RECOMMENDATIONS

- No. 35 concerning Indirect Compulsion to Labour, 1930
- No. 69 concerning Medical Care, 1944
- No. 90 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951

- No. 92 concerning Voluntary Conciliation and Arbitration, 1951
- No. 94 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking, 1952
- No. 110 concerning Conditions of Employment of Plantation Workers, 1958
- No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958
- No. 114 concerning the Protection of Workers against Ionising Radiations, 1960
- No. 115 concerning Workers' Housing, 1961
- No. 116 concerning Reduction of Hours of Work, 1962
- No. 118 concerning the Guarding of Machinery, 1963
- No. 119 concerning Termination of Employment at the Initiative of the Employer, 1963
- No. 122 concerning Employment Policy, 1964
- No. 129 concerning Communications between Management and Workers within the Undertaking, 1967
- No. 130 concerning the Examination of Grievances within the Undertaking with a view to Their Settlement, 1967
- No. 134 concerning Medical Care and Sickness Benefits, 1969
- No. 144 concerning Protection against Hazards of Poisoning arising from Benzene, 1971
- No. 146 concerning Minimum Age for Admission to Employment, 1973
- No. 147 concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents, 1974
- No. 150 concerning Vocational Guidance and Vocational Training in the Development of Human Resources, 1975
- No. 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999