

**HOST GOVERNMENT AGREEMENT**

**BETWEEN AND AMONG**

**THE GOVERNMENT OF THE REPUBLIC OF TURKEY**

**AND**

**THE STATE OIL COMPANY OF THE AZERBAIJAN REPUBLIC**

**BP EXPLORATION (CASPIAN SEA) LTD.**

**STATOIL BTC CASPIAN AS**

**RAMCO HAZAR ENERGY LIMITED**

**TURKIYE PETROLLERI A.O.**

**UNOCAL BTC PIPELINE, LTD.**

**ITOCHU OIL EXPLORATION (AZERBAIJAN) INC.**

**DELTA HESS (BTC) LIMITED**

## TABLE OF CONTENTS

	Page
ARTICLE 1	DEFINITIONS..... 3
ARTICLE 2	AUTHORITY ..... 3
ARTICLE 3	AGREEMENT, TERM AND DURATION ..... 7
ARTICLE 4	GRANT OF RIGHTS ..... 10
ARTICLE 5	GOVERNMENT GUARANTIES ..... 11
ARTICLE 6	REPRESENTATIONS AND WARRANTIES ..... 13
ARTICLE 7	CERTAIN COVENANTS AND CONSENTS OF THE GOVERNMENT..... 15
ARTICLE 8	TURNKEY AGREEMENT AND GOVERNMENT GUARANTY ..... 21
ARTICLE 9	TAXES ..... 23
ARTICLE 10	COMPENSATION FOR LOSS OR DAMAGE..... 33
ARTICLE 11	LIMITATION OF LIABILITY ..... 36
ARTICLE 12	SECURITY ..... 37
ARTICLE 13	ENVIRONMENT, HEALTH, SAFETY AND SOCIAL IMPACT..... 37
ARTICLE 14	CURRENCY ..... 38
ARTICLE 15	IMPORT AND EXPORT ..... 39
ARTICLE 16	BINDING EFFECT ..... 40
ARTICLE 17	SUCCESSORS AND PERMITTED ASSIGNEES ..... 41
ARTICLE 18	DISPUTE RESOLUTION AND APPLICABLE LAW ..... 44
ARTICLE 19	OPERATING COMPANY..... 47
ARTICLE 20	FORCE MAJEURE ..... 48
ARTICLE 21	ACKNOWLEDGMENTS ..... 49
ARTICLE 22	COOPERATION AND COORDINATION MECHANISMS ..... 50
ARTICLE 23	NOTICES ..... 50
ARTICLE 24	MISCELLANEOUS ..... 52

## Attachments

Appendix 1 - Certain Definitions

Appendix 2 - Turnkey Agreement

Appendix 3 - Government Guaranty

Appendix 4 - Rights to Land in the Territory

Appendix 5 - Code of Practice

## **HOST GOVERNMENT AGREEMENT**

THIS AGREEMENT, made and entered into in the city of Ankara in the Republic of Turkey as of this 19th day of October, 2000, between:

**THE GOVERNMENT OF THE REPUBLIC OF TURKEY**, represented by the Ministry of Energy and Natural Resources,

and

**THE STATE OIL COMPANY OF THE AZERBAIJAN REPUBLIC**, a company created pursuant to Presidential Decree No. 200 dated 13 September 1992 and its Charter;

**BP EXPLORATION (CASPIAN SEA) LTD.**, a corporation organised and existing under the laws of England;

**STATOIL BTC CASPIAN AS**, a corporation organised and existing under the laws of Norway;

**RAMCO HAZAR ENERGY LIMITED**, a corporation organised and existing under the laws of Scotland;

**TURKIYE PETROLLERI A.O.**, a corporation organised and existing under the laws of the Republic of Turkey;

**UNOCAL BTC PIPELINE, LTD.**, a corporation organised and existing under the laws of Bermuda;

**ITOCHU OIL EXPLORATION (AZERBAIJAN) INC.**, a corporation organised and existing under the laws of the Cayman Islands;

**DELTA HESS (BTC) LIMITED**, a corporation organised and existing under the laws of the Cayman Islands;

all the foregoing named signatories being legal persons in accordance with the legislation of the jurisdictions of their formation and organisation as confirmed by appropriate documentation thereof;

WITNESSETH:

WHEREAS, the MEP Participants are considering the development of a secure and efficient pipeline system for the transportation of Petroleum to, within and across the territories of the Azerbaijan Republic, Georgia and the Republic of Turkey for export to international markets, including markets in the Republic of Turkey;

WHEREAS, based on the agreed terms and conditions of the Project Agreements and other commercial arrangements consistent with the Project Agreements, the

MEP Participants shall have the right to implement the Project and construct (or cause to be constructed), own and/or operate the MEP System, including the Facilities, and utilise the resulting capacity in the MEP System and Rights to Land;

WHEREAS, the Government acts on behalf of the State and the State Authorities in matters such as those provided in this Agreement;

WHEREAS, the Republic of Turkey, Georgia and the Azerbaijan Republic have entered into the Intergovernmental Agreement to give the Project's legal and commercial terms and conditions the support and framework of international law;

WHEREAS, this Agreement is entered into based on and in furtherance of the Intergovernmental Agreement;

WHEREAS, the MEP Participants and the Turnkey Contractor are entering into the Turnkey Agreement, which agreement provides for, among other things, the design, engineering and construction of the MEP System within the Territory at a lump sum fixed price;

WHEREAS, the Government is providing to the MEP Participants the Government Guaranty with respect to full performance by the Turnkey Contractor of the Turnkey Agreement including such other assurances and commitments as set forth therein in order to implement the Project;

WHEREAS, the Government, acting on behalf of the State and the State Authorities, enters into this Host Government Agreement empowered with the authority under Turkish Law to direct and make commitments on behalf of the State and all State Authorities and to manage State assets, including the assets of State Entities; and

WHEREAS, the State Authorities wish to facilitate and support the Project and, in furtherance thereof, the State Authorities recognise the need to create the necessary framework of legal and commercial protections and intend to provide to, or for the benefit of, the Project and the relevant Project Participants, among other things, rights in and to certain facilities owned or controlled by the State Authorities, direct government guaranties, indemnities and other representations, authorisations, exemptions and assurances, as well as the required land in the Republic of Turkey comprising the pipeline routes as specified herein and in the applicable Project Agreements;

WHEREAS, in connection therewith, the Intergovernmental Agreement shall become effective as law of the Republic of Turkey and (with respect to the subject matter thereof) prevailing over all other Turkish Law (other than the Constitution) and the terms of such agreement shall be the binding obligation of the Republic of Turkey under international law; this Agreement shall gain legal effect following publication in the *Official Gazette* as a part of the appropriate Decree of the Council of Ministers of the Republic of Turkey; the Government Guaranty and the Turnkey Agreement shall become effective and shall be binding and enforceable in accordance with their terms; and any other Project Agreements shall be binding instruments, enforceable in accordance with their respective terms.

NOW, THEREFORE, for and in consideration of the premises, the Parties hereby agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

Capitalised terms used in this Agreement (including the recitals), and not otherwise defined herein, have the meanings given to them in Appendix 1.

## **ARTICLE 2**

### **AUTHORITY**

- 2.1 With respect to this Agreement, the Government is empowered with the authority under Turkish Law to direct and to make the commitments provided herein on behalf of the State and all State Authorities. All obligations of the State Authorities under this Agreement shall be, and for all purposes shall hereby be conclusively deemed to be, the obligations of the State. All obligations of the State Authorities shall be obligations to be observed and performed by each relevant constituent element thereof, including the Government, each of the Local Authorities and each State Entity.
- 2.2 In order to ensure that the obligations of the State Authorities set forth in this Agreement are discharged in a timely manner and otherwise to facilitate and coordinate the conduct of Project Activities, the Government shall appoint by written notice to the MEP Participants an authorised representative, agency or other body by or through which the MEP Participants may request and secure (i) issuance of any and all rights, licenses, visas, permits, certificates, authorisations, approvals and permissions provided in this Agreement, (ii) information, documentation, data and other materials specified by this or any other Project Agreement or appropriate to evidence any grants of rights hereunder, (iii) the submission and receipt of notifications, certifications and other communications provided herein, and (iv) the taking of such other actions with respect to the State Authorities appropriate to facilitate the implementation of the Project. Without limiting the foregoing, the Government may assign or establish an authority (the “State Transit Pipeline Authority”) to facilitate and coordinate activities in relation to transit pipeline projects with respect to the obligations of the State Authorities, including the obligations of the State Authorities under the Project Agreements. In this respect the State Transit Pipeline Authority may serve as a direct point of contact for the Parties with respect to this Project. The State Transit Pipeline Authority may also give assistance to the MEP Participants in connection with any other relevant aspects of any Project Agreement.
- 2.3 The MEP Participants recognise the fundamental importance of discharging their obligations and of facilitating and coordinating the conduct of Project Activities under this Agreement in a timely and efficient manner. Accordingly, the MEP Participants shall use Best Endeavours to adopt procedures by not later than one hundred eighty (180) days from the Effective Date (which procedures shall include, inter alia, the appointment of one or more representatives, committees, or other organisational or functional bodies by or through whom the MEP Participants may act) which will facilitate the method and manner of the MEP Participants’ timely and efficient

exercise of their rights, benefits, privileges and exemptions and/or performance of their obligations hereunder (the “MEP Representative(s)”), subject at all times to (i) the terms and conditions of the business structure among, and/or the business activities of, the MEP Participants and (ii) the requirement that all matters in respect of Taxes for an MEP Participant shall be addressed by that MEP Participant (or its designated agent). Upon the appointment of the MEP Representative(s), the State Authorities shall be entitled to rely upon the communications, actions, information and submissions of an MEP Representative, in respect of that MEP Representative’s notified area of authority, as being the communications, actions, information and submissions of the MEP Participants. The Parties further acknowledge that the MEP Participants shall have the right, upon reasonable notice to the State Authorities, to remove, substitute or discontinue the use of one or more specific MEP Representative(s).

2.4 In respect of the operation of the Facilities, no later than two (2) years prior to the planned commencement of commercial operation of the Facilities the Government shall notify the MEP Participants in writing of the authorisation and appointment of a State Authority with appropriate qualifications and relevant experience and capabilities to serve as operator of the Facilities (“Designated Operator”). The activities of the Designated Operator in respect of the Facilities shall be governed by an agreement (the “Operating Agreement”) between the Designated Operator and the MEP Participants, such Operating Agreement to be agreed as soon as practicable following the Government’s appointment of the Designated Operator. The Operating Agreement shall contain those terms and conditions typically found in agreements for the operation of international Petroleum pipelines of similar size and complexity, modified as mutually agreed to address the particular circumstances of the Project. Among other terms and conditions, the Operating Agreement will provide that:

- (i) the Designated Operator shall be subject to removal by the MEP Participants if:
  - (A) an order is made by a court or other tribunal, or an effective resolution is passed, for the reorganisation under any bankruptcy law, dissolution, liquidation, or winding up of the Designated Operator;
  - (B) the Designated Operator dissolves, liquidates, is wound up, or otherwise terminates its existence;
  - (C) the Designated Operator becomes insolvent, bankrupt or makes an assignment for the benefit of creditors;
  - (D) a receiver is appointed for a substantial part of the Designated Operator’s assets; or
  - (E) the Designated Operator has committed a material breach of the Operating Agreement and has either failed to commence to cure that breach within thirty (30) days of receipt of a notice from the MEP Participants detailing the alleged breach or failed to diligently pursue the cure to completion.

(ii) In respect of the amount to be paid to the Designated Operator by the MEP Participants as full and complete compensation for the provision of all operator services and the conduct of all activities under the Operating Agreement, including all costs associated with operations and maintenance of the Facilities (including, for the avoidance of doubt, the marine terminal and port facilities), the following principles shall apply:

(A) An Operating Fee shall be determined and paid as follows:

(1) during each of the first sixteen (16) years of the Primary Term, the Designated Operator shall be paid a per Barrel fee for Petroleum transported through the Facilities during such year as measured at the Point of Terminus (the "Operating Fee") equal to the excess of zero point fifty-five Dollars (\$.55) over the Corporation Tax Amount for such year;

(2) during the remaining twenty-four (24) years of the Primary Term, the Operating Fee shall be equal to zero point forty-three Dollars (\$.43) per Barrel; and

(3) not later than one (1) year prior to the end of the Primary Term and the first Rollover Term, the Designated Operator and the MEP Participants shall meet and agree a redetermined Operating Fee which shall be applicable for the next applicable Rollover Term. Such redetermined Operating Fee shall take into account the amount of said fee that was previously in effect, as well as current costs associated with the operation and maintenance of the Facilities (including the marine terminal and port facilities), the prevailing and forecasted regional market conditions respecting the Petroleum production and transportation industries, and the desire to maintain the relative economic positions of the MEP Participants and the Designated Operator.

(B) A monthly payment amount ("Base Payment") shall be payable during each and every Rollover Term, such Base Payment to be determined as follows:

(1) not later than one (1) year prior to the end of the Primary Term and the first Rollover Term, the Designated Operator and the MEP Participants shall meet and agree the total amount of the fixed and variable costs for the Facilities reasonably expected to be required in each year of the subject Rollover Term in order for the Designated Operator to maintain the Facilities in accordance with standards and practices generally prevailing in the Petroleum pipeline industry assuming for purposes of such determination that Petroleum throughput through the Facilities is equal to two hundred fifty thousand (250,000) Barrels per day throughout the subject term; and

(2) using the agreed annual amounts determined in subsection (B)(1) above, such annual amounts shall be divided by

twelve (12) in order to establish the Base Payment which shall be payable by the MEP Participants to the Designated Operator during the applicable period(s); provided, however, all amounts payable to the Designated Operator in respect of previous months of the applicable Rollover Term by reason of the Operating Fee under subsection (A) above shall be credited against the Base Payment(s) otherwise due hereunder for subsequent month(s).

- (C) If the MEP Participants and the Designated Operator are unable to reach agreement on the redetermined Operating Fee or the initial or any redetermined Base Payment by not later than one hundred eighty (180) days prior to the first day of the Rollover Term during which such fee and/or payment will be applicable, then either Party may, by written notice to the other Party of its election, refer the matter to an independent expert appointed by the President of the Stockholm Chamber of Commerce, Sweden, for a final and binding determination by such independent expert by not later than the first day of the Rollover Term during which such fee and/or payment will be applicable. The independent expert shall be free of any business or other relationships with the parties suggesting possible bias or prejudice in favour or against either party, and shall be internationally recognised as having substantial, relevant expertise respecting the Petroleum production and transportation industries. The independent expert's determination of the fee and/or payment, as the case may be, regardless of when rendered, shall be effective as of the first day of the Rollover Term during which such fee and/or payment is to be applicable. If for any reason the parties cannot agree, or the independent expert has not rendered a decision, prior to the first day of the Rollover Term during which such fee and/or payment is to be applicable, then the Operating Fee and/or the Base Payment for the immediately preceding Rollover Term (or Primary Term, as the case may be) shall continue in effect on a provisional basis until such agreement is reached or decision rendered; provided, however, that the redetermined Operating Fee and/or Base Payment shall apply retroactively as of the first day of the relevant Rollover Term, with an appropriate compensating payment(s) (including interest at the Agreed Interest Rate from the first day of such Rollover Term) to be paid to the extent any determination or redetermination results in a change in the fee and/or payment from that provisionally paid.
- (D) If and for so long as the MEP Participants elect to use Petroleum to fuel pump stations which are part of the Facilities, the MEP Participants shall charge the Designated Operator a price per Barrel which is not in excess of eighteen Dollars (\$18.00) per Barrel; provided, however, that the Designated Operator shall be responsible for and shall indemnify and hold harmless each of the MEP Participants, their Affiliates and the Shippers from and against any Taxes (including VAT and Taxes on income or profit) which may be imposed on or incurred by each of them in connection with any Petroleum to be used as fuel in connection

with the Project (including the ownership, importation, transportation, transfer of ownership or use thereof).

- 2.5 The MEP Participants and the State Authorities shall, at the request of either of them, review from time to time the status of MEP Activities and confer respecting any issues arising with respect thereto.

### **ARTICLE 3**

#### **AGREEMENT, TERM AND DURATION**

- 3.1 This Agreement shall be effective and binding from the date it has been fully executed by all Parties hereto (the "Effective Date"), shall continue for a primary term of forty (40) years from the date of first shipment of Petroleum from the Ceyhan Terminal (the "Primary Term") and, subject to all other provisions of this Agreement, shall continue in full force and effect after the Primary Term for two (2) successive ten (10) year rollover terms (each, a "Rollover Term"); provided, however, that in order to continue this Agreement in effect into the next Rollover Term the MEP Participants shall be obligated to provide written notice to the Government of their election to continue this Agreement into the next Rollover Term (the "Rollover Notice") no earlier than three hundred sixty (360) days and no later than one hundred eighty (180) days prior to the end of the Primary Term and the first Rollover Term (each a "Notice Period"); and provided, further, (1) if the date of first shipment of Petroleum from the Ceyhan Terminal is a date in a calendar year on or before June 30, the Primary Term shall consist of (i) a first year, which shall be deemed to be all days remaining in such calendar year, plus (ii) the thirty-nine (39) calendar years next following such first year of the Primary Term, and (2) if the date of first shipment of Petroleum from the Ceyhan Terminal is a date in a calendar year on or after July 1, the Primary Term shall consist of (i) a first year, which shall be deemed to be all days remaining in such calendar year as well as all days in the next succeeding calendar year, plus (ii) the thirty-nine (39) calendar years next following such first year of the Primary Term; and provided, finally, that during each Notice Period, the Parties shall identify and resolve any Additional Commercial Issues applicable to the next Rollover Term. The term "Additional Commercial Issues" means those commercial issues (other than issues under or relating to the Operating Agreement referred to in Section 2.4 hereof and those pertaining to Taxes) relating to the Project which either Party, by written notice to the other (given by not later than thirty (30) days following the Rollover Notice), submits for resolution and inclusion as additional contractual element(s) of this Agreement. In the event of any failure by the MEP Participants to give the Rollover Notice during the Primary Term or during the first Rollover Term, this Agreement shall terminate and the provisions of Section 3.7 shall apply. For the avoidance of doubt, if the Parties are unable to resolve the Additional Commercial Issues during the Notice Period, this Agreement nevertheless shall continue during the Rollover Term and, in accordance with Article 18 hereof, the dispute shall be submitted to arbitration for final determination. For purposes of any such arbitration, the arbitrators, in determining whether and to what extent such additional contractual element(s) for the Additional Commercial Issues should be included in this Agreement, shall take into account: (A) the existing terms and conditions of this and other Project Agreements; (B) changed circumstances, if any, occurring since the Agreement and other Project

Agreements were entered into (or later modified) which are asserted to be causing the Party material detriment or harm under or in respect of this Agreement; (C) the effects, if any, of inflation or deflation in respect of this Agreement; (D) the relative benefits enjoyed and burdens borne by the Parties under this Agreement and the other Project Agreements in the context of governmental agreements encouraging and supporting direct foreign investment in the Project; (E) the maintenance of the Project as a viable commercial enterprise for the transportation of Petroleum to international markets (including markets in the Territory); and (F) such other matters as are, under the circumstances, relevant to fairly resolving the particular dispute over the Additional Commercial Issues.

- 3.2 Notwithstanding the foregoing Section 3.1, this Agreement may be terminated at any time by the MEP Participants giving their written notice of termination to the Government and shall be of no further force or effect for any purpose as of the date specified by the MEP Participants in said notice.
- 3.3 If the MEP Participants have not taken steps to commence the construction phase respecting the Facilities (by, for example, giving notice to the Turnkey Contractor under the Turnkey Agreement to commence such activity) by not later than thirty-six (36) months after the Effective Date, then for a period of one hundred twenty (120) days thereafter the Government shall have the right to give written notice to the MEP Participants of the termination of this Agreement. Such termination shall become effective thirty (30) days after actual receipt by the MEP Participants of said termination notice unless within said thirty day period the MEP Participants take steps to commence the construction phase respecting the Facilities. If the above-referenced one hundred twenty (120) day period expires without the Government giving any such termination notice, the 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 thirty-six (36) month period shall be extended if and to the extent of any delays caused by the failure or refusal of any State Authorities (including the Turnkey Contractor) to perform timely any obligations they may have respecting MEP Activities.
- 3.4 In addition to the termination right of the Government set forth in Section 3.3, the Government shall have the right to terminate this Agreement under the circumstances and in accordance with the procedures set forth in this Section 3.4. If the Government concludes that the MEP Participants have committed a material breach of any of their joint and several obligations (as those obligations are set forth in Section 11.3), then the Government shall have the right to give written notice to the MEP Participants of such breach in detail sufficient for the MEP Participants to undertake cure. During the pendency of any discussions to attempt resolution and/or any subsequent arbitral proceedings, the MEP Participants may, but shall have no obligation to, undertake to address and/or cure the alleged breach; provided, however, in the event the MEP Participants do not commence efforts to effect cure of a disputed breach, the Government may undertake cure. If and to the extent the MEP Participants do not dispute or, after discussions to attempt resolution, agree with the Government that such breach has occurred, or it is determined through arbitration that such a breach has occurred, the MEP Participants shall promptly undertake efforts to effect cure. If any such breach remains uncured for ninety (90) days after receipt of any undisputed notice, confirmation of resolution or arbitral determination that such a breach has

occurred, as the case may be (the “Cure Period”), the Government shall have the right to give the MEP Participants written notice of termination of this Agreement, which termination shall be effective thirty (30) days after the Government’s giving of the termination notice to the MEP Participants. If the cure is effected by the MEP Participants within the Cure Period, the Government’s right to give a termination notice in respect of the earlier noticed breach shall end and this Agreement shall continue in full force and effect. If the breach is one that cannot be effectively cured within the Cure Period, the MEP Participants shall nevertheless have the right to cure the breach and avoid termination hereunder by commencing efforts to cure the breach within the Cure Period and thereafter diligently pursuing efforts to cure. Any cure so effected beyond the Cure Period shall nonetheless be deemed to have occurred within the Cure Period, any cure so effected shall serve to end the Government’s right to give a termination notice in respect of the earlier noticed breach, and this Agreement shall continue in full force and effect. Any dispute respecting the timeliness or adequacy of any cure effected by the MEP Participants and/or whether termination has properly occurred hereunder may be submitted to arbitration in accordance with Article 18. In the event that, pursuant to the provisions of this Section 3.4, the Government effects cure of a disputed breach, which disputed breach is later determined pursuant to Article 18 to have been a material breach, the MEP Participants shall pay all costs incurred by the Government in effecting such cure.

For purposes of this Section 3.4, “material breach” means a breach which:

- (i) constitutes the knowing and persistent failure or refusal by the MEP Participants to take appropriate action to assure that:
  - (a) their Project Activities in the Territory comply with the standards and practices set forth in this Agreement; or
  - (b) their activities in the Territory related to the Project do not pose a threat to the national security of the Republic of Turkey; or
- (ii) is tantamount to the frustration of the entire Agreement;

and, in the case of either or both of (i) and (ii) above, the nature and extent of the breach (including repetition) reasonably supports the conclusion that the only appropriate remedy under the circumstances is the full and final termination of this Agreement and permanent cessation of the Project in the Territory. Termination hereunder shall be without prejudice to the Government’s right to any other remedies available under this Agreement.

Notwithstanding the foregoing, the Government shall have no right of notice and/or termination hereunder if any such material breach is caused by or arises from any breach of any Project Agreement and/or breach of duty by any State Authority.

- 3.5 If this Agreement has not been earlier terminated pursuant to this Article 3, this Agreement shall terminate and be of no further force or effect on the date on which all Project Activities have permanently ceased, as such date is notified by the MEP Participants in writing to the Government.

- 3.6 Except as otherwise may be expressly provided in another Project Agreement, it is expressly understood by the Parties to this Agreement that no MEP Participant or other Project Participant is committed, or is in any manner obligated to any of the State Authorities, to undertake any Project Activities or otherwise to implement or carry out the Project, or to continue any Project Activities that it may have begun, in reliance on this or any other Project Agreement, or otherwise.
- 3.7 Termination of this Agreement shall be without prejudice to (i) the rights of the Parties (including those which are no longer Parties) respecting the full performance of all obligations accruing prior to termination and (ii) the survival of all waivers and indemnities provided herein in favour of a Party (or former Party).

## **ARTICLE 4**

### **GRANT OF RIGHTS**

- 4.1 For purposes of the Project, the State Authorities hereby grant pursuant to the Project Agreements:
- (i) to the Project Participants, the absolute and unrestricted right and privilege to implement and carry out the Project, conduct all Project Activities, and enjoy all other rights and privileges provided to any or all of them by the State Authorities under the Project Agreements;
  - (ii) to the MEP Participants and such other Project Participants as the MEP Participants may designate, the exclusive and unrestricted Rights to Land as set forth in Appendix 4;
  - (iii) to each of the MEP Participants, the exclusive and unrestricted property right (other than ownership) to use, possess, control and construct upon and/or under the Permanent Land, and to restrict or allow (at the MEP Participants' sole discretion) the use, occupation, possession and control of, and construction upon and/or under, the Permanent Land by any other Persons.
  - (iv) to each of the MEP Participants, the exclusive and unrestricted right and privilege to construct, own, use, possess and control the Facilities;
  - (v) to the Project Participants, subject to Section 19.2, the unrestricted right and privilege to employ or enter into contracts with, for the purpose of conducting Project Activities, such Persons and their respective personnel (including citizens of the State and, subject to Section 7.2, of countries other than the State) who, in the opinion of such Project Participant, demonstrate the requisite knowledge, qualifications and expertise to conduct such activities; and
  - (vi) to the MEP Participants and their designated Contractors free of charge, readily available water of sufficient quality and quantity located proximate to the Facilities in order to perform hydrostatic and other testing of the Facilities,

together with the right to dispose of same at location(s) proximate to said Facilities upon completion of such testing.

- 4.2 The rights, exemptions and/or privileges granted or made available under this Agreement are granted by the State Authorities in relation to the carrying out of the Project and Project Activities by the MEP Participants and other Project Participants engaged to participate in and carry out the Project and Project Activities by the MEP Participants. The State Authorities hereby acknowledge that the MEP Participants intend to do business with and/or engage Project Participants in the carrying out of the Project and Project Activities, and agree that these Project Participants, by their participation in the Project, shall have the benefit of all rights, exemptions and privileges as are provided under any Project Agreement. If any rights, exemptions, grants or privileges are not already vested in any such Project Participant by operation of Turkish Law (whether by the enactment or ratification of Project Agreements into Turkish Law as provided herein or otherwise), the State Authorities hereby grant to each of the MEP Participants the further right and authority to (i) make such rights available by sub-grant to such Project Participants or (ii) transfer, assign or share such rights to or with such Project Participants pursuant to Article 17. In addition, the State Authorities agree that, if requested by any MEP Participant, the State Authorities shall evidence the grant of rights to any Project Participants 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.
- 4.3 In accordance with the rights, exemption and/or privileges granted to the MEP Participants under this Agreement, the Parties hereto recognize that in order to facilitate the Project in the Territory, the Turnkey Contractor, on behalf of the MEP Participants and after the issuance of the appropriate authorisation to proceed under the Turnkey Agreement, shall (i) make any necessary application(s) to the General Directorate of Petroleum Affairs for a Petroleum Certificate(s), (ii) make payment of the required guaranty (deposit) and any other necessary amounts relating to the acquisition of such Petroleum Certificate(s) and (iii) execute such other documents, make such other applications and take such other actions as may be necessary or appropriate to secure the necessary authorisations.

## **ARTICLE 5**

### **GOVERNMENT GUARANTIES**

- 5.1 In addition to affirming that the following obligations are primary obligations of the State Authorities, the Government hereby guarantees to each of the MEP Participants the validity and effectiveness of the acknowledgments, representations and warranties made by it on behalf of and committing the State Authorities as set forth in this Agreement, the rights and privileges provided (and to be provided) to any and all Project Participants by the State Authorities under all Project Agreements and the complete and timely satisfaction and performance of all State Authorities' obligations under the Project Agreements.

5.2 Without limiting the breadth and scope of the foregoing, the Government hereby commits the State Authorities to perform and guarantees to each of the MEP Participants:

- (i) that the State Authorities shall not interrupt or impede the freedom of transit of Petroleum in, across and/or from the Territory;
- (ii) that the State Authorities shall perform and take all actions and make all decisions required of the State Authorities under all Project Agreements;
- (iii) that the State Authorities shall not act or fail to act in any manner that could hinder or delay any Project Activity or otherwise negatively affect the Project or impair any rights granted under any Project Agreement (including any such action or inaction predicated on security, health, environmental or safety considerations that, directly or indirectly, could interrupt, impede or limit the flow of Petroleum in or through the Facilities, except under circumstances in which continued operation of the Facilities without immediate corrective action creates an imminent, material threat to public security, health, safety or the environment that renders it reasonable to take or fail to take, as the case may be, such action and, then, only to the extent and for the period of time necessary to remove that threat);
- (iv) that the State Authorities shall give their full cooperation in connection with Project Activities;
- (v) that the State Authorities shall not claim or demand title to or possessory rights over the Petroleum or the Facilities;
- (vi) that the State Authorities shall not claim, demand or in any way restrict any rights respecting the Permanent Land which are contrary to the grant by the State Authorities of the rights with respect to the Permanent Land granted under Section 4.1(iii); and
- (vii) that the State Authorities shall make the payment of any and all sums of money which may become due and owing by the State Authorities under or pursuant to any Project Agreement, including compensation payments under Article 10 of this Agreement and pursuant to the indemnification provisions of any Project Agreement.

5.3 The guaranties made by the Government in this Article 5:

- (i) are several, independent, absolute, irrevocable and unconditional and each constitutes an independent covenant and principal obligation of the Government, separately enforceable from all other obligations of the State Authorities under the Project Agreements, without regard to the non-performance, invalidity or unenforceability of any of those other obligations;
- (ii) are enforceable, jointly and severally, against the constituent elements of the State Authorities and, regardless of against whom enforcement is sought, any award or claim for payment in respect thereof shall be submitted to the

Ministry of Energy and such award or claim for payment (granted, with respect to a claim for payment, such claim is not disputed by the State Authorities) shall be paid to the MEP Participants on or before thirty (30) days after receipt by the Ministry of Energy of the related award or claim for payment; and

- (iii) shall not be modified, impaired or rendered unenforceable by any defense available to the State Authorities under any Project Agreement or otherwise as a result of the occurrence of any event that, but for this Section 5.3(iii), would discharge that guaranty other than by the full performance thereof in accordance with the relevant Project Agreement.

- 5.4 In furtherance of the guaranties made by the Government in this Article 5, the Government (i) hereby affirms the obligations set forth herein of the State Authorities and consents to the performance of all obligations of the State Authorities under the Project Agreements and (ii) 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 further the foregoing affirmation and consent to enable and require the State Authorities to perform in a timely manner all of their obligations as provided by the Project Agreements.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES**

- 6.1 The Government hereby represents and warrants to each of the MEP Participants that as of the Effective Date the Government has:
- (i) accomplished all ratifications and completed all parliamentary, legislative and other actions and enactments of the State Authorities required by Turkish Law to cause the Intergovernmental Agreement to be effective and otherwise endow the Intergovernmental Agreement as binding on the State under international law and Turkish Law; and
  - (ii) completed all parliamentary, legislative or other actions and enactments required of the State Authorities by Turkish Law, including signature by the President of the Republic of Turkey, to cause the terms of this Agreement and the various grants and obligations of the State Authorities under this Agreement in favour of the MEP Participants and/or other Project Participants to become effective in the Republic of Turkey as the prevailing legal regime under Turkish Law with respect to the Project and all Project Activities, as the binding obligations of the State Authorities.
- 6.2 The Government hereby represents and warrants to each of the MEP Participants that as of the Effective Date and throughout the term of this Agreement:

- (i) the Government is duly authorised under Turkish Law to execute this Agreement and to bind, commit and impose obligations on itself, the State and all State Authorities hereunder, subject only to fulfillment of the obligations of the State Authorities under Section 7.1;
- (ii) the State Authorities have, or have the legal authority to obtain in a timely manner, sole and exclusive jurisdiction respecting Rights to Land (including the Permanent Land) and the full power, authority and right under Turkish Law to grant the rights and privileges provided in Article 4, which rights are transferable by an MEP Participant in accordance with this Agreement;
- (iii) the obligations of the State Authorities under this Agreement (including the Government's guaranties under Article 5) and the other Project Agreements are valid, binding and enforceable against the State and State Authorities in accordance with the terms of this Agreement and the other Project Agreements;
- (iv) the representations, warranties and covenants made in respect of the Government under the Intergovernmental Agreement (including, but not limited to, the representation and warranty set forth in Section (2) of Article II thereof) apply *mutatis mutandis* under this Agreement and are enforceable hereunder by the MEP Participants;
- (v) the State Authorities have not granted and are not obligated to grant to any Person any rights or privileges that are inconsistent or conflict, or that may limit or interfere, with the exercise and enjoyment of the rights and privileges held by any Project Participant under any Project Agreement;
- (vi) in accordance with the acknowledgment under Section 20.3, neither this Agreement nor any other Project Agreement constitutes a special administrative contract granting a concession under Turkish Law and none of those agreements is or shall be construed to be subject to any limitation, condition, avoidance or prohibition, in whole or in part (including the provisions of Article 18 hereof), based on Turkish legal principles derived from the law (including court decisions) on special administrative contracts, the law on concessions or any other feature of Turkish Law, or otherwise; and
- (vii) the Rights to Land as set forth in Appendix 4 and, in particular, the rights of exclusive use, construction, possession and control respecting the Permanent Land as granted by the State Authorities to the MEP Participants in this Agreement constitute rights to property other than ownership of land.

6.3 Each of the MEP Participants hereby represents and warrants that as of the Effective Date:

- (i) 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;

- (ii) 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;
- (iii) 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;
- (iv) 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, where applicable, by general principles of equity;
- (v) there are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it before any court, arbitral tribunal or any governmental body which individually or in the aggregate may result in any materially 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 Party 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 materially adverse effect or such impairment;
- (vi) 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 the Agreement; and
- (vii) 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 7**

### **CERTAIN COVENANTS AND CONSENTS OF THE GOVERNMENT**

- 7.1 The Government hereby covenants and agrees that it shall promptly ensure the taking of all actions and the ratification, enactment and promulgation of all laws and decrees that are or may become necessary under Turkish Law to continue in force and fully

implement the terms of this Agreement and all other Project Agreements and to authorise, enable and support the activities and transactions contemplated by all Project Agreements. In this regard, the Government shall consult with and keep the MEP Participants informed respecting the development of any necessary laws or decrees and the status of all actions which are or may be necessary in order to comply with the foregoing.

7.2 The Government hereby covenants and agrees (on its behalf and acting on behalf of and committing the State Authorities) that throughout the term of this Agreement:

- (i) from time to time after the date hereof the State Authorities shall accomplish all notifications and complete all parliamentary, legislative or other actions, ratifications and enactments required to cause any written extension, renewal, replacement, amendment or other modification of this Agreement, the Intergovernmental Agreement, and all other Project Agreements to become effective as the prevailing legal regime of the Republic of Turkey with respect to the Project and as the binding obligation of the State Authorities under Turkish Law, and with respect to the Intergovernmental Agreement, under international law. In this regard, the Government shall consult with and keep the MEP Participants informed respecting the development of any necessary laws or decrees and the status of all actions which are or may be necessary in order to comply with the foregoing;
- (ii) except for the grants expressly provided in the Project Agreements, or with the prior written consent of all of the MEP Participants, the State Authorities shall not grant any rights to use the Facilities or respecting the Rights to Land or grant to any Person any other rights that are inconsistent or conflict, or that may interfere, with the full exercise or enjoyment by any of the Project Participants of their rights under any Project Agreement;
- (iii) except as may be expressly set forth in any Project Agreement, the State Authorities shall not reduce, condition or limit (whether by termination or amendment of the respective Project Agreement, or otherwise) any right, interest or benefit accruing under the Project Agreements to any Project Participant without the prior written consent of all of the MEP Participants;
- (iv) the State Authorities shall not cause or permit to exist any restriction on the ingress or egress of any personnel with respect to the Project, subject only to the enforcement of immigration (including visa and residence permit regulations), customs, criminal and other relevant laws of the State;
- (v) except in the manner and under the circumstances provided in Section 10.4 (but in all cases, whether or not Section 10.4 is complied with, subject to the payment of compensation for Expropriation as provided in Section 10.2 (iii)), the State Authorities shall not carry out any act of Expropriation in respect of the Project;
- (vi) if any domestic or international agreement or treaty; any legislation, promulgation, enactment, decree, accession or allowance; 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, privileges, exemptions, waivers, indemnifications or protections granted or arising under this Agreement or any other Project Agreement it shall be deemed a Change in Law under Article 7.2(xi).

(vii) the State Authorities shall:

(1) perform all obligations and otherwise assist the MEP Participants, the Turnkey Contractor and any other designated Contractors in respect of the acquisition of, grant to and exercise of the Rights to Land as and when necessary, from time to time, during the life of the Project, all as further provided herein and in Appendix 4 of this Agreement, in consideration for which the MEP Participants shall pay to the designated State Authority in accordance with the schedule of payments set forth in the Turnkey Agreement the sum of ninety-nine million Dollars (\$99,000,000);

(2) bear full responsibility and liability for the identification of any and all Persons having or claiming any form of ownership or other property, occupancy, construction or possessory interest which is or may be terminated, conditioned, limited or affected by the State Authorities' grant to each of the MEP Participants of the Rights to Land;

(3) bear full responsibility and liability for the prior notification to those Persons described in the foregoing clause (2) of each of the MEP Participant's Rights to Land and the authorisation from the State Authorities for any of the MEP Participants, the Turnkey Contractor and any other designated Contractors to be present thereon to conduct Project Activities;

(4) exercise such powers of taking, compulsory acquisition, eminent domain or other similar sovereign powers to enable each of the MEP Participants and their designees to receive and exercise the Rights to Land and, in particular, to fulfill the grant by the State Authorities to the MEP Participants of the exclusive and unrestricted property right (other than ownership) to the Permanent Land as specified in Section 4.1(iii) of this Agreement and the exclusive and unrestricted right of ownership of the Facilities as specified in Section 4.1(iv) of this Agreement;

(5) pay such compensation to Persons in the Territory as may be required by Turkish Law to authorise the State Authorities to grant to and vest in each of the MEP Participants the rights obtained in accordance with the foregoing clause (4);

(6) furnish to each of the MEP Participants written evidence of all rights of entry and/or discharges (including, if applicable, the written acknowledgment by those Persons who have been dispossessed of any ownership, occupancy, possessory, construction and/or usage rights);

(7) ensure that the Rights to Land including, in particular, the rights obtained in accordance with the foregoing clause (4), and all necessary documents related thereto, are properly and timely registered or recorded in favour of each of and specifically naming the MEP Participants as property rightsholders in respect of the Permanent Land and owners of the Facilities in accordance with Turkish Law in order to satisfy any applicable requirements of Turkish Law and to provide public notice of the rights of each of the MEP Participants to the Rights to Land including, in particular, the rights obtained in accordance with the foregoing clause (4); and

(8) protect, defend and indemnify each of the MEP Participants, the Turnkey Contractor and other affected Project Participants from and against any Loss or Damage in respect of the Rights to Land and any and all third-party claims or demands (including any claims or demands by, or arising out of the use by, those adjacent landowners who may be granted the right by the MEP Participants (at their sole discretion), to enter upon and use the surface of the Permanent Land and any Loss or Damage in respect of the Facilities and MEP Activities caused by such landowners and/or Persons (other than Persons involved in Project Activities) such landowners allow on the Permanent Land or arising from their use of the land surface) arising from or related to the MEP Participants' exercise of their Rights to Land or the State Authorities' obligations under this Section 7.2(vii).

- (viii) the State Authorities shall not (1) characterise as, or conclude or determine that, this Agreement or any other Project Agreement is a special administrative contract granting a concession under Turkish Law; or (2) seek to limit, condition, deny or avoid, or fail or refuse to observe or enforce, any of the representations, warranties, grants, agreements, indemnities, waivers or obligations hereunder or under any other Project Agreement (including provisions on the resolution of disputes such as are contained in Article 18 hereof) made in favour of the MEP Participants, including on the basis that this or any other Project Agreement is or at any time has become a concession contract, special administrative contract granting a concession or similar agreement under Turkish Law;
- (ix) the State Authorities expressly authorise and agree that the Project may be implemented by the MEP Participants using whatever legal or business structure or structures, including an unincorporated joint venture of co-owners, a limited partnership, a limited liability company, corporation, branch[es] or any other structure or arrangement, as the MEP Participants may elect from time to time;
- (x) except as may be expressly provided therein, the State Authorities shall not amend, rescind, terminate, declare invalid or unenforceable, or otherwise seek to avoid or limit this Agreement, the Intergovernmental Agreement or any other Project Agreement without the prior written consent of the MEP

Participants and/or any other Project Participants which are parties to such agreements;

- (xi) the State Authorities shall take all actions available to them to restore the Economic Equilibrium established under the 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 Turkish Law (including any Turkish Laws regarding Taxes, health, safety and the environment) occurring after the later of (1) the Effective Date or (2) the date that the Government has fulfilled its obligations under Section 7.1 or 7.2(i), as applicable, including changes resulting from the amendment, repeal, withdrawal, termination or expiration of Turkish Law, the enactment, promulgation or issuance of Turkish Law, the interpretation or application of Turkish 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 State Authorities, jurisdictional alterations, and the failure or refusal of judicial bodies, tribunals and courts, and/or the State Authorities to take action, exercise authority or enforce Turkish Law (a “Change in Law”). Without limiting the foregoing, any legislative action or any interpretation or application of, or decision with respect to, Turkish Law by a judicial body, tribunal or court to the effect that this Agreement constitutes a special administrative contract granting a concession shall be conclusively deemed to be a Change in Law. 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 any Project Agreement and such Turkish Law; and
- (xii) the State Authorities shall perform and take all actions necessary and make all decisions required under this Agreement to facilitate performance of the Turnkey Agreement and the Government Guaranty.

7.3 Upon request by an MEP Participant or such other Project Participants as the MEP Participants may designate, the relevant State Authority shall provide a complete and proper list of all documentation (the “Application Requirements”) necessary to obtain a specific license, visa, permit, certificate, authorisation, approval or permission on the part of the MEP Participants and such other Project Participants as the MEP Participants may designate in order to carry out Project Activities. The MEP Participant or other Project Participants may rely on such listing of the particular Application Requirements as complete and proper, and the same shall be the only Application Requirements required for the relevant request. Subject only to the submission of the Application Requirements therefor, the State Authorities shall, on a priority basis within thirty (30) days, but in no event later than sixty (60) days (which sixty-day period shall be appropriate only under extraordinary circumstances), provide all licenses, visas, permits, certificates, authorisations, approvals and permissions necessary or appropriate in the opinion of the MEP Participants 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 fulfill their obligations in accordance with the Project Agreements, including:

- (i) use and enjoyment of the Rights to Land (subject to the provisions of Appendix 4);
- (ii) customs clearances;
- (iii) import and export licenses;
- (iv) visas and residence permits;
- (v) rights to open and maintain bank accounts;
- (vi) rights to lease or, where appropriate, acquire office space and employee accommodations;
- (vii) rights and licenses, in accordance with relevant Turkish Law, to operate communication and telemetry facilities (including the dedication of a sufficient number of exclusive radio and telecommunication frequencies as requested by the MEP Participants to allow the uniform and efficient operation of the MEP System within and without the Territory) for the secure and efficient conduct of Project Activities;
- (viii) rights to establish such branches, permanent establishments, 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;
- (ix) rights to operate vehicles and other mechanical equipment, and in accordance with relevant Turkish Law, the right to operate aircraft, ships and other water craft, in the Territory; and
- (x) environmental and safety approvals (subject to the provisions of Appendix 5).

With respect to all such rights, licenses, visas, permits, certificates, authorisations, approvals and permissions, including those customarily issued by the State Authorities, 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 therefor 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 Section 9.9(i) or 15.4 hereof or in the Project Agreements.

- 7.4 The State Authorities shall provide and/or exert Best Endeavours to make available to the Project Participants on Best Available Terms all goods, works and services as may be necessary or appropriate for the Project in the opinion of the requesting Project Participant that are owned or controlled by the State Authorities (including raw

materials, electricity, water (other than the water referred to in Section 4.1(vi), which is granted to the MEP Participants free of charge), gas, communication facilities, other utilities, onshore construction and fabrication facilities, supply bases, vessels, import facilities for goods and equipment, warehousing and means of transportation).

- 7.5 The State Authorities shall exert their Best Endeavours to assist the Project Participants in obtaining on Best Available Terms:
- (i) all goods, works, services and technology as may be necessary or appropriate for the Project in the opinion of the requesting Project Participant that are not owned, controlled or customarily provided by the State Authorities (including raw materials, electricity, water (other than the water referred to in Section 4.1(vi), which is granted to the MEP Participants free of charge), gas, communication facilities, other utilities, onshore construction and fabrication facilities, supply bases, vessels, import facilities for goods and equipment, warehousing and means of transportation); and
  - (ii) 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 (1) storage and staging of Petroleum, lines of pipe, materials, equipment and other supplies destined for or exiting from the Territory; (2) all marine vessels sailing to or from the Territory in connection with the export of Petroleum; (3) the import and/or export or re-export of any goods, works, services or technology necessary for the Project; and (4) exemptions from national, local and other taxes, duties, customs, levies, imposts, assessments, contributions, transit fees and other fees and charges in relation to Petroleum which is transported through the MEP System.
- 7.6 The State Authorities hereby consent to all actions on the part of any of the Project Participants necessary or appropriate (i) to implement the Project, including the transportation and shipment of Petroleum for export, (ii) to ensure the full and effective use and enjoyment of the Facilities and the Rights to Land, and (iii) to enable each of the MEP Participants and any other Project Participants to satisfy their respective obligations under all Project Agreements.
- 7.7 The State Authorities hereby consent to any Project Activities or actions taken preparatory to or in connection with the Project by the MEP Participants and their designated Contractors that comply with the Code of Practice set forth in Appendix 5 of this Agreement or any of the principles or standards set forth therein.

## **ARTICLE 8**

### **TURNKEY AGREEMENT AND GOVERNMENT GUARANTY**

- 8.1 In addition to the representations and warranties set forth in Article 6, the Government hereby further represents, warrants and acknowledges that:

- (i) the Turnkey Agreement obligates the Turnkey Contractor to carry out the construction of the Facilities on the terms and conditions set forth in the Turnkey Agreement;
- (ii) the Government is familiar with and finds acceptable the terms and conditions of the Turnkey Agreement and has designated the Turnkey Contractor;
- (iii) the Government Guaranty, on the terms and conditions set forth therein, obligates the Government to guarantee the payment of amounts payable by the Turnkey Contractor under the Turnkey Agreement;
- (iv) the Turnkey Agreement and the Government Guaranty are integral parts of the transactions contemplated by this Agreement and are essential to the implementation of the Project, and the MEP Participants are and will be relying on the Turnkey Agreement and the Government Guaranty, as well as the terms of this Agreement, in connection with the MEP Activities; and
- (v) in order to induce the MEP Participants to enter into this Agreement, the Government has executed and delivered the Government Guaranty and has caused the Turnkey Contractor to execute and deliver the Turnkey Agreement.

8.2 In addition to the covenants and consents set forth in Article 7, the Government hereby further covenants:

- (i) to maintain (a) the Government Guaranty and such related reasonable assurances, undertakings and other agreements to permit Lenders and Insurers to exercise the rights of the MEP Participants under the Government Guaranty and (b) counter-guaranties, approvals, consents and similar instruments as applicable to multilateral or bilateral lending and insurance agencies in respect of political risk protection to facilitate the financing of the Facilities arising therefrom in full force and effect in accordance with their terms;
- (ii) to execute and deliver counter-guaranties, approvals, consents and similar instruments, as applicable, to multilateral or bilateral lending and insurance agencies in respect of political risk protection to facilitate the financing of the Facilities and to take such further actions as may be reasonably required by the MEP Participants, their Lenders or Insurers to cause the Facilities to be financed so that such Facilities may be constructed, completed and commissioned (including start-up, testing and commencement of commercial operations) according to the cost, specifications and design elements and other terms and conditions of the Turnkey Agreement (the "Completion Activities"); and
- (iii) to execute and deliver other written documents, agreements and instruments as may be reasonably required from time to time by an MEP Participant or its Lender or Insurer as is necessary or appropriate to (1) evidence in greater detail the indemnities, guarantees, undertakings and assurances of the Government respecting the Completion Activities, including the Government's obligation to be responsible for such costs or liabilities in excess of the lump sum fixed price as specified under the Turnkey Agreement;

(2) guarantee and assure payment by the Turnkey Contractor of such contractual amounts and/or claims for damage as specified in the Turnkey Agreement or arising from any breach by the Turnkey Contractor of the Turnkey Agreement; (3) guarantee and assure the full and prompt payment and performance of all other obligations of the Turnkey Contractor in accordance with Article 10 of the Turnkey Agreement; (4) grant or extend the benefits of the Government Guaranty and any documents, agreements or instruments entered into as contemplated by this clause (iii) to any Lenders, Insurers or other Persons (including any multilateral and bilateral lending agencies, export credit agencies and other Financing Sources) necessary or useful to or involved in the financing of the Completion Activities; and (5) enter into any amendments or other modifications to Project Agreements already in effect as may be reasonably required by an MEP Participant or its Lender or Insurer as is necessary or appropriate to permit or facilitate the actions contemplated by this Article 8, which amendments or modifications shall be negotiated and agreed by the parties in good faith, and the consent of such parties with respect to such amendments or modifications shall not be unreasonably withheld, provided, however, that all actions contemplated under this Article affecting guarantees of obligations of the Turnkey Contractor under the Turnkey Agreement are subject to the limits on liability specifically provided in the Turnkey Agreement; and provided further that no counter-guarantee, approval, consent or similar instrument contemplated by this Article 8 shall increase the liability of the Government under this Agreement.

## **ARTICLE 9**

### **TAXES**

#### **9.1 General.**

- (i) Except as otherwise specifically provided in this Agreement, an MEP Participant, an Affiliate of an MEP Participant or Interest Holder that is a Foreign Entity, an Affiliate of an MEP Participant that is incorporated or otherwise legally created or established outside the Territory, has no activities other than activities related to the MEP System and does not have any profit as a result of Project Activities in the Territory (an “MEP Sister Affiliate”), and a Shipper shall not be subject to any Taxes, any Tax filing obligations or, in the case of an MEP Participant, an Affiliate of an MEP Participant or Interest Holder that is a Foreign Entity, an MEP Sister Affiliate with respect to its transactions with an MEP Participant which do not generate profit in the Territory (other than dividends or other distributions or other remittances of profit), or a Shipper that is a Foreign Entity and does not have income attributable to an Office in the Territory, any Tax compliance obligations arising from or related, directly or indirectly, to MEP Activities, the MEP System, the Facilities, the Rights to Land, Petroleum that is transported through the Facilities or the MEP System or any related assets or activities, whether before (but not before 15 May 1998), on or after the Effective Date.

- (ii) 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.
- (iii) The provisions of this Article 9 shall at all times prevail over all conflicting provisions of Turkish Law.
- (iv) To the extent any provisions of this Article 9 are or could be construed as being inconsistent with the other provisions of this Agreement (including Sections 4.2 and 11.1), the provisions of this Article 9 shall govern.
- (v) For purposes of Taxes, the MEP System (whether before or after its completion), the Rights to Land or Petroleum that is transported through the Facilities or the MEP System shall not be regarded as an Office or permanent establishment of an MEP Participant, Affiliate of an MEP Participant, Interest Holder or Shipper.

## 9.2 MEP Participants.

- (i) Each of the MEP Participants is subject to corporation tax in accordance with the Turkish corporation tax law, as amended by the provisions of this Article 9, in respect of its Project Activities (other than activities described in Section 9.2(x)) for each Year (the “Corporation Tax”). The Corporation Tax shall apply individually to each MEP Participant. The Corporation Tax shall consist of a Base Corporation Tax and a Corporation Tax Surtax. Subject to Section 9.2(iii), the amount of the Base Corporation Tax liability of an MEP Participant for a Year shall be equal to such MEP Participant’s taxable income (other than taxable income described in Section 9.2(x)) related to Project Activities for the Year, which shall be based on such MEP Participant’s separate share of any income, expenses and other taxable items (other than any such items taken into account in determining taxable income described in Section 9.2(x)) related to Project Activities for the Year as determined in accordance with the Turkish corporation tax law, multiplied by the general corporation tax rate in force in the Territory on 1 January 1999 (which is thirty percent (30%)).
- (ii) The amount of the Corporation Tax Surtax imposed on an MEP Participant for a Year shall be equal to the excess, if any, of such MEP Participant’s total Corporation Tax liability over such MEP Participant’s Base Corporation Tax liability for the Year. The MEP Participants shall be subject to Corporation Tax Surtax for each Year in lieu of any liability for corporation tax fund levy, additional corporation tax or other emergency income tax or surcharge or Taxes on undistributed profit after imposition of corporation tax for such Year.
- (iii) An MEP Participant’s total Corporation Tax liability for a Year shall be equal to an amount per Barrel of Petroleum transported through the capacity owned by such MEP Participant in the Facilities during such Year as measured at the Point of Terminus equal to the Corporation Tax Amount for such Year. In the event an MEP Participant’s Base Corporation Tax liability for a Year as determined under Section 9.2(i) exceeds such MEP Participant’s total

Corporation Tax liability for the Year, the amount of such MEP Participant's Base Corporation Tax liability for the Year shall be reduced to an amount equal to such MEP Participant's total Corporation Tax liability for the Year (and no Corporation Tax Surtax shall be imposed on such MEP Participant for the Year).

- (iv) The Corporation Tax imposed on each MEP Participant for a Year shall fully satisfy such MEP Participant's liability for Taxes which may be imposed in accordance with the Turkish corporation tax law or otherwise on or with respect to income or profit (other than taxable income described in Section 9.2(x)) of such MEP Participant in connection with MEP Activities for the Year.
- (v) Notwithstanding the foregoing, in the event of an assignment by more than one of the MEP Participants of all or any of their interests in the Project to an assignee which is an Entity that is a partnership pursuant to the law under which the Entity was established (the "Partnership") in exchange for partnership interests in the Partnership, the Corporation Tax (consisting of the Base Corporation Tax and the Corporation Tax Surtax) shall apply individually to each of the partners in the Partnership (the "Partners") as if each of the Partners was a separate MEP Participant. The individual liability of a Partner for Corporation Tax (consisting of the Base Corporation Tax and the Corporation Tax Surtax) shall be based on the Partner's share of the profits of the Partnership and the Barrels of Petroleum transported by the Partnership through the Facilities as measured at the Point of Terminus. The Partnership, notwithstanding any contrary provision in this Article 9, shall not itself be liable for Corporation Tax or have any Corporation Tax compliance or filing obligations.
- (vi) Each MEP Participant shall file a Corporation Tax return for each Year for which it is liable for Corporation Tax and shall submit such Corporation Tax return to the Taxation Office, and pay the Corporation Tax for such Year to the Taxation Office on behalf of the State, not later than thirtieth (30th) April of the following Year. The Corporation Tax return shall set forth general information regarding the MEP Participant, the amounts of the total Corporation Tax, Base Corporation Tax and Corporation Tax Surtax for the Year and such additional information as may be provided for in any agreement described in Section 9.9(vi). There shall be attached to such return an annex which contains the following summary information with respect to the MEP Participant's Project Activities for the Year: the MEP Participant's gross income from tariffs, depreciation deductions, other deductions, total taxable income, Base Corporation Tax liability, the number of Barrels of Petroleum transported by all MEP Participants and by such MEP Participant through the Facilities during the Year as measured at the Point of Terminus, the Corporation Tax Amount, Corporation Tax Surtax liability, total Corporation Tax liability and such additional information as may be provided for in any agreement described in Section 9.9(vi). Such return and annex will not include any amounts relating to the MEP Participant's taxable income described in Section 9.2(x). Each MEP Participant shall maintain its books and records with respect to Project Activities in accordance with accounting

standards which are generally accepted in the international Petroleum transportation industry, and shall have the right to maintain such books and records and prepare its Corporation Tax returns exclusively in Dollars. The filing of the Corporation Tax return for a Year and payment of Corporation Tax thereunder shall be deemed to be a final and conclusive settlement of the amount of the Corporation Tax liability of the MEP Participant for the Year. Advance (temporary) Corporation Tax returns shall not be filed, and advance (temporary) Corporation Tax payments shall not be made, by the MEP Participants. All payments of Corporation Tax shall be made in Dollars.

- (vii) If an MEP Participant fails to pay the Corporation Tax for a Year on or before the date it is due, interest shall accrue and shall be paid by such MEP Participant in Dollars on the unpaid portion of such MEP Participant's total Corporation Tax liability for the Year from the date it is due until the date it is paid at the Agreed Interest Rate.
- (viii) Each MEP Participant shall make its Corporation Tax payments to the Taxation Office for the location of the primary operating office in the Territory of the Operating Company which is responsible for operating the Facilities, or, if there is no such office, to the Beyoglu Transport Taxation Office in Istanbul. Any such Corporation Tax payment may be made on behalf of such MEP Participant by an agent thereof (including an Operating Company).
- (ix) The Taxation Office to which an MEP Participant makes any Corporation Tax payment will issue to such MEP Participant separate official tax receipts evidencing the amounts of such payment that are attributable to Base Corporation Tax and to Corporation Tax Surtax, if applicable, within ten (10) days after such payment is made. Such tax receipts shall state the date and relevant Dollar amount, whether the amount relates to Base Corporation Tax or Corporation Tax Surtax, the currency in which such payment was made and any other particulars customary in the State for such receipts.
- (x) An MEP Participant may, subject to any Double Tax Treaty, be subject to Taxes (including Taxes on undistributed profit after imposition of any Taxes on profit) on its taxable income from the supply of goods or technology (except goods or technology supplied pursuant to works or services) in connection with MEP Activities if such income is attributable to an Office of such MEP Participant in the Territory. Any such taxable income shall be reported, and any such Taxes shall be paid, in the manner required by Turkish Law. Such taxable income shall be reported on a corporation tax return along with taxable income of the MEP Participant subject to corporation tax that is not derived in connection with MEP Activities. The MEP Participant shall be required to comply with Tax compliance and filing obligations under Turkish Law with respect to any activities described in this Section 9.2(x).

### 9.3 Contractors.

- (i) Except as otherwise provided in this Article 9, Taxes may be imposed on, or withheld with respect to payments to, any Foreign Contractor in connection

with Project Activities and any other Contractor in connection with MEP Activities, and Tax compliance or filing obligations shall apply to any Foreign Contractor in the case of Project Activities and any other Contractor in the case of MEP Activities. For the avoidance of doubt, for purposes of this Section 9.3, a Contractor shall include an Affiliate of an MEP Participant, Interest Holder, Operating Company or Shipper in its role as a Contractor.

- (ii) No Taxes shall be imposed on, or withheld with respect to payments to, the Construction Contractor or Back-to-Back Subcontractor in connection with MEP Activities.
- (iii) No Taxes shall be imposed on, or withheld with respect to payments to, any First Level Subcontractor or Second Level Subcontractor which is a Major Subcontractor in respect of works or services (including any goods or technology supplied pursuant to works or services) in connection with MEP Activities, but only if the total amount paid or payable to such First Level Subcontractor or Second Level Subcontractor under the relevant works or services contract or agreement is equal to at least (1) two hundred fifty thousand Dollars (\$250,000) (or equivalent value in other currency based on market exchange rates at the time the contract or agreement is signed), in the case of a First Level Subcontractor or Second Level Subcontractor that is a Contractor, directly or indirectly, of the Construction Contractor or, in the case of activities in connection with the design, construction, installation, capacity expansion, extension, interconnection, modification, retirement or abandonment of the Facilities (“Construction Activities”), of all or any of the MEP Participants or an Exempt Operating Company, or (2) one hundred thousand Dollars (\$100,000) (or equivalent value in other currency based on market exchange rates at the time the contract or agreement is signed), in the case of a First Level Subcontractor or Second Level Subcontractor that is a Contractor, directly or indirectly, of an Exempt Operating Company or all or any of the MEP Participants other than in connection with Construction Activities.
- (iv) No Taxes shall be imposed on, or withheld with respect to payments to, any Foreign Contractor in connection with MEP Activities with respect to (1) works or services performed outside the Territory, or (2) the reimbursement of costs or expenses incurred by the Foreign Contractor, or (3) works or services performed over a period not exceeding one hundred eighty-three (183) days during the Year and not attributable to an Office of the Foreign Contractor located in the Territory, or (4) income or payments that are exempt from Tax in accordance with the provisions of a Double Tax Treaty (together, “Excluded Services”).
- (v) No Taxes shall be imposed on, or withheld with respect to payments to, an Affiliate of an MEP Participant in respect of any supply of goods, works, services or technology charged at cost (including all related expenses) to such MEP Participant.
- (vi) No Taxes shall be imposed on, or withheld with respect to payments to, any Foreign Subcontractor in respect of works or services (including any goods or

technology supplied pursuant to works or services) in connection with MEP Activities, except that, subject to any Double Tax Treaty, any such taxable income of a Foreign Contractor which is not exempt from Taxes under Section 9.3(ii), (iii), (iv), or (v) may be subject to corporation tax or income tax under Turkish Law at an aggregate rate not to exceed twenty-five percent (25%) of such taxable income, inclusive of any fund levy, additional corporation or income tax or other emergency income tax or surcharge, Taxes on undistributed profit after imposition of any Taxes on profit and any other Taxes which may be imposed on or with respect to income or profit of the Foreign Contractor in connection with Project Activities.

- (vii) A Foreign Contractor whose only transactions in the Territory in connection with Project Activities during a Year constitute Excluded Services shall have no Tax compliance or filing obligations for the Year other than the obligation to provide the Taxation Office with necessary documentation which the Taxation Office may reasonably request regarding its transactions in connection with Project Activities.
- (viii) The MEP Participants and their Affiliates and Interest Holders, and their respective employees, shall have no liability or responsibility to the State Authorities for any failure of Contractors to comply with Turkish Law regarding Taxes.

#### 9.4 Payments to Certain Persons.

- (i) Except as otherwise provided in this Article 9, Taxes may be imposed on, or withheld with respect to, any payments or deemed payments made by (1) MEP Participants or their Interest Holders that are incorporated or otherwise legally created or established outside the Territory, MEP Sister Affiliates, Foreign Contractors, or Project Participants that are Foreign Entities in connection with Project Activities and (2) any other Project Participants in connection with MEP Activities.
- (ii) No Taxes shall be imposed with respect to payments or deemed payments made in connection with MEP Activities by all or any of the MEP Participants that are incorporated or otherwise legally created or established outside the Territory, Affiliates of MEP Participants that are Foreign Entities, MEP Sister Affiliates, or Shippers in respect of payments or deemed payments that are not attributable to an Office of the Shipper in the Territory, or by any branch or permanent establishment thereof, to any Foreign Entity. No Taxes shall be withheld with respect to payments or deemed payments made in connection with MEP Activities by all or any of the MEP Participants that are incorporated or otherwise legally created or established outside the Territory, Affiliates of MEP Participants that are Foreign Entities, MEP Sister Affiliates, or Shippers in respect of payments or deemed payments that are not attributable to an Office of the Shipper in the Territory, or by any branch or permanent establishment thereof, to any Foreign Entity or to any physical person who is not an employee of the payor.

- (iii) For purposes of this Section 9.4, (1) payments shall mean (a) any dividends or other distributions or other remittances of profit, cost reimbursements or overhead charges and (b) payments of interest or other amounts in connection with a loan or other financing, royalties or late payment charges and payments for insurance, software or processing provided that any such payments are not attributable to an Office of the payee located in the Territory, (2) Taxes on deemed payments shall mean any Taxes on undistributed profit after imposition of any Taxes on profit, and (3) royalties shall mean payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, patent, trademark, design, model, plan, secret formula, process, or information concerning industrial, commercial or scientific experience. No Taxes shall be imposed on or with respect to payments made by an MEP Participant or an Operating Company to an Affiliate thereof, or to an Interest Holder or an Affiliate thereof, in reimbursement of costs incurred on behalf of the payor or for overhead charges.
- (iv) No Taxes shall be imposed or withheld with respect to payments of dividends or other distributions or other remittances of profit made to a Foreign Entity, or deemed payments, in connection with MEP Activities by any Exempt Operating Company or by any Contractor with respect to profits that are exempt from Taxes under Section 9.3(ii), (iii) or (iv) or subject to the twenty-five percent (25%) tax rate under Section 9.3(vi). No Taxes shall be imposed or withheld with respect to payments of dividends or other distributions or other remittances of profit made to a Foreign Entity or payments of interest or other amounts in connection with a loan or other financing made to a Foreign Entity that is a financial institution or direct or indirect equity owner of the payor, or deemed payments, in connection with MEP Activities by an Interest Holder that is incorporated or otherwise legally created or established outside the Territory.

## 9.5 Employees.

- (i) All Foreign Employees shall be liable to pay Taxes only on their income earned as a direct result of their employment in the Territory, subject to any applicable Double Tax Treaty; provided, however, such a Foreign Employee shall be liable for such Taxes for a Year only if he or she is present in the Territory for one hundred eighty-three (183) or more days during the Year.
- (ii) The Project Participants, their Affiliates and their respective Foreign Employees shall not be required to make payments of State social insurance (including accident, sickness, maternity, disability, retirement and life insurance contributions and social security support premiums) and other social fund payments with respect to their Foreign Employees; provided, however, such payments shall be made with respect to each Foreign Employee who is present in the Territory for one hundred eighty-three (183) or more days during a Year in a total amount equal to one thousand two hundred Dollars (\$1,200) for the Year.

- (iii) Except as otherwise provided in this Section 9.5, the Project Participants shall be subject to any Taxes and Tax compliance and filing obligations applicable to them under Turkish Law with respect to their employees involved, directly or indirectly, in Project Activities.
- 9.6 No Taxes on Transfers, Contributions, Loans, Etc. 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 an MEP Participant, an Operating Company, an Interest Holder or a predecessor or Affiliate of any of the foregoing arising under any Project Agreement or in connection with the Project or the MEP System; an Interest Holder's interest in an MEP Participant or an Operating Company; an MEP Participant's interest in an Operating Company; or any rights or obligations of an MEP Participant, an Operating Company or any Interest Holder or Shipper with respect to the transportation of Petroleum in and/or through the Facilities or the MEP System. No Taxes shall be imposed on any contribution of assets or any loan to or by any Project Participant in connection with MEP Activities. The provisions of this Section 9.6 shall apply to any assignment, transfer, pledge, adjustment, contribution or loan described above, whether made before (but not before 15 May 1998), on or after the Effective Date.
- 9.7 Operating Companies. Except as otherwise specifically provided in this Article 9, no Exempt Operating Company shall be subject to any Taxes with respect to MEP Activities. For purposes of this Article 9 (including the defined terms used in this Article 9), an Exempt Operating Company will be treated as an Operating Company, and not as a Contractor, with respect to its provision of works or services (including goods or technology provided pursuant to works or services) to the MEP Participants or the Overall Operating Company in connection with MEP Activities.
- 9.8 VAT; Certificates.
- (i) Each MEP Participant, Construction Contractor, Operating Company and Shipper shall be exempt with credit (zero percent (0%) rate) from VAT on all goods, works, services and technology supplied by it in connection with MEP Activities. Every supplier of goods, works, services and technology to each MEP Participant, Construction Contractor, Operating Company, Back-to-Back Subcontractor, First Level Subcontractor or Shipper in connection with MEP Activities shall treat those supplies for VAT purposes as being exempt with credit (zero percent (0%) rate). Each MEP Participant, Operating Company and Shipper shall be exempt with credit (zero percent (0%) rate) from VAT on all its imports and exports of Petroleum which is transported through and exported from the Facilities. Each MEP Participant, its Affiliates and Interest Holders acting on its behalf, Operating Company and Contractor shall be exempt with credit (zero percent (0%) rate) from VAT on all its (1) imports of Petroleum, natural gas used as fuel, fuels and lubricants to be used in connection with the Project, (2) imports of goods (other than goods described in clause (1)), works, services and technology acquired by it in connection with MEP Activities and (3) exports and re-exports of goods (other than goods described in clause (1)), works, services and technology by it in connection with MEP Activities.

- (ii) The appropriate Taxation Office or other appropriate tax or customs authority shall provide each Person, as well as each successor or permitted assignee of such Person, that is entitled to the exemptions and/or VAT zero percent (0%) rate as provided in this Agreement with a certificate or other legally valid documentation confirming such exemptions and/or VAT zero percent (0%) rate within thirty (30) days after receipt of a written request for such certificate or documentation. Any such request shall include genuine documentation confirming the identity and status under this Agreement of the Person making such request. Each of the MEP Participants, their Affiliates or Interest Holders acting on their behalf, Operating Companies or Contractors shall provide the appropriate Taxation Office or other tax or customs authority with notification on a regular basis of any imports that it made which were exempt from VAT under the final sentence of Section 9.8(i).
- (iii) An MEP Participant, Operating Company or Contractor shall be entitled to offset any input VAT paid against any output VAT collected for a calendar month. Any such offset shall be applied first against input VAT paid in connection with activities other than MEP Activities and then against input VAT paid in connection with MEP Activities. To the extent there remains any excess of input VAT paid in connection with activities other than MEP Activities over output VAT collected in connection with activities other than MEP Activities for the calendar month, such MEP Participant, Operating Company or Contractor shall be entitled to any remedy provided for under Turkish Law for the recovery of such excess VAT. To the extent there remains any input VAT paid in connection with MEP Activities for the calendar month that has not been offset (“MEP Excess VAT”), such MEP Participant, Operating Company or Contractor shall be entitled to offset the amount of such MEP Excess VAT against any of its own Taxes that are due or Taxes it is required to withhold (including Corporation Tax or income tax withheld from payments to employees) which it otherwise would be required to pay or to a prompt refund of the amount of such MEP Excess VAT or any other remedy provided for under Turkish Law for the recovery of such MEP Excess VAT. In the case of any such offset against Corporation Tax liability of an MEP Participant, the amount of such offset shall be treated as payment by such MEP Participant of such Corporation Tax for purposes of Section 9.2 (including the requirement that a tax receipt be issued in accordance with Section 9.2(ix)). Such MEP Participant, Operating Company or Contractor shall notify the Taxation Office or other appropriate authority in writing of any such offset of MEP Excess VAT (including the amount thereof). The amount of any such refund or offset of MEP Excess VAT shall be increased by interest at the Agreed Interest Rate from the date sixty (60) days after the date the MEP Participant, Operating Company or Contractor filed the relevant return or claim seeking the refund (or such earlier date as may be provided for under Turkish Law for any VAT refund or offset) to the date the refund is paid and, if the refund claim is in Local Currency, the amount of such refund or offset, as well as the interest thereon from the date described above, shall also be increased to reflect the difference in the Dollar value of the amount of the refund based on any change in market rates of exchange from the date ten (10) Business Days after the date the return or claim for refund was filed to the date the refund is paid. Any such claim for refund of MEP Excess VAT may be

filed on or after the first (1st) day of the month after the month in which the input VAT was paid.

- (iv) The appropriate Taxation Office shall provide each Construction Contractor, Back-to-Back Subcontractor, First Level Subcontractor and Second Level Subcontractor, as well as each successor or permitted assignee thereof, with a certificate confirming its status as a Construction Contractor, Back-to-Back Subcontractor, First Level Subcontractor or Second Level Subcontractor, as the case may be, and, if it is also a Major Subcontractor that is entitled to exemption from Taxes pursuant to Section 9.3, with a certificate confirming its status as a Major Subcontractor, within thirty (30) days after its receiving a written request for such certificate. Any such request shall include a letter from the relevant Construction Contractor, MEP Participant or Operating Company confirming the identity and status under this Agreement of the Person making such request, along with genuine documentation supporting such letter.

#### 9.9 Other.

- (i) The MEP Participants shall pay any registration or similar fees, other than customs service/documentation fees (covered by Section 15.4), which may be imposed by the State Authorities, but only to the extent they are nominal and of a non-discriminatory nature.
- (ii) An MEP Participant shall not be subject to any interest, penalties and fines (including financial sanctions and administrative penalties) under Turkish Law with respect to Taxes related to MEP Activities, except (1) monetary penalties for failure to provide to the Taxation Office invoices, documentation or information with respect to the MEP Participant's transactions in the Territory, but only if such failure is willful and systematic, (2) penalties for obtaining false and fake invoices with respect to the MEP Participant's transactions in the Territory, but only if the MEP Participant knowingly and willfully obtained the false and fake invoice, (3) monetary penalties for failure to obtain or retain an invoice in accordance with Turkish Law (subject to Section 9.9(v)) with respect to the MEP Participant's transactions in the Territory, provided that such penalties shall not apply (a) in the case of the failure by the MEP Participant to obtain or retain an invoice with respect to a transaction if the amount of consideration payable in connection with such transaction is equal to at least one hundred Dollars (\$100) (or equivalent value in other currency based on market exchange rates at the time the relevant contract or agreement is entered into), (b) in the case of a mere technical or insubstantial irregularity with respect to an invoice or (c) if the MEP Participant provides the invoice or a replacement invoice to the Taxation Office within thirty (30) days (plus such additional period of at least fifteen (15) days as may be permitted by the Taxation Office upon request of the MEP Participant, such permission not to be unreasonably withheld), and the total amount of such penalties for which an MEP Participant may be liable for any Year shall not exceed sixty-five thousand Dollars (\$65,000) (or equivalent value in Local Currency based on market exchange rates at the time the penalty is paid), (4)

interest payable as computed under Section 9.2(vii) and (5) as required under Turkish Law with respect to Taxes payable under Section 9.2(x) or 9.5.

- (iii) Notwithstanding any provision in this Article 9 (except Section 9.9(v)) to the contrary, an MEP Participant shall be required to provide the Taxation Office with documentation and information which the Taxation Office may reasonably request in writing regarding its transactions in the Territory and, in the case of an MEP Participant which is a Partnership, the determination of each Partner's share of the Barrels of Petroleum transported by the Partnership through the Facilities as measured at the Point of Terminus, and shall obtain invoices for all transactions in the Territory. Each MEP Participant shall maintain a record of the number of Barrels of Petroleum transported by it through the Facilities as measured at the Point of Terminus.
- (iv) Notwithstanding any provisions in this Article 9 to the contrary, each Operating Company shall be required to comply with Tax compliance and filing obligations under Turkish Law, except that it shall have the right to maintain all records in accordance with accounting standards which are generally accepted in the international Petroleum transportation industry, which records may be maintained in Dollars.
- (v) An MEP Participant or Operating Company shall not be required to retain any documentation, invoices, records or other materials relating to Taxes for more than sixty (60) months after the Year in which such documentation, invoices, records or materials were created or received.
- (vi) The Ministry of Finance and the MEP Participants may enter into one or more agreements, which may not be amended without the written consent of each of them, containing detailed rules regarding the administration and application of the provisions of this Article 9 (subject to the principles of this Article 9).
- (vii) The provisions of this Article 9 shall survive the termination of this Agreement. If an MEP Participant is no longer a Party to this Agreement, the provisions of this Article 9 shall continue to apply to Taxes or any Tax compliance or filing obligations arising from or related, directly or indirectly, to the MEP Participant's assets or activities pursuant to this Agreement for all periods in which the MEP Participant was a Party to this Agreement.

## **ARTICLE 10**

### **COMPENSATION FOR LOSS OR DAMAGE**

10.1 Without prejudice to the right of the MEP Participants to seek full performance by the State Authorities of the State Authorities' obligations under any Project Agreement, the Government shall provide monetary compensation as provided in this Article 10 for any Loss or Damage which is caused by or arises from:

- (i) any failure of the State Authorities, whether as a result of action or inaction, to fully satisfy or perform all of their obligations under all Project Agreements;

- (ii) any misrepresentation by the State Authorities in any Project Agreement;
- (iii) any failure by the State Authorities, whether as a result of action or inaction, to maintain Economic Equilibrium as provided in Section 7.2(xi);
- (iv) any requisitioning by Governmental forces or authorities of the assets of any Project Participant or any damage or destruction by Governmental forces or authorities of the assets of any Project Participant during any event of war (declared or undeclared), armed conflict or similar event in the Territory; or
- (v) any act of Expropriation by the State Authorities.

Without limiting the foregoing, the obligation of the Government to provide monetary compensation also applies with respect to any such Loss or Damage caused by or arising from any of the foregoing by any Person which was a State Entity at the time the applicable Project Agreement was executed by it.

10.2 In the event and to the extent any Project Participant suffers any Loss or Damage of the kind described in Section 10.1, the Government shall provide prompt, adequate and effective compensation for all such Loss or Damage. Solely for purposes of this Article 10, any reference to Project Participants shall not include Lenders or Insurers; provided, however, nothing contained herein shall alter, amend, waive, condition or release (i) any State Authority from any claims, causes of action or rights of Lenders or Insurers which may exist independent of this Agreement or which may arise independent of this Agreement or (ii) step-in rights, rights of subrogation or other similar rights, and the exercise of same, which Lenders and/or Insurers may have in respect of any other Project Participant in respect of the Project. In respect of the adequacy of compensation, if the Loss or Damage:

- (i) is of the kind described in Section 10.1(i) through (iv), the Government shall accord as among the monetary remedies of (1) money damages, (2) restitution, (3) reimbursement, (4) indemnification and (5) other forms of monetary relief (excluding punitive or exemplary damages), that monetary remedy or combination of monetary remedies as the MEP Participants may elect to the end that all Project Participants shall be fully and fairly compensated and kept whole by the State Authorities respecting all such Loss or Damage;
- (ii) is, notwithstanding the monetary remedies set forth in Section 10.2(i), applicable to the events described in Section 10.1(iv), a result of any event of war (declared or undeclared), armed conflict or similar event in the Territory, the Government shall accord to the MEP Participants for themselves and/or any other Project Participants the most favourable treatment (including such remedies as restitution, money damages, indemnification or other settlement) of those treatments accorded any other Person affected by such event; and
- (iii) results from or relates to any act of Expropriation by the State Authorities (as described in Section 10.1(v)), the Government shall pay Fair Market Value.

- 10.3 With respect to all monetary relief under this Article 10, all amounts shall be expressed and paid in a currency that is widely traded in international foreign exchange markets and widely used in international transactions, on the basis of the market rate of exchange for that currency at the close of business of the London Stock Exchange on the date of payment, and shall be paid together with interest at the Agreed Interest Rate from the date of breach by the State Authorities of a Project Agreement, the date of misrepresentation by the State Authorities in any Project Agreement, the date of change in Economic Equilibrium, the date of requisitioning, loss or damage of assets during war or the date of Expropriation, as the case may be, to the date of payment to the MEP Participants by the State Authorities.
- 10.4 In the event the State Authorities should ever carry out any act of Expropriation with respect to the Project, the State Authorities shall do so only where such Expropriation is (i) for a purpose which is an overriding public purpose, (ii) not discriminatory, (iii) carried out under due process of law and (iv) accompanied by the payment of compensation as provided in Section 10.2(iii). For purposes of the foregoing, due process respecting any claim of Expropriation shall include the MEP Participants' right to resort to the arbitration provisions of this Agreement for purposes of establishing that an Expropriation has taken place (both as to themselves and on behalf of any Project Participants) and for the assessment through arbitration of the amount owed by the State Authorities to the MEP Participants as adequate compensation as provided in Section 10.2(iii) for all Loss or Damage suffered by the MEP Participants and/or and all other Project Participants caused by or arising from such Expropriation.
- 10.5 The Government's obligation to provide monetary compensation to the MEP Participants under this Article 10:
- (i) is several, independent, absolute, irrevocable and unconditional and constitutes an independent covenant and principal obligation of the Government, separately enforceable from all other obligations (including monetary compensation obligations) of the State Authorities under the Project Agreements, without regard to the invalidity or unenforceability of any such other obligations;
  - (ii) is enforceable, jointly and severally, against the constituent elements of the State Authorities and, regardless of against whom enforcement is sought, any award or claim for payment due under this Article 10 may be submitted to the Ministry of Energy and such award or claim for payment (granted, with respect to a claim for payment, such claim is not disputed by the State Authorities) shall be paid to the MEP Participants on or before thirty (30) days after receipt by the Ministry of Energy of the related award or claim for payment;
  - (iii) shall not be modified, impaired or rendered unenforceable by any defense available to the State Authorities or as a result of the occurrence of any event that, but for this Section 10.5(iii), would discharge that obligation other than by the full performance thereof in accordance with this Agreement.

- 10.6 The Government shall compensate the MEP Participants for any Loss or Damage set forth in this Article 10 suffered by the MEP Participants and/or another Project Participant. In no event shall the Government's obligation to provide compensation under this Article 10 include any punitive or exemplary damages.
- 10.7 Notwithstanding anything in this Agreement to the contrary:
- (i) no party to the Turnkey Agreement shall have any liability hereunder with respect to the Turnkey Agreement in an amount which is in excess of, or in any manner which is different than, that which is specifically provided in the Turnkey Agreement; and
  - (ii) the Government shall have no payment liability hereunder with respect to the Government Guaranty in an amount which is in excess of, or in any manner which is different than, that which is specifically provided in the Government Guaranty.

## **ARTICLE 11**

### **LIMITATION OF LIABILITY**

- 11.1 The MEP Participants shall be liable to the State Authorities for Loss or Damage caused by or arising from (i) any breach by them of any Project Agreement or (ii) any breach by them of any applicable law; provided, however, that the MEP Participants shall have no liability hereunder if and to the extent the Loss or Damage is caused by or arises from any breach of any Project Agreement and/or breach of duty by any State Authority. Notwithstanding the foregoing, the MEP Participants shall not be liable to the State Authorities for any punitive or exemplary damages.
- 11.2 The MEP Participants shall be liable to a third party (other than the State Authorities and any Project Participant) for Loss or Damage suffered by such third party as a result of the MEP Participants' breach of the standards of conduct set forth in the Project Agreements; provided, however, that the MEP Participants shall have no liability hereunder if and to the extent the Loss or Damage is caused by or arises from any breach of any Project Agreement and/or breach of duty by any State Authority.
- 11.3 The MEP Participants shall have no joint and several liability under this Agreement except in respect of liability arising from their failure to comply with applicable law in the conduct of Pipeline Activities (other than liability in respect of any matters relating to Taxes) and with the terms of Article 13 and Appendix 5.
- 11.4 Except as set forth in Section 3.4 hereof, it is understood and agreed that under no circumstances whatsoever shall the Government or any State Authorities have the right to seek or declare any cancellation or termination of this or any other Project Agreement as a result of any breach by the MEP Participants or any other Project Participants.

## **ARTICLE 12**

### **SECURITY**

- 12.1 Commencing with the initial Project Activities relating to route identification and evaluation and continuing throughout the life of the Project, the State Authorities shall ensure the safety and security of the Rights to Land, the Facilities and all Persons within the Territory involved in Project Activities and shall protect the Rights to Land, the Facilities and those Persons from all Loss or Damage resulting from civil war, sabotage, vandalism, blockade, revolution, riot, insurrection, civil disturbance, terrorism, kidnapping, commercial extortion, organised crime or other destructive events.
- 12.2 In order to avoid or mitigate harm to the Project of the kind described in Section 12.1, the State Authorities shall, on request by and in consultation with the MEP Participants, exert their Best Endeavours consistent with Appendix 5 to enforce any relevant provisions of Turkish Law relating to threatened and/or actual instances of loss or damage caused by third parties (other than Project Participants) to the Rights to Land, the Facilities or loss or injury to Persons within the Territory involved in Project Activities.
- 12.3 Without limiting the State Authorities' obligations under Sections 12.1 and 12.2, the Government, at its sole cost and expense, but in regular consultation with the MEP Participants, shall use the security forces of the State to provide physical security for the Rights to Land, the Facilities and Persons within the Territory involved in Project Activities. As among the Parties, the Government shall be solely liable for the conduct of all operations of the security forces of the State and neither the MEP Participants nor any other Project Participants shall have any liability or obligation to any Person for any acts or activities of the security forces of the State or be obligated to reimburse the Government for the cost and expense of providing security as contemplated hereby.

## **ARTICLE 13**

### **ENVIRONMENT, HEALTH, SAFETY AND SOCIAL IMPACT**

- 13.1 The applicable environmental, health and safety standards and practices for the Project shall be as set forth in Appendix 5 attached hereto. The State Authorities hereby agree to the standards and practices set forth in Appendix 5 and consent to any action taken by or on behalf of the MEP Participants and other Project Participants in conformity therewith. If a spillage or release of Petroleum occurs from the Facilities, or any other event occurs which is causing or likely to cause material environmental damage or material risk to health and safety, the MEP Participants shall take all necessary action as set forth in Appendix 5 and, on request by or on behalf of the MEP Participants, the State Authorities shall, in addition to any indemnification obligations the State Authorities may have under the Project Agreements, use their Best Endeavours to make available promptly and in reasonable quantities, any labor, materials and equipment not otherwise readily available to the MEP Participants or their Contractors to assist in any remedial or repair effort.

- 13.2 The applicable social impact standards, practices and program for the Project shall be effected as set forth in Appendix 5 attached hereto. The State Authorities hereby agree to the standards and practices set forth in Appendix 5 and consent to any action taken by or on behalf of the MEP Participants and other Project Participants in conformity therewith.

## **ARTICLE 14**

### **CURRENCY**

- 14.1 The State Authorities confirm that the MEP Participants and all other Project Participants shall have the right for the duration of Project Activities:
- (i) 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;
  - (ii) 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;
  - (iii) to purchase and/or convert Local Currency with and/or into Foreign Currency at the market exchange rate legally available or, if applicable, at a rate of exchange made available in respect of similar sums of money by the central bank of the State or any successor organisation to foreign Entities doing business in the Territory, without deductions or the imposition of fees other than usual and customary banking charges;
  - (iv) to transfer, hold and retain Foreign Currency outside the Territory;
  - (v) to be exempt from all mandatory conversions, if any, of Foreign Currency into Local Currency or other currency;
  - (vi) 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;
  - (vii) to pay Contractors and Foreign Contractors abroad, directly or indirectly, in whole or in part, in Foreign Currency, for their goods, works, technology or services supplied to the Project; and
  - (viii) to make any payments provided for under any Project Agreement in Foreign Currency.
- 14.2 All payments to be made by the State Authorities under any Project Agreement shall be made in Dollars and on the basis of the market rate of exchange at the time of payment, except that any such payments with respect to Taxes that have been paid

shall be made in the currency in which such Taxes were paid. The State Authorities shall take all steps and measures required to ensure that:

- (i) all such payments shall be made without any withholdings or other deductions whatsoever; and
- (ii) it has available to it at all times sufficient Dollars and effective means of payment to transfer to the relevant Person full value at the relevant time.

## **ARTICLE 15**

### **IMPORT AND EXPORT**

- 15.1 At any time and from time to time, each Project Participant has the right to import into or export or re-export from the Territory, free of Taxes and restrictions, whether in its own name or on its behalf, all equipment, materials, machinery, tools, vehicles, spare parts, supplies, Petroleum, fuels and lubricants to be used in connection with the Project and all other goods (other than natural gas), works, services or technology necessary or appropriate for use in connection with the Project. At any time and from time to time, each Project Participant has the right to import into the Territory, free of Taxes and restrictions (but in cooperation with any State Entity to the extent such State Entity holds a monopoly or other exclusive right respecting gas imports into the Territory), whether in its own name or on its behalf, natural gas to be used as fuel in connection with the Project. Provided, however, that no Project Participant shall be exempt from VAT on any import, export or re-export described in this 15.1 except to the extent specified in Section 9.8, 15.2 or 15.3, or in Article 14.
- 15.2 Each Foreign Employee of each Project Participant, each Contractor who is a physical person and is not a citizen of the State, each family member of any such employee or Contractor and each Project Participant on behalf of any such employee, Contractor or family member shall have the right at any time and from time to time to import into or export or re-export from the Territory, free of Taxes and restrictions, whether in its own name or on its behalf, all goods, works, services or technology for its own use and personal consumption or for the use and personal consumption of such employees, Contractors and family members; provided, however, that subject to Article 9, all sales by any such Person within the Territory of any such imported goods to any other Person will be taxable, and, in the case of sales of automobiles, furniture and professional tools and instruments, will result in liability for customs import tariff, in accordance with Turkish Law. The authorisations and exemptions granted under this Section 15.2 may be restricted by Turkish Laws generally applicable for the protection of public health, safety and public order.
- 15.3 Petroleum transported, or to be transported, by any of the MEP Participants for any Shipper or for its or their own account through the Facilities shall be considered goods-in-transit for all purposes of the customs laws of the State and shall be exempt from all Taxes. Except as may otherwise be provided in this Agreement, the MEP Participants and each such Shipper shall have the right at any time and from time to time to import and export, free of all Taxes and restrictions, all Petroleum which is, or is to be, transported through and exported from the Facilities.

15.4 All imports to and exports from the Territory in connection with the Project shall be subject to the procedures and documents required by applicable customs laws and regulations; provided, however, such imports and exports shall be subject to the exemptions from Taxes set forth in Articles 9 and 14 and Sections 15.1, 15.2 and 15.3, except that, in the case of any such imports and exports of goods by an MEP Participant other than those described in Section 15.3, the MEP Participant shall pay any customs service/documentation fees to the extent they are nominal and consistent with the actual costs of providing such customs service/documentation and are of a non-discriminatory nature, but in no event shall the customs service/documentation fees exceed the following:

<b>Declared Value of Shipment</b>	<b>Fees</b>
\$0 to \$100,000	0.15% of value
\$100,001 to \$1,000,000	\$150 plus 0.10% of value over \$100,000
\$1,000,001 to \$5,000,000	\$1,050 plus 0.07% of value over \$1,000,000
\$5,000,001 to \$10,000,000	\$3,850 plus 0.05% of value over \$5,000,000
More than \$10,000,000	\$6,350 plus 0.01% of value over \$10,000,000

15.5 Each Project Participant shall be exempt from the provisions of any foreign trade regulations of the State Authorities relating to any goods, works, services or technology acquired or performed, directly or indirectly, in connection with the Project or otherwise relating to Petroleum in the Facilities, including those purporting to prohibit, limit or restrict the import or export thereof or relating to determinations of country of origin or destination.

## **ARTICLE 16**

### **BINDING EFFECT**

16.1 This Agreement and the rights, obligations and other provisions of this Agreement and any other Project Agreement shall bind and apply to the Parties and:

- (i) in the case of the State Authorities, shall continue to bind the Government, all State Entities and all Local Authorities notwithstanding any change in the constitution, control, nature or effect of all or any of them and notwithstanding the insolvency, liquidation, reorganisation, merger or other change in the viability, ownership or legal existence of the State Authorities (including the partial or total privatisation of any State Entity); and
- (ii) in the case of any MEP Participant, shall bind and apply to the benefit of all and any successors, assignees and transferees of such MEP Participant from time to time in respect of this Agreement or any of the rights, obligations and other provisions of this Agreement (as the case may be).

16.2 Except as otherwise provided in Article 17, the State Authorities shall not assign, transfer or otherwise deal with (or carry out or permit any act inconsistent with their continued retention of) their interests under this Agreement or any other Project

Agreement and all or any of the rights, obligations and other provisions on their part set out in this Agreement or any other Project Agreement.

## **ARTICLE 17**

### **SUCCESSORS AND PERMITTED ASSIGNEES**

- 17.1 Each MEP Participant shall be entitled to transfer, assign, share or otherwise deal with all or any of its rights under this Agreement, with binding effect on the State Authorities, subject only to the prior notification by the MEP Participant transferor to the State Authorities of details of such transferred rights and the recipient thereof, and if the MEP Participant transferor so elects, delivery to the State Authorities of an agreement duly executed by the MEP Participant and the recipient of such rights; provided, however, that the State Authorities shall have the right, within fifteen (15) days of receipt of such notification, to disapprove such transfer, assignment, sharing or dealing if the proposed transferee, assignee or other party poses a threat to national security, defense and/or public safety in violation of Turkish Law. Upon delivery of the form of agreement as contemplated by this Section 17.1, the Government shall promptly execute the agreement and return same to the MEP Participant transferor.
- 17.2 Each MEP Participant shall be entitled to transfer, assign or otherwise deal with all or any of its obligations under this Agreement:
- (i) in the case of any such transfer, assignment or other dealing in relation to another MEP Participant or an Affiliate of the MEP Participant transferor, subject to prior notification by the MEP Participant transferor to the State Authorities of details of such obligations and the recipient of such obligations and delivery to the State Authorities of an agreement duly executed by the MEP Participant and the recipient of such obligations and in form and substance satisfactory to the MEP Participant transferor which (1) provides that the transferor shall cease to be a Party to this Agreement and is released from any obligations hereunder, (2) provides that the recipient shall become a party to this Agreement in succession to the transferor and shall observe all obligations and assume any liabilities as if it had at all times been a Party to this Agreement, (3) provides that the recipient shall indemnify the transferor and all other Parties from and against obligations and liabilities that otherwise would have been the responsibility of the transferor and (4) specifies the effective date of the transfer and such other matters that the transferor shall reasonably require;
  - (ii) in the case of any such transfer, assignment or other dealing which is not in relation to another MEP Participant or an Affiliate of the MEP Participant transferor, and where the recipient of such obligations certifies to the State Authorities that it has the financial and (to the extent it may be required in the circumstances) technical status to observe and perform such obligations, subject to not less than fifteen (15) days' prior notification to the State Authorities of:
    - (1) details of such obligations;

- (2) details of the recipient of such obligations; and
- (3) financial statements, disclosure documents and other information in relation to the statements made in such certificate

and the delivery to the Government of the agreement referred to in Section 17.2(i) above.

Notwithstanding anything to the contrary set forth in Section 17.2(i) in respect of Affiliates or otherwise under Section 17.2(ii), the State Authorities shall have the right, within fifteen (15) days of receipt of a prior notification by the MEP Participant transferor to the State Authorities of the details of such transferred obligations and the recipients thereof, to disapprove such transfer, assignment, sharing or other dealing respecting such Affiliate or non-Affiliated party, as the case may be, if the proposed transferee, assignee or other party poses a threat to national security, defense and/or public safety in violation of Turkish Law. Upon delivery of the form of agreement as contemplated by this Section 17.2, the Government shall promptly execute the agreement and return same to the MEP Participant transferor. Notwithstanding the foregoing in this Section 17.2 or anything else contained in this Agreement, no MEP Participant shall have the right to assign all or any portion of its obligation to pay Taxes except when such transfer of obligation is in conjunction with a transfer of all or a corresponding portion of its rights under Section 17.1.

- 17.3 Without releasing the MEP Participant from its obligations under this Agreement, each MEP Participant shall be entitled to undertake the Project and/or discharge all or any of its obligations hereunder by causing or procuring that such obligations are performed on its behalf by any Person; provided, however, that if the Person acting on behalf of the MEP Participant is a State Authority, then unless and to the extent the applicable Project Agreement provides to the contrary such State Authority shall bear responsibility under this Agreement for any failure or nonperformance of such obligations and the MEP Participant shall have no responsibility under this Agreement with respect thereto.
- 17.4 Without prejudice to the provisions of Section 17.1, each MEP Participant shall be entitled to create security interests in relation to its rights and obligations under this Agreement and any other Project Agreement in favour of banks or other financing entities (providing for, among other things, enforcement of such security by means of succeeding to the interests of the MEP Participant under this Agreement and any other Project Agreement); provided, however, that the Government shall have the right within fifteen (15) days receipt of notification to disapprove any assignment, lien creation, charge or security interest hereunder if the proposed assignee, lien holder, charge beneficiary or secured party or other party poses a threat to national security, defence, and/or public safety in violation of Turkish Law. Except as set forth in the preceding sentence, such creation of security interests and the exercise of such security interests shall be made without any requirement of consent or permission of the State Authorities and such security interests shall be binding on the State Authorities upon the MEP Participant notifying to the Government details of such security interests and the beneficiary of such security interests and the State Authorities shall, if requested by the MEP Participant, enter into such agreements or

other arrangements with such banks or other financing entities as may be required by such banks or other financing entities to give effect and business efficacy to the security interests so created including, among other things:

- (a) advance notice by the State Authorities of any default by the MEP Participant and any intention of the State Authorities to take action in respect thereof; and
- (b) an acknowledgment of the existence and potential exercise of rights to remedy or cure any such default and rights to acquire or otherwise step into the position of the MEP Participant under this Agreement and any other Project Agreements pursuant to such security interests.

17.5 Without prejudice to any rights or exemptions which may have vested in the Project Participants by operation of Turkish Law (including the ratification and enactment of Project Agreements into Turkish Law as provided herein), it is acknowledged by the State Authorities that the implementation of the Project may result in circumstances in which Project Participants other than the MEP Participants are to be subject to some or all of the obligations, or are to enjoy some or all of the rights, set out in this Agreement for such Project Participant (other than in circumstances of transfer, assignment or other dealing) by the MEP Participants, and the State Authorities agree that, in such circumstances, they will, upon receipt of a duly executed agreement in form and substance satisfactory to the relevant MEP Participant or Participants to the effect that such other Project Participant shall become a contracting party and shall have the rights, exemptions and/or privileges of the applicable Project Agreements and in that respect, the State Authorities shall promptly execute such form of agreement and return it to the relevant MEP Participant or Participants. For the avoidance of doubt, the provisions of this Section 17.5 shall not operate to (i) make the subject Project Participant an MEP Participant or (ii) cause the Tax treatment of any Project Participant to be other than as set forth in Articles 9 and 15 and the other provisions of this Agreement relating specifically to Taxes.

17.6 The State Authorities expressly acknowledge that both assignments of rights and transfers of obligations by the MEP Participants pursuant to this Article 17 are foreseeable and intended by the Parties to the Agreement. In accordance with the foregoing, the State Authorities agree and commit at the request of an MEP Participant to promptly provide, receive and/or execute any further or other documentation as may be necessary in order to effect a legally enforceable assignment of rights or novation of obligations hereunder or to allow Project Participants to become contracting parties as contemplated by Section 17.5 above.

## **ARTICLE 18**

### **DISPUTE RESOLUTION AND APPLICABLE LAW**

18.1 The provisions of this Article 18 shall be valid and enforceable notwithstanding the illegality, invalidity, or unenforceability under the law specified in Section 18.12 of any other provisions of this Agreement. Arbitration pursuant to this Article 18 shall not be subject to the condition of exhaustion of local remedies such as that referred to in Article 26 of the ICSID Convention. In order to provide prior notice and a

reasonable opportunity for the Parties to resolve disputes without resorting to arbitration, as a condition to any Party or Parties submitting a dispute to arbitration under this Article 18, the Party or Parties shall provide written notice of the dispute to all other Parties and shall submit the dispute to arbitration only after the passage of thirty (30) days from the date of delivery of such notice on all Parties pursuant to Article 23 of this Agreement; provided, however, that where a Party has given notice of dispute(s) it shall not be necessary for any other Party to give a similar notice in order to participate in the arbitration of such dispute(s); and provided, further, that once a dispute is submitted to arbitration no additional notice of dispute(s) shall be required in order for any Arbitrating Party to add, to modify or redefine those disputes which it seeks to resolve in such arbitration. Any dispute arising under this Agreement, or in any way connected with this Agreement (including its formation and any questions regarding arbitrability or the existence, validity or termination of this Agreement), between (i) the Government, the State, any State Entity and/or the Local Authorities, on the one hand, and (ii) one or more of the MEP Participants, on the other hand, may be submitted to arbitration pursuant to this Article 18. The MEP Participants may submit any dispute to arbitration jointly and may assign rights granted under this Agreement among themselves for purposes of arbitration, it being further understood and agreed that the foregoing shall not require that, in an arbitration to which more than one MEP Participant is a party, the MEP Participants must take a joint position on any or all disputed issues. In addition, any MEP Participant that demonstrates to the reasonable satisfaction of the arbitral tribunal that it has a genuine interest in the issues in dispute and agrees to be bound by any award in respect of any fact or matter determined in the proceeding may intervene in any arbitration proceeding in which it is not already a party, subject only to its willingness to accept the record as previously established in the proceeding prior to its notice of intervention.

- 18.2 Except as otherwise expressly provided in the State's reservation to the ICSID Convention, the Government and all other Parties hereby consent to arbitrate any such dispute pursuant to the ICSID Convention and the ICSID Arbitration Rules. Subject to its ICSID reservation, the Government shall take any actions or decisions as may be necessary to ensure the effectiveness of the State Authorities' consent to ICSID jurisdiction for all disputes arising under this Agreement or in any way connected with this Agreement. In the event of any conflict between the ICSID Arbitration Rules and the arbitration provisions of this Agreement, this Agreement shall govern. For purposes of Article 25(1) of the ICSID Convention and for any other purposes related to this Agreement, any dispute among the Parties shall be considered a legal dispute arising directly out of an investment. For purposes of the State's reservation to the ICSID Convention, as of the Effective Date any dispute among the Parties shall be considered a legal dispute arising directly out of investment activities which have "effectively started" and which have obtained all necessary permissions and authorisations in accordance with the relevant legislation of the State on foreign capital. If and to the extent the State's reservation to the ICSID Convention is later modified or rescinded such that any disputes heretofore not subject to arbitration under the ICSID Convention become eligible for ICSID arbitration, the Government and all other Parties consent to arbitrate all such eligible disputes pursuant to the ICSID Convention and the ICSID Arbitration Rules. Additionally, in furtherance of dispute resolution under the Turnkey Agreement, the Government hereby (1) designates the Turnkey Contractor to ICSID as a constituent subdivision or agency of

the State for purposes of Article 25(1) of the ICSID Convention and (2) irrevocably approves the consent of the Turnkey Contractor to arbitrate disputes in accordance with the terms of the Turnkey Agreement.

- 18.3 If, for any reason, and notwithstanding the consent granted in Section 18.2, ICSID arbitration is not available for the resolution of any such dispute (including by reason of the State's reservation to the ICSID Convention), then the dispute shall be finally resolved under the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"); provided, however, that ICC arbitration shall apply to all disputes involving rights to property in the Territory, other than claims to ownership of land; and provided, further, if the State's reservation to the ICSID Convention is at any time modified or rescinded, then such disputes involving rights to property may also be arbitrated hereunder pursuant to the ICSID Convention and the ICSID Arbitration Rules. In the event of any conflict between the ICC Rules and the arbitration provisions of this Agreement, this Agreement shall govern.
- 18.4 An arbitral tribunal constituted pursuant to this Agreement shall consist of three (3) arbitrators, one of which shall be appointed by the Arbitrating Party or Arbitrating Parties first requesting arbitration, and one of which shall be appointed by the opposing Arbitrating Party or Arbitrating Parties. The third arbitrator, who shall be the presiding arbitrator of the arbitral tribunal, shall be appointed by agreement of the first two arbitrators appointed. If either of the first two appointments are not made within thirty (30) days after the request for arbitration, or if the first two arbitrators fail to agree on a third arbitrator within thirty (30) days after the later of them shall have been appointed, the unfilled appointment will be made, upon the request of any Arbitrating Party, by the International Chamber of Commerce, acting in accordance with the provisions addressing appointment of arbitrators in the ICC Rules. With respect to arbitration proceedings held under the ICSID Convention and ICSID Arbitration Rules, the Parties agree that the period of time to which reference is made in Article 38 of the ICSID Convention shall be extended to ninety (90) days after the submission of a request by an Arbitrating Party to the International Chamber of Commerce to appoint a third and presiding arbitrator. The Parties agree that, regardless of the payment scales otherwise prescribed by any institution administering an arbitration under this Agreement, the Arbitrating Parties shall compensate the members of the arbitral tribunal at rates sufficient to secure their service as arbitrators.
- 18.5 With respect to any arbitration proceedings arising under this Agreement, additional or alternative procedural rules may be adopted at any time by written agreement of the Arbitrating Parties.
- 18.6 The Parties agree that the seat of any arbitration held pursuant to this Agreement shall be Geneva, Switzerland, unless the Arbitrating Parties agree in writing to hold the arbitration in another country that has ratified or acceded to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The language used during any arbitration proceeding shall be the English language and the English language text of this Agreement will be used and relied upon for all purposes by the arbitral tribunal. Interpretation of any live proceedings of the arbitration and translation of written arguments and documentation shall be provided if requested by any Arbitrating Party, at the expense of such requesting Arbitrating Party.

- 18.7 The Parties shall provide the arbitral tribunal with reasonable opportunity to inspect the Facilities as may be necessary for the determination of a dispute. Each Arbitrating Party shall, at the request of an opposing Arbitrating Party or the arbitral tribunal, make available to the arbitral tribunal and the opposing Arbitrating Party all documents and witnesses substantially relevant, as determined by the tribunal, to the dispute.
- 18.8 An arbitral tribunal's award issued pursuant to this Article 18 shall be final and binding on the Arbitrating Parties upon being rendered, and the Arbitrating Parties undertake to comply with any such award without delay. Judgment on the award may be entered and execution had in any court having jurisdiction, or application may be made for a judicial acceptance of the award and an order of enforcement and execution, as applicable.
- 18.9 Subject to Section 10.2(i), if monetary damages are included in a final award, the award shall be rendered and payment shall be made in Dollars and, in accordance with the terms of this Agreement as relate to amounts due and payable, shall include interest calculated at the Agreed Interest Rate from the date of the event, breach, or other violation giving rise to the dispute to the date when the award is paid in full. The arbitral tribunal may also order any interim or conservatory measures it deems appropriate.
- 18.10 With respect to arbitration proceedings held under the ICSID Convention and ICSID Arbitration Rules, the Parties agree any *ad hoc* committee appointed in accordance with Article 52 of the ICSID Convention shall not stay enforcement of an award unless the Arbitrating Party requesting annulment posts an irrevocable and unconditional bank guaranty in the full amount that the award directs the Arbitrating Party requesting annulment to pay. With respect to arbitration proceedings held under the ICC Rules, the Arbitrating Parties hereby waive the right to judicial intervention in the proceedings themselves and also waive the right to have any interim or conservatory order or any final award annulled or set aside by the courts of any jurisdiction other than the jurisdiction in which the arbitration is held.
- 18.11 Each State Authority hereby waives any claim to immunity in regard to any proceedings to enforce this Agreement or to enforce any interim or conservatory order or any final award rendered by an arbitral tribunal constituted pursuant to this Agreement, including immunity from service of process, immunity from jurisdiction of any court, and immunity of any of its property from pre-judgment attachment based on an interim or conservatory order or from execution based on a final award; provided, however, that notwithstanding anything to the contrary in this Agreement, the waiver of immunity with respect to property in this Section 18.11 shall only apply to property owned or controlled by State Authorities located outside the Territory and shall not apply to (i) property which is used or intended for use solely for the exercise of diplomatic rights, including the State's diplomatic missions, consular posts, special missions, missions to international organisations or to international conferences and including their furnishings, means of transportation and funds held in bank accounts solely for use in funding such missions, posts, organisations and/or conferences; (ii) property of a military character or used or intended for use for military purposes; (iii) property constituting or forming part of the essential cultural heritage of the State or part of its archives and not placed or intended to be placed on sale, including

museums, archaeological sites and artifacts, libraries and related historical preservation and research facilities, cemeteries, monuments and other similar property; (iv) property forming part of an exhibition of objects of scientific or historical interest which is outside the Territory and not placed or intended to be placed on sale; and (v) ships and aircraft used solely for governmental service.

- 18.12 This Article 18 shall be governed in accordance with the substantive law of England, but excluding any rules or principles of English law that would (i) prevent adjudication upon, or accord presumptive validity to, the transactions of sovereign states or (ii) require the application of the laws of any other jurisdiction to govern this Article 18.

## **ARTICLE 19**

### **OPERATING COMPANY**

- 19.1 Subject only to any requirement under Turkish Law that any Operating Company register to conduct business within the Territory, the MEP Participants shall have the right to establish, own and control one or more Operating Companies, and/or appoint or select one or more Operating Companies, that have been organised in any jurisdiction, whether inside or outside the Territory. The MEP Participants shall have the right to appoint jointly any Operating Company (i) to enforce on behalf of the MEP Participants any or all obligations of the State Authorities under any Project Agreement and (ii) to exercise on behalf of the MEP Participants any or all rights of the MEP Participants arising under any Project Agreement. To the extent authorised by the MEP Participants, any and all Operating Companies may act as the MEP Participants' agent or independent contractor, as the MEP Participants may indicate, in respect of any and all Project Activities.
- 19.2 The MEP Participants and any Contractor (including any Operating Company) are hereby authorised to select and determine the number of employees to be hired by it or them in connection with Project Activities. All citizens of the State hired in respect of the Project shall be hired pursuant to written employment contracts that specify the hours of work required of the employees and the compensation and benefits to be paid or furnished to them and other material terms of employment. Consistent with their respective employment contracts, such employees may be located wherever deemed appropriate in connection with their employment. Subject to requirement that no Project Participant shall be required to follow any employment practices or standards that (i) exceed those international labor standards or practices which are customary in international Petroleum transportation projects or (ii) are contrary to the goal of promoting an efficient and motivated workforce, 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 the Turkish labor legislation generally applicable to its citizenry.

## **ARTICLE 20**

### **FORCE MAJEURE**

- 20.1 Nonperformance or delays in performance on the part of any Party respecting any obligations or any part thereof under this Agreement, other than the obligation to pay money, shall be suspended if caused or occasioned by Force Majeure, as defined in this Agreement.
- 20.2 Force Majeure with respect to State Authorities shall be limited to (i) natural disasters (earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences), (ii) wars between sovereign states where the Republic of Turkey has not initiated the war under the principles of international law, and (iii) international embargoes of sovereign states other than the Republic of Turkey; provided in every case the specified event or cause (whether of the type set forth in (i), (ii) and/or (iii) above) and any resulting effects prevent the performance by the State Authorities of their obligations or any part thereof, are beyond their control, and, concerning those events or causes (whether of the type set forth in (i), (ii) and/or (iii) above) which are reasonably foreseeable, are not caused or contributed to by the negligence of the State Authorities or by their breach of this Agreement or any other Project Agreement.
- 20.3 Force Majeure with respect to the MEP Participants shall be limited to those events or causes and any resulting effects that prevent the performance by the MEP Participant(s) of its (or their) obligations or any part thereof, are beyond its (or their) control and, concerning events or causes which are reasonably foreseeable, are not caused or contributed to by the negligence of the MEP Participants or by its (or their) breach of this Agreement or any other Project Agreement. Force Majeure under this Section 20.3 shall include the following events and causes to the extent they otherwise satisfy the requirements of this Article 20: natural disasters (earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences), wars, strikes or other labor disputes, rebellions, acts of terrorism, international embargoes, the inability to obtain necessary goods, materials, services, or technology, the inability to obtain or maintain any necessary means of transportation, the application of laws, treaties, rules, regulations, and decrees, the actions or inactions of the State Authorities and other events or causes, whether of the kind enumerated or otherwise, which are beyond the control of the MEP Participants.
- 20.4 If a Party is prevented from carrying out its obligations or any part thereof under this Agreement as a result of Force Majeure, other than the obligation to pay money, it shall promptly notify in writing the other affected Party or Parties to whom performance is owed. The notice must:
- (i) specify the obligations or part thereof that the Party cannot perform;
  - (ii) fully describe the event of Force Majeure;
  - (iii) estimate the time during which the Force Majeure will continue; and

- (iv) 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.

- 20.5 Any Party that is prevented from carrying out its obligations or parts thereof as a result of Force Majeure shall take such actions as are available to it and expend such funds (and in the case of a State Authority, the actions and funds of other State Authorities) as necessary to remove or remedy the Force Majeure and resume performance of its obligations and all parts thereof as soon as reasonably practicable.
- 20.6 Any State Authority that is prevented from carrying out its obligations as a result of Force Majeure shall take, and shall also procure that other State Authorities take, all such action as may be required to mitigate any loss suffered by any MEP Participant or other Project Participant during the continuance of the Force Majeure and as a result thereof.
- 20.7 In respect of the obligation of the State Authorities to provide compensation for Loss or Damage as a result of the events or causes specified in Section 10.1, the State Authorities shall have no right to declare Force Majeure under this Agreement in respect of subsection (ii), (iii), (iv) and (v) of said Section 10.1.

## **ARTICLE 21**

### **ACKNOWLEDGMENTS**

- 21.1 The State Authorities hereby acknowledge that they have received and reviewed this Agreement, the Intergovernmental Agreement, the Turnkey Agreement and the Government Guaranty and hereby declare them to be acceptable.
- 21.2 The Parties hereby acknowledge that it is their mutual intention that no Turkish Law now or hereafter existing (including the interpretation and application procedures thereof) that is contrary to the terms of this Agreement or any other Project Agreement shall limit, abridge or affect adversely the rights granted to the MEP Participants or any other Project Participants in this or any other Project Agreement or otherwise amend, repeal or take precedence over the whole or any part of this or any other Project Agreement.
- 21.3 The Parties hereby acknowledge that (i) this Agreement is not, and shall not be construed as, a special administrative contract granting a concession, (ii) none of the Project Activities conducted by the MEP Participants or any other Project Participant is intended to constitute a public service, (iii) this Agreement and other Project Agreements are intended to constitute instruments to develop, construct, operate and maintain a pipeline system for the transportation of Petroleum and, therefore, the Turkish law relating to any special administrative contract granting a concession is not intended to be applicable to this Agreement and shall have no effect on any of the substantive provisions, commitments, undertakings, rights, guaranties, exemptions,

privileges, indemnities, waivers and standards provided in this Agreement or other Project Agreements; and (iv) neither the MEP Participants nor any other Project Participant are intended to be, or shall be, subject to any requirement or obligation that would arise solely by virtue of having entered into a special administrative contract granting a concession with the State Authorities or the State.

## **ARTICLE 22**

### **COOPERATION AND COORDINATION MECHANISMS**

- 22.1 The Government shall use its Best Endeavours to negotiate and enter into such other intergovernmental or multilateral agreements or treaties as may be necessary or appropriate between or among it and the other governments and states in the region to authorise, enable, support and facilitate the Project. Without limiting the foregoing, the Government shall consult with the MEP Participants concerning those measures by which the State Authorities, in conjunction with other governments, may make crossborder Project Activities more effective, timely and efficient, including streamlined and coordinated customs and transit procedures and practices and the use of common measurement and metering facilities within or without the Territory to monitor the transportation of Petroleum.
- 22.2 On the request of any or all of the MEP Participants, solely for the purpose of assisting in any attempt to finance all or any part of the Project or all or any part of its or their Project Activities or to insure against risks to the Project, the Government, on its own behalf and on behalf of the State Authorities, shall confirm in writing, or, as appropriate, execute such documents as are necessary or appropriate to extend directly to any and all applicable Lenders and Insurers (including multilateral lending agencies and export credit agencies) the representations, warranties, guarantees, covenants and undertakings of the State Authorities as, and to the extent, set forth in this Agreement.

## **ARTICLE 23**

### **NOTICES**

All notices given under this Agreement by any Party shall be given in writing in the English and Turkish languages and may be given by telex, fax or letter to the address set forth below for each Party (or such other address as a Party may notify in advance to the other Party from time to time in accordance with this Article 23). A notice given by telex or fax sent to the correct address as set forth below or as notified pursuant hereto shall be deemed to be delivered on the first Business Day following the date of dispatch. A notice sent by letter shall not be deemed to be delivered until the first Business Day following receipt.

THE STATE AUTHORITIES:

**The Government of the Republic of Turkey**

Ministry of Energy and Natural Resources  
Ýnönü Bulvarý No: 27 Bahçelievler  
Ankara, Turkey  
Attn: The Undersecretariat  
Fax: (90 312) 2234084

THE MEP PARTICIPANTS:

**The State Oil Company of the Azerbaijan Republic**

Foreign Investment Division  
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**Turkiye Petrolleri A.O.**

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**ITOCHU Oil Exploration (Azerbaijan) Inc.**

C/O ITOCHU Oil Exploration Co., Ltd.  
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**BP Exploration (Caspian Sea) Ltd.**

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**Ramco Hazar Energy Limited**

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**Unocal BTC Pipeline, Ltd.**

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Fax: (603) 917-6144  
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**Delta Hess (BTC) Limited**  
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U.S.A.

copy to:

**Amerada Hess International Limited**  
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United Kingdom  
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Tel: (44) 207 887 2733  
Fax: (44) 207 887 2089  
E-Mail: richard.mew@hess.com

## ARTICLE 24

### MISCELLANEOUS

- 24.1 Interest shall accrue at the Agreed Interest Rate on any amount, if any, payable under or pursuant to this Agreement from the time that amount is payable through the date on which that amount, together with the accrued interest thereon, is paid in full.
- 24.2 This Agreement, together with all appendices attached hereto, shall constitute the entire agreement of the Parties with respect to the matters addressed herein. This Agreement may not be amended or otherwise modified, except by the written agreement of the Parties. Without limiting the generality of the foregoing, no Article (including any Section thereof) may be amended or otherwise modified, except by a written agreement of the Parties that specifically provides for such amendment or modification and references the Article and any Section thereof intended by the Parties to be so amended or otherwise modified. In no event shall any Article (including any Section thereof) be considered amended or otherwise modified by compromise or negotiation between the Parties or purported amendments or modifications to this Agreement that do not so specifically provide for such amendment or modification and reference the subject Article and any applicable Section thereof. No waiver of any right, benefit, interest or privilege under this Agreement shall be effective unless made expressly and in a writing referencing the Article (including any applicable Section thereof) providing that right, benefit, interest or privilege. Any such waiver shall be limited to the particular circumstance in respect of which it is made and shall not imply any future or further waiver.
- 24.3 The table of contents to and the topical headings used in this Agreement are inserted for convenience only and are not intended by the Parties to have, and are not to be construed as having, any substantive significance or as indicating that all provisions of this Agreement relating to any particular subject matter are to be found in any particular Article or Section.

- 24.4 Unless the context otherwise requires, references to all Articles, Sections and Appendices are references to Articles and Sections of, and Appendices to, this Agreement. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The words “includes” and “including” and words of similar import shall neither limit that which precedes it in the text nor be interpreted as making exclusive that which succeeds it, but instead shall always mean “including without limitation” or “including but not limited to” whenever used in this Agreement. Unless the context otherwise requires, reference to the singular includes a reference to the plural, and vice-versa, and reference to either gender includes a reference to both genders.
- 24.5 All references in this Agreement to “rights,” “rights and privileges,” “rights and entitlements,” “exemptions,” and other similar references are to be construed, as the context may require, to include rights, privileges, guaranties, entitlements, exemptions, benefits, protections, assurances, authorisations, approvals, consents, waivers, indemnities and other similar matters. Similarly, all references in this Agreement to “obligations” or “requirements” and other similar references are to be construed, as the context may require, to include obligations, requirements, undertakings, commitments, promises, guaranties, agreements, waivers, indemnities and other similar matters.
- 24.6 The rights and remedies of a State Authority or a Project Participant, as the case may be, provided in any Article (including any Section thereof) shall apply cumulatively and shall not apply to the exclusion of any other right or remedy that a State Authority or Project Participant may have under any other provision of this Agreement or any provision of any other Project Agreement.
- 24.7 The State Authorities, on the one hand, and the other Parties to this Agreement, on the other hand, shall maintain or cause to be maintained the confidentiality of all data and information of a non-public or proprietary nature that they may receive, directly or indirectly, from the other or pertaining to any of the Project Participants or the Project.
- 24.8 Each Party shall, on the request of the other Party, exert its Best Endeavours to execute and deliver, or cause to be executed and delivered, such written agreements, documents and instruments as are necessary or appropriate to enable the Party making such request to fulfill its obligations under any Project Agreement.
- 24.9 Notwithstanding anything to the contrary in this Agreement or any other Project Agreement, no MEP Participant shall be required to act or refrain from acting if to do so would render that MEP Participant or any of its Affiliates subject to demonstrable risk of liability for civil or criminal penalties under the laws of any jurisdiction applicable to such Person.
- 24.10 This Agreement (including the provisions concerning arbitration set forth in Article 18) shall be governed in accordance with the substantive law of England, but excluding any rules or principles of English law that would (i) prevent adjudication upon, or accord presumptive validity to, the transactions of sovereign states or (ii) require the application of the laws of any other jurisdiction to govern this Agreement.

- 24.11 This Agreement is executed in multiple counterparts in the English and Turkish languages. In the event of any conflicting interpretations of any provisions of this Agreement or any notices hereunder as between the language counterparts, the English language counterpart version shall prevail.
- 24.12 The Government, on the one hand, and each of the other Parties to this Agreement, on the other hand, reserves to itself all rights, counterclaims and other remedies and defenses which such Party has under or arising out of this Agreement. All obligations of the Government to make payments to an MEP Participant under this Agreement may be set off or recouped out of any amounts otherwise payable hereunder to the Government by such MEP Participant. All obligations of an MEP Participant to make payments of Corporation Tax may be set off or recouped out of any amounts otherwise payable hereunder to such MEP Participant by the Government, in which case the amount of such set-off or recoupment shall be treated as a payment by such MEP Participant of such Corporation Tax for purposes of Section 9.2 (including the issuance of tax receipts in accordance with Section 9.2(ix)). In the case of any such offset or recoupment against Corporation Tax, the MEP Participant shall notify the Taxation Office in writing of such offset or recoupment (including the amount thereof).
- 24.13 If and for so long as any provision of this Agreement shall be deemed or be judged illegal, invalid or unenforceable for any reason whatsoever under the law specified in Section 24.10, such illegality, invalidity or unenforceability shall not affect the legality, validity, enforceability or operation of any other provision of this Agreement except only insofar as shall be necessary to give effect to the construction of such illegality, invalidity or unenforceability, and any such illegal, invalid or unenforceable provision shall be deemed severed from this Agreement without affecting the legality, validity and enforceability of the balance of this Agreement.
- 24.14 This Agreement, together with the other Project Agreements, constitutes the entire agreement between the Parties relating to the subject matter of those agreements and no Party has given any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in this Agreement and any Project Agreements.

**IN WITNESS HEREOF** the Parties have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

**THE GOVERNMENT OF  
THE REPUBLIC OF TURKEY,**

represented by  
the Ministry of Energy and Natural Resources

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**THE MEP PARTICIPANTS:**

**STATE OIL COMPANY OF THE  
AZERBAIJAN REPUBLIC**

**BP EXPLORATION (CASPIAN SEA)  
LTD.**

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**STATOIL BTC CASPIAN AS**

**RAMCO HAZAR ENERGY LIMITED**

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**TURKIYE PETROLLERI A.O.**

**UNOCAL BTC PIPELINE, LTD.**

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**ITOCHU OIL EXPLORATION  
(AZERBAIJAN) INC.**

**DELTA HESS (BTC) LIMITED**

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

## APPENDIX 1

### CERTAIN DEFINITIONS

The capitalised terms used and not otherwise defined in the Host Government Agreement to which this Appendix 1 is attached shall have the following meanings:

“Affiliate” means, 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” means 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 or other equity ownership interest in an Entity, by law, or by agreement between Persons conferring such power or voting rights.

“Agreed Interest Rate” means, for each day of an Interest Period with respect to any amount due and payable under or pursuant to this Agreement, interest at the rate per annum equal to three and one-half percent (3.5%) plus LIBOR in effect on the Business Day immediately preceding the first day of the initial applicable Interest Period and, thereafter, as in effect on the Business Day immediately preceding the first day of each succeeding Interest Period.

“Agreement” means this Host Government Agreement, including all Appendices attached hereto, together with any written extension, renewal, replacement, amendment or other modification hereof signed by all the Parties, all of which by this reference are incorporated herein.

“Application Requirements” is defined in Section 7.3.

“Arbitrating Parties” means the Party or Parties that submit a dispute to arbitration or which intervene or are added to the arbitral proceeding pursuant to the provisions of this Agreement, on the one hand, and the Party or Parties against whom that dispute is submitted, on the other hand, and “Arbitrating Party” means any one of them.

“Back-to-Back Subcontractor” means the one Contractor that supplies goods, works, services or technology in connection with MEP Activities pursuant to a contract or agreement with the Turnkey Contractor, where such one Contractor is acting as a general contractor with respect to the construction works or services (which may include design and engineering) to be provided by the Turnkey Contractor.

“Barrel” means U.S. barrel, *i.e.*, 42 U.S. gallons (158.987 litres) measured at the standard temperature and atmospheric pressure of sixty degrees Fahrenheit/fifteen point five six degrees Centigrade (60°F/15.56°C) and 1.01325 bars.

“Best Available Terms” means, at any time with respect to any goods, works, services or technology specified by a Project Participant 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.

“Best Endeavours” means the taking by the relevant Person of all lawful, reasonable steps in such Person’s power which a prudent and determined man acting in his own interest and anxious to achieve what is required would have taken under the circumstances.

“Business Day” means any day that is not a Saturday, Sunday or legal holiday in the Republic of Turkey and, with respect to the determination of LIBOR, days on which clearing banks are customarily open for business in London, England.

“Code of Practice” means those codes and regulations regarding the construction, installation, operation and maintenance of the Facilities as set forth in Appendix 5.

“Completion Activities” is defined in Section 8.2(ii).

“Constitution” means the constitution of the State, as the same may be amended or otherwise modified or replaced from time to time.

“Construction Activities” is defined in Section 9.3(iii).

“Construction Contractor” means the Turnkey Contractor, any other single Contractor that is responsible for the construction of the Facilities directly for the MEP Participants in the place of the Turnkey Contractor, or any single Contractor that is responsible for any capacity expansion, extension, interconnection, modification, retirement or abandonment project with respect to the Facilities directly for the MEP Participants if such project has a total cost in excess of one hundred million Dollars (\$100,000,000) (or equivalent value in other currency based on market exchange rates at the time the relevant agreement or agreements are signed).

“Construction Corridor” is defined in Article 6 of Appendix 4.

“Contractor” means any Person supplying, directly or indirectly, to or for the benefit of all or any of the MEP Participants or their Affiliates goods, works, services or technology related to the MEP System, and any successors or permitted assignees of such Person. The term includes an Interest Holder, Affiliate of an MEP Participant, Shipper or Operating Company, but does not include an MEP Participant, that is supplying such goods, works, services or technology. The term does not include a physical person acting in his or her role as an employee of any other Person.

“Corporation Tax” is defined in Section 9.2(i).

“Corporation Tax Amount” means (1) for each year beginning with the first year of the Primary Term to and through the fifth (5th) year of the Primary Term, an amount per Barrel equal to zero point twenty Dollars (\$.20), (2) for each year beginning with the sixth (6th) year of the Primary Term to and through the sixteenth (16th) year of the Primary Term, an amount per Barrel equal to the sum of (a) zero point twenty Dollars (\$.20) plus (b) if the daily average of the total number of Barrels transported through the Facilities during such year as measured at the Point of Terminus is in

excess of two hundred fifty thousand (250,000) Barrels, an amount of Dollars equal to (i) the total number of Barrels transported through the Facilities during such year as measured at the Point of Terminus, divided by one million (1,000,000), divided by (ii) the number of days in such year multiplied by ten (10), (3) for each of the remaining twenty-four (24) years of the Primary Term, an amount per Barrel equal to zero point thirty-seven Dollars (\$.37), and (4) a revised amount per Barrel for each Rollover Term. Not later than one (1) year prior to the end of the Primary Term and the first Rollover Term, the Government and the MEP Participants shall agree a revised Corporation Tax Amount which shall be applicable for the next applicable Rollover Term. Each such revised Corporation Tax Amount shall take into account the amount of the Corporation Tax Amount that was previously in effect, the prevailing and forecasted regional market conditions respecting the Petroleum production and transportation industries and the desire to maintain the relative economic positions of the Parties (taking into account, inter alia, the amount of the Operating Fee for such period). If the Government and the MEP Participants are unable to reach agreement on the revised Corporation Tax Amount by not later than one hundred eighty (180) days prior to the first day of the Rollover Term for which such amount will be applicable, either Party may, by written notice to the other Party of its election, refer the matter to arbitration in accordance with Article 18. The arbitral tribunal's determination of the revised Corporation Tax Amount for such Rollover Term shall not be made prior to the determination, however determined, of the Operating Fee for such Rollover Term. If for any reason the revised Corporation Tax Amount for a Rollover Term has not been determined prior to the due date of the Corporation Tax return of each MEP Participant for any year during such Rollover Term, the total amount of the Corporation Tax liability of each of the MEP Participants for such year shall be based provisionally upon the Corporation Tax Amount previously in effect. Within thirty (30) days after the revised Corporation Tax Amount for such year has been determined, the total amount of Corporation Tax liability of each of the MEP Participants shall be redetermined, and each MEP Participant shall either pay additional Corporation Tax or receive a refund of the Corporation Tax previously paid, as the case may be, to reflect the difference between the provisional Corporation Tax Amount and the revised Corporation Tax Amount as so determined, and shall file an amended Corporation Tax return and annex, in accordance with Section 9.2(vi), which reflect such redetermined amount. Such adjustment payment shall be treated as a payment or refund of Base Corporation Tax and/or Corporation Tax Surtax as appropriate in accordance with Section 9.2, and shall include interest at the Agreed Interest Rate from the due date for the payment of Corporation Tax for such year to the date the adjustment payment is made. In the event of any such provisional or additional Corporation Tax payment by an MEP Participant, the MEP Participant shall be entitled to tax receipts in accordance Section 9.2(ix). The Government shall take any action necessary to cause the Corporation Tax, based upon any revised Corporation Tax Amount which may be established for a Rollover Term in accordance with the procedures described above, to be valid and effective as tax legislation of the State.

“Corridor of Interest” is defined in Article 6 of Appendix 4.

“Cure Period” is defined in Section 3.4.

“Designated Operator” is defined in Section 2.4.

“Dollars” or “\$” means the currency of the United States of America.

“Double Tax Treaty” means any applicable or relevant treaty or convention with respect to Taxes that is in force in the Republic of Turkey.

“Economic Equilibrium” means the economic value to the Project Participants of the relative balance established under the Project Agreements at the applicable date between the rights, interests, exemptions, privileges, protections and other similar benefits provided or granted to such Person and the concomitant burdens, costs, obligations, restrictions, conditions and limitations agreed to be borne by such Person.

“Effective Date” is defined in Section 3.1.

“Entity” means any company, corporation, limited liability company, partnership, limited partnership, joint venture, enterprise, association, trust or other juridical entity, organisation, whether of a governmental or private nature, established or organised under the laws of any state or jurisdiction or by written agreement between two or more Persons.

“Excluded Services” is defined in Section 9.3(iv).

“Exempt Operating Company” means (i) any Overall Operating Company and (ii) a single Operating Company with respect to the Facilities if a State Authority is or at any time was such an Operating Company.

“Expropriation” means any nationalisation or expropriation, or any measure having an effect equivalent to nationalisation or expropriation, and for the avoidance of doubt, the term includes:

- (i) expropriating the assets of a Person;
- (ii) the taking of property or rights, or the limiting of the use or exercise thereof, in a manner that impairs the use or enjoyment of that property or those rights, including expropriating through the ownership of equity or equivalent interests therein;
- (iii) measures or effects which individually or separately may not constitute expropriation but which when viewed together may constitute expropriation; and
- (iv) measures or effects in relation to any tax, levy, duty or charge which whether alone or in aggregate may constitute expropriation.

“Facilities” means one or more pipelines and laterals for the transportation of Petroleum within and/or across the Territory and all above and below ground or seabed installations and ancillary equipment, all loading, unloading, pumping, compressing, measuring, testing and metering facilities, communications, telemetry and similar equipment, all pig launching and receiving facilities, all pipelines, power lines and other related equipment used to deliver any form of liquid or gaseous fuel

and/or power necessary to operate pump stations or for other system needs, cathodic protection devices and equipment, all monitoring posts, markers and sacrificial anodes, all port, terminaling, storage and related installations, all marine jetties and similar facilities, and all associated appurtenances required from time to time for the proper functioning of any and all thereof, constructed, installed, maintained, repaired, replaced, expanded, extended, owned, controlled and/or operated by or on behalf of the MEP Participants within the Territory.

“Fair Market Value” means the value of a Project Participant’s interests, investments, property, commercial arrangements, rights, privileges and exemptions which are taken, diminished, devalued, damaged or otherwise detrimentally affected as a result of the Expropriation, taking into account that Project Participant’s overall business and its related investments and determined on the basis of an ongoing concern utilising the discounted cash flow method, assuming a willing buyer and willing seller in a nonhostile environment and disregarding all unfavourable circumstances (including any diminution of value) leading up to or associated with the Expropriation. In determining said value the principle of indemnification shall apply, with value determined as of the time immediately prior to the Expropriation.

“Financing Sources” means any and all sources of loans, financial accommodations, extensions of credit, insurance or other forms of financing or insurance, including, without limitations, any commercial banking or lending institution, any fund or capital pool engaged in providing finance, any multilateral and bilateral lending agencies such as the World Bank Group, Overseas Protection Insurance Corporation, the European Bank for Reconstruction and Development and any export credit agency of any OECD member country.

“First Level Subcontractor” means any Contractor (other than the Back-to-Back Subcontractor) that supplies goods, works, services or technology in connection with MEP Activities pursuant to a contract or agreement with the Construction Contractor, all or any of the MEP Participants, an Operating Company or the Back-to-Back Subcontractor.

“Foreign Contractor” means any Contractor that supplies goods, works, services or technology pursuant to a contract or agreement and is (i) a physical person who is not a citizen of the State or (ii) a Foreign Entity.

“Foreign Currency” means any freely convertible currency, including Dollars, that is the lawful currency of a state and is issued other than by the State Authorities, and is not subject to general limitations or restrictions of the issuing authority on conversion or exchange.

“Foreign Employee” means any employee of any Person who is involved in MEP Activities and is not a citizen of the State.

“Foreign Entity” means an Entity which (i) is incorporated or otherwise legally created or established outside the Territory and (ii) either (a) does not have all or a substantial majority of its business activities within the Territory or (b) does not have all or a substantial majority of its overall management activities within the Territory.

“Government” means the central government of the State, including any and all instrumentalities, branches and administrative and other subdivisions thereof or therein, and any and all executive and regulatory bodies, agencies, departments, ministries, authorities and officials thereof or therein that have the authority to govern, regulate, levy or collect taxes, duties or other charges, grant licenses or permits or approve or otherwise affect (whether financially or otherwise), directly or indirectly, Project Activities or any Project Participant’s rights or obligations in respect of the Project (excluding Local Authorities and State Entities), notwithstanding any change at any time or from time to time in structure, form or otherwise.

“Government Guaranty” means the Government Guaranty of even date herewith attached hereto as Appendix 3, together with all related instruments, assurances, undertakings, commitments or indemnities entered into pursuant to the terms thereof, and as such Government Guaranty and all such related or derivative documentation may be extended, renewed, replaced, amended or otherwise modified from time to time in accordance with the terms thereof.

“ICSID” means the International Centre for the Settlement of Investment Disputes established by the ICSID Convention.

“ICSID Convention” means the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

“Insurer” means any insurance company or other Person providing insurance covering all or a portion of MEP System risks, the Project, or other risks to any Project Participant, and any successors or permitted assignees of such Person.

“Interest Holder” means, at any time, any Person holding any form of equity interest in an MEP Participant or an Operating Company, together with all Affiliates, successors and permitted assignees of that Person.

“Interest Period” means, for purposes of the definition of “Agreed Interest Rate,” a period of thirty (30) days, beginning the first day after the date on which any such amount becomes due and payable and ending thirty (30) days thereafter, with each succeeding Interest Period beginning on the first day after the last day of the Interest Period it succeeds.

“Intergovernmental Agreement” means that certain “Agreement between the Azerbaijan Republic, Georgia and the Republic of Turkey Relating to the Transportation of Petroleum via the Territories of the Azerbaijan Republic, Georgia and the Republic of Turkey” dated 18 November 1999, together with its appendices as set forth therein as such agreement may be acceded to, extended, renewed, replaced, amended or otherwise modified from time to time in accordance with its terms.

“Lender” means any financial institution or other Person providing any loan, financial accommodation, extension of credit or other financing to any MEP Participant or any of its Affiliates or any Interest Holder in connection with the MEP System (including any refinancing thereof), and any successor or assignee of any of them.

“LIBOR” means, for any day on which clearing banks are customarily open for business in London, the London interbank fixing rate for three-month Dollar deposits, as quoted on Reuter’s LIBO page on that day or, if the Reuter’s LIBO page ceases to be available or ceases to quote such a rate, then as quoted in the London Financial Times, or if neither such source is available or ceases to quote such a rate, then such other source, publication or rate selected by the Parties.

“Local Authorities” means any and all local and municipal authorities of the State and all their constituent elements, notwithstanding any change at any time or from time to time in structure, form or otherwise, including any and all instrumentalities, administrative bodies and other subdivisions thereof or therein, and any and all executive, regulatory, municipal and local bodies, agencies, departments or ministries, authorities and officials thereof or therein that have the authority to govern, adjudicate, regulate, levy or collect taxes, duties or other charges, grant licenses or permits or approve or otherwise impact (whether financially or otherwise), directly or indirectly, Project Activities or the rights or obligations of any Project Participant in respect of the Project.

“Local Currency” means any freely convertible currency issued by the State.

“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. Solely in the case of an act of Expropriation by a State Authority, Loss or Damage may include indirect, incidental or consequential losses (including, for the avoidance of doubt, any loss of profits, reliance losses, costs of mitigation or third party costs).

“Major Subcontractor” means any First Level Subcontractor or Second Level Subcontractor that is a Contractor, directly or indirectly, of the Construction Contractor, the Back-to-Back Subcontractor, all or any of the MEP Participants or an Exempt Operating Company.

“MEP Activities” means any and all activities relating to or arising out of, directly or indirectly, the evaluation, development, design, acquisition, construction, installation, financing, insuring, ownership, operation (including the transportation by any or all of the MEP Participants and the Shippers of Petroleum through the Facilities), repair, replacement, maintenance, capacity expansion, extension (such as laterals) and protection of the MEP System, whether or not such activities are conducted inside the Territory (as Project Activities) or outside the Territory.

“MEP Excess VAT” is defined in Section 9.8(iii).

“MEP Participants” means any one or more, or all, of the Parties to this Agreement (including by novation and/or accession as an MEP Participant pursuant to any Project Agreement), other than the State Authorities, and any successors and permitted assignees of any of the foregoing; provided, however, that the TPAO Affiliate (and its successors and permitted assignees) shall be an MEP Participant notwithstanding that it is (or was previously) a State Entity.

“MEP Representative” is defined in Section 2.3.

“MEP Sister Affiliate” is defined in Section 9.1(i).

“MEP System” means, at any time, the Baku-Tbilisi-Ceyhan pipeline systems (commencing at the Sangachal terminal facilities) and all related appurtenances, including the Facilities located within the Territory and all other such related facilities located outside the Territory.

“Ministry of Energy” means the Ministry of Energy and Natural Resources of the Government, and its successors.

“Ministry of Finance” means the Ministry of Finance of the Government, and its successors.

“Office” of a Person means a fixed facility or fixed premises that is or are owned or leased by such Person or by an agent of such Person and regularly used by or on behalf of such Person.

“Operating Agreement” is defined in Section 2.4.

“Operating Company” means one or more Persons appointed or selected by the MEP Participants or their Affiliates to implement, manage, coordinate and/or conduct for or on behalf of the MEP Participants or their Affiliates all or any portion of the day-to-day MEP Activities including serving as an operator of all or any portion of the MEP System, whether as an agent for or independent contractor to the MEP Participants or their Affiliates, and any successors or permitted assignees of any such Person.

“Overall Operating Company” means any Entity appointed or selected by the MEP Participants or their Affiliates to serve as an operator of the entire MEP System whether as an agent for or independent contractor to the MEP Participants or their Affiliates.

“Parties” means the Government as signatory to this Agreement and its successors, as well as other signatories to this Agreement and their respective successors and permitted assignees.

“Partners” is defined in Section 9.2(v).

“Partnership” is defined in Section 9.2(v).

“Permanent Land” is defined in Article 6 of Appendix 4.

“Person” means any physical person or any Entity.

“Petroleum” means crude mineral oil, condensate, and all other kinds of liquid hydrocarbons regardless of gravity, in their natural condition or obtained from natural gas (being hydrocarbons that are gaseous at standard temperature and pressure) or liquid petroleum by vaporisation, condensation or extraction, including natural gas liquids, as well as any asphalt, bitumen or ozocerite, and any incidental amounts of

natural gas which may be liberated from the liquid hydrocarbons while in transit, any impurities in solution or suspension with the foregoing or any hydrocarbon product refined or produced from any of the foregoing.

“Point of Entry” is defined in Article 6 of Appendix 4.

“Point of Terminus” is defined in Article 6 of Appendix 4.

“Preferred Route Corridor” is defined in Article 6 of Appendix 4.

“Primary Term” is defined in Section 3.1.

“Project” means, in relation to the MEP System, the evaluation, development, design, acquisition, construction, installation, financing, insuring, ownership, operation (including the transportation by any or all of the MEP Participants and the shipment by Shippers of Petroleum through the Facilities), repair, replacement, refurbishment, maintenance, capacity expansion, extension (such as laterals) and protection of the Facilities, from time to time, in the Territory.

“Project Activities” means any and all activities conducted in the Territory relating to or arising out of, directly or indirectly, the Project, including any and all activities of the MEP Participants in respect of their rights or obligations under any Project Agreement and any such activities conducted in the Territory prior to the Effective Date.

“Project Agreements” means this Agreement, the Intergovernmental Agreement, the Turnkey Agreement, the Government Guaranty and all other existing and future agreements, contracts and other documents to which, on the one hand, any of the State Authorities and, on the other hand, any MEP Participant are or later become a party relating to the Project, as such agreements, contracts or other documents may be extended, renewed, replaced, amended or otherwise modified from time to time in accordance with their terms.

“Project Participants” means any and all of the MEP Participants and any Affiliates thereof, the Interest Holders, the Operating Companies, the Contractors, the Shippers, the Lenders and the Insurers.

“Rights to Land” means those rights of examination, testing, evaluation, analysis, inspection, construction, use, possession, occupancy, control, assignment and enjoyment with respect to land in the Territory as set forth in Appendix 4 to this Agreement. The term is used in its broadest sense to refer not only to the Permanent Land within, over or under which the Facilities, as completed, will be located, but also such other and additional lands (including seabeds) and land rights within the Territory as the MEP Participants and their designated Contractors may require and designate for purposes of evaluating and choosing the particular routing and location(s) desired by the MEP Participants for the Permanent Land in respect of the Facilities.

“Rollover Term” is defined in Section 3.1.

“Second Level Subcontractor” means any Contractor (other than the Construction Contractor or the Back-to-Back Subcontractor) that supplies goods, works, services or technology in connection with MEP Activities pursuant to a contract or agreement with a First Level Subcontractor.

“Shippers” means those Persons (including the MEP Participants) that have arranged or contracted for Petroleum transportation services through all or a portion of the MEP System and have the right to tender Petroleum for transit through the MEP System within and beyond the Territory, and their respective successors and permitted assignees.

“Specified Corridor” is defined in Article 6 of Appendix 4.

“State” means the sovereign state of the Republic of Turkey.

“State Authorities” means, as the context and jurisdiction of the various governmental elements requires, (i) the Government, (ii) any and all State Entities, (iii) any and all Local Authorities, and (iv) any Persons acting on behalf of, and all successors or permitted assignees of, any or all of the foregoing.

“State Entity” means any Entity in which, directly or indirectly, the State or the Government has an equity or similar economic interest or which is, directly or indirectly, controlled by the Government, including agents and representatives of the Government. For purposes of this definition, “control” means 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 voting securities, by contract, by law, or otherwise; provided, however, that any State Entity which may also be an MEP Participant shall not be a State Entity whenever it is acting in the role of MEP Participant.

“State Transit Pipeline Authority” is defined in Section 2.2.

“Taxation Office” means the Taxation Office of the Republic of Turkey and any successor thereto.

“Taxes” means all existing or future taxes, levies, duties, customs, imposts, contributions, fees, assessments or other similar charges payable to or imposed by the State Authorities, together with interest, penalties and fines (including financial sanctions and administrative penalties) with respect thereto, and “Tax” means any of the foregoing.

“Territory” means the land territory of the State, its territorial sea and the air space above them, as well as the maritime areas over which it has jurisdiction or sovereign rights in accordance with international law.

“Turkish Law” means the laws of the Republic of Turkey binding and legally in effect from time to time and forming the organic law constituting the entire legal regime of the Republic of Turkey, including the Constitution, all other laws, codes, decrees with the force of law, decrees, by-laws, regulations, communiques, declarations, principle decisions, orders, normative acts and policies, all international agreements to which

the Republic of Turkey is or may be a party together with all domestic enactments, laws and decrees for the ratification or implementation of such international agreements, and prevailing judicial interpretations of all such legal instruments.

“Turnkey Agreement” means that certain agreement of even date herewith and attached hereto as Appendix 2, as such Turnkey Agreement may be extended, renewed, replaced, amended or otherwise modified from time to time in accordance with the terms thereof.

“Turnkey Contractor” means the party identified as contractor under the Turnkey Agreement.

“VAT” means value added Tax and any other similar Tax applicable to the provision of goods, works, services or technology.

“Year” means a Gregorian calendar year.

**APPENDIX 2**

**INSERT TURNKEY AGREEMENT**

**APPENDIX 3**

**INSERT GOVERNMENT GUARANTY**

## **APPENDIX 4**

### **RIGHTS TO LAND IN THE TERRITORY ASSOCIATED WITH THE PROJECT**

#### **1. RIGHTS TO LAND**

- 1.1 This Appendix 4 sets forth and provides for the rights to land in the Territory and associated rights (including rights of exclusive use, possession and control, rights of ingress and egress, rights of construction upon and/or under, licenses to enter and perform Project Activities on the land of third parties, and all other similar rights in the Territory) which are to be notified by the MEP Participants to the State Authorities as the phased implementation of the Project (including later repairs, replacements, capacity expansions and extensions of the Facilities) requires, obtained by the State Authorities in accordance with Turkish Law, and granted to the MEP Participants in respect of the Project.
- 1.2 The Rights to Land granted to the MEP Participants shall be enforceable by the MEP Participants against all State Authorities and against all third parties.
- 1.3 The State Authorities shall cause all landowners and occupiers of affected properties and/or land rights to observe and respect all of the Rights to Land obtained by the State Authorities and granted to the MEP Participants permanently, temporarily and/or from time to time, as the case may be, to enable the construction and operation of the Facilities and the conduct of all other Project Activities. Without limiting the foregoing and that which is provided in the Agreement to which this Appendix is appended, the State Authorities shall assist the MEP Participants in avoiding and in rectifying any interference by third parties with the MEP Participants' exercise and enjoyment of the Rights to Land, including any encroachments on the areas constituting Permanent Land or affecting the Facilities.
- 1.4 Subject to the foregoing and without limiting that which is provided in the Agreement to which this Appendix is appended, the Rights to Land shall include all of the rights as hereinafter provided for the phased development of the Project.

#### **2. PHASE 1 - PRECONSTRUCTION PHASE (ROUTE SELECTION)**

##### **2.1 Corridor of Interest.**

Without limiting the rights which may be necessary and shall be granted in order to accomplish route selection, during the preconstruction phase the following rights will be required and shall be obtained and secured subject to relevant provisions of Turkish Law with respect to matters such as national security, defense, public safety and civil aviation and other similar matters by the State Authorities and granted to the MEP Participants respecting the Corridor of Interest:

- (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 from time to time 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 said area .

If the MEP Participants determine in their sole discretion that construction and installation of the Facilities is not viable within any previously designated Corridor of Interest or portion thereof, the MEP Participants will have the right to so notify the State Authorities and the MEP Participants will have the further right to modify the existing or designate a new Corridor of Interest for further study as aforesaid.

## 2.2 Preferred Route Corridor

Once the Corridor of Interest has been assessed and confirmed by notice to the State Authorities, and without limiting the rights which may be necessary and shall be granted in order to conduct Project Activities, the following rights with respect to the entire Corridor of Interest will be required and shall be obtained and secured by the State Authorities and granted to the MEP Participants for the selection by the MEP Participants of the Preferred Route Corridor:

- (i) All rights defined in Section 2.1 and, in addition, vehicular access (including the right to create temporary and/or permanent access roads) at the MEP Participants' discretion on and off the public highways within and across the borders of the Territory for detailed route reconnaissance.
- (ii) Full access to all relevant and nonclassified information held at the central, regional, district and local levels of the State Authorities respecting:
  - (1) - geology
  - (2) - hydrology and land drainage
  - (3) - archaeology
  - (4) - ecology
  - (5) - mining, mineral deposits and waste disposal
  - (6) - urban and rural planning and development, including relevant topographical standards and criteria of the State
  - (7) - the environment
  - (8) - seismology

- (9) - highways and navigations
  - (10) - utility and commercial service apparatus records, including pipeline crossings
  - (11) - areas under current or former restriction by the State
  - (12) - Local Authorities' structure and administration requirements
  - (13) - agricultural and forestry
  - (14) - current and prior land development, ownership, use and occupation
  - (15) - meteorology
  - (16) - oceanography
- (iii) If the MEP Participants determine in their sole discretion that construction and installation of the Facilities is not viable within any previously designated Preferred Route Corridor or portion thereof, the MEP Participants will have the right to so notify the State Authorities and the MEP Participants will have the further right to modify the existing or designate a new Preferred Route Corridor for further study, as aforesaid.

### 2.3 Specified Corridor

- (i) From the information gained in Sections 2.1 and 2.2 above, the Specified Corridor will be defined by the MEP Participants and notified to the State Authorities. Within this Specified Corridor the MEP Participants and their Contractors will conduct further detailed studies as provided herein.
- (ii) In respect of the Specified Corridor, the State Authorities shall obtain and secure in addition to the rights defined in Sections 2.1 and 2.2 above, the necessary additional Rights to Land and grant to the MEP Participants such rights so that the MEP Participants will possess the full right of access to and passage within the Specified Corridor for the following activities:
  - (1) Topographical survey in accordance with relevant topographical standards and criteria of the State requiring pedestrian and on/off highway vehicular access within and across the borders of the Territory at the MEP Participants' discretion. These rights shall extend over the area necessary to undertake the survey and could extend outside the Specified Corridor, as notified by the MEP Participants.
  - (2) Geotechnical Survey-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 of removal of such material from the site as is necessary.

- (3) Cathodic protection resistivity and soil sample surveys requiring vehicular and pedestrian access onto land to take and remove soil samples for further analysis.
  - (4) One or more land and offshore use surveys.
- (iii) The right to undertake surveys shall include the right to leave monitoring equipment on site to collect necessary data.
- 2.4 Subject to the provisions of Section 24.7 of the Agreement to which this Appendix is appended, the MEP Participants shall have the right to use, publicise and export any data and information obtained by the MEP Participants and their Contractors in connection with the activities described in this Appendix 4.
- 2.5 If the MEP Participants determine in their sole discretion that construction and installation of the Facilities is not viable within any previously designated Specified Corridor or portion thereof, the MEP Participants will have the right to so notify the State Authorities and the MEP Participants will have the further right to modify the existing or designate a new Specified Corridor for further study, as aforesaid.

### **3. PHASE 2 - FACILITIES CONSTRUCTION AND INSTALLATION PHASE**

If the MEP Participants determine in their sole discretion that the construction and installation of the Facilities is viable within any previously designated Specified Corridor, the MEP Participants will have the right to so notify the State Authorities and such Specified Corridor shall thereafter be designated the Construction Corridor. At the earliest practicable date after such designation the State Authorities will obtain, secure and grant to the MEP Participants the following Rights to Land:

- 3.1 Right to transport all construction material, plant and equipment within the Territory and cross border 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 MEP Participants.
- 3.2 Right to designate and use other areas of land, both in the vicinity of the proposed Facilities and remote from the Facilities, for the conduct of all Project Activities, including for pipe storage dumps, site compounds, construction camps, fuel storage dumps, parking areas, roads and other activity sites.
- 3.3 Right to install generation and transmission equipment and to connect to any existing electricity supply and, where necessary, the right to lay cables from such supply to the Construction Corridor.
- 3.4 Right of entry onto such land and offshore areas with all necessary materials and equipment to lay and construct and thereafter use, maintain, protect, repair, alter, renew, augment, expand, inspect, remove, replace or render unusable the Facilities as is required for construction and installation of the Facilities and right to commence and undertake construction and installation.

- 3.5 Right to receive confirmation that each affected landowner and/or occupier has been made aware of and has consented to and/or has been compensated under Turkish Law for the rights acquired by the MEP Participants through the State Authorities.
- 3.6 Right to receive from the State Authorities details of land ownership and use, including names and addresses of landowners and occupiers and details of land holding defined on plans showing all such details for all property falling within two hundred fifty (250) metres either side of the Construction Corridor.
- 3.7 All rights of access over any land as required by the MEP Participants 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 Facilities, such routes to be defined by notice from the MEP Participants prior to road construction and/or use.
- 3.8 The right to the exclusive use, possession and control, and the right to construct upon and/or under, and peaceful enjoyment of, these Rights to Land without hindrance or interruption.
- 3.9 The right of the MEP Participants to require that it shall be unlawful for any Person without prior written consent of the MEP Participants:
- (i) to use explosives within an area of five hundred (500) metres either side of the Facilities.
  - (ii) to undertake any pile-driving within fifty (50) metres either side of the Facilities.
  - (iii) to encroach on the Construction Corridor or other areas where land has been granted to the MEP Participants to conduct Project Activities.
  - (iv) to cross or otherwise interfere with the MEP Participants' Rights to Land with any road, railway, power line, utility, pipeline or other public project ("Crossing Project") and the MEP Participants shall in no event be required to consider a request for consent to such 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 MEP Participants (1) details of the proposed Crossing Project sufficient, in the sole opinion of the MEP Participants, to enable the MEP Participants to assess in its sole discretion the practicability of conducting the Crossing Project safely, efficiently, and without unreasonably interfering with Project Activities and (2) a guarantee of compensation to the MEP Participants for any costs incurred by the MEP Participants to accommodate the Crossing Project.
- 3.10 The right, in accordance with Turkish Law, 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 later repair, replacement, capacity expansion or extension process.

3.11 Any additional regulatory and other administrative compliance requirements.

#### **4. PHASE 3 - POST CONSTRUCTION PHASE**

4.1 Following the completion of the Facilities, the MEP Participants will require the following Rights to Land, all of which shall be obtained and secured by the State Authorities and granted to the MEP Participants:

- (i) The exclusive use, possession and control of, as well as the right to construct upon and/or under, the Pipeline Corridor and other Permanent Land.
- (ii) All rights previously described to the extent applicable to the use and enjoyment of the Facilities once constructed (including, but not limited to, temporary and permanent roads), the construction and use of additional Facilities within the Pipeline Corridor and other Permanent Land and the future maintenance, protection, repair, alteration, renewal, augmentation, capacity expansion, extension, inspection, removal, replacement or the rendering unusable of any such Facilities.
- (iii) The right to add any equipment as the MEP Participants deem necessary.
- (iv) The right to fly along the route of the Facilities within and across the borders of the Territory, in accordance with relevant provisions of Turkish Law, to inspect it and to land wherever it is deemed necessary to ensure the safe and efficient operation of the Facilities.
- (v) The right to erect and thereafter maintain the Facilities, including SCADA, marker posts, cathodic protection test posts and aerial marker posts or signaling equipment and any other equipment or installations necessary for the Project in such locations and positions as deemed necessary by the MEP Participants.
- (vi) The right of access over any land between the public highway and Pipeline Corridor and other Permanent Land without prior notice in cases of emergency.
  - (vii) Subject to the Project Agreements, the right to allow use of the Facilities by third parties under such terms and conditions as the MEP Participants and the Interest Holders may elect.

#### **5. GOVERNMENTAL NOTIFICATIONS**

5.1 Within fifteen (15) days after the Effective Date of the Host Government Agreement of which this Appendix is a part, the MEP Participants and the 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 herein. Such notified contact persons or bodies shall be subject to change, from time to time, on not less than fifteen (15) days prior written notice (except for emergencies).

## 6. DEFINITIONS

6.1 In this Appendix, all capitalised terms not otherwise defined shall have the same meaning as specified in the Agreement to which this Appendix is appended. Additionally, the following terms shall have the following meanings:

“Corridor of Interest” means an area of land ten (10) kilometres wide and extending from the Point of Entry to the Point of Terminus, all as notified by the MEP Participants to 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 Point of Entry to the Point of Terminus, all as notified by the MEP Participants to the State Authorities.

“Specified Corridor” means an area of land within the Preferred Route Corridor one hundred (100) metres wide and extending from the Point of Entry to the Point of Terminus, all as notified by the MEP Participants to the State Authorities.

“Construction Corridor” means an area of land (including exclusive control of the area above such and to a specified height and rights to the land’s subsurface to a specified depth) within the Preferred Route Corridor twenty-two (22) metres wide and extending from the Point of Entry to the Point of Terminus, within which the centreline of the Pipeline Corridor will be located, and such other areas determined by the MEP Participants in their sole discretion as reasonably necessary for the conduct of Project Activities within which Rights to Land required for the construction and installation phase as set forth under Phase 2 of this Appendix shall be exercised, all as notified by the MEP Participants to the State Authorities.

“Pipeline Corridor” means an area of land (including exclusive control of the area above such land to a specified height and rights to the land’s subsurface to a specified depth) within the Construction Corridor eight (8) metres wide extending from the Point of Entry to the Point of Terminus.

“Permanent Land” refers to the grant described in Section 4.1(iii) and the procedures set forth in Section 7.2(vii) and in Appendix 4 of this Agreement, and means (i) the Pipeline Corridor and (ii) those other designated areas of land (contiguous or noncontiguous) notified to the State Authorities in the MEP Participants sole discretion for use as the locations upon or under which the Facilities exist, from time to time, throughout the life of the Project.

“Point of Entry” means the entry point of the MEP System into the Republic of Turkey at a point to be selected by the MEP Participants between forty-two degrees, forty-nine minutes East (42° 49' E) and forty-three degrees, eighteen minutes East (43° 18' E) on the Republic of Turkey-Georgia land border.

“Point of Terminus” means the terminus of the Facilities at a point to be selected by the MEP Participants at or near the Turkish city of Ceyhan.

Any reference to any access from a public highway means an access of not less than seven (7) metres in width suitable for use by construction plant and equipment.

## APPENDIX 5

### CODE OF PRACTICE

This Code of Practice sets forth certain principles, standards and agreements that shall be applicable to certain matters arising in connection with Project Activities or the implementation and carrying out of the Project. All capitalised terms not otherwise defined shall have the same meaning as specified in the Agreement to which this Code of Practice is appended. In the event Project Activities or actions are taken in connection with any implementation or carrying out of the Project by or on behalf of the MEP Participants, the following shall be applied unless in the opinion of the Person performing such Project Activities or actions, standards and practices generally observed by the international community with respect to Petroleum pipeline projects comparable to the Project would under the circumstances permit or require conduct different than that set forth below. If this Appendix is silent on specific standards to be applied in future activities, the standards relevant to the international community with respect to Petroleum pipeline projects comparable to the Project shall apply.

#### 1. TECHNICAL STANDARDS

- 1.1 It is agreed that for purposes of construction or operation of any Facilities 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
AWPA	-	American Wood Preservers' Association
AWS	-	American Welding Society
GBE	-	British Gas Code of Practice
BSI	-	British Standards Institution
DIN	-	Deutsche Institut fur 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

- 1.2 The MEP Participants shall maintain a copy (in English) of all standards applicable to the construction related Project Activities in the Territory at its offices in the Republic of Turkey during the conduct of any such activities by or on behalf of the MEP Participants.

## **2. PROJECT ACTIVITIES**

- 2.1 In the event of Project Activities or the implementation and carrying out of the Project by or on behalf of the MEP Participants, the MEP Participants and any Operating Company or Person acting for or on behalf of the MEP Participants or any Operating Company shall:

- (i) comply with good international Petroleum industry standards and practice generally observed by the international community with respect to Petroleum pipeline projects comparable to the Project;
- (ii) comply with the requirements and provisions of the Agreement to which this Code of Practice is appended and any other Project Agreements; and
- (iii) have the right to take any action that, in the opinion of the Person so acting, a reasonably prudent operator would take under the circumstances.

- 2.2 In the event of Project Activities or the implementation and carrying out of the Project by or on behalf of the MEP Participants, the MEP Participants and any Operating Company or Person acting for or on behalf of the MEP Participants or any Operating Company shall:

- (i) install and maintain at or near the international boundary between Georgia and the Republic of Turkey and at the point of export, in accordance with applicable API codes and ASTM standards, metering and calibration equipment capable of continuous measurement of Petroleum, and devices for sampling to determine the basic sediment and water content of any Petroleum, which equipment shall be tested and calibrated to operating conditions by the MEP Participants at least once each calendar month during the first two Years after the completion of construction and after such time in accordance with generally accepted practices and standards and any procedures specified by the vendors of such equipment (or more often if necessary to insure continuing accuracy);
- (ii) continuously measure and periodically sample all Petroleum transported through the Facilities; and
- (iii) maintain a true and complete monthly record of the volumes from meter readings, meter correction factors, temperature, pressure, gravity, basic sediment and water content and other necessary characteristics of the flow stream.

API standards and procedures will be used to measure Petroleum flowing through the custody transfer meters at all custody transfer points and entry and exit points,

including any marine terminal. The API standards and procedures will be taken from or provided by the API's Standard Method of Sampling and Manual of Petroleum Measurement Standards.

### **3. ENVIRONMENT, HEALTH AND SAFETY**

- 3.1 In conducting all activities involved in the construction, reconstruction, capacity expansion, relocation, repair, replacement, decommissioning, dismantling, removal, use or operation of the Facilities (the "Pipeline Activities") the MEP Participants shall use Best Endeavours to minimise potential disturbances to the environment, including the surface, subsurface, sea, air, lakes, flora, fauna, other natural resources and property. The order of priority for actions shall be protection of life, environment, and property.
- 3.2 The MEP Participants shall promptly notify the Government of all emergencies and other events (including explosions, leaks, and spills), occurring in relation to Pipeline Activities that result in or threaten loss of life or significant damage to the environment or property. Such notice shall include a summary description of the circumstances, and steps taken and planned by the MEP Participants to control and remedy the situation. The MEP Participants shall provide such additional reports to the Government as are necessary to keep it apprised of the effects of such events and the course of all actions taken to prevent further loss and to mitigate deleterious effects.
- 3.3 If any regional or intergovernmental authority having jurisdiction enacts or promulgates environmental standards relating to areas where Pipeline Activities occur, the MEP Participants and the Government will confer respecting the possible impact thereof on the Project, but in no event shall the Project be subject to any such standards to the extent they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects.
- 3.4 Prior to the selection of the general location of the Facilities, a general review of environmental conditions and the risks to the environment associated with Pipeline Activities shall be completed. This will consist of a scoping study and a risk assessment. The scoping study will be the basis of the content and structure for the environmental impact assessment ("EIA") more further described in Section 3.6. The risk assessment will serve to highlight potential risks and costs impacts to the engineering design requirements of the Project.
- 3.5 After completion of the scoping study and risk assessment described in Section 3.4, the MEP Participants shall cause to be conducted a contaminated land baseline study (the "Baseline Study"), to provide a qualitative assessment of the existing pollution and contamination in the areas within the Territory relevant to Pipeline Activities as of the Effective Date. The Baseline Study shall include:
  - (i) a desk study review of the relevant and available information;

- (ii) an audit of relevant existing operations and practices and the collection of relevant environmental data from the areas surrounding the location of the Facilities, including but not limited to information on:
  - (a) surface and subsurface geology;
  - (b) geomorphology;
  - (c) rock permeability and the presence of aquifers;
  - (d) assessment of existing quality of surface waters;
  - (e) the effect of any existing contamination on flora and fauna; and
  - (f) a qualitative assessment of any pollution, environmental damage and contamination at each identified site.

3.6 Upon completion of the Baseline Study, the MEP Participants shall cause an EIA of Pipeline Activities and associated operations to be conducted with respect to environmental impacts to the Territory (whether from Pipeline Activities within or without the Territory). The EIA shall include:

- (i) a project description;
- (ii) an environmental and socio-economic description of the relevant areas of possible impact;
- (iii) an evaluation of impact to the environment of the proposed construction and operation of the Facilities, including an estimate of the associated air emissions, aqueous discharges and solid waste produced;
- (iv) a plan for the identification and implementation of practicable mitigation measures for each identified impact;
- (v) an assessment of the environmental risks associated with Pipeline Activities; and
- (vi) the formulation of a monitoring programme to verify that mitigation measures are effective, and in the event that additional impacts are identified to ensure that additional appropriate mitigation measures are effected.

3.7 Prior to the completion of the Facilities and in relation to Pipeline Activities, a plan for Petroleum spill response capability (“Spill Response Plan”) as to spills within or that could affect the Territory will be created and implemented by the MEP Participants. The Spill Response Plan will include:

- (i) environmental mapping of habitats vulnerable to potential Petroleum spills in the entire MEP System;

- (ii) plans for the provision of relevant Petroleum spill clean up equipment and materials;
  - (iii) plans for the deployment of relevant equipment and emergency response notification details of the organisation required to handle Petroleum spill response; and
  - (iv) plans for the treatment and disposal of resulting contaminated materials.
- 3.8 Each of the scoping study, risk assessment, Baseline Study, EIA and Spill Response Plan (collectively, the “Environmental Strategy Product”) shall be prepared by or in consultation with one or more recognised international environmental consulting firms selected by the MEP Participants. The costs of the items constituting the Environmental Strategy Product, and implementation of the environmental strategy reflected in the EIA and the Spill Response Plan, shall be borne by the MEP Participants except that the Government shall be liable for all costs associated with its technical representatives.
- 3.9 The development and completion of the Baseline Study, the EIA and the Spill Response Plan shall be subject to the following procedures to ensure that they represent implementation of an appropriate environmental strategy with respect to the Project:
- (i) The consulting firm(s) involved and representatives of the MEP Participants shall, at the request of the Government, consult with the technical representatives of the Government, at reasonable times and places, during the preparation of the Baseline Study, the EIA and the Spill Response Plan.
  - (ii) The Baseline Study, the EIA and the Spill Response Plan shall each be subject to approval of the Government in accordance with the following procedures:
    - (a) The Baseline Study, the EIA (with executive summary demonstrating adequate response to public concerns, as described below) and the Spill Response Plan shall each be submitted to the Government upon its completion. The Government shall approve each such item if it has been prepared in accordance with the requirements of this Appendix 5.
    - (b) If the Government requires clarification of any portion of the Baseline Study, the EIA or the Spill Response Plan, or determines that it has not been prepared in accordance with the requirements of this Appendix 5, it shall submit its specific concerns or questions to the MEP Participants within thirty (30) days of receipt of the item in question.
    - (c) The Baseline Study, the EIA or the Spill Response Plan, as the case may be, shall be deemed approved by the Government if, within thirty (30) days after having been submitted to the Government, the MEP Participants have received no written submission of additional concerns or questions. If the Government submits specific concerns or questions, the item in question shall be deemed approved if, within thirty (30) days after the response to such concerns or questions is

submitted to the Government, the MEP Participants have received no written submission of concerns or questions with respect to such response.

- (d) If the Government disapproves of any of the Baseline Study, the EIA or the Spill Response Plan and the MEP Participants believe that the Government has unreasonably withheld its acceptance, then the MEP Participants shall so notify the Government and the Parties shall attempt to amicably resolve any dispute. Failing resolution of any such dispute within fifteen (15) days of the receipt of such notice by the Government, the MEP Participants may cause the dispute to be resolved in accordance with the provisions of Article 18 of the Agreement.
- (iii) The EIA shall be subjected to public review and comment in accordance with the following procedures:
- (a) Affected public and non-governmental organisations will be notified about the nature of the operation of the Facilities during the development of the EIA through dissemination of information to these organisations through meetings and exhibitions.
  - (b) Following the completion of the EIA, the public will be provided with information on the environmental aspects of the Project to enable it to comment with respect thereto. To facilitate this process the EIA and an executive summary (in the Turkish language) will be made available in a public place for review and comments; additionally an information copy of the executive summary shall be submitted simultaneously to the Government.
  - (c) A maximum of sixty (60) days will be allowed for public comments, which will be provided to the Government by the MEP Participants within thirty (30) days after the expiration of said sixty (60)-day period. Demonstration that the MEP Participants have reasonably addressed public concerns (through modification of the EIA, if necessary) will be included in a final executive summary that will be submitted to the Government.

3.10 Creation of the Environmental Strategy Product and implementation of the environmental strategy reflected therein shall be in accordance with the standards and practices generally prevailing in the international Petroleum pipeline industry. Creation of the EIA shall also be in accordance with the principals of EC Directive 85/337/EEC (as amended by EC Directive 97/11/EC) and will include the following general environmental principles, all of which shall be applied or performed in accordance with standards and practices generally prevailing in the Petroleum pipeline industry:

- (i) there shall be no discharging of Petroleum;

- (ii) waste Petroleum, sludge, pigging wastes, polluted ballast waters and other wastes will either be recycled, treated, burned, or buried employing the best practicable environmental option;
  - (iii) all waste streams will be disposed of in an acceptable manner and concentration as determined during the course of the EIA; and
  - (iv) emission monitoring programs will be developed to ensure environmental compliance.
- 3.11 Once approved by the Government, the MEP Participants shall implement the mitigation and monitoring activities specified in the EIA. The results shall be published in reports available to the public and submitted to the appropriate State Authorities. The EIA monitoring programme shall be updated as required on an informal basis. Any disputes respecting the contents or implementation of the EIA monitoring programme shall be resolved in accordance with the provisions of Article 18 of the Agreement.
- 3.12 Any dispute as to implementation of the environmental strategy reflected in the Environmental Strategy Product shall be resolved in accordance with the provisions of Article 18 of the Agreement.
- 3.13 Without limiting the generality of Article 11 of the Agreement, the MEP Participants shall not be liable for any environmental pollution or contamination, damage, or other conditions in existence on the Effective Date, which shall be deemed to include all conditions identified in the Baseline Study. The foregoing shall not preclude the MEP Participants from later establishing, through appropriate studies or other evidence, the existence as of the Effective Date of other such conditions not identified by the Baseline Study, it being recognised that no study can be expected to identify all conditions that may exist.
- 3.14 By not later than thirty (30) days after any termination of this Agreement, the MEP Participants shall provide to the Government a written plan describing the proposed actions to be taken by them associated with the abandonment or other disposition of the Facilities (the “Abandonment Plan”). The Abandonment Plan shall address, among other things:
- a) the removal of all surface installations;
  - b) the clearance of all waterways and marine areas of material and equipment posing a navigational hazard;
  - c) the drainage and proper disposition of any remaining Petroleum in the Facilities;
  - d) to the extent the MEP Participants do not plan to remove and salvage said pipelines, the disconnection from all sources and supplies of Petroleum to those buried pipelines or similar underground installations and either abandonment of same in place or removal of same in those areas where abandonment 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 pipeline industry;

- e) to the extent the MEP Participants 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;
- f) 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 MEP Participants for salvage; and
- g) the revegetation of the Pipeline Corridor consistent with the terrain features and other prevailing conditions in the subject area.

The Abandonment Plan shall be subject to approval by the Government, which approval shall not be unreasonably withheld or delayed. The Abandonment Plan shall be deemed approved by the Government if, within thirty (30) days after having been submitted to the Government, the MEP Participants have received no written submission of concerns or questions. If the Government submits specific concerns or questions, the MEP Participants shall respond to same in writing and the Abandonment 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 Government, the MEP Participants have received no written submission of concerns or questions with respect to such response. If the Government disapproves of the Abandonment Plan and the MEP Participants believe that the Government has unreasonably withheld its acceptance, then the MEP Participants shall so notify the 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 Government, the MEP Participants may cause the dispute to be resolved in accordance with the provisions of Article 18 of the Agreement. Once the Abandonment 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 Government of the Abandonment Plan, the MEP Participants shall be obligated to accomplish the abandonment of the Facilities in accordance with the Abandonment Plan. Said abandonment obligations are hereinafter referred to as the "Abandonment Obligations."

Within thirty (30) days after the Government's approval of the Abandonment Plan, as provided in Section 3.14 of Appendix 5, the MEP Participants shall provide the Government one or more irrevocable direct pay letters of credit (collectively, the "Letter of Credit") to secure the performance by the MEP Participants of the Abandonment Obligations. The Letter of Credit shall (i) be in an aggregate amount to be reasonably agreed by the MEP Participants and the Government as a component of the Abandonment Plan, (ii) be issued to the Government by a financial institution(s) having a long-term unsecured senior debt rating of at least "A" or its equivalent by Standard & Poor's Corporation, a division of the McGraw-Hill Companies, or "A2" or its equivalent by Moody's Investors' Service, Inc. at the time of issuance, or be otherwise acceptable to the Government (the "Issuer"), (iii) be in form and substance

reasonably acceptable to the Government, (iv) have a minimum term of one (1) year, (v) be for the benefit of the Government, (vi) automatically extend for a term of at least one (1) year or until the full performance in all material respects by the MEP Participants of the Abandonment Obligations and (vii) provide that the Issuer shall provide at least thirty (30) days prior written notice to the Government of any termination or non-renewal of the Letter of Credit. In the event the Abandonment Obligations remain unperformed and any existing Letter of Credit is not replaced by the MEP Participants in accordance with the foregoing procedures (but in an aggregate amount that reflects any reduction of the Letter of Credit for any previous drawings or for any reduction in the amount of estimated remaining Abandonment Obligations) by not later than fifteen (15) days prior to the termination of the existing Letter of Credit, then, in order to assure completion of any Abandonment Obligations which remain outstanding, the Government shall be entitled to draw upon the Letter of Credit as of said fifteenth day prior to the notified termination date thereof up to an amount that is the Government's good faith estimate of the remaining Abandonment Obligations for which the MEP Participants are liable under the Abandonment Plan, subject, however, to reimbursement by the Government to the MEP Participants of the amount, if any, by which the funds so withdrawn by the Government exceed the actual costs incurred by the Government to complete any unfulfilled Abandonment Obligations.

3.15 The following provisions shall apply with respect to the obligations of the MEP Participants for environmental matters after termination of this Agreement and performance of the Abandonment Obligations:

- (i) After completion of the Abandonment Obligations the MEP Participants shall cause an environmental assessment similar in scope to, and prepared in accordance with the same standards as are applicable to, the Baseline Study (the "Preliminary Exit Study") to be prepared by a recognised international environmental consulting firm selected by the MEP Participants. If the Preliminary Exit Study is prepared at the request of the Government as contemplated above, it shall be delivered to the Government within one hundred eighty (180) days after performance of the Abandonment Obligations.
- (ii) Once such study is prepared and delivered to the Government, it shall be subject to approval by the Government, which approval shall not be unreasonably withheld or delayed. The Preliminary Exit Study shall be deemed approved by the Government if, within thirty (30) days after having been submitted to the Government, the MEP Participants have received no written submission of concerns or questions. If the Government submits specific concerns or questions, the Preliminary Exit Study shall be deemed approved if, within thirty (30) days after the response to such concerns or questions is submitted to the Government, the MEP Participants have received no written submission of concerns or questions with respect to such response. If the Government disapproves of the Preliminary Exit Study and the MEP Participants believe that the Government has unreasonably withheld its acceptance, then the MEP Participants shall so notify the Government and the Parties shall attempt to amicably resolve any dispute. Failing resolution of any such dispute within thirty (30) days of the receipt of such notice by the

Government, the MEP Participants may cause the dispute to be resolved in accordance with the provisions of Article 18 of the Agreement.

- (iii) Once the Preliminary Exit Study is approved or all disputes respecting same are resolved, the MEP Participants shall be obligated to continue to monitor those areas where Pipeline Activities occurred in order to identify and remediate those adverse environmental impacts related to Pipeline Activities which may subsequently become evident. Such monitoring and remediation obligation shall continue for a period of two (2) years, at which time the above-stated provisions of this Section 3.15 respecting the Preliminary Exit Study shall apply for purposes of preparing a Final Exit Study. Once the Final Exit Study is prepared, submitted for Governmental approval and it has been approved by the Government, then from and after the end of said two-year period and completion of the activities, if any, called for in the Final Exit Study, the MEP Participants shall be released from any liability for environmental impacts with respect to or resulting from the Project and the Government shall indemnify, defend and hold harmless the Project Participants with respect to any claims of any third parties with respect thereto.
- (iv) If a Final Exit Study is performed and if said Final Exit Study, as approved by the Government, indicates that there have been no environmental impacts of Pipeline Activities that have not been remediated or otherwise appropriately addressed in accordance with this Appendix 5, or if impacts that are identified are remediated or otherwise appropriately addressed in accordance with such standards and this is reflected in an update to the Final Exit Study, then from and after delivery of the Final Exit Study (as so updated) to the Government, the MEP Participants shall be released from any liability for environmental impacts with respect to or resulting from the Project and the Government shall indemnify, defend and hold harmless the Project Participants with respect to any claims of any third parties with respect thereto.

3.16 In addition to their applicability to the MEP Participants, the provisions of this Appendix 5 shall apply with respect to each Project Participant other than an MEP Participant, and all of its actions, to the extent such actions constitute conduct or performance of Pipeline Activities.

#### **4. SOCIAL IMPACT**

4.1 In conducting the Project Activities the MEP Participants shall use Best Endeavours to minimise potential disturbances to surrounding communities and the property of the inhabitants thereof.

4.2 If any regional or intergovernmental authority having jurisdiction enacts or promulgates social regulations or guidelines applicable to areas where Project Activities occur, the MEP Participants and the Government will confer respecting the possible impact thereof on the Project, but in no event shall the Project be subject to any such standards to the extent they are different from or more stringent than the standards and practices generally prevailing in the international Petroleum pipeline industry for comparable projects.

- 4.3 Prior to the selection of the general location of the Facilities, a general review of social conditions in the applicable areas shall be completed, consisting of a scoping study and a risk assessment. These will together form the basis of the content and structure for a social impact assessment of Project Activities and associated operations (“SIA”) to be conducted by the MEP Participants with respect to social impacts to the Territory (whether from Project Activities within or without the Territory).
- 4.4 During the course of Project Activities, the MEP Participants shall, pursuant to Article 2 hereof, from time to time confer with the State Authorities as to the impact of ongoing Project Activities in light of the SIA.

## **5. MISCELLANEOUS**

- 5.1 All trial borings required to be made by the MEP Participants prior to the commencement of construction work will be carried out with as little disturbance as is reasonably practicable after consultation with the landowner and the occupier of the land.
- 5.2 Subject to Section 3.6 of Appendix 4, the MEP Participants will use Best Endeavours to give the landowners and occupiers of the land which is adjacent to the Permanent Land granted to the MEP Participants in accordance with the Agreement notice of intention to commence the construction works on the Permanent Land. All movement of pipes, vehicles and machinery for construction purposes will be carried out as far as it is reasonably practicable in accordance with a programme of which such adjacent landowners and occupiers will be made aware.
- 5.3 All reasonably necessary means of access will be maintained by the MEP Participants with the construction of such suitably agreed temporary crossings as may be reasonably required by the affected landowners and occupiers of land which is adjacent to the Permanent Land which have been granted to the MEP Participants in accordance with the Agreement. Such temporary crossings will be agreed where possible prior to commencement of construction. Following construction and to the extent reasonably practicable, private roads and footpaths will be reinstated to a condition equivalent to that subsisting before the commencement of the works and made available for use consistent with the need to maintain the security of the Facilities and conduct Project Activities.
- 5.4 The MEP Participants will provide facilities for maintaining and affording means of communication and access between parts of any land which is adjacent to the Permanent Land granted to the MEP Participants in accordance with the Agreement and which is temporarily or permanently severed by reason of the construction of any works by the MEP Participants, said facilities being such as will enable the adjacent land to be properly worked having regard to the purposes for which communication and access may be required and the period for which and the time of year at which it may be expected to be used. If and to the extent that adjacent land is by necessity permanently severed in connection with Project Activities and Project Activities (including security of the Facilities) do not allow such communication and access, the

Government shall be responsible for same and shall defend and indemnify all claims made against any Project Participant.

- 5.5 Subject to the provisions of Article 11 of the Agreement, the MEP Participants will use Best Endeavours to take all reasonably practicable steps to prevent the straying of animals during such time as construction work is in progress and, after completion of the Facilities in regard to the land which due to the presence and use of the pipeline will or is likely to become subject to additional risk of the straying of animals, will provide and maintain suitable and adequate barriers wherever and to the extent reasonably practicable for the purpose of preventing or minimising the risk of such straying; therefore, necessary fences, lights and barriers will be provided as reasonably practicable. Unless otherwise agreed in writing by the MEP Participants with the affected landowners and occupiers of adjacent properties, the method of fencing the working width will be a fence adequate for the purpose of excluding any stock typically kept on adjoining land.
- 5.6 Where any work requiring the use of explosives for blasting rock is carried out, notice will be given to all persons who may in the opinion of the MEP Participants be affected. Appropriate precautionary measures will be taken. Any use of explosives will be confined to the hours of daylight.
- 5.7 Whenever an area has been declared an infected area on account of a notifiable human disease requiring quarantine or other similar measures, all Project Activities involving entry on the land will be suspended unless there are exceptional circumstances in which case the approval of the relevant Governmental ministry will first be obtained. Nothing in this clause shall prevent the MEP Participants entering on the land forthwith and without giving notice or obtaining any approval in order to address any emergency situation, including to remedy a breach or leak in the pipeline.
- 5.8 The MEP Participants in conjunction with the adjacent landowners and occupiers directly affected by Project Activities will take such reasonable precautions as may be necessary to avoid the spreading of notifiable soil borne pests and diseases or other soil borne pests and diseases as may be notified to the MEP Participants by such landowners or occupiers prior to entry.
- 5.9 During the course of construction works and the exercise of Rights to Land, fossils, coins, any antiquities or other articles of value may be discovered. Ownership of such objects will be determined in accordance with Turkish Law.