

# **APPENDIX 1**

**This Appendix 1, as amended and restated 28 April 2000, is attached to and made part of the Intergovernmental Agreement dated 18 November 1999.**



**HOST GOVERNMENT AGREEMENT  
BETWEEN AND AMONG  
THE GOVERNMENT OF GEORGIA  
AND  
[THE MEP PARTICIPANTS]**

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## Attachments

Appendix 1 - Certain Definitions

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## HOST GOVERNMENT AGREEMENT

THIS AGREEMENT, made and entered into in the city of Tbilisi in Georgia as of this \_\_\_\_ day of \_\_\_\_\_, 2000, between:

THE GOVERNMENT OF GEORGIA

and

[THE MEP PARTICIPANTS]

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 Georgia;

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 Azerbaijan Republic, the Republic of Turkey and Georgia 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 Government, acting on behalf of the State and the State Authorities, enters into this Host Government Agreement empowered with the authority under Georgian Law to direct and make commitments on behalf of the State and all State Authorities;

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 Georgia comprising the pipeline routes as specified herein and in the applicable Project Agreements; and

WHEREAS, in connection therewith and as provided therein, the Intergovernmental Agreement and attached form of this Agreement shall become effective (with respect to the subject matter thereof) as the prevailing legal regime of Georgia (other than the Constitution) and the terms of such agreement shall be the binding obligation of Georgia under international law and shall be made effective under the Constitution as the prevailing legal regime respecting the Project under Georgia's domestic law; and this Agreement and any other Project Agreements, once executed, 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 Georgian 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 under this Agreement shall be obligations to be observed and performed by each relevant constituent element thereof, including the Government, each of the relevant Local Authorities and each relevant 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 (the [Government MEP Representative]) 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.
- 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 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 through the custody transfer meter at the Point of Terminus (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 through the custody transfer meter at the Point of Terminus 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 the calendar year, plus (ii) the thirty-nine (39) calendar years next following such first

year; and (2) if the date of first shipment of Petroleum from the Point of Terminus 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 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 17 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 this 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 and subject to Section 3.7, 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 material steps to commence the construction phase respecting the Facilities 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 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 10.3), 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, 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 or confirmation of resolution, 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. 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 17 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 continuous, repeated or 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 Georgia; or

(ii) is tantamount to the frustration of the entire Agreement;

and, in the case of (i) above, the nature and extent of the breach reasonably supports the conclusion that termination is an appropriate remedy under the circumstances, it being further agreed that nothing in this Section 3.4 shall preclude an award in arbitration of a remedy other than termination. 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 Subject to Section 3.7, it is expressly understood by the Parties that by entering into this Agreement or undertaking Project Activities, no MEP Participant or other Project Participant is committed, or is in any manner obligated to any of the State Authorities, to undertake any other 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 and subject to the terms hereof (including any applicable Application Requirements), and the other Project Agreements, the State Authorities hereby grant:
- (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 to implement Project Activities, the exclusive and unrestricted Rights to Land in respect of State Land as set forth in

Appendix 2;

- (iii) to each of the MEP Participants, such status and powers of taking, compulsory acquisition, eminent domain, expropriation, or other similar delegated powers of the State to enable each of the MEP Participants for the duration of the Project to secure, maintain and pay reasonable compensation to affected Persons for all Rights to Land in respect of Nonstate Land as set forth in Appendix 2;
  - (iv) subject to any private arrangements entered into by the MEP Participants in respect of Nonstate Land, to each of the MEP Participants, the exclusive and unrestricted property right 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;
  - (v) to each of the MEP Participants, the exclusive and unrestricted right and privilege to construct, own, use, possess and control the Facilities;
  - (vi) to the Project Participants, subject to Sections 18.2 and 18.3, the absolute and 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
  - (vii) to the MEP Participants and their designated Contractors free of charge, readily available surface water not subject to prior restriction 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. In this regard, to facilitate the administration of any Project Agreement, the MEP Participants will notify the State Authorities, from time to time, of those Persons who are Project Participants and/or furnish said Persons with written evidence of such status with respect to the Project, it being further understood that no such failure to notify and/or furnish written evidence of Project Participant status will have the effect of denying such status (either retroactively or prospectively) but may cause a delay under particular

circumstances (for example, immediate grant of customs clearances) until such status is confirmed by the MEP Participants. If any rights, exemptions, grants or privileges are not already vested in any such Project Participant by operation of Georgian Law, 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 16. 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.

## **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 in accordance with the terms of the Project Agreements.
- 5.2 Without limiting the breadth and scope of the foregoing, the Government hereby commits the State Authorities to perform and, in respect of all State Authorities other than itself, 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 except in accordance with the provisions of clause (iii) below;
  - (ii) that the State Authorities shall perform and take all actions and make all decisions required of the State Authorities in accordance with the terms of 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 prompt corrective action creates an unreasonable threat to public security, cultural heritage, health, safety or the environment (using, for such purposes in

respect of the environment, the applicable standards and practices of Appendix 3 of this Agreement and, in respect of health, safety, public security and cultural heritage, the applicable provisions of Georgian Law) 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, in accordance with the applicable Project Agreements, 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, the Facilities, or the Nonstate Land;
- (vi) that the State Authorities shall not claim, demand or restrict any of the Rights to Land granted by the State Authorities to the MEP Participants under Section 4.1 (ii), (iii) and (iv); 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 9 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 Finance of Georgia 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 Finance of Georgia 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 commitments and 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, orders, regulations, rules, interpretations, authorisations, approvals and consents necessary or appropriate to evidence further the foregoing affirmation and consent to enable 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:

- (i) all ratifications and all parliamentary, legislative and executive actions and enactments required by Georgian Law to cause the Intergovernmental Agreement, together with the attachments thereto, to be effective and otherwise endow the Intergovernmental Agreement, together with the attachments thereto, as binding on the State under international law and Georgian Law have been completed; and
- (ii) all parliamentary, legislative and executive actions and enactments required of the State Authorities by Georgian Law, to cause the terms of the Intergovernmental Agreement, together with the attachments thereto, and the various grants and obligations of the State Authorities thereunder in favour of the MEP Participants and/or other Project Participants to become effective in Georgia as the prevailing legal regime under Georgian Law with respect to the Project and all Project Activities as the binding obligations of the State Authorities have been completed.

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 Georgian 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, exclusive jurisdiction respecting Rights to Land in respect of State Land and the full power, authority and right under Georgian 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 (5) of Article II thereof) apply *mutatis mutandis* under this Agreement and are enforceable hereunder by the MEP Participants; and
- (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.

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 this 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 within its power to achieve the ratification, enactment and promulgation of all laws and decrees that are or may become necessary under Georgian 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 actions within their power to enable the taking of all parliamentary, legislative or other actions, ratifications and enactments required to cause any written extension, renewal, replacement, amendment or other modification of the terms of this Agreement or the Intergovernmental Agreement to become effective as, and the terms of all other Project Agreements to be added as an effective part of, the prevailing legal regime of Georgia with respect to the Project and as the binding obligation of the State Authorities under Georgian 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) subject to the terms hereof and any other Project Agreement, 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) subject to the terms hereof and any other 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) subject only to the enforcement of immigration (including visa and residence permit regulations), customs, criminal and other relevant laws of the State and any applicable Application Requirements, 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;
- (v) except in the manner and under the circumstances provided in Section 9.4 (but in all cases, whether or not Section 9.4 is complied with, subject to the payment of compensation for Expropriation as provided in Section 9.2 (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; or any other form of commitment, policy or pronouncement or permission, has the effect of impairing, conflicting or interfering with the implementation of the Project, or limiting, abridging or adversely affecting the value of the Project or any of the rights, 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(x).
- (vii) the State Authorities shall:
  - (1) perform all obligations and otherwise assist the MEP Participants and any 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 2 of this Agreement;
  - (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 in the Rights to Land for all State Land and all Nonstate Land required by the MEP Participants in respect of the Project;



(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, and any 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 in respect of the State Land and, in particular, to fulfill the grant by the State Authorities to the MEP Participants of the exclusive and unrestricted right to the State Land as specified in Section 4.1(ii) and (iv) of this Agreement and the exclusive and unrestricted right of ownership of the Facilities as specified in Section 4.1(v) of this Agreement;

(5) assist the MEP Participants in respect of their exercise of the powers of taking, compulsory acquisition, eminent domain or other similar powers of the State in respect of the Nonstate Land necessary for the Project, including with respect to all judicial and procedural filings and requirements associated with the MEP Participants exercise of the rights granted to each of them in Section 4.1(iii) of this Agreement;

(6) in respect of the State Land only, settle with, or pay such compensation to, those Persons as may be required by Georgian 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);

(7) 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), other than in respect of the Construction Corridor and Permanent Land to the extent either previously was Nonstate Land;

(8) 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 and owners of the Facilities in accordance with Georgian Law in order to satisfy any applicable requirements of Georgian Law and to provide public notice of the rights of each of the MEP Participants to the Rights to Land;

(9) protect, defend and indemnify each of the MEP Participants and other affected Project Participants from and against any Loss or Damage in respect of the Rights to Land (other than in respect of the Construction Corridor and Permanent Land to the extent either previously was Nonstate

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 Construction Corridor and the Permanent Land to the extent either previously was State 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 to use any State Land or otherwise related to the MEP Participants' exercise of their Rights to Land (other than in respect of the Construction Corridor and Permanent Land to the extent either previously was Nonstate Land) or the State Authorities' obligations under this Section 7.2(vii); and

(10) protect, defend and indemnify each of the MEP Participants and other affected Project Participants from and against any Loss or Damage in respect of any environmental pollution or contamination, damage, or other conditions of or associated with the Rights to Land if and to the extent the same were in existence on the Effective Date;

- (viii) 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;
- (ix) 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; and
- (x) 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 Georgian Law (including any Georgian Laws regarding Taxes but excluding any Georgian Law(s) affecting Pipeline Activities (as defined in Appendix 3) and the Facilities with respect to cultural heritage, health, safety and the environment which are enacted, promulgated, adopted, decreed, amended, re-enacted or otherwise issued or effected (including the enforcement, exercise of authority, and judicial interpretation of Georgian Law in respect of such matters) if and to the extent such Georgian Laws do not impose on the Project, the Facilities, Project Activities and/or the Project Participants legal terms or conditions more onerous than those generally observed by the member states of the European Union respecting cultural heritage, health,

safety or the environment, as the case may be, and, in any event, specifically excluding any provision for punitive or exemplary damages) occurring after the Effective Date, including changes resulting from the amendment, repeal, withdrawal, termination or expiration of Georgian Law, the enactment, promulgation or issuance of Georgian Law, the interpretation or application of Georgian 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 Georgian Law (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 the grant of an exemption, the introduction of legislation, the issuance of a decree and/or the taking of other authoritative acts, any conflict or anomaly between any Project Agreement and such Georgian Law.

- 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 and requirements necessary to obtain a specific license, visa, permit, certificate, authorisation, approval or permission (the "Application Requirements") 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 and/or satisfaction 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 2);
  - (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 Georgian 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 Georgian Law, the right to operate aircraft, ships and other water craft, in the Territory; and
- (x) environmental, health and safety approvals (subject to the provisions of Appendix 3).

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 8.9(i) or 14.4 hereof or in the Project Agreements.

- 7.4 The State Authorities shall exert their 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(vii), 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). In respect of any written contract(s) with State Entities as described in this Section 7.4, the relevant Project Participant(s) will use Best Endeavours in respect of any written contract to be entered into with a State Entity for goods, works or services under this Section 7.4, to timely and reasonably notify the Government MEP Representative in writing pursuant to the terms of Article 22 hereof of the particulars of the proposed transaction not less than twenty (20) days prior to entering into such written contract. If the Government MEP Representative objects in writing pursuant to the terms of Article 22 hereof to such proposed transaction by not later than fifteen

(15) days after receipt of such notification, the State Entity may nevertheless enter into said written contract, but neither the Government nor any State Authority (other than the State Entity which entered into the written contract) shall have any liability or obligation under this Agreement in respect of such written contract. The failure of the Government MEP Representative to provide timely written objection to a notified transaction pursuant to the terms of Article 22 hereof shall be deemed approval of such transaction. For the avoidance of doubt, any failure of the relevant Project Participant(s) to provide the requisite advance written notice of proposed transaction pursuant to the terms of Article 22 hereof, as aforesaid, shall mean that only the subject State Entity, and not the Government or any other State Authority, shall have any liability or obligation under said written contract or this Agreement.

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(vii), 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 Subject to Section 7.3, 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 Subject to Section 7.3, 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 3 of this Agreement or any of the principles or standards set forth therein.

## ARTICLE 8

### TAXES

#### 8.1 General.

- (i) Except as otherwise specifically provided in this Agreement, no Project Participant shall be subject to any Taxes or any Tax compliance or filing 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, 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. Moreover, any Person that is not entitled to the benefits of such a treaty shall be entitled to the benefits that would have been available if a treaty equivalent to the Organisation for Economic Co-operation and Development Model Tax Convention on Income and Capital, updated as of 1 November 1997 (the "OECD Treaty"), were applicable. In either event, no further administrative action shall be necessary to enable the Person to take advantage of such benefits. The provisions of this Section 8.1(ii) shall not affect the liability of an MEP Participant for Profit Tax pursuant to Section 8.2 or the amount of such liability.
- (iii) The provisions of this Article 8 shall at all times prevail over all conflicting provisions of the Tax Code of Georgia, including the provisions of Articles 3(2), 4(3), 4(5), 4(7), 6(6), 6(7) and 6(8) thereof, or other Georgian Law.
- (iv) To the extent any provisions of this Article 8 are or could be construed as being inconsistent with the other provisions of this Agreement (including Sections 4.2 and 10.1), the provisions of this Article 8 shall govern.
- (v) For purposes of Taxes, the MEP System (whether before or after its completion), the Rights to Land, Petroleum that is transported through the Facilities or the MEP System or assets or activities in connection with any other Petroleum transportation system in existence on the Effective Date shall not be regarded as a permanent establishment of an MEP Participant, Affiliate of an MEP Participant, Interest Holder or Shipper.

#### 8.2 MEP Participants.

- (i) Each of the MEP Participants is subject to profit tax in accordance with the Tax Code of Georgia, as amended by the provisions of this Article 8, in

respect of its Project Activities (the "Profit Tax"). The Profit Tax shall apply individually to each MEP Participant. The Profit Tax shall consist of a Base Profit Tax and a Profit Tax Surtax. Subject to Section 8.2(iii), the amount of the Base Profit Tax liability of an MEP Participant for a Year shall be equal to such MEP Participant's taxable income related to Project Activities for the Year multiplied by a tax rate of thirty percent (30%), which consists of the general profit tax rate in force in the Territory on 1 January 1999 (twenty percent (20%)) and an additional branch-profits tax rate of ten percent (10%). For this purpose, the MEP Participant's taxable income related to Project Activities shall be based on the MEP Participant's separate share of any income, expenses and other taxable items related to Project Activities for the Year as determined in accordance with the Tax Code of Georgia.

- (ii) The amount of the Profit Tax Surtax imposed on an MEP Participant for a Year shall be equal to the excess, if any, of such MEP Participant's total Profit Tax liability over such MEP Participant's Base Profit Tax liability for the Year.
- (iii) An MEP Participant's total Profit Tax liability for a Year shall be equal to the Profit Tax Amount per Barrel of Petroleum transported, as measured at the Point of Terminus, through the capacity owned by such MEP Participant in the Facilities during such Year. In the event an MEP Participant's Base Profit Tax liability for a Year as determined under Section 8.2(i) exceeds such MEP Participant's total Profit Tax liability for the Year, the amount of such MEP Participant's Base Profit Tax liability for the Year shall be reduced to an amount equal to such MEP Participant's total Profit Tax liability for the Year (and no Profit Tax Surtax shall be imposed on such MEP Participant for the Year). Any such reduction shall be applied first to the portion of the Base Profit Tax liability attributable to the branch-profits tax rate and then to the portion of such liability attributable to the general profit tax rate.
- (iv) The Profit Tax imposed on each MEP Participant for a Year shall fully satisfy such MEP Participant's liability for Georgian profit tax or any other Taxes which may be imposed on or with respect to income or profit 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 Profit Tax (consisting of the Base Profit Tax and the Profit 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 Profit Tax (consisting of the Base Profit Tax and the Profit 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 8, shall not itself be liable for Profit Tax or have any Profit Tax compliance or filing obligations. Principles comparable to those described in this Section 8.2(v) shall apply in the event the Project is owned by all of the investors through a single Entity (whether a partnership, company or any other form of Entity).

- (vi) Each MEP Participant shall file a Profit Tax return for each Year for which it is liable for Profit Tax and shall submit such Profit Tax return to the State Tax Department, and pay the Profit Tax for such Year to the State Tax Department on behalf of the State, not later than first (1st) April of the following Year. The Profit Tax return shall set forth general information regarding the MEP Participant, the amounts of the total Profit Tax, Base Profit Tax and Profit Tax Surtax for the Year and such additional information as may be provided for in any agreement described in Section 8.9(iii). 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 Profit Tax liability, the number of Barrels of Petroleum transported, as measured at the Point of Terminus, through the capacity owned by such MEP Participant in the Facilities during the Year, the Profit Tax Amount, Profit Tax Surtax liability, total Profit Tax liability and such additional information as may be provided for in any agreement described in Section 8.9(iii). There shall also be attached to the Profit Tax return of each MEP Participant for each Year a copy of a statement (the "Allocation Statement") prepared and signed by the Operating Company which sets forth (a) the total number of Barrels of Petroleum transported, as measured at the Point of Terminus, through the Facilities during such Year and (b) the number of Barrels transported, as measured at the Point of Terminus, through the capacity owned by each MEP Participant in the Facilities during such Year, the sum of which for all MEP Participants shall be equal to such total measured quantity at the Point of Terminus as set forth in clause (a). The original Allocation Statement for each Year shall be provided by the Operating Company to the State Tax Department not later than first (1st) April of the following Year. 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 Profit Tax returns exclusively in Dollars. Estimated Profit Tax returns shall not be filed, and estimated Profit Tax payments shall not be made, by the MEP Participants. All payments of Profit Tax shall be made in Dollars.
- (vii) (1) The filing of the Profit Tax return for a Year and payment of Profit Tax thereunder shall be deemed to be a final and conclusive settlement of the amount of the Profit Tax liability of an MEP Participant for



the Year, provided that (a) the amount of the Profit Tax liability as shown on such return is equal to the Profit Tax Amount for the Year multiplied by the number of Barrels transported, as measured at the Point of Terminus, through the capacity owned by such MEP Participant in the Facilities during the Year as set forth on the Allocation Statement for the Year and (b) the State Tax Department shall have the authority to conduct an examination (a [Technical Examination]) to verify the technical accuracy of the measurement at the Point of Terminus of the total number of Barrels of Petroleum transported through the Facilities during such Year, which examination must be concluded within twelve (12) months from the due date for filing Profit Tax returns for such Year.

(2) On completion of a Technical Examination, if any, with respect to a Year, the State Tax Department shall discuss any proposed adjustments with the Operating Company and any affected MEP Participants and, where appropriate, issue to one or more of the MEP Participants a notice of additional Profit Tax due or a notice of refund. Any agreed underpayments or overpayments of Profit Tax shall be paid within ten (10) days following receipt by the MEP Participant of the appropriate notice. If the Operating Company and any affected MEP Participants and the State Tax Department are unable to agree on the technical accuracy of the measurement at the Point of Terminus of the total number of Barrels of Petroleum transported through the Facilities during the Year, the issue shall be submitted to arbitration under Article 17.

(3) If an MEP Participant fails to pay the Profit Tax for a Year on or before the date it is due, or on a final determination that there has been an underpayment (or overpayment) of Profit Tax by the MEP Participant on its Profit Tax return for a Year as a result of a Technical Examination, interest shall accrue and be paid by the MEP Participant (or, in the case of a refund of an overpayment, shall be paid to the MEP Participant) in Dollars on the unpaid, underpaid or overpaid amount from the date the Profit Tax was due (or, in the case of an overpayment, the date the Profit Tax was paid) at the Agreed Interest Rate.

- (viii) Each MEP Participant shall make its Profit Tax payments to the large taxpayers inspectorate of the State Tax Department located in Tbilisi (or any successor thereto). Any such Profit Tax payment may be made on behalf of such MEP Participant by an agent thereof (including an Operating Company).
- (ix) The agency of the State Tax Department to which an MEP Participant makes any Profit Tax payment will issue to such MEP Participant separate official tax receipts evidencing the amounts of such payment that are attributable to Base Profit Tax and to Profit Tax Surtax, if applicable, within ten (10) Business Days after such payment is made. Such tax receipts shall state the date and relevant Dollar amount of such payment, whether the amount relates to Base Profit Tax or Profit Tax Surtax, the currency (Dollars) in

which such payment was made and any other particulars customary in the State for such receipts.

- (x) Notwithstanding the other provisions of this Section 8.2, solely in the case of the first (1st) Year and the second (2nd) Year for which each MEP Participant is liable for Profit Tax, (a) Profit Tax returns shall be filed and Profit Tax shall be paid on the basis of the six (6)-month periods ending thirtieth (30th) June and thirty-first (31st) December in each such Year and (b) the due date for submitting the Profit Tax returns, providing the original Allocation Statements and making Profit Tax payments for each such six (6)-month Profit Tax period shall be first (1st) October or first (1st) April next following the end of such period. Except as provided in the preceding sentence, the provisions of this Section 8.2 (and other applicable provisions of this Agreement) shall apply for Profit Tax purposes for each six (6)-month Profit Tax period in each such Year, and any reference therein to a Year shall instead be deemed to be a reference to the relevant six (6)-month Profit Tax period.

### 8.3 Contractors.

- (i) No Taxes shall be imposed on, or withheld with respect to payments to, any Contractor in connection with MEP Activities, and Contractors shall have no Tax compliance or filing obligations arising from or related, directly or indirectly, to MEP Activities.
- (ii) 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 Georgian Law regarding Taxes.
- (iii) No Taxes (other than profit tax, if applicable) shall be imposed on, or withheld with respect to payments to or by, a Joint Operating Company within the meaning of the PSA in respect of any supply of goods, works, services or technology (including all related or reimbursable expenses) to or by the MEP Participants or an Operating Company. No Taxes shall be imposed or withheld with respect to such payments if the goods, works, services or technology (including all related or reimbursable expenses) are charged at cost.
- (iv) No Taxes (including Taxes on income, revenue or profit) shall be imposed on any of the MEP Participants, their Affiliates or the Shippers with respect to any Petroleum to be used as fuel in connection with the Project (including the ownership, importation, transportation, transfer of ownership, or use thereof). The supply of any such Petroleum shall be exempt with credit (zero percent (0%) rate) from VAT.

### 8.4 Payments to Certain Persons. No Taxes shall be imposed with respect to payments or deemed payments made in connection with MEP Activities by all or any of the

Project Participants or their respective Affiliates, or any branch or permanent establishment thereof, to any Entity established outside the Territory, and no Taxes shall be withheld with respect to payments or deemed payments made in connection with MEP Activities by all or any of the Project Participants or their respective Affiliates, or any branch or permanent establishment thereof, to any Entity or to any physical person who is not an employee of the payor. For purposes of the preceding sentence, (i) Taxes on payments shall include any Taxes on interest, royalties, fees for services and dividends or other distributions or other remittances of profit, and (ii) Taxes on deemed payments shall include any Taxes on undistributed profit after imposition of any Taxes on profit. 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.

#### 8.5 Employee Taxes.

- (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 (or the OECD Treaty in accordance with Section 8.1(ii)); 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. Any Project Participant whose employee(s) is subject to Taxes for any Year pursuant to this sub-section (i) shall be obligated to withhold and pay to the State Tax Department any Taxes which are due with respect to such employee following the time in such Year when the employee becomes subject to such Taxes pursuant to this sub-section (i).
- (ii) The Project Participants, their Affiliates and their respective Foreign Employees shall not be required to make payments of State social tax (including payments to the Unified State Fund for Social Security and the Unified State Fund for Employment and compulsory medical insurance contributions) and other similar payments with respect to their Foreign Employees.
- (iii) Except as otherwise provided in this Article 8, the MEP Participants and Contractors shall be subject to any Taxes and Tax compliance and filing obligations applicable to them under Georgian Law with respect to their employees.

#### 8.6 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, Shipper or other

Person with respect to the transportation of Petroleum in and/or through the Facilities or the MEP System. No Taxes (including any import Taxes) shall be imposed on or with respect to any contribution of assets or any loan to or by any Project Participant or any payment or other transfer to any Project Participant in connection with the Project. The provisions of this Section 8.6 shall apply to any assignment, transfer, pledge, adjustment, contribution or loan described above, whether made before, on or after the Effective Date.

8.7 Operating Companies. Any Operating Company shall be entitled to all the exemptions and privileges accorded to the MEP Participants under this Article 8 and shall have no Profit Tax liability or compliance or filing obligations.

8.8 VAT; Certificates.

(i) Each of the MEP Participants, Interest Holders, Contractors, Operating Companies, Shippers and their respective Affiliates shall be exempt with credit (taxable at a zero percent (0%) rate) from VAT on all (1) goods, works, services and technology supplied, directly or indirectly, to or by it in connection with MEP Activities, (2) its imports and exports of Petroleum which is transported through the Facilities, (3) imports of goods, works, services and technology acquired by it in connection with MEP Activities and (4) exports and re-exports of goods, works, services and technology by it in connection with MEP Activities. In addition, every supplier of goods, works, services and technology to each of the MEP Participants, Interest Holders, Contractors, Operating Companies, Shippers and their respective Affiliates in connection with MEP Activities shall treat those supplies for VAT purposes as being exempt with credit (taxable at a zero percent (0%) rate). For the avoidance of doubt, a similar exemption with credit (taxable at a zero percent (0%) rate) from VAT shall apply, and no other transfer Taxes or notarial or other fees shall apply, in the case of any transfer of Rights to Land, directly or indirectly, to the MEP Participants. Notwithstanding the foregoing, notarial fees may be imposed in accordance with Georgian Law on transfers to the MEP Participants of Rights to Land with respect to Nonstate Land to the extent they are of a non-discriminatory nature, but in no event shall such notarial fees with respect to such transfers on or before the date ten (10) years after the date of commencement of the construction phase respecting the Facilities exceed the amounts that would be imposed pursuant to the Law of Georgia on Fees for Notary Services dated 11 June 1998, as enacted and generally applicable and in force in the Territory on 1 January 2000.

(ii) The appropriate agency of the State Tax Department 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 as provided in this Agreement within thirty (30) days of its requesting such certificate or documentation. In the event VAT is

paid by an MEP Participant, Operating Company or Contractor, such MEP Participant, Operating Company or Contractor shall be entitled to offset the amount of such VAT against any Taxes (including Profit Tax or income tax withheld from payments to employees) which it otherwise would be required to pay. Such MEP Participant, Operating Company or Contractor shall notify the State Tax Department or other appropriate tax or customs authority in writing of any such offset (including the amount thereof). In the case of any such offset against Profit Tax liability of an MEP Participant, the amount of such offset shall be treated as payment by such MEP Participant of such Profit Tax for purposes of Section 8.2 (including the requirement that a tax receipt be issued in accordance with Section 8.2(ix)).

- (iii) For the avoidance of doubt, in the case of any value added tax or similar tax imposed by any state in the former Soviet Union and paid or incurred by an MEP Participant or Operating Company in respect of the acquisition of goods, works, services or technology used in connection with the Project, the MEP Participant or Operating Company shall be entitled to such remedies as may be provided for under Georgian Law and applied in current practice.

#### 8.9 Other.

- (i) The MEP Participants shall pay any registration or similar fees, other than customs service/documentation fees (covered by Section 14.4), 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) with respect to Taxes, except (a) interest payable as computed under clause (3) of Section 8.2(vii) and (b) if the amount of Profit Tax of the MEP Participant for a Year was underpaid due to a knowing and intentional/deliberate failure to pay Profit Tax (which failure did not result from mistake or other good faith action or inaction), the MEP Participant shall, absent a demonstration of evidence that there was no such knowing and intentional/deliberate failure (or of evidence of such mistake or other good faith action or inaction), be liable for interest in Dollars on the amount of the underpayment due to such knowing and intentional/deliberate failure from the date thirty (30) days after such Profit Tax was due until the date it is paid at a rate per annum equal to thirty percent (30%) (in lieu of interest at the Agreed Interest Rate).
- (iii) The State Tax Department 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 8.
- (iv) The provisions of this Article 8 shall survive the termination of this Agreement. If an MEP Participant is no longer a Party to this Agreement,

the provisions of this Article 8 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 9

### COMPENSATION FOR LOSS OR DAMAGE

- 9.1 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 9 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(x);
  - (iv) any requisitioning by Governmental security forces or authorities of the assets of any Project Participant or any damage or destruction by Governmental security forces or authorities, to the extent it was not required by the necessity of the situation, of the assets of any Project Participant during any event of war (declared or undeclared); or
  - (v) any act of Expropriation by the State Authorities.

Without limiting the foregoing but subject to Section 7.4 of this Agreement, 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.

- 9.2 In the event and to the extent any Project Participant suffers any Loss or Damage of the kind described in Section 9.1, the Government shall provide prompt, adequate and effective compensation for all such Loss or Damage. Solely for purposes of this Article 9, 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 9.1(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 9.2(i), applicable to the events described in Section 9.1(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 9.1(v)), the Government shall pay Fair Market Value.

9.3 With respect to all monetary relief under this Article 9, 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.

9.4 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 9.2(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 9.2(iii) for all Loss or Damage suffered by the MEP Participants and/or all other Project Participants caused by or arising from such

Expropriation.

- 9.5 The Government's obligation to provide monetary compensation to the MEP Participants under this Article 9:
- (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 9 may be submitted to the Ministry of Finance of Georgia 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 Finance of Georgia 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 9.5(iii), would discharge that obligation other than by the full performance thereof in accordance with this Agreement.
- 9.6 The Government shall compensate the MEP Participants for any Loss or Damage set forth in this Article 9 suffered by the MEP Participants and/or another Project Participant. In no event shall the Government's obligation to provide compensation under this Article 9 include any punitive or exemplary damages.

## **ARTICLE 10**

### **LIMITATION OF LIABILITY**

- 10.1 The MEP Participants shall be liable to the State Authorities for Loss or Damage caused by or arising from any breach by them of (i) any Project Agreement or (ii) applicable Georgian 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, (i) the MEP Participants shall not be liable to the State Authorities for any punitive or exemplary damages and (ii) nothing herein is intended to or shall limit the rights of the MEP Participants against any third parties in respect of such Loss or Damage.
- 10.2 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 (i) 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 and (ii) nothing herein is intended to or shall limit the rights of the MEP Participants against any other Person in respect of such Loss or Damage.

- 10.3 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 12 and Appendix 3.
- 10.4 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 11**

### **SECURITY**

- 11.1 Commencing with the initial Project Activities relating to route identification and evaluation and continuing throughout the life of the Project, the State Authorities, at their sole cost and expense, shall take all reasonable and prudent measures determined by the State Authorities (i) to safeguard and secure the Rights to Land, the Facilities and all Persons within the Territory involved in Project Activities and (ii) to provide protection for 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 similar destructive events.
- 11.2 In order to avoid or mitigate harm to the Project of the kind described in Section 11.1, the State Authorities shall, on reasonable request by and in consultation with the MEP Participants, take all reasonable and prudent measures determined by the State Authorities consistent with Appendix 3 to enforce any relevant provisions of Georgian 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 or the Facilities, or loss or injury to Persons within the Territory involved in Project Activities.
- 11.3 In order to effect the obligations and without limiting the State Authorities' obligations under Sections 11.1 and 11.2, the Government, at its sole cost and expense, but in regular consultation with the MEP Participants, shall use the security forces of the State. 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 12

### ENVIRONMENT, HEALTH, SAFETY AND SOCIAL IMPACT

- 12.1 The applicable environmental, health and safety standards and practices for the Project shall be as set forth in Appendix 3 attached hereto and shall be applicable notwithstanding any conflicting standards and practices otherwise required or approved by Georgian Law. The Parties hereby agree to the standards and practices set forth in Appendix 3 and the State Authorities hereby 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 in conducting Project Activities, 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 3 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, make available under Section 7.4 any goods, works or services available to the State Authorities and not otherwise readily available to the MEP Participants or their Contractors to assist in any remedial or repair effort.
- 12.2 The applicable social impact standards and practices for the Project shall be effected as set forth in Appendix 3 attached hereto. The Parties hereby agree to the standards and practices set forth in Appendix 3 and the State Authorities hereby consent to any action taken by or on behalf of the MEP Participants and other Project Participants in conformity therewith.
- 12.3 Notwithstanding the provisions of Article 10 or any other term of any Project Agreement, solely in respect of any loss or damage arising from or related to any adverse environmental, health or safety event or occurrence, the MEP Participants shall be obligated, regardless of fault or causation, to take all action necessary to remedy the harm and to restore the land and other harmed matter(s) to the maximum practicable extent to their prior condition and use, all in accordance with and as required by the standards and practices set forth in this Article 12 and Appendix 3, and incur all expenses necessary to so remedy the harm, it being further agreed that if and to the extent that any harm cannot be so fully remedied, the MEP Participants shall pay full, adequate and fair compensation in respect of any such unremedied harm; provided, however, that if and to the extent any such loss or damage relating to the environment, health or safety is caused by or arises from any breach of any Project Agreement and/or breach of duty by any State Authority, the State Authorities shall indemnify and hold the MEP Participants and other Project Participants harmless with respect thereto, including for all costs and liabilities incurred by the MEP Participants or Project Participants for third-party loss or damage. Notwithstanding the foregoing, (i) the MEP Participants shall not be liable to the State Authorities for

any punitive or exemplary damages and (ii) nothing herein is intended to or shall limit the rights of the MEP Participants against any third parties in respect of any loss or damage arising from or related to adverse environmental, health or safety events or occurrences.

## **ARTICLE 13**

### **CURRENCY**

- 13.1 The State Authorities confirm that the MEP Participants and all other Project Participants shall have the right for the duration of and in order to conduct 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.
- 13.2 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 all such payments shall be made without any withholdings or other deductions whatsoever.

## **ARTICLE 14**

### **IMPORT AND EXPORT**

- 14.1 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, 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 Section 14.1 except to the extent specified in Section 8.8, 14.2 or 14.3, or in Article 13.
- 14.2 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 8, 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 Georgian Law. The authorisations and exemptions granted under this Section 14.2 may be restricted by Georgian Laws generally applicable for the protection of public health, safety and public order.
- 14.3 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.
- 14.4 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 8 and 13 and Sections 14.1, 14.2 and

14.3, except that, in the case of any such imports and exports of goods by an MEP Participant other than those described in Section 14.3, 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

14.5 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 15**

### **BINDING EFFECT**

15.1 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; provided, however, for all purposes of the Project Agreements, that if the State or any State Authority sells, assigns, transfers or otherwise privatises by whatever means, including by management contract or operations contract or conditional sale, all or part of its equity and/or other economic interest in any State Entity to a Person which is not a State Authority, such equity and/or other economic interest (or pertinent portion thereof, as well as such State Entity itself (unless such State Entity continues to be controlled, directly or indirectly, by the Government or its duly appointed representatives)) shall no longer, directly or indirectly, be liable under, or

bound by, or subject to, the terms of this Agreement or any other Project Agreement, other than any other Project Agreement which such State Entity has itself executed and entered into; and

- (ii) in the case of any MEP Participant, shall bind and apply to the benefit of all and any successors and permitted 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).

15.2 Except as otherwise provided in Article 16 and Section 15.1(i), above, 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 16**

### **SUCCESSORS AND PERMITTED ASSIGNEES**

- 16.1 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 twenty (20) 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 Georgian Law. Upon delivery of the form of agreement as contemplated by this Section 16.1, the Government shall promptly execute the agreement and return same to the MEP Participant transferor.
- 16.2 Each MEP Participant shall be entitled to transfer, assign or otherwise deal with all or any of its obligations under this Agreement, with binding effect on the State Authorities, subject to the requirement that the MEP Participant transferor provide to the State Authorities not less than twenty (20) days<sup>□</sup> prior notification of:
- (i) the details of the proposed transaction with respect to obligations proposed to be retained and those transferred;
  - (ii) the details of the recipient in the context of the proposed transaction and, in particular, the obligations proposed to be assumed; and
  - (iii) certified financial statements, disclosure documents and other relevant information reasonably demonstrating to the State Authorities that the transferee has the financial and (to the extent it may be required in the

circumstances) technical capability to observe and perform such obligations.

The State Authorities shall have the right, within twenty (20) days of receipt of the foregoing, to disapprove such transfer, assignment, sharing or other dealing on the basis that the proposed transferee has not reasonably demonstrated that (i) it has the financial or (to the extent it may be required in the circumstances) technical capability to observe and perform such obligations or (ii), except when the proposed recipient of the obligation is an MEP Participant, the proposed recipient poses a threat to national security, defense and/or public safety in violation of Georgian Law. If the State Authorities have not provided notice of disapproval of such proposed transaction to the MEP Participant transferor within twenty (20) days after receipt of transaction notification and supporting information, such transaction shall be deemed approved. Unless the MEP Participant transferor and the recipient of obligations otherwise agree, the terms of their agreement of transfer shall provide, in form and substance satisfactory to the MEP Participant transferor, (1) that the transferor shall cease to be a Party to this Agreement and is released from any obligations hereunder, (2) 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) 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) the effective date of the transfer and such other matters that the transferor shall reasonably require.

Upon delivery of such agreement, the Government shall promptly execute the agreement and return same to the MEP Participant transferor. Notwithstanding the foregoing in this Section 16.2 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 16.1.

- 16.3 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.
- 16.4 Without prejudice to the provisions of Section 16.1, 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 Georgian 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.

16.5 Without prejudice to any rights or exemptions which may have vested in the Project Participants by operation of Georgian Law (including the ratification and enactment of Project Agreements into Georgian 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 16.5 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 8 and 14 and the other provisions of this Agreement relating specifically to Taxes.

16.6 The State Authorities expressly acknowledge that both assignments of rights and transfers of obligations by the MEP Participants pursuant to this Article 16 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 16.5 above.

## ARTICLE 17

### DISPUTE RESOLUTION AND APPLICABLE LAW

- 17.1 The provisions of this Article 17 shall be valid and enforceable notwithstanding the illegality, invalidity, or unenforceability under the law specified in Section 17.12 of any other provisions of this Agreement. Arbitration pursuant to this Article 17 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 17, 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 22 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 to 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 (which shall be the sole proper party to represent the State, and all State Authorities) and (ii) one or more of the MEP Participants, may be submitted to arbitration pursuant to this Article 17. 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.
- 17.2 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. 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. 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.

- 17.3 If, for any reason, and notwithstanding the consent granted in Section 17.2, 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]). In the event of any conflict between the ICC Rules and the arbitration provisions of this Agreement, this Agreement shall govern.
- 17.4 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.
- 17.5 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.
- 17.6 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.

- 17.7 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.
- 17.8 An arbitral tribunal's award issued pursuant to this Article 17 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.
- 17.9 Subject to Section 9.2(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.
- 17.10 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.
- 17.11 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 17.11 shall not apply to (i) property to the extent used or intended for use 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 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; (v) ships and aircraft to the extent used for governmental service; (vi) physical assets being used to perform the essential government functions, such as Parliament and governmental buildings and their furnishings; (vii) property of the judiciary, such as court buildings and their furnishings; and (viii) property of public health care, welfare and educational, as well as that of the police and other law enforcement, systems.

- 17.12 Nothing in this Article 17 shall preclude the agreement to use other dispute resolution procedures (including use of internationally recognised independent experts) for any particular (or particular type of) dispute (including, in particular, any dispute respecting the EIA and/or the final design of the Facilities under Appendix 3 of this Agreement), but in the absence of such separate written agreement the provisions of this Article 17 shall control.
- 17.13 This Article 17 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 17.

## **ARTICLE 18**

### **OPERATING COMPANY**

- 18.1 Subject only to any requirement under Georgian Law that any Operating Company register to conduct business within the Territory, and taking into account the applicable principles of facilitation and coordination set forth in Section 2.3 hereof, 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 (provided that such organisation in a jurisdiction outside the Territory does not pose a threat to national security, defense and/or public safety). 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.

- 18.2 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 Georgian labor legislation generally applicable to its citizenry.
- 18.3 In respect of their procurement of services, equipment, materials, machinery and tools, vehicles, spare parts, goods and supplies necessary for the proper conduct and achievement of Project Activities, the MEP Participants and any Contractor (including any Operating Company) shall give preference to Georgian suppliers in those cases in which such Georgian suppliers are in all material respects competitive in price, quality and availability with those available from other sources. For purposes of this Section 18.3, a Georgian supplier shall mean any production, economic or other Entity (including a State Entity) which has validly represented and warranted to the procuring Project Participant before it tenders to supply any of the above-referenced services or items that (i) it is registered, incorporated and legally operating in the Territory and (ii) not less than twenty percent (20%) of the control of such supplier is held, directly or indirectly, by citizens of the State.
- 18.4 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 have the right to notify the MEP Participants in writing of the authorisation and appointment of a State Authority (the "Georgian Operations Entity") with appropriate qualifications and relevant experience and capabilities to participate in or with the business organisation or venture to be formed or designated to serve as operator of the Facilities. Subject always to the requirement that each successor State Authority have appropriate qualifications and relevant experience and capabilities to assume and perform its obligations in respect of Facilities operations, the Government shall have the right to authorise and appoint another State Authority to replace the preexisting State Authority as the Georgian Operations Entity. The manner and degree of participation by the Georgian Operations Entity respecting Facilities operations shall be determined by mutual agreement of the Georgian Operations Entity, the MEP Participants and their Lenders and Insurers, and any other relevant parties involved in the organisation or venture. It is the intent of the Parties that the Georgian Operations Entity will initially have the right to a substantial, but not controlling, level of such

participation. Facilities operations shall be governed by an operating agreement to be agreed with the MEP Participants as soon as practicable following the Government's appointment of the Georgian Operations Entity and the formation or designation of said organisation or venture. 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 with the MEP Participants to address the particular circumstances of the Project.

## **ARTICLE 19**

### **FORCE MAJEURE**

- 19.1 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.
- 19.2 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 Georgia has not initiated the war under the principles of international law, and (iii) international embargoes of sovereign states other than Georgia.
- 19.3 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 19.3 shall include the following events and causes to the extent they otherwise satisfy the requirements of this Article 19: 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.
- 19.4 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.

- 19.5 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.
- 19.6 Any State Authority that is prevented from carrying out its obligations as a result of Force Majeure shall take, and shall seek to also procure that other appropriate State Authorities take, all such action as may be reasonably 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.
- 19.7 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 9.1, the State Authorities shall have no right to declare Force Majeure under this Agreement in respect of subsections (ii), (iii), (iv) and (v) of said Section 9.1.

## **ARTICLE 20**

### **ACKNOWLEDGMENTS**

- 20.1 The State Authorities hereby acknowledge that they have received and reviewed this Agreement and the Intergovernmental Agreement and hereby declare them to be acceptable.
- 20.2 The Parties hereby acknowledge that it is their mutual intention that no Georgian 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.

## **ARTICLE 21**

## **COOPERATION AND COORDINATION MECHANISMS**

- 21.1 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.
- 21.2 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 22**

### **NOTICES**

All notices given under this Agreement by any Party shall be given in writing in the English language 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 22). 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 Georgia

Fax:



Attention: The Office of [\_\_\_\_\_]

[EACH OF THE MEP PARTICIPANTS]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_  
Attention: \_\_\_\_\_

and copied for information to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 23**

**MISCELLANEOUS**

- 23.1 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.
- 23.2 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.
- 23.3 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.

- 23.4 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.
- 23.5 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.
- 23.6 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.
- 23.7 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.
- 23.8 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.
- 23.9 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.

- 23.10 This Agreement (including the provisions concerning arbitration set forth in Article 17) 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.
- 23.11 This Agreement is executed in multiple counterparts in the English and Georgian 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.
- 23.12 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 which have been properly notified and are properly due and payable to an MEP Participant under this Agreement may be set off or recouped out of any amounts otherwise properly notified and properly due and payable hereunder to the Government by such MEP Participant. All obligations of an MEP Participant to make payments of Profit Tax may be set off or recouped out of any amounts otherwise properly notified and properly due and 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 Profit Tax for purposes of Section 8.2 (including the issuance of tax receipts in accordance with Section 8.2(ix)). In the case of any such offset or recoupment against Profit Tax, the MEP Participant shall notify the State Tax Department in writing of such offset or recoupment (including the amount thereof). Notwithstanding anything in this Section 23.12 to the contrary, all rights of set off or recoupment hereunder shall be subject to five (5) Business Days prior notice in accordance with Article 22 of this Agreement by the Party intending to effect such offset or recoupment as provided herein.
- 23.13 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 23.10, 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.
- 23.14 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.
- 23.15 Any reference to [Persons acting as agent and/or representative of a State Authority] or as [duly appointed representative of a State Authority] or similar references is not

intended, and shall not be construed as, imposing personal liability on any such Person except and to the extent such Person is otherwise liable and/or obligated to perform under the terms of this Agreement.

[SIGNATURE BLOCKS]

## 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.

“Allocation Statement” is defined in Section 8.2(vi).

“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.

“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 Georgia 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 well as such other provisions, as set forth in Appendix 3.

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

□Construction Corridor□ is defined in Article 6 of Appendix 2.

□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.

□Corridor of Interest□ is defined in Article 6 of Appendix 2.

□Cure Period□ is defined in Section 3.4.

□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 Georgia.

□Economic Equilibrium□ means the economic value 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 a Project Participant and the concomitant burdens, costs, obligations, liabilities, restrictions, conditions and limitations agreed to be borne by that Project Participant under the applicable Project Agreement(s).

□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.

“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, enjoyment or exercise thereof, in a manner which is equivalent to expropriation, including expropriating through the ownership of equity or equivalent interests therein;
- (iii) measures or effects which individually or separately may not constitute expropriation but when taken together are equivalent to expropriation; and
- (iv) measures or effects in relation to any tax, levy, duty or charge which whether alone or in aggregate are equivalent to 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 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 terminaling, storage and related installations, 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 business and investments, all as related to or affected by the Project, 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.

“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.

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

“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 MEP Representative” is defined in Section 2.2.

“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, the Republic of Turkey and Georgia 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).

“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 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.

“MEP Representative(s)” is defined in Section 2.3.

“MEP System” means, at any time, the Baku-Tbilisi-Ceyhan Petroleum pipeline system (commencing at the Sangachal terminal facilities) and all related appurtenances owned or used in connection therewith, including the Facilities located within the Territory and all other such related facilities located outside the Territory.

“Nonstate Land” means those lands in the Territory, and all rights and privileges of every kind and character, however arising and however characterised with respect thereto, other than State Land. For the avoidance of doubt, all lease, license and other non-ownership rights held as of the Effective Date by any Person (other than a State Authority) for State Land shall be classified as Nonstate Land for purposes of this Agreement, including Appendix 2.

“OECD Treaty” is defined in Section 8.1(ii).

“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.

“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 8.2(v).

“Partnership” is defined in Section 8.2(v).

“Permanent Land” is defined in Article 6 of Appendix 2.

“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 2.

□Point of Terminus□ is defined in Article 6 of Appendix 2.

□Preferred Route Corridor□ is defined in Article 6 of Appendix 2.

□Primary Term□ is defined in Section 3.1.

□Profit Tax□ is defined in Section 8.2(i).

□Profit 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 twelve Dollars (\$.12), (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 zero point fourteen Dollars (\$.14), (3) for each year beginning with the seventeenth (17th) year of the Primary Term to and through the twenty-fifth (25th) year of the Primary Term, an amount per Barrel equal to zero point seventeen Dollars (\$.17), (4) for each year beginning with the twenty-sixth (26th) year of the Primary Term to and through the thirtieth (30th) year of the Primary Term, an amount per Barrel equal to zero point twenty Dollars (\$.20), (5) for each year beginning with the thirty-first (31st) year of the Primary Term to and through the thirty-fifth (35th) year of the Primary Term, an amount per Barrel equal to zero point two hundred and twenty five Dollars (\$.225), (6) for each of the remaining five (5) years of the Primary Term, an amount per Barrel equal to zero point twenty five Dollars (\$.25), and (7) 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 Profit Tax Amount which shall be applicable for the next applicable Rollover Term. Each such revised Profit Tax Amount shall take into account the amount of the Profit 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. If the Government and the MEP Participants are unable to reach agreement on the revised Profit 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 17. If for any reason the revised Profit Tax Amount for a Rollover Term has not been determined prior to the due date of the Profit Tax return of each MEP Participant for any year during such Rollover Term, the total amount of the Profit Tax liability of each of the MEP Participants for such year shall be based provisionally upon the Profit Tax Amount previously in effect. Within thirty (30) days after the revised Profit Tax Amount for such year has been determined, the total amount of Profit Tax liability of each of the MEP Participants shall be redetermined, and each MEP Participant shall either pay additional Profit Tax or receive a refund of the Profit Tax previously paid, as the case may be, to reflect the difference between the provisional Profit Tax Amount and the revised Profit Tax Amount as so determined, and shall file an amended Profit Tax return and annex, in accordance with Section 8.2(vi), which reflect such redetermined amount. Such adjustment payment shall be

treated as a payment or refund of Base Profit Tax and/or Profit Tax Surtax as appropriate in accordance with Section 8.2, and shall include interest at the Agreed Interest Rate from the due date for the payment of Profit Tax for such year to the date the adjustment payment is made. In the event of any such provisional or additional Profit Tax payment by an MEP Participant, the MEP Participant shall be entitled to tax receipts in accordance with Section 8.2(ix). The Government shall take any action necessary to cause the Profit Tax, based upon any revised Profit 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.

□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 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.

□PSA□ means Agreement on the Joint Development and Production Sharing for the Azeri and Chirag Fields and the Deepwater Gunashli Field in the Azerbaijan Sector of the Caspian Sea dated 20 September 1994.

□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 2 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 and land rights (encompassing both State Land and Nonstate Land) 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.

“Shippers” means those Persons (including the MEP Participants) that have contracted, directly or indirectly, 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 2.

“State” means the sovereign state of Georgia.

“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 to the extent acting as duly appointed representatives 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 and which is, directly or indirectly, controlled by the Government, including duly appointed 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 Land” means those lands in the Territory, and any and all rights and privileges of every kind and character, however arising and however characterised with respect thereto, which are owned, controlled, used, possessed, enjoyed or claimed by any State Authority and which are included within the Rights to Land as provided herein and in Appendix 2. For the avoidance of doubt, those ownership, reversionary, lessor, licensor and other similar rights of the State Authorities respecting land in the Territory which, as of the Effective Date, was leased, licensed, or otherwise granted to any Person (other than a State Authority) shall be classified as rights in relation to State Land and shall be included within the grant of State Land to the MEP Participants under this Agreement, including for purposes of Appendix 2.

“State Tax Department” means the State Tax Department of Georgia and any successor thereto.

“Taxes” means all existing or future taxes, levies, duties, customs, imposts, contributions (such as social fund and compulsory medical insurance contributions), assessments or other similar fees or 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.

□Technical Examination□ is defined in Section 8.2(vii).

□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.

□VAT□ means value added Tax and any other similar Tax applicable to the provision of goods (including Rights to Land), works, services or technology.

□Year□ means a Gregorian calendar year.

## **APPENDIX 2**

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

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

- 1.1 This Appendix 2 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, 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.
- 1.2 Subject to any private arrangements entered into by the MEP Participants (including in respect of Nonstate Land), the Rights to Land granted to or obtained by the MEP Participants shall be enforceable by the MEP Participants against all State Authorities and against all third parties.
- 1.3 Except for State Land, the MEP Participants shall exercise those powers granted to each of them pursuant to Section 4.1(iii) of the Agreement to which this Appendix is appended to obtain the Construction Corridor and to obtain and maintain the Permanent Land as necessary, in the sole opinion of the MEP Participants, to undertake Project Activities for the duration of the Project and shall be responsible for compensating all landowners and occupiers of such lands which are part of the Construction Corridor or become part of the Permanent Land in accordance with such grant and applicable Georgian Law.
- 1.4 It is the mutual intent of the Parties that, on and after the Effective Date and continuing thereafter for a period of fifteen (15) months, no interest in State Land shall be classified as Nonstate Land by reason of any leasing, licensing or other conveyance of a nonownership interest by the State Authorities to any Person who is not a State Authority. If, however, the MEP Participants have not designated the Preferred Route Corridor by the end of such fifteen-month period, then notwithstanding the definitions of State Land and Nonstate Land (which otherwise fix the classification at the Effective Date), any nonownership interest (including leases and licenses) so conveyed by the State Authorities after said fifteen-month period shall be classified as Nonstate Land pursuant to the definitions applicable to the Agreement to which this Appendix is attached.
- 1.5 Except for the obligation to make the reimbursements of actual, verifiable costs as provided in Article 2 hereof, the MEP Participants shall have no obligation to pay to the State Authorities any compensation in respect of any land or Rights to Land; provided, however, that in respect of any State Land which is made subject to this Agreement as part of the Construction Corridor and/or Permanent Land and, as of the Effective Date, was used for agricultural purposes, the MEP Participants shall be obligated to the extent that any such land is disabled from use for agricultural



purposes as a result of Project Activities, to pay the designated State Authority that amount, determined by reference to and in accordance with Chapter II of the Law of Georgia [On Compensation of Compensatory Land Cultivation Costs and Sustained Damages in Case of Allocation of Agricultural Land for Nonagricultural Purposes] (adopted on October 2, 1997, and as in effect on the Effective Date), for costs of substituting compensatory parcels of land for agricultural purposes.

- 1.6 The State Authorities shall use Best Endeavours to cause all landowners and occupiers of affected properties and/or land rights to observe and respect all of the Rights to Land held by the MEP Participants, whether 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, including landowners and occupiers of affected properties and/or land rights, 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.
- 1.7 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 (subject to relevant provisions of Georgian Law with respect to matters such as national security, defense, public safety and civil aviation and other similar matters) shall be obtained and secured by the State Authorities and, subject to reimbursement of actual, verifiable costs incurred in respect of Nonstate Land, 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 and (subject to relevant provisions of Georgian Law with respect to matters such as national security, defense, public safety and civil aviation and other similar matters) be granted such rights for further study as aforesaid, subject to reimbursement of actual, verifiable costs incurred for the necessary rights for any Nonstate Land within such modified or new Corridor of Interest.

## 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 State Authorities shall review the Corridor of Interest in respect of the relevant provisions of Georgian Law concerning matters such as national security, defense, public safety and civil aviation, cultural heritage, public projects (being projects declared under Georgian Law to involve public necessity), and other similar matters in order to determine and notify the MEP Participants of any areas where the requested grant of Rights to Land for the Preferred Route Corridor, and any Specified Corridor and Construction Corridor contained within said Preferred Route Corridor, must be conditioned, limited or denied based on such considerations, recognising that the EIA as provided for in Appendix 3 of the Agreement to which this Appendix is appended may subsequently further condition the Rights to Land for the Preferred Route Corridor, Specified Corridor or Construction Corridor, as applicable. Subject to the foregoing, the following rights as requested by the MEP Participants with respect to the entire Corridor of Interest will be required and shall be obtained and secured by the State Authorities and, subject to reimbursement of actual, verifiable costs incurred in respect of Nonstate Land, 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 hereof 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 and areas of cultural or historical significance
  - (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, forestry and park lands
  - (14) - current and prior land development, ownership, use and occupation
  - (15) - meteorology
  - (16) - oceanography
- (iii) Based upon the foregoing, the MEP Participants shall notify the State Authorities respecting their selected Preferred Route Corridor. If the MEP Participants later 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, subject to reimbursement of actual, verifiable costs incurred for the necessary rights for any Nonstate Land within such modified or new Preferred Route Corridor.

### 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 and subject to the avoidance of areas of cultural or historic significance, 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, subject to reimbursement of actual, verifiable costs incurred, 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 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 23.7 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 2.
- 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, subject to reimbursement of actual, verifiable costs incurred for the necessary rights for any Nonstate Land within such modified or new Specified Corridor.

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

- 3.1 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 designate 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:
- (i) 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.

- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) Receipt from the State Authorities of 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.
- (vi) 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.
- (vii) 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, subject to the provisions of this Appendix 2, the Agreement to which this Appendix is appended and to any agreements with the relevant party or parties in respect of the Permanent Land.
- (viii) The right, in accordance with Georgian 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.
- (ix) Any additional regulatory and other administrative compliance requirements.

Notwithstanding the foregoing, the State Authorities shall have no obligation to obtain, secure or grant any of the foregoing Rights to Land as to Nonstate Land if doing so would require the exercise of the State Authorities' powers of expropriation, which Rights to Land as to Nonstate Land shall be acquired and paid for by the MEP Participants using the powers granted to them under Section 4.1(iii) of the Agreement to which this Appendix is appended.

3.2 Without prejudice to any contractual arrangement entered into between the MEP Participants and any landowner or occupier, and except as part of Project Activities,

no Person shall have the right to do any of the acts set forth in this Section 3.2 without the prior authorisation of the designated State Authority. No authorisation shall be granted by the designated State Authority without the prior written consent of the MEP Participants, which consent may not be unreasonably withheld. Any such withholding of consent may only be on grounds that such action would be unsafe, compromise Project security or unreasonably interfere with Project Activities.

- (i) Use explosives within an area of five hundred (500) metres either side of the Facilities.
- (ii) Undertake any pile-driving within fifty (50) metres either side of the Facilities.
- (iii) Encroach on the Construction Corridor or other areas where the MEP Participants are conducting Project Activities.
- (iv) Cross or otherwise interfere with the MEP Participants' Rights to Land with any road, railway, power line, utility, pipeline or other project declared under Georgian Law to involve public necessity ("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 to enable the MEP Participants to assess the practicability of conducting the Crossing Project safely and securely, and without unreasonably interfering with Project Activities, and (2), in the case of a Crossing Project undertaken by any State Authority, a creditworthy commitment to provide compensation to the MEP Participants for any costs, or Loss or Damage, incurred by the MEP Participants to accommodate the Crossing Project and, in the case of a Crossing Project undertaken by any Person who is not a State Authority, a creditworthy commitment to provide compensation to the MEP Participants for any cost, loss, claim, damage or expense incurred by the MEP Participants to accommodate the Crossing Project.

#### **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 either be obtained and secured by the State Authorities and granted to the MEP Participants or, in respect of Permanent Land which previously was Nonstate Land, obtained by the MEP Participants through the rights of taking granted to them in Section 4.1(iii) of the Agreement to which this Appendix is appended:

- (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 Georgian 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; provided however, that notice is given to the affected landowner(s) or occupant(s) as soon as reasonably practicable and subject to the payment of reasonable compensation for any Loss or Damage occurring as a direct result of such emergency access.
- (vii) The right to allow use of the Facilities by third parties for Project Activities under such terms and conditions as the MEP Participants 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 land and rights to the land’s subsurface, in each case to be specified upon designation of the Construction Corridor by the MEP Participants), 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 and rights to the land’s subsurface, in each case to be specified upon designation of the Construction Corridor by the MEP Participants), within the Construction Corridor eight (8) metres wide extending from the Point of Entry to the Point of Terminus.

“Permanent Land” refers to the grants described in Section 4.1(ii), (iii) and (iv) and the procedures set forth in Section 7.2(vii) and in this Appendix 2 of this Agreement, and means in respect of State Land and Nonstate Land (i) the Pipeline Corridor and (ii) those other areas of land (contiguous or noncontiguous) designated in the MEP Participants’ sole discretion and acquired by and/or granted to the MEP Participants in accordance with this Appendix and the Agreement to which this Appendix is appended 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 Georgia at a point on the Azerbaijan Republic-Georgia land border.

“Point of Terminus” means the terminus of the Facilities at a point to be selected by the MEP Participants on the land border between Georgia and the Republic of Turkey.

## **7. MISCELLANEOUS**

7.1 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.

7.2 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.

7.3 Subject to Section 3.1(v) of this Appendix 2, the MEP Participants will use Best



Endeavours to give the landowners and occupiers of the land which is adjacent to the Construction Corridor and/or Permanent Land notice of intention to commence the construction works on the Construction Corridor and/or 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.

7.4 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 Construction Corridor and/or Permanent Land which have been granted to, and/or acquired by, 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 pursuant to terms agreed with such landowners and occupiers, but consistent with the need to maintain the security of the Facilities and conduct Project Activities.

7.5 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 Project Participants shall not be responsible for same and the Government shall defend and indemnify all claims made against any Project Participant.

## APPENDIX 3

### CODE OF PRACTICE

This Code of Practice sets forth the agreed technical, environmental, health, safety and social standards and practices to be complied with and relied upon by the MEP Participants, any Operating Company, and any Person acting for or on behalf of any of them with respect to the Facilities and the conduct of Pipeline Activities. The term "Pipeline Activities" means the design, planning, construction, reconstruction, expansion, extension, relocation, repair, replacement, maintenance, operation, use, decommissioning, dismantling, removal or abandonment of the Facilities. Any reference herein to "comparable projects" or projects which are "comparable to the Project" means those involving the trunkline transmission of Petroleum through large diameter (twenty (20) inches or greater) pipe and corresponding operating throughput of three hundred thousand (300,000) barrels per day or greater, with recognition given to the fact that the Facilities are planned to be new built. In identifying, harmonising, and complying with all such standards and practices, the MEP Participants, any Operating Company, and any Person acting for or on behalf of any of them shall act as a prudent operator and shall have the right and obligation to take any action that a prudent operator would take under the same or similar circumstances. The order of priority for actions shall be protection of life, environment, and property. All capitalised terms not otherwise defined shall have the same meaning as specified in the agreement to which this Code of Practice is appended (the "Agreement").

#### 1. AGREED ACTIONS

1.1 In conducting Pipeline Activities, the MEP Participants and any Operating Company or Person acting for or on behalf of them shall:

- (i) install as part of the Facilities and maintain (a) at the Point of Entry and (b) at the Point of Terminus, 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 (2) 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); provided, however, that unless the MEP Participants and the Government agree otherwise, at least one of the metering and measurement facilities shall be in the Territory;
- (ii) continuously measure and periodically sample all Petroleum transported through the Facilities;
- (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; and

- (iv) on or before the tenth (10th) day of each calendar month, provide a statement to the State Authorities of the aggregate quantity of Petroleum transported through the Facilities as measured at the Point of Terminus or, in the event that such quantity is unavailable, a best good-faith estimate thereof, subject to prompt correction if and when such information may later become available.

1.2 The State Authorities shall have the right, at their sole risk and expense, subject to observation of all safety rules applicable to the relevant workplace, and the avoidance of disruption to Project Activities:

- (i) with the requirement that the Operating Company shall give not less than forty-eight (48 hours) prior notice of such activities so that a representative(s) of the State Authorities may be present to observe all operations to install, repair, prove or calibrate the metering and sampling equipment at the Point of Terminus;
- (ii) subject to the provisions of Section 3.2 of this Appendix 3, on not less than twenty-four (24) hours prior notice to the Operating Company, to inspect the Facilities (or portions thereof) and to observe Pipeline Activities; and
- (iii) on not less than forty-eight (48) hours prior notice to the Operating Company, to inspect the books and records of Operating Company with respect to measurement, metering, calibration and other related matters.

1.3 Where an error in measurement of Petroleum (a [Mismeasurement]) occurs, the following will be applied, as available, to correct the Mismeasurement and in the following order:

- (i) data from backup, verification or substitute devices or procedures; failing which,
- (ii) where applicable, data from calibration tests; failing which,
- (iii) estimates based on periods when similar conditions applied; failing which,
- (iv) estimates based on best available technical and scientific evidence.

When the exact date of the start of the Mismeasurement is known, the full correction shall be applied from that date to the date on which the Mismeasurement ceased.

When the exact date of the start of the Mismeasurement cannot be determined with certainty, the most recent date on which there is an auditable trail demonstrating that the appropriate parameter was correct shall be ascertained. The period from that date to the date that the Mismeasurement ceased shall be halved. No correction shall be applied for the first half of the period. The appropriate correction shall be made in

full for the second half of the period.

- 1.4 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.

## 2. TECHNICAL STANDARDS

- 2.1 In conducting Pipeline Activities, it is agreed that those of the technical standards and practices specifically set forth below in Section 2.2 of this Appendix 3 (the "Specified Technical Standards") which are appropriate under the circumstances or, to the extent the Specified Technical Standards are silent or are inapplicable under the circumstances, then the then-current technical standards and practices generally used by the international community (within Canada, the United States or Western Europe) with respect to Petroleum pipeline projects comparable to the Project, shall be applied, including in any instance in which a different technical standard or practice is included in, referenced by, or otherwise relied upon in any Environmental Standards or any Health and Safety Standards (as defined in Section 3.1, below). The relevant technical standard or practice shall be determined by the MEP Participants based on the foregoing from time to time, as the needs of the Project require, and notified to the Government. Such notification shall briefly explain the purpose of the new technical standard or practice and shall either cite where such standard or practice may be found (if readily available) or be accompanied by a copy thereof (if not otherwise readily available). The technical standards and practices set forth in Section 2.2, as augmented by technical standards and practices determined under this Section 2.1, shall be referred to herein as the "Applicable Technical Standards."
- 2.2 Subject to Section 3.1(iii) of this Appendix 3, it is agreed that for purposes of conducting Pipeline Activities the standards, and the practices required by or associated with such standards, from time to time in effect as the Universal Building Code (or "UBC") as well as those of the following organisations shall be acceptable for all purposes of technical compliance as well as in the context of and for purposes of achieving compliance with the Environmental Standards and the Health and Safety Standards:

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 für Normung

IEC	-	International Electrotechnical Commission
IEEE	-	Institute of Electrical and Electronics Engineers (USA)
IP	-	Institute of Petroleum (UK)
ISA	-	Instrument Society of America
ISO	-	International Standards Organisation
NACE	-	National Association of Corrosion Engineers (USA)
NEMA	-	National Electrical Manufacturers Association (USA)
NFPA	-	National Fire Prevention Association (USA)
SSPC	-	Steel Structures Painting Council

- 2.3 If and to the extent the Specified Technical Standards in respect of Pipeline Activities and the Facilities are not readily available through other means, including electronically through the Internet, the MEP Participants will secure and maintain either a paper and/or electronic copy of such standard (in the English language) at their offices in Georgia. Upon written request for same by the Government, and solely as an accommodation, the MEP Participants will furnish another such paper and/or electronic copy, as the case may be, to the designated State Authority at no charge.
- 2.4 In order to confirm compliance of the final design of the Facilities with the Applicable Technical Standards and the requirements imposed on the Facilities as a result of the approved EIA (as defined herein), the MEP Participants shall use Best Endeavours to consult periodically with the Government during the design phase and, in any event, shall provide for Government review and approval of the final design of the Facilities before commencement of construction activities. In the event of any disagreement regarding Facilities compliance, the MEP Participants and the Government shall endeavour, in good faith, to agree on a plan to proceed. In the absence of objection to the final design of the Facilities within thirty (30) days after the Government's receipt of same, the Facilities design shall be deemed approved. Any disagreement on compliance and/or how to proceed will be resolved in accordance with the dispute resolution provisions set forth in Article 17 of the Agreement. In respect of the foregoing final design of the Facilities and in order that the Government may be prepared to review promptly such proffered design information, the MEP Participants shall provide the Government at least twenty (20) days' prior notice before their submission of the final design of the Facilities.
- 2.5 Promptly after the completion of the Facilities, the MEP Participants shall provide to the Government (i) as-built drawings of the Facilities, (ii) final alignment sheets and (iii) operating manuals for the essential components and systems of the Facilities.
- 2.6 During the construction phase for the Facilities, the MEP Participants will provide to the Government monthly reports of the status of the Project and forecasted activities for the upcoming month.
- 2.7 If any regional or intergovernmental authority having jurisdiction enacts or promulgates technical standards or practices relating to Pipeline Activities or the Facilities, the MEP Participants and the Government will confer respecting the

possible impact thereof on the Project, but in no event shall Pipeline Activities or the Facilities be subject to any such technical standards or practices to the extent they are different from, in addition to, or more stringent than the Applicable Technical Standards.

### **3. ENVIRONMENTAL STANDARDS**

3.1 With respect to minimising potential disturbances to the environment, including the surface, subsurface, sea, air, watercourses and reservoirs, lakes, flora, fauna, landscapes, ecosystems and other natural resources and property, the MEP Participants shall, in conducting all Pipeline Activities and with respect to the Facilities, conform to the environmental standards and practices set forth in this Appendix 3 as well as those generally observed by the international community with respect to Petroleum pipeline projects comparable to the Project, but in no event shall such environmental standards and practices be less stringent than the relevant standards and practices applied in the Netherlands (and, with respect to mountainous and earthquake-prone terrain as well as whenever the Netherlands has no relevant standard or practice, the relevant standards or practices, if any, of Austria) in respect of comparable projects (the "Environmental Standards"). For the avoidance of doubt, whenever the Environmental Standards refer to or are drawn from the standards and practices of any particular country or jurisdiction (such as the Netherlands or Austria), those environmental standards and practices:

- (i) do not include the laws of that country or jurisdiction defining or establishing the legal standard of liability (such as negligence, strict liability or the like) of Persons for harm arising from any environmental events, occurrences or noncompliance, it being agreed that the provisions of the Agreement (including, in particular, Articles 10 and 12) relating to what constitutes, and the consequences of, the MEP Participants' breach of obligations shall apply;
- (ii) do not include the regulatory administrative structure or procedures (including those for licensing, permitting and regulatory approvals) of that country or jurisdiction, it being agreed that the regulatory administrative structure and procedures, including environmental permitting as set forth in Section 7.3 of the Agreement, of Georgia shall apply;
- (iii) in those instances in which the particular environmental standard or practice assumes or is based upon technical standards or practices of a country or jurisdiction which are not identical or comparable to the Applicable Technical Standards, the MEP Participants shall either (a) follow those standards and practices which are compatible with the Applicable Technical Standards in order to achieve environmental protections substantially comparable to those of the country or jurisdiction or (b) comply with such country or jurisdiction's environmental standard or practice to the extent reasonably practicable under the circumstances, taking into account the use of the Applicable Technical Standards; and

- (iv) do not include environmental standards and practices beyond those applicable to Petroleum pipelines and pipeline operations.
- 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 serious personal injury, 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. At the Government's sole cost, risk and expense, and in a manner which does not interfere with the MEP Participants' activities undertaken in response to an emergency or other event as herein described, the designated representative(s) of the Government shall have the right to visit the scene and monitor the responsive or remedial activities of the MEP Participants to confirm compliance with this Code of Practice and the Agreement to which this Code of Practice is appended.
- 3.3 If any regional or intergovernmental authority having jurisdiction enacts or promulgates environmental standards or practices relating to the Facilities, Pipeline Activities or 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 environmental standards or practices to the extent they are different from, in addition to, or more stringent than the Environmental Standards.
- 3.4 Prior to the selection of the general location of the Facilities, a review of environmental conditions and the potential 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 for the environmental impact assessment ("EIA") further described in Section 3.6 hereof. 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 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, fauna, landscapes and ecosystems; and
- (f) a qualitative assessment of any pollution, environmental damage and contamination in respect of the Facilities.

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 potential 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 those emissions and discharges into the environment (*e.g.*, associated air emissions, aqueous discharges and solid waste produced) that are reasonably foreseeable;
- (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; provided, however, that said monitoring programme shall provide for Government participation at the Government's sole cost, risk and expense, which participation shall not interfere with Project Activities; and provided further, that in recognition that the Government will be conducting its own monitoring of the Project to assure environmental compliance, the MEP Participants will cooperate with the Government in respect of such Project monitoring, but the foregoing general duty of cooperation shall not vary any terms of the Agreement (including its Appendices).

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) situational scenarios of potential spillages and responses, taking into consideration local circumstances;
- (iii) plans for the provision of relevant Petroleum spill clean up equipment, materials and services;
- (iv) plans for the deployment of relevant equipment and emergency response notification details of the organisation required to handle Petroleum spill response; and
- (v) 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 one or more recognised independent international environmental consulting firms selected by the MEP Participants and approved by the Government, such approval not to be unreasonably withheld or delayed. In this regard, the MEP Participants' choice for the recognised independent international environmental consulting firm shall be deemed approved by the Government if, by not later than twenty (20) days after such choice is notified to the Government, the MEP Participants have received no written objection (with the reason(s) for any such objection fully set forth) to their choice. 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 official and 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 official and 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, which completion of the Baseline Study and EIA shall be prior to commencement of construction activities and provided that the MEP Participants shall provide the Government no less than thirty (30) days prior notice before making any such submission(s). The Government shall approve each such item if it satisfies the requirements of this Appendix 3.

- (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 satisfied the requirements of this Appendix 3, it shall submit its specific concerns or questions to the MEP Participants in writing 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 17 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 Georgian 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 shall include and take account of and implementation of the environmental strategy reflected therein shall be in accordance with, the Environmental Standards and shall take into account the Applicable Technical Standards, as appropriate. Creation of the EIA shall also be in accordance with the principles of EC Directive 85/337/EEC (as amended by EC Directive 97/11/EC) and its conclusions will be based upon the following general environmental principles:

- (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; 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 17 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 17 of the Agreement.

3.13 Without limiting the generality of Article 10 or Article 12 of the Agreement, the MEP Participants shall not be liable for any environmental pollution or contamination, damage, or other conditions if and to the extent the same were 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 one or more subsequent studies prepared under the procedures

applicable to the Baseline Study, 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 harm to the environment which is not reasonably susceptible to other remediation techniques, all as determined in accordance with the Environmental, Health and Safety Standards and/or Applicable Technical Standards, as applicable;
  - 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, the sealing of such pipelines at the ends and the taking of such other action as may be reasonably necessary in order to result in any abandoned facilities being left in an environmentally safe condition;
  - 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;
  - g) the revegetation of the Pipeline Corridor consistent with the terrain features and other prevailing conditions in the subject area; and
  - h) the manner and techniques to be employed in accomplishing the foregoing activities consistent with the Environmental, Health and Safety Standards and/or Technical Standards, as applicable.

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 ninety (90) 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 17 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."

- 3.15 Within thirty (30) days after the Government's approval of the Abandonment Plan, as provided in Section 3.14 of Appendix 3, in order to financially secure their Abandonment Obligations hereunder and without impairing their obligation to perform same, the MEP Participants shall provide the Government one or more irrevocable direct pay letters of credit (collectively, the "Letter of Credit"). 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.

3.16 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 independent international environmental consulting firm selected by the MEP Participants and approved by the Government, such approval not to be unreasonably withheld or delayed. In this regard, the MEP Participants' choice for the recognised independent international consulting firm shall be deemed approved by the Government if, by not later than twenty (20) days after such choice is notified to the Government, the MEP Participants have received no written objection (with the reason(s) for any such objection fully set forth) to their choice. 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 17 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 3.16 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 3, 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.

3.17 In addition to their applicability to the MEP Participants, the provisions of this Appendix 3 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. HEALTH AND SAFETY STANDARDS**

4.1 With respect to promoting health and safety in respect of the Facilities and Project Activities, including those related to Persons involved in Project Activities, the MEP Participants shall conform to the health and safety standards and practices generally observed by the international community with respect to Petroleum pipeline projects comparable to the Project (the "Health and Safety Standards"). For purposes hereof, "comparable" shall have the same meaning as "comparable projects" as defined and used in Section 3.1 of this Appendix 3.

4.2 If any regional or intergovernmental authority having jurisdiction enacts or promulgates health and/or safety standards or practices relating to the Facilities, Pipeline Activities or 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 health and/or safety standards or practices to the extent they are different from, in addition to, or more stringent than

the Health and Safety Standards.

## **5. SOCIAL IMPACT ASSESSMENT**

- 5.1 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.
- 5.2 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.
- 5.3 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).
- 5.4 During the course of Project Activities, the MEP Participants shall from time to time confer with the State Authorities as to the impact of ongoing Project Activities in light of the SIA.

## **6. MISCELLANEOUS**

- 6.1 Subject to the provisions of Article 10 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.
- 6.2 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.



- 6.3 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.
- 6.4 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.
- 6.5 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 Georgian Law.

**GEORGIA HOST GOVERNMENT AGREEMENT --  
DOCUMENT NUMBER: HOU03:648165.19, THIS  
DRAFT IS DATED 28 APRIL 2000. THIS IS THE  
SIGNED VERSION.**