

**APPENDIX 2**

**to that certain Host Government Agreement between the  
Government of the Republic of Turkey and the MEP Participants  
dated 19 October, 2000.**

**TURNKEY AGREEMENT**

**BETWEEN**

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

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

**STATOIL BTC CASPIAN AS**

**RAMCO HAZAR ENERGY LIMITED**

**TURKIYE PETROLLERI A.O.**

**UNOCAL BTC PIPELINE, LTD.**

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

**DELTA HESS (BTC) LIMITED**

**AND**

**BOTAS PETROLEUM PIPELINE CORPORATION**

19 October, 2000

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## APPENDICES

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## **TURNKEY AGREEMENT**

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

**BOTAS PETROLEUM PIPELINE CORPORATION**, a corporation organised and existing under the laws of the Republic of Turkey;

and

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

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

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

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

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

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

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

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

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

### **W I T N E S S E T H:**

WHEREAS, the MEP Participants propose to develop, construct, own and/or operate the MEP System for the transportation of Petroleum to, within and across the Territories of the Azerbaijan Republic, Georgia and the Republic of Turkey for export to international markets, including markets in the Republic of Turkey;

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

WHEREAS, the Governments of the Azerbaijan Republic, Georgia, and the Republic of Turkey acting on behalf of their respective States and the Governmental Authorities have each entered into respective Host Government Agreements with the MEP Participants in furtherance of the Intergovernmental Agreement to facilitate and support the implementation of the Project within their respective Territories;

WHEREAS, the Government of the Republic of Turkey under the Host Government Agreement is guaranteeing the performance of the Turnkey Contractor and is providing to the MEP Participants the Government Guaranty by which the Republic of Turkey guarantees the payment of amounts payable by the Turnkey Contractor under this Agreement;

WHEREAS, the Turnkey Contractor desires to provide, and the MEP Participants wish to obtain, design, engineering, procurement, construction, start-up, commissioning, testing and related goods, works, services and technologies for the Work, all of which is to be provided on a Lump Sum Fixed Price (as hereinafter defined), turnkey basis in accordance with the terms and conditions herein specified;

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 following meanings:

### 1.1 Definitions.

“Acceptable Letter of Credit” shall have the meaning set forth for it in the definition of Security in this Agreement.

“Additional Amounts” shall have the meaning set forth in Section 10.5.2 of this Agreement.

“Additional Cost Exposure” means, at any time, the excess of (i) the Expected Cost of the Facilities at such time as reflected in the most recently delivered Independent Engineer’s Report over (ii) the Lump Sum Fixed Price.

“Additional Funding Requirement” means, at any time, the amount, if any, that the Additional Cost Exposure exceeds the amount of Required Security at such time.

“Adjusted Required Security” means the Required Security on the Initial Security Delivery Date, as adjusted for the resolution of the Cost Dispute pursuant to Section 10.2.3.

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

“Applicable Laws” means in respect of the State, the laws of that State binding and legally in effect from time to time and forming the organic law constituting the entire legal regime of the State, including the Constitution, all other laws, codes, decrees, by-laws, regulations, communiques, declarations, principal decisions, orders, normative acts and policies, all international agreements to which the State 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.

“Applicable Permits” means all Permits relative to the Work as are required by this Agreement and/or the Governmental Authorities to be obtained or maintained, including those secured by reference to the Application Requirements.

“Application Requirements” means a complete and proper list of all documentation necessary to obtain a particular Permit in order to carry out the Project in the Territory, as such list pertains to the Work and as is provided by the relevant Governmental Authority pursuant to the Host Government Agreement.

“Arbitrating Parties” means the Party or Parties that submit a Dispute to arbitration 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, together with those Parties which may later intervene in or are added to the arbitral proceeding. “Arbitrating Party” means any one of them.

“ASME” means the American Society of Mechanical Engineers or any successor society thereto.

“Basic Engineering Phase” means the initial Phase of the Work to be performed by the Turnkey Contractor encompassing the basic engineering services more particularly described in Appendices A and B and specifically including the following key deliverables : (i) route selection to within five hundred (500) meter wide pipeline corridor, (ii) environmental baseline study, (iii) functional design specifications for pipeline, pump stations and Ceyhan Terminal, and (iv) basic design report.

“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.

“Bid Report” shall have the meaning set forth in Section 10.2.1 (iii) of this Agreement.

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

“Class A Package” means a package of deliverables suitable to allow the competitive bidding of Key Subcontract(s) and as set out in Appendix D.

“Code of Practice” means those codes and regulations regarding the Work as set forth in this Agreement and as are set forth in the Host Government Agreement.

“Commencement Date” means, for each Phase of the Work, the date on which the Turnkey Contractor is to commence performance of such Phase, as specified in the Notice to Proceed for each such Phase delivered to the Turnkey Contractor by the MEP Participants’ Representative pursuant to Section 3.2 of this Agreement.

“Commencement Date of the Fill” shall have the meaning set forth in Section 6.6 of this Agreement.

“Completed Performance Test” means any Performance Test conducted in accordance with the provisions of Section 7.2.2 during which all or portions of the Work and the operation thereof are to be demonstrated by the Turnkey Contractor to operate at specified standards or rates and, while so doing, to comply with Applicable Laws and, once the standards or rates for such test are successfully accomplished, constituting a Completed Performance Test in accordance with the provisions of Section 7.3.

“Completion Certificate” means the form of certificate attached hereto as Appendix G and prepared and furnished by the Turnkey Contractor for execution by the MEP Participants to signify their acceptance of the first two Phases and of each of the several milestones within the three Phases in accordance with this Agreement.

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

“Cost Dispute” shall have the meaning set forth in Section 10.2.3 of this Agreement.

“Cost Evaluation Date” shall have the meaning set forth in Section 10.2.1 (iv) of this Agreement.

“Cost Overrun Amount” means as of any date the amount, if any, that the actual cost incurred by the Turnkey Contractor in connection with this Agreement as verified by the Independent Engineer exceeds the sum of (i) amounts paid to the Turnkey Contractor by the MEP Participants pursuant to this Agreement and (ii) the amounts payable to the Turnkey Contractor under the Turnkey Agreement for the Work performed to such date, assuming that the Turnkey Contractor would satisfactorily perform all conditions to such payment.

“Design Documents” shall have the meaning set forth in Section 3.1.3 of this Agreement.

“Detailed Engineering Phase” means the second Phase of the Work to be performed by the Turnkey Contractor encompassing the detailed engineering services more particularly described in Appendices A and B and specifically including four milestones : (i) delivery of the Class A Package(s) for pipeline, pump stations and Ceyhan Terminal, (ii) approval by State Authorities of the Environmental Impact Assessment, (iii) coordination of the securing of provisional rights to the Permanent Land for the benefit of the MEP Participants by entry into the relevant land registers in accordance with Applicable Laws and (iv) the remainder of the Work for the detailed engineering services.

“Dispute” shall have the meaning set forth in Section 21.1 of this Agreement.

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

“Early Completion Payment” shall have the meaning set forth in Section 8.3 of this Agreement.

“Effective Date” shall have the meaning set forth in Article 2.1 of this Agreement.

“Entity” means any company, corporation, limited liability company, partnership, limited partnership, joint venture, enterprise, association, trust or other juridical entity, organisation or business relationship between two or more Persons, whether of a governmental or private nature.

“Equivalent Availability” shall have the meaning set forth in Section 7.3.1 of this Agreement.

“Event of Default” shall have the meaning set forth in Section 16.3 of this Agreement.

“Expected Cost of the Facilities” means the amount calculated by the Independent Engineer to be the statistical mean of the distribution of the “Cost of the Work” against probability of occurrence of such cost, derived using all information available, and using statistical and cost estimating methodology that the Independent Engineer shall have determined to be appropriate in its discretion. “Cost of the Work” means, in this definition, the total cost to be incurred by the Turnkey Contractor to perform its obligations to design, engineer, install, start-up, equip, mobilise, test, and commission the Facilities in accordance with this Agreement.

“Facilities” means the segment of the MEP System located in the Territory and consisting of one or more pipelines and laterals and all necessary interconnects for the transportation of Petroleum within and/or across the Territory and all above and below ground or seabed installations and ancillary equipment, all loading, unloading, pumping, compressing, measuring, testing and metering facilities, communications, telemetry and similar equipment, all pig launching and receiving facilities, all pipelines, power lines and other related equipment used to deliver any form of liquid or gaseous fuel and/or power necessary to operate pump stations or for other system needs, cathodic protection devices and equipment, all monitoring posts, markers and sacrificial anodes, all port, terminaling, storage and related installations, all marine jetties and similar facilities, and all associated physical and intangible (including intellectual property, contract rights, Permits and other rights) assets and appurtenances (including all temporary and permanent roads and other means of access and operational support) required for proper functioning in accordance with the Appendices attached hereto.

“Facility Sites” means all those parcels of land (and improvements thereon and thereto) in the Territory on, under and through which the Facilities will be located, including the Rights to Land and the temporary and permanent pipeline corridor and all other land or interests in land which must be acquired and controlled regarding the Work.

“Financial Closing Date” means the date upon which the MEP Participants notify the Turnkey Contractor that the MEP Participants have access to construction financing adequate to pay their obligations hereunder pursuant to binding commitments.

“Financing Request” shall have the meaning set forth in Section 10.5.1(ii) of this Agreement.

“Financing Taxes” shall have the meaning set forth in Section 10.5.2 of this Agreement.

“First Security Determination Report” shall have the meaning set forth in Section 10.2.1 (iv) of this Agreement.

“Force Majeure” shall have the meaning set forth in Sections 12.1 and 12.2 of this Agreement.

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

“Government Guaranty” means the Government Guaranty between the Republic of Turkey and the MEP Participants (the original form of which is attached as Appendix 3 to the Host Government Agreement), together with all related instruments, assurances, undertakings, commitments or indemnities entered into pursuant to the terms thereof, and as such Government Guaranty and all such related or derivative documentation may be extended, renewed, replaced, amended or otherwise modified from time to time in accordance with the terms thereof.

“Governmental Authority” means, with respect to the State and the Government, all central, state, local, municipal or other governmental bodies or agencies or subdivisions thereof, having or asserting governmental or administrative authority over the MEP Participants, the Turnkey Contractor, and their respective Affiliates, or over any part or all of the Work, the Project or the Facilities.

“Guaranteed Completion Date” shall have the meaning set forth in Section 8.1, subject to adjustment thereto in accordance with Section 13.2 of this Agreement.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant

to any law, rule, regulation, code, ordinance, order, decree, judgment, injunction, notice or binding agreement issued, promulgated or entered into by the Government relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any such material or to health and safety matters.

“Host Government Agreement” means that certain Host Government Agreement by and among the Government of the Republic of Turkey and the MEP Participants dated 19 October, 2000, as such agreement may be extended, renewed, replaced, amended or otherwise modified from time to time in accordance with its terms.

“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.

“Indemnified Party” shall have the meaning set forth in Section 14.1 of this Agreement.

“Independent Engineer” means the Person selected by the MEP Participants and/or their Lenders and/or Insurers from a list of Persons agreed by the Parties to prepare reports of the Expected Cost of the Facilities, which Person shall not be an Affiliate of any MEP Participant or the Turnkey Contractor. The MEP Participants shall pay the costs and expenses of the Independent Engineer.

“Independent Engineer’s Report” means any report prepared by the Independent Engineer setting forth the Expected Cost of the Facilities, a range of expected costs of the Facilities, together with the Independent Engineer’s estimate of the likelihood of occurrence of such costs, projected schedule for completion of the Facilities and the material assumptions applied by the Independent Engineer in developing the Expected Cost of the Facilities and delivered pursuant to Section 10.2.2.

“Independent Expert” shall have the meaning set forth in Section 10.2.3 of this Agreement.

“Initial Security Delivery Date” shall have the meaning set forth in Section 10.4.1 of this Agreement.

“Insurers” means any insurance company or other Person providing insurance covering all or portion of the Facilities, or other risks to any Project Participant in relation to the Project in the Territory, 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 Among the Azerbaijan Republic, Georgia and the Republic of Turkey Relating to the Transportation of Petroleum Via the Territories of the Azerbaijan Republic, Georgia and the Republic of Turkey Through the Baku-Tbilisi-Ceyhan Main Export Pipeline” dated 18 November 1999, as such agreement may be acceded to, extended, renewed, replaced, amended or otherwise modified from time to time in accordance with its terms.

“Key Subcontractors” shall have the meaning set forth in Section 4.1 of this Agreement.

“Key Subcontracts” shall have the meaning set forth in Section 4.1 of this Agreement.

“Land Acquisition and Construction Phase” means the third Phase of the Work to be performed by the Turnkey Contractor encompassing (i) the acquisition from the appropriate State Authorities (as defined and in accordance with the Article 7.2 (vii) of the Host Government Agreement) of the necessary Rights to Land in the Territory in accordance with the terms of this Agreement and the Host Government Agreement, with such land-related services and deliverables otherwise more particularly described in Appendices A and B and in the Host Government Agreement and (ii) the construction design, procurement, fabrication, installation, testing, commissioning and start-up of the Facilities, and all other aspects of the Work necessary to achieve Work Completion. The Land Acquisition and Construction Phase includes those several Work components and milestones as further set forth in Appendices A and B.

“Late Completion Payment” shall have the meaning set forth in Section 8.2 of this Agreement.

“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 Facilities (including any refinancings thereof) and any successor or permitted assignee of any of them, excluding the Government.

“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.

“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 the Government or a Governmental 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).

“Lump Sum Fixed Price” shall have the meaning set forth in Section 5.1 of this Agreement.

“Mechanical Completion” means completion of all work required to allow linefill and commissioning to proceed. This requires the Facilities to be in a safe and functional condition, with all equipment, safety systems and control devices verified as operational to the satisfaction of the MEP Participants. Without limiting the foregoing, such completion shall include completion in accordance with the terms and conditions of this Agreement of all engineering, procurement, construction, installation, testing, cleaning, calibration, precommissioning, and function-test work with respect to all mechanical, electrical, civil, structural, architectural, marine loading facilities, instrumentation, communications, utility and control systems of the Facilities.

“MEP Participants” means any one or more, or all, of the Parties to this Agreement (including by novation and/or permitted assignment as an MEP Participant pursuant to this and/or any other Project Agreement), other than the Turnkey Contractor, and any successors and permitted assignees of any of the foregoing.

“MEP Participants’ Additional Cost Financing” shall have the meaning set forth in Section 10.3.3 (i) of this Agreement.

“MEP Participants’ Representative” shall have the meaning set forth in Section 6.1 of this Agreement.

“MEP System” means, at any time, the Baku-Tbilisi-Ceyhan pipeline system (commencing at Sangachal terminal facilities, and terminating at the end flange of the loading arms of the Ceyhan Terminal to be constructed after the Effective Date of this Agreement) and all related appurtenances, including the Facilities in the Territory and all other such facilities in the other territories.

“Milestone/Progress Payment Schedule” means the Work-related payment schedule set forth in Appendix B to this Agreement.

“Monthly Progress Report” means the report which will be produced by the Turnkey Contractor and submitted to the MEP Participants at an agreed monthly cut-off date. It will contain information that reflects the current technical and commercial position of the Work, and advising of trends and activities requiring special attention. The format and content of the report will be agreed between the Turnkey Contractor and the MEP Participants’ Representative within fifteen (15) days beyond the commencement of the Work and reflect the agreed project strategy.

“Notice of Work Completion” shall have the meaning set forth in Section 7.4.1 of this Agreement.

“Notice of Provisional Acceptance” shall have the meaning set forth in Section 7.2.1 of this Agreement.

“Notice to Proceed” shall have the meaning set forth in Section 3.2 of this Agreement.

“Notice of Reliability Guaranty Achievement” shall have the meaning set forth in Section 7.3.2 of this Agreement.

“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 Project activities including serving as an operator of all or any portion of the Facilities, 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.

“Operating Fee” shall have the meaning set forth for it in Section 2.4 of the Host Government Agreement.

“Operating Manuals” shall have the meaning set forth in Section 3.1.3.1 of this Agreement.

“Parties” means each of the signatories to this Agreement and each of their respective successors and permitted assignees.

“Performance Guaranties” shall have the meaning set forth in Section 9.4 of this Agreement.

“Permanent Land” refers to the grant described in Section 4.1 (iii) and the procedures set forth in Section 7.2 (vii) and in Appendix 4 of the Host Government Agreement and means (i) the Pipeline Corridor (as defined in the Host Government Agreement) and (ii) those other designated areas of land (contiguous or non contiguous) notified to the State Authorities in the MEP Participants sole discretion for use as the locations upon or under which the Facilities covered by this Agreement will be constructed or installed.

“Permit” means any valid waiver, exemption, variance, franchise, validation, confirmation, permit, certificate, permission, authorisation, licence or similar order or approval of or from any Governmental Authority.

“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.

“Phase” means the Basic Engineering Phase, the Detailed Engineering Phase and/or the Land Acquisition and Construction Phase, as the context may indicate, and “Phases” means one or more of the foregoing, as the context may indicate.

“Procedures Manual” shall have the meaning set forth in Section 3.1.3.3 of this Agreement.

“Project” means, relating 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, expansion, extension (including laterals) and protection of the Facilities, from time to time, in the Territory.

“Project Agreements” means this Agreement, the Intergovernmental Agreement, the Host Government Agreement, the Government Guaranty and all other existing and future agreements, contracts and other documents to which, on the one hand, any of the Governmental Authorities or a State Entity and, on the other hand, any MEP Participants are or may 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 Execution Plan” is the plan attached hereto as Appendix D of this Agreement, as such plan may be revised and updated by the Turnkey Contractor from time to time with the approval of the MEP Participants.

“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.

“Provisional Acceptance” means the actual acceptance by the MEP Participants of Facilities’ performance pursuant to the provisions of Section 7.2 of this Agreement.

“Provisional Acceptance Certificate” shall have the meaning set forth in Section 7.2 (iv) of this Agreement.

“Punch List” means the list prepared by or on behalf of the MEP Participants, with the full cooperation of the Turnkey Contractor, which sets forth those items of the Work that remain to be performed in order to ensure that the Facilities, all of its components and the Work fully comply with all of the standards and requirements set forth in this Agreement, the Host Government Agreement, and Applicable Laws. The Punch List shall not include any items of Work, alone or in the aggregate, the noncompletion of which (i) prevents the Facilities from being used for its purpose as described in this Agreement in accordance with Applicable Laws, (ii) prevents the Facilities from operating on a legal, safe, environmentally sound and reliable basis, or (iii) could have a materially adverse effect on the operation, efficiency, safety or reliability of the Facilities or the environment.

“Quality Control Manual” shall have the meaning set forth in Section 3.1.3.4 of this Agreement.

“Quality Control Plan” shall have the meaning set forth in Section 3.1.3.4 of this Agreement.

“Reliability Certificate” shall have the meaning set forth in Section 7.3.3 of this Agreement.

“Reliability Guaranty” means the Reliability Guaranty described in Section 7.3.1 of this Agreement.

“Reliability Run” shall have the meaning set forth in Section 7.3 of this Agreement.

“Report Delivery Date” shall have the meaning set forth in Section 10.2.2 of this Agreement.

“Required Security” means an amount of Security equal to the lesser of (i) the Additional Cost Exposure as of the Cost Evaluation Date, as adjusted pursuant to Section 10.2.3, pending resolution of Cost Disputes described in such Section 10.2.3 respecting the Expected Cost of the Facilities contained in the Independent Engineer’s First Security Determination Report, and (ii) three hundred million Dollars (\$300,000,000).

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

“Scheduled Payments” shall have the meaning set forth in Section 5.2 of this Agreement.

“Scope Change” means any addition to, deletion from, suspension of or other modification to the requirements of this Agreement which may necessitate a change in one or more of the Lump Sum Fixed Price, the Guaranteed Completion Date, the Milestone/Progress Payment Schedule, the Work Schedule or the Performance Guaranties in accordance with the terms of Article 13 of this Agreement.

“Scope Change Order” means a written order to the Turnkey Contractor issued and signed by the MEP Participants after the execution and delivery of this Agreement authorising a Scope Change and, if appropriate, an adjustment in one or more of the Lump Sum Fixed Price, the Guaranteed Completion Date, the Milestone/Progress Payment Schedule, the Work Schedule, the Performance Guaranties or any other amendment or modification of the terms and conditions of this Agreement.

“Scope Change Order Notice” means a written notice to the MEP Participants issued by the Turnkey Contractor in accordance with this Agreement and requesting a Scope Change Order in connection with the performance of the Work.

“Scope Change Order Request” means a written proposal issued and signed by the MEP Participants requesting a Scope Change and submitted to the Turnkey Contractor by the MEP Participants (or the MEP Participants’ Representative) pursuant to the terms of Section 13.3.2 of this Agreement.

“Security” means the (i) cash, (ii) letters of credit issued by a bank having an unsecured senior debt rating of A or better by Standard & Poor’s Ratings Group and the equivalent by Moody’s Investors Services, Inc. (an “Acceptable Letter of Credit”) having an expiry date of thirty two (32) months from the Notice to Proceed for the Land Acquisition and Construction Phase as such date may be extended, or has a shorter maturity but provides that such letter of

credit may be drawn if the Turnkey Contractor has not replaced such letter of credit with an otherwise Acceptable Letter of Credit with an expiry of at least twelve (12) months from the date of replacement, at least thirty (30) days before the expiry of the existing letter of credit, and all of which letters of credit will provide that the letter of credit may be drawn if the debt ratings of the issuer of the letter of credit are no longer at the above levels or (iii) other liquid security acceptable to the MEP Participants, in each case established by the Turnkey Contractor for the benefit of the MEP Participants and/or their Lenders and/or Insurers in the amount required under the provisions of Article 10 of this Agreement and may be drawn or applied in accordance with the terms of Article 10.

“Security Delivery Date” means, each of the Initial Security Delivery Date and the date thirty (30) days following the delivery of each Independent Engineer’s Report delivered during the Land Acquisition and Construction Phase.

“Specifications Report” shall have the meaning set forth in Section 10.2.1 (ii) of this Agreement.

“Start-up Period” shall have the meaning set forth in Section 3.1.13 of this Agreement.

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

“State Entity” means, any Entity in which, directly or indirectly, the State or the Government has an equity or similar economic interest or which is, directly or indirectly, controlled by the Government, including agents and representatives of the Government. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, by law, or otherwise.

“Subcontractors” shall have the meaning set forth in Section 4.1 of this Agreement.

“Subcontracts” shall have the meaning set forth in Section 4.1 of this Agreement.

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

“Termination Payment” shall have the meaning set forth in Section 5.3 of this Agreement.

“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.

“Turnkey Contractor” means Boru Hatlari ile Petrol Tasima A.S. (“BOTAS”), the Person so identified as a signatory to this Agreement, which is a state economic enterprise established as a joint state company in accordance with Turkish Law by the authority of decree no. 233 (dated February 8, 1995) and which is responsible for the obligations of the Turnkey Contractor under this Turnkey Agreement, and any successor or permitted assignee of such Person.

“Turnkey Contractor Additional Security” shall have the meaning set forth in Section 10.3.3 of this Agreement.

“Turnkey Contractor Permits” shall have the meaning set forth in Section 3.1.6.1 of this Agreement.

“Turnkey Contractor’s Equipment” means all materials, equipment, tools, appliances and items of whatsoever nature used, useable or required by the Turnkey Contractor and/or its Subcontractors for the performance of the Work, but not including materials, equipment, appliances or items intended to form, or forming, part of the Work.

“Turnkey Contractor Representative” shall have the meaning set forth in Section 3.1.1 of this Agreement.

“Warranty Period” shall have the meaning set forth in Section 11.1.4.

“Work” shall have the meaning set forth in Section 3.1 of this Agreement.

“Work Completion” means the actual acceptance by the MEP Participants of the completed Work from the Turnkey Contractor in accordance with the provisions of Section 7.4 of this Agreement.

“Work Schedule” shall have the meaning set forth in Section 3.1.17 of this Agreement.

“Year” means a Gregorian calendar year.

## ARTICLE 2

### Agreement, Term and Duration

2.1 Effective Date. This Agreement shall be effective and binding on the Parties from the date first written above, which is the date it has been fully executed by all Persons listed as Parties hereto (the “Effective Date”), until Work Completion and the expiration of the Warranty Period applicable to the Work and the Facilities, unless this Agreement has been earlier terminated pursuant to Article 16.

2.2 Effect of Termination. On termination of this Agreement (irrespective of cause), the obligations of the MEP Participants and the Turnkey Contractor under this Agreement shall cease other than (i) the indemnity obligations set forth in Section 3.1.2.2 and Article 14, which shall survive until the expiration of the Warranty Period; (ii) those Sections of this Agreement which expressly provide for their survival; and (iii) those Sections of this Agreement which are required to give effect to any termination. Termination of this Agreement shall be without prejudice to the rights, obligations and liabilities of the Parties which accrued during the term hereof.

## ARTICLE 3

### Turnkey Contractor's Work and Other Rights and Obligations

3.1 Work to Be Performed. Except as otherwise expressly set forth in Article 6, the Turnkey Contractor shall timely and properly perform or cause to be performed in compliance with applicable health, safety, social and environmental standards, all work and services required in connection with the design, engineering, procurement, construction, inspection, start-up, demonstration and testing of the Facilities, including the coordination of the designated State Authority's activities (as provided in the Host Government Agreement) in securing the necessary Rights to Land, the conduct of all environmental evaluations, impact assessments and compliance procedures, provision of any and all materials, equipment, machinery, tools, labour, transportation, construction fuels, chemicals, construction utilities, warranty compliance, administration, accounting, overhead and support services and other services and items required to deliver the fully functional Facilities to the MEP Participants, all on a Lump Sum Fixed Price, turnkey basis in accordance with this Agreement (the "Work"). Without limiting the foregoing, certain details of the Work are described in this Article 3 and in Appendix A. It is the intent of the Parties that the Turnkey Contractor design, engineer, procure, construct, start-up, demonstrate, test and put into operation a highly reliable and operationally efficient Work in strict accordance with the terms of this Agreement and Applicable Laws, to such end, the Turnkey Contractor shall perform all of the work necessary to complete the entire Work, notwithstanding the fact that every item, part, subsystem or element necessarily involved may not be specifically mentioned in this Agreement. Subject to Article 13, details and items not indicated by Appendix A (and items, parts, subsystems or elements specified therein that are inadequate) shall be adequately and properly included, added or performed by the Turnkey Contractor at no extra cost to the MEP Participants if such details or items, parts, subsystems or elements are necessary to complete the Work pursuant to this Agreement. The intent of this Agreement is to relieve the MEP Participants of the necessity of engaging or supplying any labour, service or material to complete the Work except as specifically provided in Sections 6.4, 6.5 and 6.6 of this Agreement.

3.1.1 Turnkey Contractor Representative. The Turnkey Contractor shall designate one representative (the "Turnkey Contractor Representative") who shall have authority to administer this Agreement on behalf of the Turnkey Contractor, agree upon procedures for coordinating with the MEP Participants and the MEP Participants' Representative furnish all Work-related information, when required or appropriate, to the MEP Participants. For the avoidance of doubt, no Turnkey Contractor Representative shall have the power to amend this Agreement.

#### 3.1.2 Engineering, Design, Procurement, Construction and Construction Management.

3.1.2.1 Engineering and Design. The Turnkey Contractor shall provide all engineering and design services necessary for completion of the Work in conformity with this Agreement and Appendix A, including (i) preparation of the engineering and detailed design necessary to definitively describe the Work, (ii) provision of specifications and criteria for the detailed design sufficient for the submission of bids by suppliers of equipment, materials and systems for incorporation into the Facilities, and (iii) preparation of drawings, plans, bills of material, schedules and estimates. As described in Appendix A, engineering and design will be authorised and completed in two Phases, defined as the Basic Engineering Phase and the Detailed Engineering Phase. Subject to mutual agreement on the fees for such services, PLE (Pipeline Engineering GmbH) has been selected and approved by the Parties to perform the Basic Engineering Phase for the MEP System. The Basic Engineering for the Facilities in the Territory

will be contracted between the PLE and the Turnkey Contractor. The Basic Engineering for the Azerbaijan and Georgian elements of the MEP System will be contracted between PLE and MEP Participants.

3.1.2.2 Coordination of Land Acquisition. With reference to Sections 4.1 (iii) and 7.2 (vii) and Appendix 4 of the Host Government Agreement, the Turnkey Contractor shall be responsible to secure the timely cooperation, consistent with accomplishing the Work Schedule of the designated State Authority (in accordance with the Host Government Agreement) in respect to the Rights to Land necessary for the Facilities and to perform the Work and, in particular, to coordinate the activities of the designated State Authority which will exercise sovereign powers to acquire the Permanent Land to be granted to the MEP Participants for the Facilities. All payments by the MEP Participants in respect of the Rights to Land shall be made by the MEP Participants in accordance with the Milestone/Progress Payment Schedule, with the Turnkey Contractor being responsible under this Agreement for advising the MEP Participants of the proper amounts and the proper payees, other than Turnkey Contractor, which are to receive all or any portion of such Scheduled Payments. The Turnkey Contractor shall protect, defend and indemnify the MEP Participants for any Loss or Damage resulting from or relating to the payments made to the Turnkey Contractor and/or the designated State Authority for Rights to Land. For the avoidance of doubt and notwithstanding that the Turnkey Contractor will require only those Rights to Land as are necessary to complete its Work and deliver the Facilities during the term of this Agreement, the payment of a total of ninety nine million Dollars (\$99,000,000) as specified in Section 7.2 (viii) of the Host Government Agreement shall be the total consideration paid by the MEP Participants for all Rights to Land for the entire duration of the Project, including those Rights to Land necessary for the Turnkey Contractor to perform this Agreement.

3.1.2.3 Construction, Procurement and Construction Management. The Turnkey Contractor shall develop a construction plan for the Work and oversee, coordinate and ensure the expeditious construction, including all required procurement activities, of the Work in accordance with Appendix A and the other terms and provisions of this Agreement. The Turnkey Contractor shall establish and maintain project management control systems and provide construction management services in accordance with the standards of performance as described in Appendix C. For the avoidance of doubt, all Work associated with the first two Phases of the Work must be completed and Completion Certificates (including confirmation of the acquisition of provisional rights to the Permanent Land) must be executed before a Notice to Proceed with the Land Acquisition and Construction Phase may be given.

3.1.3 Documentation and Manuals. Subject to Article 18, the Turnkey Contractor shall submit to the MEP Participants, as they become available from time to time during their preparation, ten (10) copies of all specifications, data sheets, plans and drawings, and other information and documents required to be submitted to the MEP Participants as specified in Appendices A and C (collectively, the “Design Documents”). In addition, the Turnkey Contractor shall provide to the MEP Participants the following:

3.1.3.1 Operating & Maintenance Manual. The Turnkey Contractor shall provide ten (10) copies of all operating and maintenance manuals (collectively, the “Operating Manuals”) to the MEP Participants in accordance with the requirements of Appendix A.

3.1.3.2 Project Execution Plan. Turnkey Contractor's Project Execution Plan will be maintained throughout the term of this Agreement that provides the guidelines by which the Work will be performed and delivered. The Project Execution Plan shall contain, among other materials, an organisational chart, correspondence procedures, a Work filing system, procedures for the review of the Design Documents and project progress and verification procedures to be implemented for use by the MEP Participants.

3.1.3.3 Procedures Manual. The Turnkey Contractor shall, within thirty (30) days after receipt from the MEP Participants of the Notice to Proceed for the Basic Engineering Phase, deliver to the MEP Participants ten (10) copies of a manual that provides the guidelines by which the Work will be performed and the day-to-day working relationships will be conducted between the MEP Participants (and the MEP Participants' Representative) and the Turnkey Contractor (and the Turnkey Contractor Representative) (the "Procedures Manual").

3.1.3.4 Quality Assurance Plan and Quality Control Manual. The Turnkey Contractor shall, within thirty (30) days after receipt from the MEP Participants of the Notice to Proceed for the Basic Engineering Phase, deliver to the MEP Participants ten (10) copies of a quality assurance plan included in Appendix C (the "Quality Assurance Plan"). During the Basic Engineering Phase, the Turnkey Contractor shall provide to the MEP Participants ten (10) copies of the Quality Control Manual.

3.1.4 Procurement. Subject to Section 3.1.4.1, the Turnkey Contractor shall procure and pay for, in the Turnkey Contractor's name as an independent contractor and not as agent for the MEP Participants, all Turnkey Contractor and Subcontractor labour, materials, equipment, supplies, manufacturing, technology, and related services (whether on or off the Facility Sites) for construction of and incorporation into the Facilities which are required for completion of the Work in accordance with this Agreement. All such items shall satisfy the requirements of Section 3.3.

3.1.4.1 Financing Requirements. The Turnkey Contractor shall procure the goods, works, services and technologies specified in this Turnkey Agreement under competitive, fair and transparent bidding processes. To the extent the procurement of such goods, works, services and technologies is required to be modified by export credit financing, multilateral financing institutions and political risk insurers selected by the MEP Participants, and such modification results in additional cost to the Turnkey Contractor, the MEP Participants hereby agree to bear the additional cost in accordance with the procedures specified in this Turnkey Agreement and execute an appropriate Scope Change Order pursuant to Article 13.

3.1.4.2 Payment Practices. The Turnkey Contractor shall be responsible for administering all contracting, procurement, and payments relating to the Work. The MEP Participants' payments to the Turnkey Contractor under this Agreement as well as the Turnkey Contractor's payments to all Subcontractors under its Subcontracts shall comply with customary and reasonable disbursement and security requirements of the Lenders and Insurers.

3.1.5 Labour and Personnel. The Turnkey Contractor shall provide, or shall cause its Subcontractors to provide, in accordance with Applicable Laws, all labour and personnel as may be required in connection with the Work, including: (i) licenced professional engineers as required for the performance of all engineering services under Applicable Laws; (ii) project engineer, construction manager, and structural, mechanical, chemical, electrical, instrumentation

and control, civil, cost, schedule, procurement, construction, start-up and training supervisors, with appropriate experience in similar work ; (iii) a project manager or other representative who shall be fully involved in and acquainted with the Work and shall have the authority to administer (but not amend) this Agreement on behalf of the Turnkey Contractor; and (iv) quality control, safety and environmental personnel. The MEP Participants shall have the right to approve (not to be unreasonably withheld) within twenty one (21) days, the project manager and the personnel directly reporting to the project manager. The MEP Participants shall have the right to require for just cause that any project personnel be removed and replaced.

### 3.1.6 Permitting.

3.1.6.1 Turnkey Contractor Permits. The Turnkey Contractor shall obtain and maintain in effect all Applicable Permits pertaining to the Turnkey Contractor's performance of the Work (collectively, "Turnkey Contractor Permits"), including (i) all Permits necessary to authorise the Turnkey Contractor to do business and provide services in the jurisdictions where the Work is to be performed, (ii) all specified building, construction and other Permits required to be obtained with respect to the Work (excluding Permits relating solely to the post-completion operation of the Facilities), (iii) all Permits necessary to move, transport and deliver construction and other types of equipment and materials to and from the Facility Sites and to store, possess, operate or maintain such equipment and materials (whether on or off the Facility Sites) and (iv) such Permits as are listed in Appendix A as the Turnkey Contractor's responsibility.

3.1.6.2 Good Standing. The Turnkey Contractor shall certify to the MEP Participants that, prior to the completion of each Phase of the Work and delivery of the completed Work, all relevant Permits are effective and otherwise in good order respecting such Work and that the Facilities and all parts thereof are free and clear of any liens or encumbrances other than those created by and through the MEP Participants. The Turnkey Contractor shall cooperate with and provide reasonable assistance to the MEP Participants with respect to transferring or securing in the name of the MEP Participants or their designee all such Permits as may apply immediately at and after delivery of the completed Work and Facilities to the MEP Participants.

3.1.7 Inspection and Expediting. The Turnkey Contractor shall perform the inspection, expediting, quality surveillance and delivery services as are required for performance of the Work. The Turnkey Contractor's responsibilities under this Section 3.1.7 shall include inspecting all materials and equipment both on and off the Facility Sites that comprise or will comprise any part of the Facilities or that are to be used in performance of the Work, including the start-up of the Facilities, and the Turnkey Contractor shall provide reasonable advance notice thereof to the MEP Participants. The MEP Participants and/or their representatives shall have the option at their own cost and expense of being present at all inspections reasonably requested to be so witnessed by them; provided, however that the MEP Participants shall make their inspection representatives available as reasonably required to support the Work Schedule. In the event of the failure by MEP Participants or MEP Participants' Representatives to attend any reasonably requested inspection, the Turnkey Contractor shall be entitled to proceed with such inspection.

3.1.8 Transportation. The Turnkey Contractor shall be responsible for the transportation, shipping, safekeeping, receiving and marshaling of all materials, equipment, supplies and other items required for the Work (including materials, supplies and equipment



required for engineering and construction activities). In accordance with the requirements of the Host Government Agreement, the Turnkey Contractor shall locate, construct and maintain pipe dumps and restore the land after completion of the Work. The Turnkey Contractor shall arrange and ensure the security of any such items while in transport or in storage off or on the Facility Sites.

3.1.9 Storage and Related Matters. The Turnkey Contractor shall warehouse or otherwise store (in accordance with manufacturers' recommendations, the Host Government Agreement, all Applicable Laws and the terms of this Agreement) all materials, supplies and equipment required for the Work.

3.1.10 Interconnection Facilities. During the Basic Engineering Phase and at the request of the MEP Participants, the Turnkey Contractor will review with the MEP Participants the design and construction of the necessary interconnection facilities at the Point of Entry (as defined in the Host Government Agreement) to the Facilities in accordance with the provisions of this Agreement.

3.1.11 Utilities, Fuels, Chemicals and Spare Parts. Prior to the achievement of Provisional Acceptance, the Turnkey Contractor shall arrange and pay for the provision of all utilities, including electricity, water, sewage and waste disposal services (excluding the test water and locations for disposal of test water stated in Section 3.1.12), chemicals and consumables in sufficient quantities, and for the disposal of sewage and the Turnkey Contractor-generated and Subcontractor-generated wastes (including waste water and waste chemicals), as necessary to enable the Turnkey Contractor to perform the Work. The Turnkey Contractor shall provide at its own expense spare parts, oils, greases and lubricants required during start-up and shall replenish the same until Provisional Acceptance is achieved. All such activities shall be done in accordance with the terms of this Agreement, the Host Government Agreement and all Applicable Laws.

3.1.12 Testing. The Turnkey Contractor shall perform, and re-perform if necessary, all Work-related tests (as provided in Article 7) in order to demonstrate the achievement by the Facilities of the Performance Guaranties; provided, however that test water and locations for disposal of the test water necessary for hydrostatic tests shall be provided by the MEP Participants at no cost to the Turnkey Contractor. The MEP Participants and/or their representatives shall have the option at their own cost and expense of being present at all testing reasonably requested to be so witnessed by them; provided, however that the MEP Participants shall make their testing representatives available as reasonably required to support the Work Schedule. In the event of the failure by the MEP Participants or the MEP Participants' Representatives to attend any reasonably requested testing, the Turnkey Contractor shall be entitled to proceed with such testing.

3.1.13 Start-up and Initial Operation. The Work shall include the reasonable cooperation of the Turnkey Contractor with the MEP Participants in filling the Facilities with Petroleum, the start-up of system components, calibration of controls and equipment, tuning, initial operation of the Facilities and each portion thereof, all function and verification tests, and all other start-up and initial operation functions pertaining to the Facilities. At and after Provisional Acceptance, the Turnkey Contractor shall use reasonable efforts to minimise (consistent with internationally accepted good practices insofar as the same are consistent with

the terms of this Agreement) the use of fuels, utilities, consumables, waste disposal services, electricity, water, chemicals and spare parts.

3.1.14 Personnel Training. As provided in Section 6.4 hereof, the MEP Participants will provide all personnel required to operate the Facilities during the start-up. Prior to start-up, the Turnkey Contractor shall provide on site training to the MEP Participants' and/or their designees' personnel in the operation and maintenance of the Facilities and its various components, including on-the-job and safety training. Such training shall be designed to offer basic instruction and training to the appropriately experienced personnel in order to provide such personnel of the MEP Participants or their designee with a comprehensive understanding of all operational and maintenance aspects of the Facilities. Training shall be conducted in the English language and shall include instruction from the equipment suppliers and Subcontractors, as appropriate, including training related to pipelines, pump stations, terminals, maintenance and operations. The Turnkey Contractor will provide all appropriate manuals and other written materials as part of the training program. All costs related to the provision of food, lodging and transportation for the training of the MEP Participants' and/or their designees' personnel shall be borne by the MEP Participants.

3.1.15 Facility Sites Access. The Turnkey Contractor shall provide the MEP Participants and their designees (including the Lenders and their independent engineer) with access to the Facility Sites and the Work at reasonable times and arrange for the MEP Participants' (and their designees') access (at reasonable times and upon reasonable advance notice and at the MEP Participants' own cost and expense) to the engineering, manufacturing and fabricating premises of the Turnkey Contractor and all Subcontractors sufficient to permit the MEP Participants (and/or their designees) to inspect Work being performed at such locations and monitor compliance by the Turnkey Contractor and the Subcontractors with the terms of this Agreement subject to inspectors' observance of rules, regulations and requirements pertaining to safety, timely prosecution of the Work, and other matters of general application. The Turnkey Contractor and the MEP Participants will mutually agree on the further details of access and office space (to be supplied at reasonable times and in reasonable amounts) for the MEP Participants' personnel at the commencement of each Phase of the Work.

3.1.16 Clean Up and Waste Disposal. The Turnkey Contractor shall keep all Facility Sites reasonably free from accumulation of waste materials, rubbish and other debris resulting from the performance of the Work. In accordance with the standards applicable to the Work under the Host Government Agreement and in accordance with Applicable Laws, the Turnkey Contractor shall remove, transport and properly dispose of any Hazardous Material transported onto the Facility Sites by or on behalf of the Turnkey Contractor or any Subcontractor or generated, created, used or handled as part of the Turnkey Contractor's or any Subcontractor's activities (including Petroleum leaks caused by events covered by the Turnkey Contractor's warranties and guaranties under Section 11.1 at the Facility Sites. The Turnkey Contractor shall notify the MEP Participants immediately upon the discovery of the presence of any Hazardous Material on, or the release of Hazardous Material other than in compliance with Applicable Law on or from, the Facility Sites. The Turnkey Contractor shall, in addition, be responsible for the proper transportation, handling, storage, remediation or removal of any Hazardous Materials which existed at, on or in the Facility Sites prior to commencement by the Turnkey Contractor of the Work.

3.1.17 Work Schedule and Progress Reports. A Work summary schedule, indicating the proposed dates for completion of the individual Phases and milestones of the Work (the “Work Schedule”), will be prepared by the Turnkey Contractor and delivered to the MEP Participants for their review and approval not less than fifteen (15) days prior to the commencement of the Work relating to that Phase or milestone and thereafter maintained and updated by the Turnkey Contractor. The Turnkey Contractor shall keep and furnish to the MEP Participants updated monthly schedules of the Work to be performed, including a critical path schedule, and Monthly Progress Reports of actual progress of the Work performed to date. The Turnkey Contractor shall be responsible for ensuring that performance of all Work proceeds in an orderly fashion and in accordance with the Work Schedule (as updated from time to time), as well as for coordinating the schedules of all Subcontractors. Subject to the review and approval process specified above for the initial Work Schedule, the Work Schedule shall be updated on a monthly basis as the Work progresses and shall reflect the results of delay and acceleration analyses, where appropriate.

3.1.17.1 Phases and Milestones. Set forth in Appendix B on the Milestone/Progress Payment Schedule are certain Phases and milestone events within the Basic Engineering Phase, Detailed Engineering Phase and Land Acquisition and Construction Phase which, among other things, determine when the MEP Participants shall become obligated to make Scheduled Payments to the Turnkey Contractor in respect of each identified portion of the Work.

3.1.18 Employee Identification; Facility Sites Security. The Turnkey Contractor shall develop appropriate procedures for identifying and monitoring the authorised employees of the Turnkey Contractor and its Subcontractors as they enter and exit those areas where the Work is to be performed. The Turnkey Contractor shall coordinate with the Governmental Authorities in the Territory and otherwise be responsible for the security of the Facilities and the Facility Sites at all times while the Work is being performed.

3.1.19 Adjoining Utilities. The Turnkey Contractor or its Subcontractors shall do all things necessary to protect any and all parallel, converging and intersecting electric lines and poles, telephone lines and poles, highways, waterways, railroads, sewer lines, oil, water and natural gas pipelines, drainage ditches, culverts and any and all property of Persons from Loss or Damage as a result of its performance of the Work. In the event that any such property is damaged or destroyed by the Turnkey Contractor or its Subcontractors in the course of the performance of the Work, the Turnkey Contractor shall at its own expense and liability, repair, rebuild, restore or replace such damaged or destroyed property to the reasonable satisfaction of the owner of said property or otherwise compensate such owner.

3.1.20 Protection of Property. The Turnkey Contractor shall provide, and shall ensure that each of its Subcontractors provides, proper and ample protection from Loss or Damage to the Facility Sites and all materials, construction equipment and tools (whether on or off the Facility Sites) during its performance of the Work. In the event that the Facilities or materials or tools comprising any part of the Work are damaged or destroyed before Provisional Acceptance has been achieved, the Turnkey Contractor shall at no expense to the MEP Participants rebuild, restore or replace in a timely manner the damaged or destroyed portion of the Facilities or items so damaged or destroyed.

3.1.21 Royalties and Licence Fees. The Turnkey Contractor shall pay all required royalties and licence fees and shall procure, as required, all appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, intellectual property, technologies and systems incorporated into the Work or used in connection with the Work, all of which shall be transferable to the MEP Participants.

3.1.22 Project Documentation. The Turnkey Contractor shall be responsible for retaining and organising all data and information generated or used in performing the Work, including that which is recorded by electronic media. This data and information shall include correspondence, engineering calculations, awards of contracts, expediting reports, Applicable Permits, Work manuals, vendor documents, and all other such documentation, all of which shall be made available to the MEP Participants in accordance to Article 18.

3.1.23 Further Assurances; Financing Requirements. Subject to and in accordance with the terms of Section 3.1.4.1 (allowing Scope Change Orders to the Turnkey Contractor for increases in cost), the Turnkey Contractor shall cooperate with and provide reasonable assistance to the MEP Participants to maximise the amount of external financing and political risk insurance for the Facilities provided by export credit agencies and other multilateral and bilateral financing agencies. The Turnkey Contractor shall cooperate with and provide reasonable assistance to the MEP Participants, the Lenders and the Insurers and their independent engineering, environmental, financial, legal, technical and other consultants, officers, employees, representatives and agents, including their due diligence, financial, technical, scientific, engineering, accounting and environmental studies, monitoring, inspections, audits, and the creation and administration of milestone and completion tests that shall test the physical, mechanical, legal, reliability, financial, regulatory and other relevant aspects of completion of the Work and the Facilities. The Turnkey Contractor shall execute and deliver all further instruments and documents, including notices, assignments, acknowledgements, consents and related instruments that may be required in order to effectuate the purposes or intent of this Agreement, including to facilitate Financing Assignments. Such cooperation and reasonable assistance may include (i) customary representations and warranties by Turnkey Contractor, (ii) estoppel certificates from the Turnkey Contractor, (iii) consent to a transfer to the Lenders and Insurers or their designees of the MEP Participants' rights hereunder in connection with the enforcement of the rights of Lenders and Insurers, (iv) consent to the exercise by the Lenders and Insurers or their designees or successors of the MEP Participants' rights under this Agreement, (v) Turnkey Contractor's agreement that the Lenders and Insurers, their designees and their successors will have no responsibility for the obligations of the MEP Participants under this Agreement if those obligations arise, or relate to events occurring, before their assumption of this Agreement, and (vi) grants of notice rights and cure periods. Upon notice from the MEP Participants' Representative, the Turnkey Contractor agrees to make payments owed by the Turnkey Contractor to the MEP Participants in the manner required by any MEP Participant's financing arrangement. The Turnkey Contractor shall provide the Lenders and Insurers access to material information available to the Turnkey Contractor relating to the Work and the Facilities, including all studies, plans, drawings, programs, Monthly Progress Reports, analyses, intellectual property, agreements, correspondence, specifications, tests and their results, surveys and other relevant information respecting the Work and the Facilities. The Lenders, Insurers, and their representatives, consultants and agents may at reasonable times with one or more representatives of the Turnkey Contractor present visit and inspect the Facility Sites and any premises and properties of the Turnkey Contractor related to the Work, and may inspect, examine and make extracts and copies of any budgets, agreements, books, records and other materials of

the Turnkey Contractor and discuss the Work and the Facilities with appropriate officers, employees, agents, consultants and other representatives of the Turnkey Contractor. To the extent the Turnkey Contractor has rights of access with its potential Subcontractors and Subcontractors, the Turnkey Contractor will cooperate with the Lenders, Insurers and their representatives to facilitate such access to such Persons as may be reasonably necessary. The Lenders, Insurers and their representatives access to the information contained in this Section shall be subject to their agreement to execute a confidentiality agreement containing terms reasonable to such Lenders, Insurers, their representatives and the Turnkey Contractor. In addition, access by the Lenders, Insurers and their representatives to information and Persons under this Section shall be by and through the MEP Participants' Representative to the maximum extent practicable.

3.2. Commencement of the Work; Conditions. The Turnkey Contractor shall commence performance of the Work for each of the Basic Engineering Phase, Detailed Engineering Phase and Land Acquisition and Construction Phase as of the date specified by the MEP Participants in a written notice delivered to the Turnkey Contractor for each such Phase. Each such notice shall be in substantially the form set forth as Appendix F (the "Notice to Proceed"), with no such Notice to Proceed for a succeeding Phase to be given prior to full execution of the Completion Certificate for the immediately preceding Phase.

3.2.1 Conditions. In the case of the Land Acquisition and Construction Phase, delivery by the MEP Participants of the Notice to Proceed shall be conditional upon the occurrence of the following:

- (i) delivery and maintenance by the Turnkey Contractor of the Security pursuant to Section 10.4;
- (ii) the Turnkey Contractor is not in breach or default under this Agreement or any other Project Agreement to which it is a party; and
- (iii) neither the Government of the Republic of Turkey nor any of its State Entities or Governmental Authorities is in breach or default of any Project Agreement to which it or any of them is a party.

3.3 Standard of Performance. Without limiting any other provision of this Agreement, (i) the Turnkey Contractor shall perform the Work in accordance with and consistent with internationally accepted good practices, all Applicable Laws, the terms and conditions of the Host Government Agreement, and the safety precautions set forth in Section 3.5, and (ii) the Facilities shall be constructed and erected (a) in a good workmanlike manner, (b) using principles, criteria and standards generally accepted for use by turnkey contractors undertaking major international pipeline projects of the same or similar size and type as the Facilities and (c) in accordance with Appendices A and D, the other provisions of this Agreement, the terms and conditions of the Host Government Agreement, and the Design Documents.

3.4 Compliance With Applicable Laws. The Turnkey Contractor shall comply with and shall cause the Facilities and all components thereof (including, without limitation, the design, engineering and construction of the Facilities) to comply with, and shall cause the Facilities to be capable of continuous and reliable operation in accordance with, all Applicable Laws.

3.5 Health Safety and Environmental (HSE) Precautions. The Turnkey Contractor shall implement and administer in respect of the Work an HSE program (subject to review of the MEP Participants), including development of an HSE manual establishing the Turnkey Contractor's and Subcontractors' HSE guidelines and requirements. While performing the Work on or outside of the Facility Sites, the Turnkey Contractor shall, and shall cause all of its Subcontractors to, comply with the requirements of the HSE program contained in Appendix C. During performance of the Work, the Turnkey Contractor shall take all reasonable precautions for the safety of Persons and shall provide all reasonable protection to prevent injury to Persons and damage to property.

3.6 Turnkey Contractor as Independent Contractor. The Turnkey Contractor shall be an independent contractor with respect to the MEP Participants and the Work, and neither the Turnkey Contractor nor its Subcontractors nor the employees of any of them shall be deemed to be agents, representatives, employees or servants of the MEP Participants with respect to the Facilities or in the performance of the Work, or any part thereof, or in any manner dealt with in this Agreement. While the MEP Participants shall have the right to specify all necessary requirements respecting the Work and monitor, inspect and audit the Work at their own cost and expense, the MEP Participants shall not have the right to control, nor exercise any actual, potential or other control over, the methods and means by which the Turnkey Contractor or any of its agents, representatives, Subcontractors or employees conducts its independent business operations. The Parties covenant and agree that in the performance of the Work, and except as otherwise expressly provided in this Agreement, the Turnkey Contractor shall not perform any act or make any representation to any Person to the effect that the Turnkey Contractor or any of its agents, representatives or Subcontractors or any of its or their employees, is the agent, representative, employee or servant of the MEP Participants.

3.7 Host Government Agreement.

The Turnkey Contractor has been provided with true, correct and complete copies of the Host Government Agreement. The MEP Participants will provide to the Turnkey Contractor any amendments or modifications which may be made to the foregoing and any other Project Agreements if and to the extent relevant to the Turnkey Contractor's performance obligation hereunder. Save to the extent the provisions of this Agreement expressly require to the contrary but not otherwise, the Turnkey Contractor shall:

(i) carry out and complete the Work and otherwise perform this Agreement so that no act, omission or default by the Turnkey Contractor in relation thereto shall constitute, cause or contribute to any breach by the MEP Participants of any of their obligations under the Host Government Agreement; and

(ii) assume and perform all of the obligations and comply with all of the conditions of the Host Government Agreement on the part of the MEP Participants to be assumed, performed, observed and complied with insofar as they apply to the Work, any part thereof, or any other obligation of the Turnkey Contractor under this Agreement.

3.8 MEP Participants' Rights. The Turnkey Contractor shall perform, supervise and/or direct all of the Work and shall be responsible for all engineering, procurement, transportation and construction means, methods, techniques, sequences and procedures for coordinating the Work. If the Turnkey Contractor fails to correct, or fails to commence and prosecute with due diligence,

correction of defective Work within the later of (i) thirty (30) days after receipt of written notice from the MEP Participants, or (ii) such other time period as is mutually agreed between the MEP Participants and the Turnkey Contractor, the MEP Participants may (but shall not be obligated to), after fifteen (15) days following receipt by the Turnkey Contractor of an additional written notice from the MEP Participants and without prejudice to any other remedy they may have, take all reasonable steps in order to remedy such defective Work, and the Turnkey Contractor shall reimburse the MEP Participants no later than thirty (30) days for or, at their discretion, the MEP Participants shall have the right to offset from amounts owed to the Turnkey Contractor, the costs thereof.

#### ARTICLE 4 Subcontracts and Procurement

4.1 Specialty Consultants, Subcontractors and Equipment Suppliers. Subject to Section 4.2, the Turnkey Contractor shall have the right to enter into any necessary Subcontracts, but the Turnkey Contractor shall remain directly responsible and liable to the MEP Participants for all Work, including those portions delegated to its Subcontractors. For purposes of this Agreement, “Subcontractors” means all vendors, suppliers, materialmen, consultants, contractors and subcontractors, including any back-to-back main subcontractor, providing equipment, materials or services in connection with the Work or in performing any portion of the Work. “Key Subcontractors” means (i) those Subcontractors which contract directly to the Turnkey Contractor or its back-to-back main Subcontractor (if applicable) in respect of the Work, and (ii) those additional Subcontractors identified during the Basic Engineering Phase and mutually agreed as providing services which may affect the technical integrity, reliability and operability of the Facilities. “Subcontracts” means all purchase orders, subcontracts and similar purchase forms and agreements entered into by a Subcontractor in respect of all or any portion of the Work, and “Key Subcontracts” means all purchase orders, subcontracts and similar purchase forms and agreements entered into by a Key Subcontractor in respect of all or any portion of the Work. In connection with the purchase of any items of equipment or machinery from any Subcontractor, the Turnkey Contractor shall purchase only such models of equipment, machinery or materials for incorporation into the Facilities as have attained the standard of reliability and performance required under this Agreement. The Turnkey Contractor shall provide to the MEP Participants customary information concerning its Subcontractors and the Subcontracts as the MEP Participants may from time to time reasonably request; provided, however, that in the case of confidential pricing information, the MEP Participants shall not be entitled to receive such information unless it relates to Section 3.1.4.1, Section 3.1.23, Section 5.1.6, Section 13.7 (iii), and any other similar provision of this Agreement where such confidential pricing information is directly relevant to the implementation of this Agreement.

4.2 Approval of Key Subcontractors. The Parties acknowledge that the Turnkey Contractor’s selection and retention of all Key Subcontractors, and the terms and conditions of all Key Subcontracts, shall be subject to the prior review and approval of the MEP Participants, which review and approval shall be completed within fifteen (15) days after the submission of the Key Subcontract(s) by the Turnkey Contractor to the MEP Participants. In addition, and without limiting the foregoing, the Turnkey Contractor shall (i) procure all goods, supplies, equipment, labour and services relating to the Work under competitive, fair and transparent bidding processes, (ii) include on its bid tender list those Subcontractors which can be supported by export credit agencies, and (iii) use recognised international standards as herein provided for all Work.

4.3 Payments to Subcontractors. The Turnkey Contractor shall be solely responsible for paying each Subcontractor and any other Person to which any amount is due from the Turnkey Contractor for goods, works, services, equipment, materials, supplies and technologies procured by it in connection with the Work or used to carry out the Work, all in accordance with Section 3.1.4.2 of this Agreement. Prior to any such payment, the Turnkey Contractor shall ensure that all goods, works, equipment, materials, supplies and technologies, and any portion thereof, have been received, inspected and approved and that all such services have been properly performed.

4.4 Key Subcontractor and Subcontractor Guaranties and Warranties. The Turnkey Contractor shall obtain from all Key Subcontractors guaranties and warranties supported by the manufacturers guarantees and warranties (if any and where applicable) on the machinery, equipment, services, materials, supplies, technology and other items used in the Work and/or installed under this Agreement, and such guaranties and warranties shall not be amended, modified or otherwise discharged without the prior written consent of the MEP Participants. The Turnkey Contractor shall obtain from each Key Subcontractor guaranties and warranties which shall remain in effect for the longest period which can be negotiated and agreed, but in any event for a period of not less than twelve (12) months from Provisional Acceptance. The Turnkey Contractor shall enforce all Subcontractor guaranties and warranties to the fullest extent thereof and shall cause all Subcontractor guaranties and warranties to be assignable to the MEP Participants. Upon termination of the Warranty Period the Turnkey Contractor shall take whatever steps are reasonably necessary to formally assign to the MEP Participants all unexpired Subcontractor guaranties and warranties (if any) and shall deliver to the MEP Participants any amounts withheld by the Turnkey Contractor pursuant to any guaranty or warranty dispute specifically related to such dispute within fifteen (15) days after the expiration of the Warranty Period. The Turnkey Contractor's formal assignment of all such unexpired Subcontractor guaranties and warranties shall serve to complete the Turnkey Contractor's obligations in respect of all Subcontractor guaranties and warranties. The Turnkey Contractor shall not, and shall cause its Subcontractors and all Persons under the Turnkey Contractor's control not to, take any action which could release, void, impair or waive any guaranties or warranties on goods, works, equipment, materials, services or technologies that it procures from other Persons. Nothing in this Section 4.4 shall derogate from the obligations of the Turnkey Contractor to provide the guaranties and warranties described in, and to comply with the provisions of Article 11.

4.5 Key Subcontractor Insurance. The Turnkey Contractor, in accordance with Section 15.6, shall require all of its Subcontractors to be covered by the insurance specified in Section 15.6 during the time in which they are engaged in performing the Work.

4.6 Subcontractors' Waiver. The Turnkey Contractor shall require all of its Subcontractors to release and waive any and all rights of recovery against the MEP Participants, the Lenders, the Insurers and each of their parent companies, Affiliates, employees, successors, permitted assigns, insurers and underwriters (including the directors, officers and shareholders of each such company), and against the Turnkey Contractor and all other Subcontractors which the releasing Subcontractor may otherwise have or acquire, in or from, or in any way connected with, any Loss or Damage covered by policies of insurance maintained or required to be maintained pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance. The Turnkey Contractor shall further require all of its Subcontractors to include in all policies of insurance maintained by its Subcontractors clauses providing that each underwriter or insurer shall release and waive



all of its rights of recovery, under subrogation or otherwise, against the MEP Participants, the Lenders, the Insurers and each of their parent companies, Affiliates, employees, successors, assigns, insurers and underwriters (including the directors, officers and shareholders of each such company), and against the Turnkey Contractor and all other Subcontractors.

4.7 No Privity With Subcontractors. The MEP Participants shall not be deemed by virtue of this Agreement to have any contractual obligation to or relationship with any Subcontractor, and, except as otherwise expressly stated herein (including during start-up of the Facilities), all Work shall be performed solely by the Turnkey Contractor and its Subcontractors.

4.8 Review and Approval Not Relief of Turnkey Contractor's Liability. The review, or giving or withholding of any approval or consent, by the MEP Participants and/or their Lenders as to the Turnkey Contractor's entering into any Subcontract with any Subcontractor shall not relieve the Turnkey Contractor of any of its duties, liabilities or obligations under this Agreement, and the Turnkey Contractor shall be liable to the same extent as if any such Subcontract had not been entered into and the Turnkey Contractor had itself undertaken the Work, or portion thereof. Any inspection, review or approval by the MEP Participants and/or their Lenders permitted under this Agreement of any Work in progress by the Turnkey Contractor or its Subcontractors shall not relieve the Turnkey Contractor of any duties, liabilities or obligations under this Agreement.

4.9 Turnkey Contractor's Responsibility. The requirements of this Agreement shall apply to all Work, including all portions of the Work performed by Subcontractors. Without limiting the foregoing, the provisions of Section 3.8 shall apply to the Turnkey Contractor respecting all Work delegated (or intended to be delegated) by the Turnkey Contractor to any Subcontractor.

## ARTICLE 5 Price and Payment

5.1 Lump Sum Fixed Price. As full consideration to the Turnkey Contractor for the full and complete performance of the Work and satisfaction of the Turnkey Contractor's obligations under this Agreement and all agreed costs incurred in connection therewith, the MEP Participants shall pay, and the Turnkey Contractor shall accept, the lump sum fixed price of one billion three hundred seven million six hundred ten thousand, Dollars (\$1,307,610,000), as such sum may be adjusted solely pursuant to this Section and Article 13 (the "Lump Sum Fixed Price").

5.1.1 In the event the MEP Participants do not give the Turnkey Contractor the Notice to Proceed for the Land Acquisition and Construction Phase within the period that the prices contained in those Subcontracts which the Turnkey Contractor included in its Bid Acceptance Report provided to the MEP Participants under Section 8.1(iii) remain firm (which firm price period for each such Subcontract and/or any back-to-back main Subcontractor shall not have been less than six (6) months from receipt of bid), and, as a result, the Turnkey Contractor must rebid the price for some or all of the Subcontracts included in the Bid Acceptance Report, then as a condition precedent to the right of the MEP Participants to give Notice to Proceed for the third Phase, the Turnkey Contractor shall undertake to rebid the price for such expired Subcontracts with two (2) or more previously-approved Subcontractors (including the original Subcontractor) for such item(s) to the end that the Lump Sum Fixed Price can be adjusted by mutual agreement of the Parties, as necessary, to reflect the net difference, if any, in the cost to the Turnkey

Contractor for the applicable Subcontracts so listed based on any difference in the price(s) contained in the original Subcontract(s) for such item(s) as compared to the price(s) contained in the rebid Subcontract(s) for such item(s) which the Turnkey Contractor proposes to accept. Agreement on the appropriate adjustment, if any, to the Lump Sum Fixed Price shall be necessary before the Notice to Proceed can issue.

5.1.2 In the event the MEP Participants do not give the Turnkey Contractor the Notice to Proceed for the Land Acquisition and Construction Phase as of the ninth (9<sup>th</sup>) month after provisional rights to the Permanent Land have been obtained by the designated State Authority pursuant to the procedures set forth in Section 3.1.2.2 hereof, then as a further condition precedent to the right of the MEP Participants to give a Notice to Proceed for the third Phase, the previously-agreed Guaranteed Completion Date shall be redesignated to that later date which equals the period by which the MEP Participants have delayed their Notice to Proceed for said Phase.

5.1.3 In addition, in the event the MEP Participants do not give the Turnkey Contractor the Notice to Proceed for the Land Acquisition and Construction Phase as of the thirteenth (13<sup>th</sup>) month after the provisional rights to the Permanent Land have been obtained by the designated State Authority pursuant to the procedures set forth in Section 3.1.2.2 hereof, then as a further condition precedent to the right of the MEP Participants to give a Notice to Proceed for the third Phase, the MEP Participants shall become obligated to pay an additional amount in respect to such Rights to Land, such additional amount to be three percent (3%) of seventy four million two hundred fifty thousand Dollars (\$74,250,000) multiplied by a fraction, the numerator of which shall be the number of days beyond the above-mentioned thirteen (13) months the Notice to Proceed is given, and the denominator of which is three hundred sixty five (365).

5.1.4 Finally, in the event the giving of such Notice to Proceed is further delayed beyond the end of the ninth (9<sup>th</sup>) month after the provisional rights to the Permanent Land are acquired pursuant to Section 3.1.2.2, then, in recognition that the provisional rights which were originally obtained must be reacquired by the designated State Authority, in addition to the amount specified in the next preceding sentence, the MEP Participants shall, and as a condition to the effectiveness of any such delayed Notice to Proceed, initiate a Scope Change by which the Parties will determine the final amount necessary to compensate the Turnkey Contractor for that portion of the Work it must reperform in respect of completing the acquisition of provisional rights to the Permanent Land, which amount shall not exceed eight million five hundred thousand Dollars (\$8,500,000).

5.1.5 Unless the Parties otherwise agree, the payment of any such additional land-related amount(s) shall be in accordance with Section 3.1.2.2.

5.1.6 The MEP Participants shall have the right to make such examination of the relevant documents, books and records as may be necessary to verify the required adjustment(s), if any, to the Lump Sum Fixed Price and/or any additional payment required by the foregoing, as well as for any adjustment in the timing of the third Phase.

5.2 Milestone/Progress Payment Schedule. The Lump Sum Fixed Price shall be paid by the MEP Participants to the Turnkey Contractor in installments in accordance with the Milestone/Progress Payment Schedule attached hereto as Appendix B (the "Scheduled Payments"). The Milestone/Progress Payment Schedule provides for the Work to be achieved

in three Phases (namely, the Basic Engineering Phase, the Detailed Engineering Phase and the Land Acquisition and Construction Phase) and several described milestones/progresses within each Phase of the Work. Payments for certain Phases and/or milestones/progresses are required to be made in two or more Scheduled Payments. The first Scheduled Payment is an initial payment of a percentage of the total Phase which is to be made in conjunction with the Notice to Proceed as to the three Phases and the authorisation of milestones within the Land Acquisition and Construction Phase in accordance with Appendix B. The subsequent and final Scheduled Payments (or the sole Scheduled Payment where only one Scheduled Payment is required) are to be made at agreed stages and/or upon full execution of the Completion Certificate for that portion of the Work.

5.2.1 Scheduled Payments. All payments to be made by the MEP Participants in respect of the Work shall be in accordance with the monthly billing and payment schedule more particularly described in Appendix B of this Agreement.

5.3 Payment Upon Termination. If the MEP Participants do not issue the Notice to Proceed for the Detailed Engineering Phase within the time limits described in Section 8.1 and the Turnkey Contractor elects to terminate this Agreement, the MEP Participants shall promptly pay to the Turnkey Contractor the actual cost of the Work performed after completion of the Basic Engineering Phase prior to the date of termination, provided that such actual costs shall not exceed three hundred thousand Dollars (\$300,000). If the MEP Participants do not issue the Notice to Proceed for the Land Acquisition and Construction Phase within the time limits described in Section 8.1 and the Turnkey Contractor elects to terminate this Agreement, the MEP Participants shall have no further payment obligations to the Turnkey Contractor. On and after the date on which the MEP Participants have issued the Notice to Proceed for the Land Acquisition and Construction Phase and upon termination of all the Work pursuant to Section 16.1, the Turnkey Contractor shall be entitled to:

(i) prompt payment of the difference between the actual cost of the Work performed during the Land Acquisition and Construction Phase prior to the date of termination plus the costs incident to the termination of the Work minus all Scheduled Payments made by the MEP Participants during the Land Acquisition and Construction Phase prior to the date of termination; and

(ii) a termination payment of two and a half percent (2.5%) of the Lump Sum Fixed Price minus the amounts paid to the Turnkey Contractor for the Basic Engineering Phase and the Detailed Engineering Phase.

5.3.1 Verification of the Termination Payment. The Turnkey Contractor shall, as soon as practicable but not later than sixty (60) days after any such termination of all or part of the Work, make available to the MEP Participants all invoices and other documentation as necessary to enable the MEP Participants, through an independent certified public accounting firm of national reputation, to verify the performance of the Work, the Turnkey Contractor's costs associated therewith and the costs of termination, and to determine the amount of the Termination Payment.

5.3.2 Termination Payment by Turnkey Contractor. Upon a termination pursuant to (i) Section 16.1 hereof, if it is determined by an independent certified public accounting firm of international reputation selected by the Turnkey Contractor, reasonably acceptable to the MEP

Participants and paid for by the Turnkey Contractor; or (ii) Section 16.3 hereof, if it is determined by an independent certified public accounting firm of international reputation selected by the MEP Participants, reasonably acceptable to the Turnkey Contractor and paid for by the MEP Participants; that, prior to such termination, the Turnkey Contractor has been paid an amount in excess of the reasonable value of the actual costs described in Section 5.3 and Section 16.6, respectively, the Turnkey Contractor shall pay to the MEP Participants, or the MEP Participants shall offset from any further amounts owed hereunder, such excess within thirty (30) days following the MEP Participants' written demand for payment. Solely in the case of termination pursuant to the Section 16.3 the Turnkey Contractor shall be required to pay the Agreed Interest Rate under this Section 5.3.2.

5.3.3 Payment and Limitation of the Termination Payment. The MEP Participants shall pay the Termination Payment to the Turnkey Contractor within thirty (30) days of the MEP Participants' receipt of the items and documentation required under Section 5.3 and Section 5.3.1.

5.3.4 Limitation of Liability. Payment of the Termination Payment shall be the sole and exclusive liability of the MEP Participants, and the sole and exclusive remedy of the Turnkey Contractor, with respect to termination of this Agreement pursuant to Section 16.1. In no event shall the MEP Participants have any further liability to the Turnkey Contractor in any such event for actual, incidental, consequential or other damages (including loss of profits), notwithstanding the actual amount of damages that the Turnkey Contractor may have sustained.

5.4 Payment Upon Suspension. Upon suspension of all or part of the Work pursuant to Section 16.2, the Turnkey Contractor shall be entitled to reimbursement for the actual cost of the Work performed prior to the date of suspension and for costs incident to the suspension of the Work. The costs incident to the suspension of the Work shall be calculated on a time and materials basis where time is charged at the Turnkey Contractor's published rates and material is charged at cost plus twenty-five percent (25%). The MEP Participants shall promptly pay to the Turnkey Contractor the difference between the actual cost of the Work performed prior to the date of suspension plus the costs incident to the suspension of the Work minus all Scheduled Payments made by the MEP Participants prior to the date of suspension. The Turnkey Contractor shall maintain complete and accurate records of such costs, which records shall be subject to audit by the MEP Participants.

5.5 All Payments Subject to Release of Liens. No less than thirty (30) days after each Scheduled Payment for Work completed by the Turnkey Contractor, the Turnkey Contractor shall (i) certify to the MEP Participants, and provide to the MEP Participants sufficient documentation (including, without limitation, an interim lien waiver and release in the form of Appendix H-2 or such other form as may be effective under Applicable Law) to establish, that the Facilities, the Facility Sites and any and all interests, rights and estates therein, and all improvements and materials placed on or buried within the Facility Sites, are free and clear from any and all claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or otherwise, arising out of or in connection with this Agreement or performance by the Turnkey Contractor or any Subcontractor of the Work, and (ii) provide copies of such releases and waivers from Subcontractors under Subcontracts as are necessary to support and verify the Turnkey Contractor's certificate. If any claim, lien, security interest or encumbrance is filed or notification of withholding money for labour or material furnished under this Agreement is served on the MEP Participants, the MEP Participants may withhold from any later Scheduled

Payment or other amount payable to the Turnkey Contractor under this Agreement or otherwise, an amount sufficient to discharge any or all such liens or claims if such lien or claim is not discharged or bonded by the Turnkey Contractor within thirty (30) days of MEP Participants' notice to Turnkey Contractor to discharge such lien or claim. In the event the Turnkey Contractor has not discharged or bonded such lien or claim within the above referenced thirty (30) day period, then the MEP Participants may withhold the necessary amount and discharge such lien or claim with the moneys withheld, whereupon for purposes of this Agreement such moneys shall be deemed to have been paid to the Turnkey Contractor on account of the next Scheduled Payment(s) to become due and payable. In addition, within thirty (30) days after the final payment to each Subcontractor is made by the Turnkey Contractor, the Turnkey Contractor shall deliver to the MEP Participants a copy of a final release, assignment and waiver of liens, in the form of Appendix H-3 or such other form as may be effective under Applicable Law, from any Subcontractor that would otherwise have had the right to place a lien or encumbrance on the Facilities, the Facility Sites or any interests, rights or estates therein, or any improvements or materials placed on the Facility Sites. Furthermore, as a condition to Work Completion, the Turnkey Contractor shall deliver to the MEP Participants a final release, assignment and waiver of liens, in the form attached as Appendix H-3 or such other form as may be effective under Applicable Law, from each Subcontractor which has not previously provided such a final release, and subject to the final Scheduled Payment by the MEP Participants associated with the Work Completion, the Turnkey Contractor's final lien waiver in the form attached as Appendix H-1 or such other form as may be effective under Applicable Law. Notwithstanding anything to the contrary herein, if the Turnkey Contractor fails to deliver any required release or waiver of a Subcontractor, the Turnkey Contractor may provide to the MEP Participants, in lieu thereof, a bond, in form and issued by a Person satisfactory to the MEP Participants, to secure the Turnkey Contractor's obligation to fully indemnify the MEP Participants against any Loss or Damage resulting from or arising out of any and all claims, liens or other interests of such Subcontractor.

5.6 Payment or Use Not Acceptance. No execution or delivery by the MEP Participants of any Completion Certificate, the making of any Scheduled Payment or other payment to the Turnkey Contractor, or any use of the Facilities by the MEP Participants shall constitute or be interpreted as an acceptance of any of the Work and shall not relieve the Turnkey Contractor of any of its obligations or liabilities with respect thereto.

5.7 Set-Off. The MEP Participants may deduct and set-off against any part of the balance due or to become due to the Turnkey Contractor under this Agreement any amounts due from the Turnkey Contractor to the MEP Participants and relating to this Agreement. The Turnkey Contractor may deduct and set-off against any part of the balance due or to become due to the MEP Participants under this Agreement any amounts due from the MEP Participants to the Turnkey Contractor and relating to this Agreement.

## ARTICLE 6

### MEP Participants' Rights and Obligations

6.1 MEP Participants' Representative. By not later than their giving the Notice to Proceed for the Basic Engineering Phase, the MEP Participants shall designate a Person (the "MEP Participants' Representative") who or which shall be authorized by the MEP Participants to function on their behalf in the exercise of their rights and the performance of their obligations under this Agreement. The Turnkey Contractor shall be entitled to rely on all actions of the MEP

Participants' Representative as the actions of the MEP Participants hereunder. Such Person may be an Operating Company but, in any case, shall be subject to replacement by the MEP Participants on not less than fifteen (15) days prior written notice to the Turnkey Contractor of the identity of and other necessary details concerning such replacement. Among other authorized duties, the MEP Participants' Representative shall coordinate and facilitate, in accordance with procedures to be agreed with the Turnkey Contractor, the activities of the MEP Participants under this Agreement, including the giving and receipt of routine notices, the monitoring of the Work, the inspection of the Facilities and the conduct of audits and documentary reviews of the Turnkey Contractor. In addition, and to the fullest extent practicable, the MEP Participants' Representative shall coordinate those Project-related activities of the Lenders and/or Insurers which require access to the Turnkey Contractor, including their monitoring of the Work, their inspection of the Facilities and their gaining of access to the Turnkey Contractor and its books, records, designs and drawings relating to the Work. Notwithstanding the foregoing, (i) the MEP Participants shall have the right to retain other experts, for other reasons, to assist them in evaluating the performance of the Turnkey Contractor hereunder and (ii) no MEP Participants' Representative shall be authorized to amend this Agreement or waive any claim or defense of the MEP Participants or any breach or default by the Turnkey Contractor.

6.2 Monitoring Program. In addition to the rights of the MEP Participants and/or their representatives to review the Design Documents pursuant to Section 18.1 of this Agreement, the MEP Participants shall be entitled to monitor at their own cost and expense the Turnkey Contractor's execution of the Work to assure compliance with the provisions of this Agreement; provided, however, that such monitoring shall be carried out in such manner as to cause minimal interference with the Work. Such monitoring program may include the following features:

- (i) onsite review and monitoring of all Phases and components of the Work;
- (ii) review and acceptance of the Turnkey Contractor's recommendation of the pipeline route and Facility Sites;
- (iii) review and acceptance of the Work products of both the Basic Engineering and the Detailed Engineering Phases;
- (iv) review and acceptance of the Rights to Land as granted in accordance with the Host Government Agreement ;
- (v) quality assurance monitoring of all procurement activities and the Construction Phase of the Work;
- (vi) review and audit of all Subcontractor invoices, provided however that the MEP Participants shall not be entitled to receive confidential pricing information unless such information is directly relates to the provisions of Section 3.1.4.1, Section 3.1.23, Section 5.1.6, Section 13.7 (iii), and any other similar provision of this Agreement where such confidential pricing information is directly relevant to the implementation of this Agreement;
- (vii) witnessing of all construction tests, function tests and quality acceptance tests relative to the Work and all subsystems as specified in this Agreement;

- (viii) Work Completion pursuant to this Agreement; and
- (ix) administer all guaranties and warranties respecting the Work as provided herein and in any other Work documentation.

6.3 Monitoring Not Release of Obligations. No monitoring or inspection by the MEP Participants shall relieve the Turnkey Contractor of any of its duties, obligations or liabilities under this Agreement.

6.4 Start-up Personnel. The MEP Participants or their designee shall provide operators and maintenance personnel for the start-up of the Facilities by the Turnkey Contractor. Such personnel shall be provided at no cost to the Turnkey Contractor in the numbers and on the dates specified by the Turnkey Contractor, provided at least six (6) months' advance notice is given by the Turnkey Contractor and such date is no earlier than six (6) months before the scheduled commencement of start-up of the Facilities. Such personnel shall have sufficient experience as is appropriate for the normal, day-to-day, in-service operation and maintenance of Petroleum pipelines (whether or not such facilities are similar to the Facilities). Such personnel shall be trained by the Turnkey Contractor and will assist the Turnkey Contractor by performing normal operating and maintenance duties in connection with the start-up of the Facilities and the demonstration of Facility performance as may be required pursuant to Article 7. Said personnel will be available to the Turnkey Contractor, as needed, and these personnel shall work under the complete direction and responsibility (as far as their work in relation to start-up activities are concerned) of the Turnkey Contractor until the Provisional Acceptance. Any additional personnel required for such activities shall be the sole responsibility of the Turnkey Contractor.

6.5 Utilities. Before Provisional Acceptance, the Turnkey Contractor and, after Provisional Acceptance, the MEP Participants, shall arrange and pay for all utilities, including electricity, water, sewage and waste disposal services, chemicals and consumables required for operation of the Facilities.

6.6 Line Fill. Consistent with the Turnkey Contractor's Start-up and commissioning schedule and subject to the Turnkey Contractor providing not less than (i) six (6) months preliminary notice, and thereafter (ii) four (4) weeks final prior notice of the volumes so required and the commencement date of the fill (the "Commencement Date of the Fill"), the MEP Participants shall be responsible to secure and make available at their own cost and expense to the Turnkey Contractor any necessary Petroleum for purposes of filling the pipeline during and as part of start-up and commissioning of the Facilities. In the event the volumes of Petroleum made available by the MEP Participants are insufficient to fill the pipeline within forty five (45) days from the Commencement Date of the Fill, a Scope Change to adjust one or more of the Work Schedule, Guaranteed Completion Date for the third Phase, and the Lump Sum Fixed Price shall be agreed to account for such delay.

6.7 Consequences of MEP Participants' Non-Performance.

6.7.1 Remedies Exclusive. Except as expressly provided in this Agreement, the Turnkey Contractor shall have no rights, whether at law or under or pursuant to this Agreement or otherwise, to any extension of time limits contained in this Agreement or to any adjustment to the Lump Sum Fixed Price, or otherwise to treat this Agreement as terminated.

## ARTICLE 7

### Completion and Acceptance of the Facilities and the Work

7.1 Facilities Start-up. The Turnkey Contractor shall pursue start-up of the Facilities in accordance with internationally accepted good practice on or prior to the Guaranteed Completion Date. The Turnkey Contractor shall, in consultation with the MEP Participants and their operating personnel, direct the start-up of the Facilities in such manner as to maximise the economic efficiency of the Facilities and in a manner consistent with internationally accepted good practice, the other provisions of this Agreement and all Applicable Laws.

7.2 Provisional Acceptance. Provisional Acceptance shall be achieved if and only if:

(i) the Facilities has achieved Mechanical Completion;

(ii) all portions of the Facilities have achieved a fully operational state as described and further specified in this Agreement and in accordance with all Applicable Laws, and all portions of the Facilities can legally, safely and reliably be placed in continuous operation;

(iii) the Facilities are fully and properly interconnected, and all features and equipment of the Facilities have been demonstrated to be fully functional and capable of safely operating at the specified rates and conditions as demonstrated by completion of the tests set forth in this Agreement; and

(iv) the MEP Participants have delivered to the Turnkey Contractor a certificate pursuant to Section 7.2.2 stating that the requirements under clauses (i) through (iii) of this Section 7.2 have been fully satisfied (the "Provisional Acceptance Certificate").

7.2.1 Notice and Report of Provisional Acceptance. When the Turnkey Contractor believes that it has achieved Provisional Acceptance, it shall deliver to the MEP Participants a notice thereof (the "Notice of Provisional Acceptance"). The Notice of Provisional Acceptance shall contain a report in a form acceptable to the MEP Participants and with sufficient detail to enable the MEP Participants to determine whether Provisional Acceptance has, in fact, been achieved in accordance with this Agreement.

7.2.2 Achievement of Provisional Acceptance. The MEP Participants shall, promptly upon receipt of the Notice of Provisional Acceptance, inspect the Facilities and all Work completed by the Turnkey Contractor and review the results of the report submitted by the Turnkey Contractor in support of its Notice of Provisional Acceptance. Within ten (10) days of the MEP Participants' receipt of the Notice of Provisional Acceptance, the MEP Participants shall notify the Turnkey Contractor that either:

(i) the requirements under clauses (i) through (iii) of Section 7.2 have been satisfied and that Provisional Acceptance has been achieved, in which case the date of achievement of Provisional Acceptance shall be the date on which the MEP Participants received the applicable Notice of Provisional Acceptance; or



(ii) Provisional Acceptance has not been achieved, stating the reasons therefor, in which case the Turnkey Contractor and the MEP Participants shall jointly identify actions to be undertaken and items to be completed as a condition of Provisional Acceptance and the Turnkey Contractor shall promptly complete such actions and items at the earliest practicable date. However in case of items that do not prevent safe operation of the Facilities, the MEP Participants shall issue Provisional Acceptance Certificate and the Turnkey Contractor shall complete these items in a timely manner after issuance of such Provisional Acceptance Certificate.

Such procedure shall be repeated as necessary until Provisional Acceptance has been achieved.

7.2.3 Operation after Provisional Acceptance. Upon issuance of the Provisional Acceptance Certificate, the MEP Participants shall take possession and control of the Facilities and shall thereafter be solely responsible for the operation and maintenance thereof, except as otherwise set forth in this Agreement. Prior to such possession and control by the MEP Participants, the Turnkey Contractor shall, in consultation with the MEP Participants and their operating personnel, operate the Facilities in accordance with internationally accepted good practices, the other requirements set forth in this Agreement and all Applicable Laws.

7.2.4 Access Following Provisional Acceptance. After Provisional Acceptance, the Turnkey Contractor shall promptly complete the remaining Work, including Punch List items and the Reliability Run. The Turnkey Contractor shall have reasonable access to the Facilities and the reasonable cooperation of the MEP Participants so as to complete the Work and to perform its obligations, which shall be accomplished with minimal interference to the operations of the Facilities. During such period the MEP Participants shall, in consultation with the Turnkey Contractor, operate the Facilities in accordance with internationally accepted good practice, the other requirements set forth in this Agreement and all Applicable Laws.

7.3 Reliability Run. As soon as is practicable after the achievement of Provisional Acceptance and for purposes of determining whether the Turnkey Contractor has satisfied the Reliability Guaranty, the Turnkey Contractor, with the assistance and cooperation of the MEP Participants' operations personnel, shall operate the Facilities in accordance with the requirements of Section 7.3.1 (the "Reliability Run") to support the operating demands for the Facilities, while simultaneously operating the Facilities in accordance with the Operating Manuals. The Reliability Run shall be conducted with all systems being operated in the automatic mode in accordance with Appendix A. Without limiting the practices which may void the test, the use of nonpermanent systems and equipment, jumpering out of safety interlocks and use of excess operating personnel shall be prohibited during the Reliability Run.

7.3.1 Reliability Guaranty. The Reliability Guaranty shall have been achieved if, and only if, Facilities achieves an Equivalent Availability of ninety eight and one-half percent (98.5%) (Items not critical to achievement of this figure will be identified during Basic Engineering Phase) during a continuous period of forty five (45) days. The term "Equivalent Availability" is defined as follows for purposes of the Reliability Guaranty:

$$\text{Equivalent Availability (\%)} = \frac{A + B + C}{1080} \times 100\%$$

Where:

- A = The total number of hours during the forty five (45)-day Reliability Run that the Facilities are operated without a load restriction imposed by the MEP Participants or their designee.
- B = The total number of hours during the forty five (45)-day Reliability Run that the Facilities are operated during which there is a load restriction on the Facilities imposed by the MEP Participants or their designee.
- C = The total number of hours during the forty five (45)-day Reliability Run that the Facilities are not operating, but are operable and available for normal operation.

Unavailability due to events unrelated to malfunction or failure of the Facilities or its components shall not prejudice achievement of the Reliability Guaranty. Should an operating event during the Reliability Run result in the Turnkey Contractor's inability to achieve the Reliability Guaranty, the Turnkey Contractor shall remedy the failure and the Reliability Run shall be restarted immediately upon return of the Facilities to service. This process shall be repeated until the Reliability Guaranty is achieved. In the event of an interruption of the Reliability Run by actions of the MEP Participants and/or their operating personnel (if any) or event of Force Majeure, the Reliability Run shall resume and the days before and after such interruption shall be aggregated for purposes of determining continuous operation for the Reliability Run.

7.3.2 Notice and Report of Reliability Guaranty Achievement. When the Turnkey Contractor believes that the Reliability Guaranty has been achieved, it shall deliver to the MEP Participants a written notice thereof (the "Notice of Reliability Guaranty Achievement"). The Notice of Reliability Guaranty Achievement shall contain a report of the results of the Reliability Run in a form acceptable to the MEP Participants and with sufficient detail to enable the MEP Participants to determine whether the Reliability Guaranty has, in fact, been achieved.

7.3.3 Achievement of the Reliability Guaranty. The MEP Participants shall, within fifteen (15) days following receipt of the Notice of Reliability Guaranty Achievement, review the results of the Reliability Run and either:

- (i) deliver to the Turnkey Contractor a certificate stating that the requirements of Section 7.3.1 have been satisfied and that the Reliability Guaranty has been achieved (the "Reliability Certificate"); or
- (ii) notify the Turnkey Contractor in writing that the Reliability Guaranty has not been achieved and stating the reasons therefor, in which case the Turnkey Contractor shall take such action as will allow the Reliability Run to be rerun as promptly as is practicable.

Such procedure shall be repeated as necessary until the Reliability Guaranty has been achieved.

7.4 Work Completion. Work Completion shall be achieved if and only if:

- (i) Provisional Acceptance has been achieved;
- (ii) the Reliability Guaranty has been achieved;

- (iii) the Punch List items have been completed in accordance with this Agreement;
- (iv) the Turnkey Contractor has performed all of the Work (other than warranty obligations which arise after Provisional Acceptance) required to be performed under this Agreement;
- (v) all final restoration Work has been completed and accepted;
- (vi) except Subcontractors designated by the Turnkey Contractor and agreed as appropriate to the MEP Participants, all Subcontractors have been demobilised and all Subcontracts have been closed;
- (vii) following the achievement of the Reliability Guaranty, all equipment and supplier warranties and guaranties have been assigned or effectively and legally transferred to the MEP Participants;
- (viii) all the Turnkey Contractor training activities have been completed;
- (ix) all required Work documentation has been transferred to the MEP Participants ;
- (x) all licenses, Permits and other permissions are in correct order and all equipment and materials are free and clear of any liens and encumbrances to the extent required herein; and
- (xi) the MEP Participants have delivered to the Turnkey Contractor a certificate pursuant to Section 7.4.2 stating that the requirements under clauses (i) through (x) of this Section 7.4 have been satisfied.

7.4.1 Notice and Report of Work Completion. When the Turnkey Contractor believes that it has achieved Work Completion, it shall deliver to the MEP Participants a notice thereof (the "Notice of Work Completion"). The Notice of Work Completion shall contain a report in a form acceptable to the MEP Participants with sufficient detail to enable the MEP Participants to determine whether Work Completion has, in fact, been achieved.

7.4.2 Achievement of Work Completion. The MEP Participants shall, within thirty (30) days following receipt of the Notice of Work Completion, inspect the Facilities and all Work, review the report submitted by the Turnkey Contractor and either:

(i) deliver to the Turnkey Contractor a certificate stating that the requirements under clauses (i) through (xi) of Section 7.4 have been satisfied and that Work Completion has been achieved, in which case the date of achievement of Work Completion shall be the date on which the MEP Participants received the applicable Notice of Work Completion; or

(ii) notify the Turnkey Contractor that Work Completion has not been achieved, stating the reasons therefor, in which case the Turnkey Contractor shall promptly take such action as will achieve Work Completion at the earliest practicable date.

Such procedure shall be repeated as necessary until Work Completion is achieved.

ARTICLE 8  
Guaranteed Completion Dates

8.1 Guaranteed Completion Dates. Within fifteen (15) days after the Effective Date, the MEP Participants shall notify the Turnkey Contractor to proceed with the Basic Engineering Phase. The Turnkey Contractor guarantees that the Basic Engineering Phase as described in Appendix A and other relevant Appendices will be completed within six (6) months from the Commencement Date for the Basic Engineering Phase. The MEP Participants will have a period of thirty-five (35) days beyond completion of the Basic Engineering Phase (including any cure period for such Phase as may be required by the Turnkey Contractor to complete the Phase, as provided in Section 8.2), within which to notify the Turnkey Contractor to proceed with the Detailed Engineering Phase. The Turnkey Contractor guarantees that the Detailed Engineering Phase, as described in Appendix A and other relevant Appendices, will be completed within twelve (12) months from the Commencement Date for the Detailed Engineering Phase. In addition, the Turnkey Contractor shall use Best Endeavours to (i) deliver the Class A Package(s) for pipeline, pump stations and Ceyhan Terminal as described in Appendix A and other relevant Appendices within six (6) months after the Commencement Date for the Detailed Engineering Phase, (ii) secure approval by the Governmental Authorities of the Environmental Impact Assessment as described in Appendix A and other relevant Appendices within nine (9) months after the Commencement Date for the Detailed Engineering Phase, (iii) complete the evaluation of all bids received from potential Subcontractors, including in particular, any back-to-back main Subcontractor and/or those for pipe, pumps and pump drivers, and provide to the MEP Participants a report (the “Bid Acceptance Report”) stating which Subcontracts the Turnkey Contractor intends to accept, directly or indirectly, and providing relevant information concerning the accepted bids for all Subcontracts included in the Bid Acceptance Report sufficient for the MEP Participants to respond timely and in accordance with Section 3.1.4.1 in respect of those items within ten (10) months after the Commencement Date for the Detailed Engineering Phase, and (iv) coordinate the securing of provisional rights to the Permanent Land for the benefit of the MEP Participants by entry into the relevant land registers in accordance with the Applicable Laws and the Host Government Agreement, as described in Appendix A and other relevant Appendices, within eleven (11) months after the Commencement Date for the Detailed Engineering Phase. Assuming that the deliverables and approval set forth in (i), (ii) and (iii) of the preceding sentence are made available to the MEP Participants by not later than one hundred eighty (180) days, ninety (90) days and sixty (60) days, respectively, prior to completion of the Detailed Engineering Phase (including any cure period for such Phase as may be required by the Turnkey Contractor to complete the Phase, as provided in Section 8.2) and that the deliverables set forth in (iv) of the preceding sentence are made available to the MEP Participants by not later than thirty (30) days prior to completion of the Detailed Engineering Phase (including any cure period for such Phase as may be required by the Turnkey Contractor to complete the Phase, as provided in Section 8.2), the MEP Participants will have a period of five (5) days after completion of the Detailed Engineering Phase within which to notify the Turnkey Contractor to proceed with the Land Acquisition and Construction Phase. The Turnkey Contractor guarantees that Provisional Acceptance will be achieved on or before thirty-two (32) months after the Commencement Date for the Land Acquisition and Construction Phase. Each of the above-referenced completion dates for the Basic Engineering Phase, the Detailed Engineering Phase and the Land Acquisition and Construction Phase is referred to herein as a “Guaranteed Completion Date”.

8.2 Early Termination; Late Completion Payment. If either the Basic Engineering Phase or the Detailed Engineering Phase is not completed on or before the applicable Guaranteed Completion Date, and provided the delay does not exceed sixty (60) days, then the period of delay (not to exceed sixty (60) days for each Phase) shall be deemed to be a cure period for completing that Phase, and the Land Acquisition and Construction Phase shall be reduced by the total number of days required to effect cure for both such Phases, up to a total of one hundred twenty (120) days. In the event of any delay exceeding sixty (60) days beyond the Guaranteed Completion Date for either of the first two Phases, then the MEP Participants shall have the right to terminate this Agreement pursuant to Section 16.3. If the MEP Participants do not issue Notice to Proceed with the Basic Engineering Phase, the Detailed Engineering Phase or the Land Acquisition and Construction Phase within the time limits described in Section 8.1 the Turnkey Contractor shall have the right to terminate this Agreement pursuant to Section 5.3. If Provisional Acceptance does not occur on or before the Guaranteed Completion Date for the Land Acquisition and Construction Phase, the Turnkey Contractor shall pay to the MEP Participants, as liquidated damages and not as a penalty, an amount equal to five-hundred-thousand Dollars (\$500,000) per calendar day (the “Late Completion Payment”), for each calendar day by which Provisional Acceptance is later than the Guaranteed Completion Date. Payment of the Late Completion Payment by the Turnkey Contractor shall be limited to a maximum of two hundred forty (240) days. Notwithstanding the payment by the Turnkey Contractor of the Late Completion Payments for two hundred forty (240) days, if Provisional Acceptance is delayed by more than two hundred forty (240) days beyond the Guaranteed Completion Date for the Land Acquisition and Construction Phase, the MEP Participants shall have the right to terminate this Agreement.

8.2.1 Pre-estimate of Loss. The MEP Participants and the Turnkey Contractor hereby acknowledge and agree that the sum specified in Section 8.2 represents a genuine pre-estimate of the amount of damages that will be suffered directly by the MEP Participants in respect of delay in achieving Provisional Acceptance within the forty (40) month period after the Commencement Date for the Land Acquisition and Construction Phase. Payment of the Late Completion Payment shall not affect the MEP Participants’ rights to receive monetary damages in addition to the Late Completion Payment in respect of the period on and after termination of this Agreement as a result of the Turnkey Contractor’s default, as provided in Section 16.4.

8.2.2 Payment. The Turnkey Contractor shall pay the amount required under this Section 8.2 monthly in arrears on the tenth (10th) day of each month.

8.2.3 Exclusive Remedy. In respect of the Turnkey Contractor’s default by reason of failure to achieve the Guaranteed Completion Date for either of the Basic Engineering Phase or the Detailed Engineering Phase, termination of this Agreement in accordance with Section 16.3(x), together with the further rights provided in Section 16.4, shall constitute the sole and exclusive remedies of the MEP Participants and the sole and exclusive liabilities of the Turnkey Contractor to meet the applicable guaranties in Section 8.1. Payment of the Late Completion Payment shall constitute the sole and exclusive remedy of the MEP Participants, and the sole and exclusive liability of the Turnkey Contractor, for failure of the Turnkey Contractor to meet the guaranties relating to achievement of Provisional Acceptance set forth in Section 8.1 for the period prior to termination under Section 16.3(x), but the MEP Participants shall have the further rights specified in Section 16.4 in respect of the period on and after termination of this Agreement pursuant to Section 16.3(xi), with such right to be in addition to that provided in Section 16.3.

8.3 Early Completion Payment. Nothing in this Agreement shall limit the right of the MEP Participants to request that the Turnkey Contractor undertake to achieve Provisional Acceptance on a date earlier than the Guaranteed Completion Date for the Land Acquisition and Construction Phase. Subject to the Turnkey Contractor and the MEP Participants reaching agreement with respect to the necessary details to achieve such earlier completion date and the amount of the bonus per day (the “Early Completion Payment”), this Agreement shall be amended accordingly.

8.3.1 Payment. The MEP Participants shall pay the amount required under this Section 8.3 monthly in arrears on the tenth (10th) day of each month.

## ARTICLE 9

### Performance Guaranties and Remedies

9.1 Facilities Capacity Guaranty. The Turnkey Contractor guarantees that the completed Facilities shall be capable of accepting and transporting up to peak rates of fifty (50) million metric tonnes per annum of Petroleum having the standard crude specification given in Appendix A.

9.2 Tanker Loading Guaranty. The Turnkey Contractor guarantees that the completed marine terminal at or near Ceyhan, Turkey shall be capable of safely loading tankers of the size range specified in Appendix A at rates of sixty thousand (60,000) barrels per hour each and as further detailed and agreed following the completion of terminal sizing during the Basic Engineering and Detailed Engineering Phases of the Work.

9.3 Reliability Guaranty. The Turnkey Contractor guarantees that the completed Facilities will achieve the Equivalent Availability as provided in Section 7.3.1.

9.4 Performance Remedies. Should all or any component of the Facilities fail to meet its agreed design capability, the Turnkey Contractor shall at its own expense and within such a time frame so as not to delay achievement of Provisional Acceptance beyond the Guaranteed Completion Date for the Land Acquisition and Construction Phase, implement reasonable repair and replacement alternatives as required to enable all or such deficient component or the Facilities to comply with all of the guaranties set forth in Sections 9.1, 9.2, and 9.3 (“Performance Guaranties”).

## ARTICLE 10

### Financing Procedures and Obligations

10.1 Independent Engineer’s Access. The Turnkey Contractor shall cooperate with and assist the Independent Engineer in the preparation of the Independent Engineer’s Reports and the performance of its other duties hereunder. The Turnkey Contractor shall furnish to the Independent Engineer all material information available to the Turnkey Contractor relating to the Work and the Facilities, including all studies, plans, drawings, programs, analyses, intellectual property, agreements, potential Subcontractors’ bids, correspondence, documentation, specifications, tests, surveys and other relevant information respecting the Work and the Facilities. The Independent Engineer may (i)

visit and inspect the Facility Sites and those offices and premises of the Turnkey Contractor where material information regarding the Work may be inspected or any Work is being performed, (ii) inspect, examine and make extracts and copies of any agreements, books, records and other materials of the Turnkey Contractor and (iii) confer with officers, employees, agents, consultants and other representatives of the Turnkey Contractor, environmental consultants, Subcontractors and potential Subcontractors regarding any aspect of the Work and the Facilities. To the extent the Turnkey Contractor has rights of access with its potential Subcontractors and Subcontractors, the Turnkey Contractor will cooperate with the Independent Engineer to facilitate such access to such Persons as may be reasonably necessary, subject to any confidentiality requirements which may be imposed by such Persons. The Independent Engineer agrees to execute a confidentiality agreement containing terms reasonable to the Independent Engineer and the Turnkey Contractor. The Turnkey Contractor shall provide substantially the same assistance to the Independent Expert in the performance of its duties.

## 10.2 Independent Engineer's Reports.

10.2.1 Delivery of Reports. The Independent Engineer shall prepare and deliver to the Turnkey Contractor, the MEP Participants, the Lenders and the Insurers an Independent Engineer's Report on each of the following dates:

- (i) at completion of the Basic Engineering Phase;
- (ii) promptly after the delivery by the Turnkey Contractor to the MEP Participants' Representative of the Class A Package(s) for pipeline, pump stations and Ceyhan Terminal as described in Appendix A and other relevant Appendices and/or the delivery of the tender packages for back-to-back main Subcontractor transfer, subject to the contracting strategy to be developed in accordance with Appendix D and finalised during the Basic Engineering Phase (the "Specifications Report");
- (iii) promptly after the delivery by the Turnkey Contractor to the MEP Participants Representative of the bids for the Class A Packages and/or the delivery of the tender packages for back-to-back main Subcontractor transfer, subject to the contracting strategy developed in accordance with Appendix D and finalised during the Basic Engineering Phase (the "Bid Report");
- (iv) promptly after the delivery by the Turnkey Contractor to the MEP Participants' Representative of the results of the negotiated bids for the Class A Packages and/or the delivery of the tender packages for back-to-back main Subcontractor transfer, subject to the contracting strategy developed in accordance with Appendix D and finalised during the Basic Engineering Phase as well as the results of the acquisition of provisional Rights to the Permanent Land (the "Cost Evaluation Date") (the "First Security Determination Report");
- (v) on the first anniversary of commencement of the Land Acquisition and Construction Phase; and

- (vi) on the second anniversary of commencement of the Land Acquisition and Construction Phase.

10.2.2 Independent Engineer's Standards. In preparing each Independent Engineer's Report, the Independent Engineer shall apply those standards and practices generally prevailing in the Petroleum pipeline industry for projects of comparable size and complexity and other appropriate principles in its reasonable professional judgment. The Independent Engineer shall consult with the Parties in developing each Independent Engineer's Report and shall provide the Parties a draft of each Independent Engineer's Report five (5) days before a meeting to be held among the Parties and the Independent Engineer to discuss the draft Independent Engineer's Report. At such meeting the Parties may also provide comments to the Independent Engineer, which will use its Best Endeavours to accommodate reasonable comments received at or before such meeting. Within three (3) days after the date of each such meeting, the Independent Engineer shall deliver a final Independent Engineer's Report.

10.2.3 Dispute Procedure. The Turnkey Contractor and the MEP Participants agree that the Expected Cost of the Facilities as specified in each Independent Engineer's Report shall be final and binding on the Parties for all purposes of, and during the period provided, in this Article 10; provided, however, that the Parties may dispute (the "Cost Dispute") solely with respect to whether, in reaching its determination of the Expected Cost of the Facilities in the First Security Determination Report, the Independent Engineer properly applied the standards set forth in Section 10.2.2 and, if such standards were not followed, the effect of such impropriety on a proper determination of the Expected Cost of the Facilities in respect of the First Security Determination Report. Such Cost Dispute shall be subject to resolution pursuant to the procedures set forth in Article 21 using (to the fullest extent available under the applicable arbitral rules) expedited procedures, except that such Cost Dispute must be initiated by the disputing Party's giving written notice of Cost Dispute to the other Parties within five (5) days after issuance of the First Security Determination Report and simultaneously initiating the appointment of an independent expert (the "Independent Expert"), as provided below. For the avoidance of doubt, if no such notice of Cost Dispute is given within said five (5) day period, the determination of the Independent Engineer shall be final and binding for all purposes. In lieu of appointment of the Independent Expert as otherwise provided in said Article 21, the Independent Expert shall be appointed by the President of the Stockholm Chamber of Commerce, Sweden, to resolve the Cost Dispute and render a final and binding determination of the Expected Cost of the Facilities as at the Cost Evaluation Date, which determination shall be final and binding for all purposes. The Independent Expert shall be free of any business or other relationships with the Parties or in respect of the Project suggesting possible bias or prejudice in favour of or against any Party, and shall be internationally recognised as having substantial, relevant expertise respecting the Petroleum production, transportation and construction industries. Pending delivery of the Independent Expert's determination, the Additional Cost Exposure shall be deemed to be that amount which is equal to ninety percent (90%) of the Additional Cost Exposure as specified by the Independent Engineer in the Bid Report, with such amount to be used on a provisional basis for all purposes of this Agreement until such time as the determination of the Independent Expert becomes available.

### 10.3 Turnkey Contractor's Finance Plan and Finance.

10.3.1 Indicative Finance Plan. Promptly after receipt of the Specifications Report,



the Turnkey Contractor shall deliver to the MEP Participants' Representative an indicative plan for financing any Additional Cost Exposure that would reasonably be expected to be required to be secured by Required Security.

10.3.2 Finance Election. Within five (5) days after its receipt of any Independent Engineer's Reports described in Section 10.2(iv)-(vi), the Turnkey Contractor shall deliver to the MEP Participants' Representative its written election to

- (i) fund;
- (ii) provide Security; or
- (iii) do neither (i) nor (ii);

respecting any Additional Funding Requirement, which election shall be irrevocable, subject to adjustment in accordance with Section 10.4.3. If the Turnkey Contractor elects (i) or (ii) above, the Turnkey Contractor shall include with its election its plan to finance such Additional Funding Requirement (the "Turnkey Contractor Additional Funding Requirements"); provided however, that in the event that the Turnkey Contractor fails to deliver its election when due, the Turnkey Contractor shall be deemed to have elected (iii).

10.3.3 Evidence of Ability to Fund. If the Turnkey Contractor does not, within five (5) days (or, in the case of such election with respect to the First Security Determination Report by the giving of Notice to Proceed for the Land Acquisition and Construction Phase) of its election pursuant to Section 10.3.2, either provide Security up to the full amount of any Additional Funding Requirement (the "Turnkey Contractor Additional Security"), or provide evidence and assurances satisfactory to the MEP Participants of the Turnkey Contractor's ability to fund such Additional Funding Requirement, as applicable, the MEP Participants shall promptly either:

- (i) agree in writing to fund such Additional Funding Requirement (the "MEP Participants Additional Cost Financing"), subject to the terms and conditions of Section 10.4.4 and 10.5.2, or
- (ii) terminate this Agreement pursuant to Article 16.1.

10.4 Providing and Maintaining Security. Security shall be provided, maintained, released and applied as follows:

10.4.1 Initial Security. No later than the giving of the Notice to Proceed for the Land Acquisition and Construction Phase, the Turnkey Contractor shall provide Security in an amount equal to the Required Security (the "Initial Security Delivery Date").

10.4.2 Maintenance of Security. The Turnkey Contractor shall maintain any Required Security and any Turnkey Contractor Additional Security in the amount required to be so provided, subject to the rights to draw on the Security in accordance with the terms thereof and hereof.

10.4.3 Adjustment of Initial Security. If following the resolution of the Cost Dispute the

Adjusted Required Security is

- (i) more than the Security currently maintained, the Turnkey Contractor shall provide Security in the amount of such excess within thirty (30) days after such resolution; and
- (ii) less than the Security maintained, and the Turnkey Contractor shall be entitled to a reduction in the amount of Security up to an amount equal to the excess of (a) the Security maintained over (b) the Adjusted Required Security.

10.4.4 Funding Cost Overruns. Subject to customary and reasonable disbursement and security requirements of Lenders and Insurers, if (i) a Cost Overrun Amount exists, (ii) no Event of Default has occurred and is continuing, and (iii) the Independent Engineer has determined that the previous amounts paid to the Turnkey Contractor under this Agreement have been used to pay for the costs of the Work in accordance with this Agreement; then, upon the request of the Turnkey Contractor, the Cost Overrun Amount shall be disbursed to be applied to the Work as directed by the Turnkey Contractor as follows, to the extent available:

- (a) first, by either (at Turnkey Contractor's election) drawing on the Security to the extent available or by funding from the Turnkey Contractor up to an amount which together with previous disbursements to, by or on behalf of the Turnkey Contractor pursuant to Sections 10.4.4(a) or 10.4.5(a) or (b) shall not exceed three hundred million Dollars (\$300,000,000) plus the aggregate amount of Turnkey Contractor Additional Funding Requirements; and
- (b) second, from the MEP Participants Additional Cost Financing, in accordance with Section 10.5.2.

10.4.5 Funding During Event of Default. Subject to customary and reasonable disbursement and security requirements of Lenders and Insurers, if (i) a Cost Overrun Amount exists, and (ii) this Agreement has been terminated by the MEP Participants after an Event of Default has occurred and is continuing, the Cost Overrun Amount shall be paid as follows, to the extent available:

- (a) first, by drawing on the Security to the extent available;
- (b) second, funding from the Turnkey Contractor up to an amount which together with previous disbursements to, by or on behalf of the Turnkey Contractor pursuant to Sections 10.4.4(a) or 10.4.5(a) or (b), shall not exceed three hundred million (\$300,000,000) plus the aggregate amount of Turnkey Contractor Additional Funding Requirements; and
- (c) third, if the MEP Participants elect in their sole discretion, from the MEP Participants Additional Cost Financing, if any.

Any amounts paid pursuant to Section 10.4.5 shall be deemed to be part of the liability of the Turnkey Contractor which is limited pursuant to Section 25.6.

10.4.6 Reduction of Security if Oversecured. If on any Security Delivery Date

during the Land Acquisition and Construction Phase, the applicable Independent Engineer's Report reflects that the Security exceeds the Additional Cost Exposure as of such date, the Turnkey Contractor may reduce the Security to an amount equal to the greater of (i) the Additional Cost Exposure as so determined and (ii) twenty five percent (25%) of the amount of the Adjusted Required Security.

10.4.7 Reduction of Security if Funded from Other Sources. If the Turnkey Contractor funds a Cost Overrun Amount pursuant to Section 10.4.4 without drawing on the Security, the Turnkey Contractor may reduce the Security by an amount equal to such funding.

10.4.8 Increases in Security on Second Security Delivery Date. If on the second Security Delivery Date during the Land Acquisition and Construction Phase, the Independent Engineer's Report reflects that the Additional Cost Exposure exceeds the amount of Security then in place, then the Turnkey Contractor shall increase the Security to an amount equal to the lesser of (i) the Additional Cost Exposure as so determined and (ii) the difference between (a) the Adjusted Required Security, and (b) the aggregate amount of Security drawn under Section 10.4.4.

## 10.5 MEP Participants Additional Cost Financing.

10.5.1 Conditions. The obligation of the MEP Participants to make available any MEP Participants Additional Cost Financing is subject to the satisfaction of the following conditions:

- (i) There exists no (a) Event of Default or (b) event with which the giving of notice or the passage of time, or both, would be an Event of Default ("Default");
- (ii) The MEP Participants' Representative shall have received at least 20 days before such financing a request from the Turnkey Contractor for MEP Participants Additional Cost Financing describing the use of proceeds of such requested financing, attaching invoices and other documentation that the amounts to be paid from the proceeds of such advance have been incurred to perform the Work in accordance with the terms of this Agreement (the "Financing Request");
- (iii) The MEP Participants' Representative shall have received no more than two (2) days before such financing a certificate of the Turnkey Contractor confirming that no Default exists or will exist on the date of such financing, that the Turnkey Contractor has no defenses or counterclaims that are currently assertable or anticipated to be assertable under the Turnkey Agreement and the Turnkey Agreement is the legal, valid and binding obligations of the Turnkey Contractor, enforceable in accordance with its terms;
- (iv) The Independent Engineer shall confirm to the MEP Participants and the Turnkey Contractor that the amounts which are the subject of the Financing Request have been incurred for the Work in accordance with the terms of this Agreement; and

- (v) The MEP Participants' Representative shall have received evidence that (a) the lien of the MEP Participants on the Operating Fee and the offset right of the MEP Participants' Corporation Tax liability is valid, perfected and of first priority or (b) such other security arrangement as is satisfactory to the MEP Participants is in place.

10.5.2 Repayment. Each MEP Participant providing MEP Participants Additional Cost Financing shall be entitled to recoupment or repayment of such amounts, together with interest on the unpaid principal balance of MEP Participants Additional Cost Financing outstanding from time to time at the Agreed Interest Rate, plus any additional amounts necessary to reimburse such MEP Participant for any Taxes which may be imposed on or incurred by such MEP Participant as a result of any MEP Participants Additional Cost Financing interest or recoupment under this Section 10.5 ("Financing Taxes"), including any Financing Taxes on such additional amounts (the "Additional Amounts"). The recoupment or repayment of the outstanding principal balance, accrued interest and Additional Amounts in respect of the MEP Participants Additional Cost Financing of an MEP Participant shall be made monthly by set off in accordance with Section 24.12 of the Host Government Agreement of amounts due from the MEP Participant to the Designated Operator (as defined in the Host Government Agreement) and the State, solely in respect of such MEP Participant's share of the following items which have become due and owing according to the following priorities: *first*, against the Operating Fee up to the maximum amount of twenty five percent (25%) of the MEP Participant's pro rata share of the Operating Fee for such month, *second*, against such MEP Participant's Corporation Tax Surtax (as defined in the Host Government Agreement) liability, if any, for any Year and *third*, against such MEP Participant's Base Corporation Tax (as defined in the Host Government Agreement) liability, if any, for any Year. Any recoupment or repayment shall be applied first to accrued and unpaid interest and then to principal. In connection with the implementation of any MEP Participants Additional Cost Financing the Parties agree to execute and deliver such additional documents and agreements in form and substance acceptable to and reasonably requested by the MEP Participants as are necessary and appropriate to evidence in greater detail the terms and provisions of this Section 10.5 or to protect the rights and remedies of the MEP Participants to collect such amounts.

10.6 Other Terms; Documentation. The failure of the Turnkey Contractor to provide or maintain any Security as required hereunder shall constitute a material breach of this Agreement. The Security shall be evidenced by agreements and documents in form and substance reasonably satisfactory to the MEP Participants that the Security (i) is for the benefit of the MEP Participants, (ii) shall remain in place until Provisional Acceptance is achieved, and (iii) may be drawn for the benefit of the Turnkey Contractor pursuant to Section 10.4.4 or for the benefit of the MEP Participants pursuant to Section 10.4.5, and (iv) includes such other terms and provisions consistent with this Article 10 and this Agreement, including Section 3.1.23, as the Lenders and Insurers may reasonably require. The Turnkey Contractor agrees that customary and reasonable disbursement and security arrangements may be required by Lenders and Insurers and the administration of the Security may also include reserve accounts with respect to cash and draws on the Security and other arrangements reasonably requested by the Lenders and Insurers with respect to the Security. In the case of any Independent Engineer's Report which is required to be issued under this Article within a specified time period, the term "issue" or "deliver" shall require receipt by the receiving Party on the date of issue or delivery; otherwise the specified time period shall be extended until the date of actual receipt by such receiving Party.

ARTICLE 11  
Warranties and Guaranties of Turnkey Contractor

11.1 Warranties and Guaranties. The warranties and guaranties provided in this Article 11 are in addition to the guaranties of the Turnkey Contractor set forth in Articles 8 and 9.

11.1.1 Materials. The Turnkey Contractor warrants and guarantees that all machinery, equipment, materials, systems, supplies, technology and other items comprising the Facilities will be new, free from defective workmanship and materials, and will meet all requirements of this Agreement and Applicable Law.

11.1.2 Work and Facilities. The Turnkey Contractor warrants and guarantees that it will perform the Work in a good and workmanlike manner and in accordance with the provisions of this Agreement, including Sections 3.3 and 3.4, and that, when completed, the Facilities and all its components shall (i) be free from deficiencies and defects, including those caused by errors or omissions in design, engineering and construction elements of the Work, (ii) comply in all respects with all requirements of this Agreement, and (iii) comply with, and be capable of operation in accordance with, all Applicable Laws.

11.1.3 Qualifications. The Turnkey Contractor represents and warrants that it and its Subcontractors are, and shall be at all times, fully qualified and capable of performing every Phase of the Work and completing the Facilities in accordance with all of the terms and conditions of this Agreement.

11.1.4 Corrections. If the MEP Participants notify the Turnkey Contractor in writing of any defects or deficiencies in the Facility discovered during the twelve (12) month period immediately following Provisional Acceptance (the "Warranty Period"), the Turnkey Contractor shall (i) correct any such defective or deficient Work at the Turnkey Contractor's sole expense as required to correct any errors, omissions, defects or deficiencies with respect thereto and (ii) in the case of any defective machinery, equipment, materials, systems, technology, supplies or other items, shall either repair or replace the same at the Turnkey Contractor's sole expense. The Turnkey Contractor's obligations under this Section 11.1.4 shall include removal, repair and replacement of all non-conforming portions of the Work or the Facilities, as well as uncovering, removal, re-covering and replacement of other portions of the Work or the Facilities as may be necessary to gain access to the non-conforming Work or defective or deficient portion of the Facilities. The MEP Participants' notice of any such defect or deficiency shall be delivered to the Turnkey Contractor as soon as practicable following the MEP Participants' discovery thereof. If any defective machinery, equipment, materials, systems, supplies, technology or other items are repaired or replaced during the Warranty Period, the warranty for such repaired or replaced machinery, equipment, materials, systems, supplies, technology or other items shall be extended for twelve (12) months after the date of repair or replacement. The duties, liabilities and obligations of the Turnkey Contractor under this Article 11 do not extend to any repairs, adjustments, alterations, replacements or maintenance of machinery, equipment, materials, systems, supplies, technology or other items as a result of the failure of the MEP Participants to operate and maintain the Facilities in accordance with the Operating Manuals, or which are required as a result of normal wear and tear in the operation of the Facilities other than as caused

by the negligence of the Turnkey Contractor, the failure of the Turnkey Contractor to comply with this Agreement or a defect in the Facilities.

11.2 No Liens or Encumbrances. The Turnkey Contractor warrants and guarantees that title to the Facilities and all Work, materials, machinery, systems, technology, supplies and equipment provided in connection with the Work and the Facilities shall pass to the MEP Participants free and clear of all liens, claims, security interests and other encumbrances, other than those created by or through the MEP Participants; and that none of such Work, materials, machinery, systems, technology, supplies or equipment shall be acquired by the Turnkey Contractor subject to any agreement under which a security interest or other lien or encumbrance is retained by any Person other than by or through the MEP Participants.

11.3 No Implied Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT THE TURNKEY CONTRACTOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE, RELATING TO DESIGN OR OTHER SERVICES, OR TO EQUIPMENT OR MATERIALS, TO BE SUPPLIED BY THE TURNKEY CONTRACTOR UNDER THIS AGREEMENT WITH RESPECT TO THE FACILITIES.

## ARTICLE 12 Force Majeure

12.1 Turnkey Contractor Force Majeure. Non-performance or delays in performance on the part of the Turnkey Contractor of its obligations or any part thereof under this Agreement, other than the obligation to pay money, shall be excused if occasioned by Force Majeure. Force Majeure with respect to the Turnkey Contractor means only an act or event which prevents the Turnkey Contractor (and its Subcontractors) from performing its obligations or complying with any conditions of this Agreement if the act or event is unforeseeable, beyond the reasonable control of the Turnkey Contractor, and not caused or occasioned by the Turnkey Contractor's or its Subcontractors' negligence or breach of this Agreement, with such acts or events being solely limited to: (i) natural disasters (earthquakes, landslides, cyclones, floods, snow, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences); (ii) radioactive contamination emanating from sources outside the Territory other than by or through the Work or the action of Governmental Authorities, (iii) pressure waves; (iv) wars between sovereign states where the Republic of Turkey has not initiated the war under the principles of international law; (v) strikes or other labour disputes (other than ones (A) involving the employees of the Turnkey Contractor, any State Entity, any Governmental Authority or the Government, (B) those with respect to any Turkish Subcontractor arising from or related to the action or inaction of the Government or Governmental Authorities, or the action or inaction of the Turnkey Contractor and (C) any other strikes or disputes outside the Territory arising from the action or inaction of the Turnkey Contractor in respect of its Subcontractors or by reason of the Actions of the Government or any Governmental Authority); (vi) rebellions and acts of terrorism occurring outside the Territory; (vii) application of laws, treaties, rules, regulations, decrees, actions or inactions of any governmental entity other than the Government or any Governmental Authority; and (viii) international embargoes of sovereign states other than the Republic of Turkey.

12.2 MEP Participant Force Majeure. Non-performance or delays in performance on the part of the MEP Participants of their obligations or any part thereof under this Agreement, other than the obligation to pay money, shall be excused if occasioned by Force Majeure. Force Majeure with respect to the MEP Participants means an act or event which is unforeseen, beyond the reasonable control of the MEP Participants, and not caused or occasioned by the MEP Participants' negligence or breach of this Agreement. For purposes of this Article 12, Force Majeure includes natural disasters, wars, strikes or other labour disputes, rebellions, acts of terrorism, application of laws, treaties, rules, regulations, decrees, actions or inactions of any governmental authority (whether having jurisdiction inside or outside the Territories). If the government within whose jurisdiction an MEP Participant or its parent company is incorporated or is subject takes actions which preclude that MEP Participant from fulfilling its obligations under this Agreement, that MEP Participant shall be excused from performance as herein provided, but the remaining MEP Participants shall not be entitled to claim such event as Force Majeure.

12.3 Burden of Proof. In the event that the Parties are unable in good faith to agree that a Force Majeure event has occurred, the burden of proof as to whether a Force Majeure event has occurred shall be upon the Party claiming Force Majeure.

12.4 Excused Performance. Except for payment obligations accruing in accordance with this Agreement, if either Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure event, that Party will be excused from whatever performance is affected by the Force Majeure event to the extent so affected; provided, however, that:

(i) the non-performing Party, within two (2) working days after becoming aware of the occurrence of a Force Majeure event, gives the other Party written notice describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of such Party's obligations, and thereafter continues to furnish timely regular reports with respect thereto during the continuation of the Force Majeure event and the effects thereof;

(ii) in the case of a Force Majeure event claimed by the Turnkey Contractor, the Turnkey Contractor exercises its Best Endeavours to preserve and safeguard the Works and the Facilities;

(iii) any excuse of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure event;

(iv) no liability of either Party for an event which arose before the occurrence of the Force Majeure event shall be excused as a result of the occurrence;

(v) the non-performing Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party;

(vi) the non-performing Party shall use all reasonable efforts to continue to perform its obligations and to correct or cure the event or condition excusing performance; and

(vii) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect and shall promptly resume performance.

12.5 Scope Change Due to Force Majeure. In the event and to the extent that Force Majeure affects the Work such that the Turnkey Contractor is unable to meet a milestone date, and/or any Guaranteed Completion Date as set forth in Appendix D attached hereto as a result of such Force Majeure, an equitable adjustment shall be made by agreement of the MEP Participants and the Turnkey Contractor in respect of the Work Schedule and subsequent milestone completion and/or Guaranteed Completion Dates in order to fairly account for the adverse effect of the Force Majeure on the completion of the milestone and/or Guaranteed Completion Date. In assessing whether to revise any milestone completion date and/or Guaranteed Completion Date, the foregoing adjustment will reflect disruptions of the Work Schedule considered to be on the critical path (that is, directly leading to the earliest accomplishment of Provisional Acceptance). All other items of Work directly affected by Force Majeure but not critical to earliest accomplishment of Provisional Acceptance will be assessed against cost impact only. Based on the foregoing principles, the milestone completion and/or Guaranteed Completion Dates will be adjusted accordingly. In respect of the effect of Force Majeure on the cost of performance (including any increased cost related to any required extension of the Performance Guarantees), if and to the extent Force Majeure affects the cost of the Work and to the extent such cost is not addressed by the insurance provisions of Article 15 hereof, then, subject to the verification of how such additional costs caused by Force Majeure affects the Lump Sum Fixed Price, an equitable adjustment shall be made in the Lump Sum Fixed Price by agreement of MEP Participants and the Turnkey Contractor.

## ARTICLE 13 Scope Changes

13.1 Further Refinement, Corrections and Detailing Not Constituting Scope Changes. It is understood and agreed that the Facilities shall be subject to further refinement, correction and detailing by the Turnkey Contractor and/or by the MEP Participants from time to time and that the Turnkey Contractor shall receive no additional time or compensation for any such refinement, correction or detailing (which shall not constitute Scope Changes). For the avoidance of doubt, a material addition to, deletion from, suspension of or other modification to the requirements or provisions of this Agreement or respecting the Facilities shall constitute a Scope Change rather than a refinement, correction or detailing.

13.2 Scope Changes. The MEP Participants, without invalidating this Agreement, may order Scope Changes to the Work, in which event one or more of the Lump Sum Fixed Price, the Guaranteed Completion Date, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties shall be adjusted or modified only to the extent necessary in light of such Scope Changes. In assessing the impact of Scope Changes on the Lump Sum Fixed Price, the milestone completion and/or Guaranteed Completion Dates, the Work Schedule and/or the Performance Guaranties, an equitable adjustment in respect of the completion dates associated with the Scope Change will reflect disruptions of the Work Schedule considered to be on the critical path (that is, directly leading to the earliest accomplishment of Provisional Acceptance). All other items of Work directly affected by the Scope Change but not critical to earliest accomplishment of Provisional Acceptance will be assessed against cost impact only.



Based on the foregoing principles, the milestone completion and/or Guaranteed Completion Dates and the Work Schedule will be adjusted accordingly by agreement of the MEP Participants and the Turnkey Contractor and, in respect of the impact of any Scope Change on the cost of performance (including any increased cost related to any required extension of the Performance Guarantees), subject to the verification of how any additional costs affect the Lump Sum Fixed Price, an equitable adjustment shall be made in the Lump Sum Fixed Price by agreement of the MEP Participants and the Turnkey Contractor. All Scope Changes shall be authorised by a Scope Change Order and only the MEP Participants or the MEP Representative may issue Scope Change Orders.

### 13.3 Procedure for Scope Changes.

13.3.1 Within ten (10) days after the Turnkey Contractor first becomes aware of any circumstances which the Turnkey Contractor has reason to believe may constitute or justify a Scope Change, the Turnkey Contractor shall issue to the MEP Participants a Scope Change Order Notice at the Turnkey Contractor's sole expense. All Scope Change Order Notices shall include preliminary documentation sufficient to enable the MEP Participants to determine (i) the factors necessitating the possibility of a Scope Change; (ii) the impact, if any, which the Scope Change may have on the Lump Sum Fixed Price; (iii) the impact which the Scope Change may have on scheduling and any Guaranteed Completion Date; and (iv) such other information which the MEP Participants may request in connection with such Scope Change (including material and labor cost information).

13.3.2 If the MEP Participants desire to make a Scope Change in response to a Scope Change Order Notice or otherwise, they shall submit a Scope Change Order Request to the Turnkey Contractor. The Turnkey Contractor shall promptly review the Scope Change Order Request and notify the MEP Participants in writing of the available options for implementing the proposed Scope Change (including, if possible, any option that does not involve an extension of time) and the effect, if any, each such option would have on each of the Lump Sum Fixed Price, the Guaranteed Completion Dates, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties. Such notice shall also describe the cost, schedule and performance level guaranty impacts of the MEP Participants' Scope Change Order Request and shall include a detailed breakdown by trades and work classifications. The MEP Participants shall reimburse the Turnkey Contractor for any agreed costs incurred by the Turnkey Contractor in developing a Scope Change Order Request initiated by the MEP Participants.

13.3.3 If the MEP Participants agree that a Scope Change is in order and accept the Turnkey Contractor's statement of the effect of such Scope Change on the Lump Sum Fixed Price, the Guaranteed Completion Dates, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties, the MEP Participants shall issue a Scope Change Order, in which event the contents of the Turnkey Contractor's response to a Scope Change Order Request pursuant to Section 13.3.2 shall be binding on the Turnkey Contractor. In the event the MEP Participants disagree with the Turnkey Contractor's statement of the effect of such Scope Change on any one or more of the Lump Sum Fixed Price, the Guaranteed Completion Dates, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties, the MEP Participants may proceed to issue the Scope Change Order in accordance with Section 13.9.

13.3.4 The MEP Participants shall issue a Scope Change Order for each Scope Change.

13.4 Scope Changes Due to Turnkey Contractor Error. Notwithstanding anything in this Agreement to the contrary, no Scope Change Order shall be issued and no adjustment of any of the Lump Sum Fixed Price, the Guaranteed Completion Dates, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties shall be made in connection with any correction of errors, omissions, deficiencies or improper or defective work on the part of the Turnkey Contractor or any Subcontractor in the performance of the Work or any failure of the Turnkey Contractor or any Subcontractor to comply with this Agreement, including any errors and omissions relating to matters within the scope of Article 20.

13.5 Scope Changes Due to Changes in Law. No Scope Changes and no adjustment of the terms and conditions of this Agreement shall be made in connection with any changes in Applicable Laws.

13.6 MEP Participants-Caused Changes. Subject to the Turnkey Contractor promptly notifying the MEP Participants after it becomes aware of any failure of the MEP Participants to perform, or cause performance of, their obligations in accordance with this Agreement, which failure is causing a demonstrable delay in the Turnkey Contractor's performance of the Work and which impairs the Turnkey Contractor's ability to meet the Guaranteed Completion Date or otherwise adversely impacts the Turnkey Contractor's cost of performance of the Work, an equitable adjustment in one or more of the Guaranteed Completion Date, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Lump Sum Fixed Price and/or the Performance Guaranties shall be made by agreement of the MEP Participants and the Turnkey Contractor pursuant to this Article 13. To the extent practicable, the MEP Participants and the Turnkey Contractor shall seek to implement a resolution that avoids such adjustments to the Lump Sum Fixed Price or the Performance Guaranties.

13.7 Price Change. An increase or decrease in Lump Sum Fixed Price, if any, required pursuant to this Article 13 as a result of a Scope Change shall be determined by the mutual agreement of the Parties and shall be paid (or reimbursed or recouped) in one or more payments in accordance with the Milestone/Progress Payment Schedule, as adjusted in accordance with this Article 13. Such increase or decrease shall be calculated as follows :

- (i) as a single value, in an amount proposed by the Turnkey Contractor and accepted by the MEP Participants;
- (ii) by unit pricing; or
- (iii) by cost and reasonable profit.

In the event that the Parties are unable to agree within sixty (60) days after the Scope Change Order is submitted upon the appropriate upward or downward adjustment to the Lump Sum Fixed Price respecting the Scope Change, then either Party may initiate arbitration to resolve the Dispute in accordance with procedures set forth in Article 21.

13.8 Effectiveness; Continued Performance Pending Resolution of Disputes. If a Scope Change is initiated under this Article 13, then the Scope Change and the modifications made pursuant to such Scope Change shall be effective upon the MEP Participants' issuance of a Scope Change Order with respect thereto. Notwithstanding a dispute regarding any proposed Scope

Change or any adjustment of one or more of the Lump Sum Fixed Price, the Guaranteed Completion Dates, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties with respect to the Scope Change, the Turnkey Contractor shall proceed with the performance of such Scope Change promptly following the MEP Participants' execution of the corresponding Scope Change Order; provided, however, the Lump Sum Fixed Price shall be adjusted by the amount equal to any increase or decrease which is disputed by neither the MEP Participants nor the Turnkey Contractor pending resolution of such dispute.

13.9 Documentation. All claims by the Turnkey Contractor for adjustments to one or more of the Lump Sum Fixed Price (except pursuant to Section 13.8(a)), the Guaranteed Completion Dates, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties as a result of Scope Changes under this Article 13 shall be supported by such documentation as is reasonably sufficient for the MEP Participants to determine the accuracy thereof, including invoices from Subcontractors and the Turnkey Contractor's man-hour breakdowns.

## ARTICLE 14 Indemnity

14.1 Turnkey Contractor's Indemnity. The Turnkey Contractor shall indemnify and keep indemnified, protect, defend, hold harmless and release from liability the MEP Participants, their respective Affiliates and their officers, directors, employees, agents, servants and other representatives of each of them (the "Indemnified Parties") from and against all Loss and Damage related to, arising out of, connected with or attributable to any of the following:

- (i) the failure of the Turnkey Contractor to perform any of its obligations under this Agreement;
- (ii) any environmental impact, occurring during the term of this Agreement, whether pre-existing or created by or in connection with the Work, including but not limited to the presence of any environmental contamination or Hazardous Material on or the release of any Hazardous Material from the Facility Sites or any other land on or under which the Facilities is constructed or any Work takes place;
- (iii) any injury to, or illness or death of, any Person, or loss of use of or damage or destruction to the property of any Person, including the MEP Participants, that arises from or is connected with, or results from, the performance or nonperformance of the Work;
- (iv) the infringement of patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to materials, supplies, technology and information designed or used by the Turnkey Contractor or any Subcontractor in performing the Work or in any way incorporated in or related to the Facilities; or
- (v) any Work-related lien claims or other claims by Subcontractors for nonpayment or otherwise, subject to any rights of the MEP Participants to withhold disputed amounts pending resolution of the dispute.

14.2 Survival of Indemnities. The provisions of this Article 14 shall survive the termination of this Agreement.

14.3 Notice and Legal Defense. Promptly after receipt by an Indemnified Party or Parties of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 14.1 applies, the Indemnified Party shall notify the Turnkey Contractor of such fact. The Turnkey Contractor shall assume on behalf of the Indemnified Party or Parties and conduct with due diligence and in good faith the defense thereof with counsel of its choice, such counsel to be reasonably satisfactory to the Indemnified Party or Parties; provided, however, that the Indemnified Party or Parties shall have the right to be represented therein by advisory counsel of its or their own selection and at its or their sole expense; and provided further, that if the defendants in any such action include both the Turnkey Contractor and one or more Indemnified Parties and an Indemnified Party shall have reasonably concluded and notified the Turnkey Contractor that there are legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Turnkey Contractor, the Indemnified Party or Parties shall have the right to select one additional counsel to participate on behalf of the MEP Participants in the defense of such action and the Turnkey Contractor shall bear the cost of the reasonable attorneys' fees of such additional counsel.

14.4 Failure to Defend Action. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in Sections 14.1 and 14.3 applies, and the Turnkey Contractor fails to timely assume the defense of such claim, action, proceeding or investigation, then the Indemnified Party may at the Turnkey Contractor's sole expense contest (or, with the prior written consent of the Turnkey Contractor, settle) such claim; provided, that no such contest need be made and settlement or full payment of any such claim, action, proceeding or investigation may be made without the Turnkey Contractor's consent (with the Turnkey Contractor remaining obligated to indemnify the Indemnified Party under Section 14.1) if, in the written opinion of the Indemnified Party's counsel, such claim is meritorious, all costs and expenses incurred by an Indemnified Party in connection with any such contest, settlement or payment shall be paid by the Turnkey Contractor, with interest thereon at the Agreed Interest Rate as provided herein, promptly following demand therefor.

14.5 Settlement of Claims. An Indemnified Party may elect to settle a claim against it, notwithstanding the Turnkey Contractor's willingness to assume the defense thereof, in which case the Indemnified Party shall not be reimbursed for its costs and expenses (including the amount of the settlement agreement) in connection with any settlement paid without the Turnkey Contractor's consent.

ARTICLE 15  
Insurance

15.1 General Insurance Requirements. Except to the extent prohibited by law, the MEP Participants shall furnish the insurance coverages referred to in this Article 15, which shall name those Persons specified for each type of coverage listed in this Article as named or additional insureds and loss payees in respect of the policies. All insurance obtained by the MEP Participants shall be maintained with an insurer or insurers and on terms to be approved by the MEP Participants' Lenders. As soon as practicable after the Notice to Proceed for the Land Acquisition and Construction Phase, the MEP Participants shall furnish to their Lenders and the Turnkey Contractor certificates of insurance (or if so directed, copies of the actual insurance policies signed by an authorized representative of the insurer or insurers) from each insurance carrier showing that the above required insurance is in force, the amount of the carrier's liability thereunder, and further providing that the insurance will not be cancelled, changed or not renewed until the expiration of at least thirty (30) days (to the extent obtainable under commercially reasonable terms) (or 10 days in the case of cancellation due to non-payment of premiums) after written notice of such cancellation, change or nonrenewal has been received by the MEP Participants, their Lenders and the Turnkey Contractor. All copies of policies and certificates of insurance submitted under this Article 15 shall be in form and content acceptable to the MEP Participants' Lenders.

15.2 Insurance of Facilities. The MEP Participants shall, in the joint names of the MEP Participants, the Turnkey Contractor, the Subcontractors, the Lenders and each of their successors and permitted assignees, insure the Facilities and keep each part thereof insured for its full replacement value on an "all risk" basis. Such insurance shall be effected from the Commencement Date of the Land Acquisition and Construction Phase, and thereafter shall continue until Work Completion.

15.3 Turnkey Contractor's, Subcontractors' or Rented Equipment. All equipment, supplies and materials belonging to the Turnkey Contractor or any Subcontractor and used by or on behalf of the Turnkey Contractor or any Subcontractor for its or their performance of the Work shall be brought to and kept at the Facility Sites at the sole cost, risk and expense of the Turnkey Contractor and/ or such Subcontractor(s), and the MEP Participants, their Affiliates and their respective successors and permitted assignees shall not be liable for Loss or Damage thereto. The owner of the construction tools and equipment shall obtain adequate insurance to cover any construction tools and equipment it owns and uses in the Work or leases from any other Persons for such purposes.

15.4 Third Party Insurance.

15.4.1 Primary Third Party Insurance. The MEP Participants shall, in the joint names of the MEP Participants, the Turnkey Contractor, the Subcontractors, the Lenders and each of their successors and permitted assignees, prior to the commencement of any Work on the Facility Sites pursuant to this Agreement, insure in an amount of fifty million Dollars (\$50,000,000) per occurrence against liability for damage or death or personal injury occurring before expiration of the Warranty Period described in Section 11.1 to any Person (including any employee of the MEP Participants) or to any property (other than property forming part of the Facilities) due to or arising out of the performance of the Work by the Turnkey Contractor or Subcontractors.

The insurance shall be on an occurrence form and the coverages provided under such insurance shall include premises/operations, contractual liability, broad form property damage, products/completed operations and the Turnkey Contractor's protective liability. Coverage for physical property shall be at full replacement value. Such insurance will be endorsed or amended as to be considered primary, and any other insurance maintained by the Turnkey Contractor is excess and not contributory with this insurance.

15.4.2 Excess Third Party Insurance. The MEP Participants shall, in the joint names of the MEP Participants, the Turnkey Contractor, the Lenders and each of their successors and permitted assignees, prior to the commencement of any Work on the Facility Sites by the Turnkey Contractor or Subcontractors pursuant to this Agreement, insure in an amount of ten million dollars (\$10,000,000) per occurrence, such insurance being considered excess of third party insurance required pursuant to Section 15.4.1, against liability for damage or death or personal injury occurring before expiration of the Warranty Period described in Section 11.1 to any Person (including any employee of the MEP Participants) or to any property (other than property forming part of the Facilities) due to or arising out of the performance of the Work by the Turnkey Contractor or Subcontractors. The insurance shall follow the form of the insurance stated in Section 15.4.1.

15.5 Insurance against Accident to Workers. The Turnkey Contractor shall insure and shall maintain insurance for all actions, suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any natural person employed by the Turnkey Contractor and/or its Subcontractors in relation to the Work.

15.6 Key Subcontractor Insurance. The Turnkey Contractor shall require all those Key Subcontractors providing equipment, materials, technology or services directly to the Turnkey Contractor or respecting the Work to obtain, maintain and keep in force during the time in which they are involved in the performance of the Work primary third party liability insurance and workers' compensation insurance coverages as provided herein.

15.7 Remedy on Failure to Insure. If the MEP Participants shall fail to effect and keep in force the insurances for which they are responsible, the Turnkey Contractor shall be entitled to a Scope Change to enable it to require and pay for the insurance coverages designated herein as being the responsibility of the MEP Participants.

15.8 Waiver of Subrogation. The insurance policies supplied by the MEP Participants under Sections 15.2 and 15.4 shall be issued in the joint names of the MEP Participants, the Turnkey Contractor, the Lenders, each of their successors and permitted assignees, as well as their Affiliates, officers, employees, consultants and representatives, and shall include a waiver of any right of subrogation of the insurers thereunder against the above-mentioned named insureds and of any right of the insurers to any set-off, counterclaim or crossclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under any such policy.

15.9 Other Provisions of Policies. All policies, binders or interim insurance contracts in respect of insurance required under Article 15:

- (i) shall provide that in respect of the respective interests of the named insureds the insurance shall not be invalidated by any action or inaction of the policy

acquirer or any other Person acting for or on behalf of the policy acquirer and shall insure the named insureds, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the policy acquirer or any other Person acting for or on behalf of the policy acquirer;

(ii) shall provide that there shall be no recourse against the MEP Participants, Lenders and their successors and permitted assigns for the payment of premiums or commissions or calls, assessments or advances and that none of the MEP Participants, the Lenders and their successors and permitted assigns shall be responsible for any representations or warranties made therein by the Turnkey Contractor or any Person acting for or on behalf of the Turnkey Contractor; and

(iii) shall be denominated in Dollars.

15.10 Turnkey Contractor's Waiver. The Turnkey Contractor shall release, assign and waive any and all rights of recovery against the MEP Participants, the Lenders, and all their Affiliates, employees, successors, permitted assignees, insurers and underwriters, and against Subcontractors which the Turnkey Contractor may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by (i) the Turnkey Contractor and (ii) the MEP Participants pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

15.11 No Limitation of Liability. The coverages referred to and set forth in this Article 15 shall in no way affect, nor are they intended as a limitation of, the Turnkey Contractor's liability with respect to its performance or nonperformance of the Work or in respect of this Agreement.

15.12 Descriptions not Limitations. The coverages referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete, nor to alter or amend any provision of the actual policies and in matters, if any, in which the said description may be conflicting with such instruments, the provisions of the policies of the insurance shall govern; provided, however, that neither the content of any insurance policy or certificate nor the MEP Participants' or Lenders' approval thereof shall relieve the Turnkey Contractor of any of its obligations under this Agreement.

15.13 Insurance Premium. Subject to Section 15.7, (i) the cost of all insurance coverages specified in this Article 15 as being the responsibility of the Turnkey Contractor is included within the Lump Sum Fixed Price and shall be borne by the Turnkey Contractor and (ii) the cost of all insurance coverages specified in this Article 15 as being the responsibility of the MEP Participants shall be borne by the MEP Participants (or, pursuant to Section 15.7, covered by a Scope Change).

## ARTICLE 16 Termination

16.1 MEP Participants' Termination Without Cause. The MEP Participants may, without cause, terminate the Work: (i) after execution by the MEP Participants of a Completion

Certificate for the Basic Engineering Phase but prior to their issuance of the Notice to Proceed for the Detailed Engineering Phase; or (ii) after execution by the MEP Participants of a Completion Certificate for the Detailed Engineering Phase and prior to their issuance of the Notice to Proceed for the Land Acquisition and Construction Phase. After the issuance by the MEP Participants of their Notice to Proceed for the Land Acquisition and Construction Phase, the MEP Participants may, without cause, terminate any part of the Work or all remaining Work by delivering notice to the Turnkey Contractor specifying the part of the Work to be terminated and the effective date of termination. Immediately upon receipt of a notice of termination during the Land Acquisition and Construction Phase, the Turnkey Contractor shall stop performance of the terminated Work and shall immediately order and commence demobilisation with regard to the terminated Work. In the event of a termination of part of the Work during such third Phase, the Turnkey Contractor shall continue to prosecute the part of the Work not terminated. In case of a termination of part of the Work during the third Phase, the MEP Participants will authorise a Scope Change Order making any required adjustments to one or more of the Lump Sum Fixed Price, the Guaranteed Completion Dates, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties, as appropriate. Solely in the event of a complete termination of the Work by the MEP Participants at any time during the Land Acquisition and Construction Phase under this Section 16.1, the MEP Participants shall pay to the Turnkey Contractor such amounts as are provided pursuant to Section 5.3.

**16.2 MEP Participants' Right to Suspend Performance of the Work.** The MEP Participants may elect to suspend performance of all or any part of the Work solely during the Land Acquisition and Construction Phase upon at least thirty (30) days' prior notice to the Turnkey Contractor (or, in emergency situations, upon such prior notice as circumstances permit) indicating (i) the portion of the Work the performance of which the MEP Participants have elected to suspend; (ii) the MEP Participants' estimate of the duration of such suspension; and (iii) the effective date of such suspension of the Work. Upon the effective date of such notice, the Turnkey Contractor shall stop performance of the Work which the MEP Participants have elected to suspend, exercise all reasonable efforts to preserve and safeguard the suspended Work or part of the Facilities and continue to complete performance of the balance of the Work. In the event of a suspension of the Work pursuant to this Section 16.2, the MEP Participants shall authorise a Scope Change Order making any required adjustments to one or more of the Lump Sum Fixed Price, the Guaranteed Completion Dates, the Milestone/Progress Payment Schedule, the Work Schedule and/or the Performance Guaranties, as appropriate. The Turnkey Contractor shall mitigate to the fullest extent reasonably possible any expenses to be borne by the MEP Participants as a result of any partial or total suspension of the Work pursuant to this Section 16.2. Notwithstanding the foregoing, if the suspension in respect of all or a portion of the Work continues for not less than six (6) consecutive months, then the Turnkey Contractor shall have the right, by written notice to the MEP Participants, to treat such suspension by the MEP Participants as the MEP Participants' election to terminate such Work under Section 16.1, with the further compensation provisions of Section 5.3 (including all of its subsections) to apply; provided, however, that in determining the total amounts of compensation due the Turnkey Contractor in the event a suspension gives rise to a termination of Work, as aforesaid, care shall be taken that no double accounting of the Turnkey Contractor's costs shall occur. This Section 16.2 shall not apply to any suspension of all or any part of the Work requested or directed by the MEP Participants as a result of an Event of Default respecting the Turnkey Contractor under this Agreement.



### 16.3 Termination upon Turnkey Contractor's Default.

In the event:

- (i) the Turnkey Contractor is adjudged bankrupt or insolvent; or
- (ii) the Turnkey Contractor makes a general assignment for the benefit of its creditors; or
- (iii) a trustee or receiver is appointed for the Turnkey Contractor or for any of its property; or
- (iv) the Turnkey Contractor files a petition to take advantage of any debtor's act, or to reorganise under the bankruptcy or similar laws; or
- (v) the machinery, equipment, services, materials, supplies, technology or other items used in the Work and/or installed under this Agreement materially adversely affect the technical integrity, reliability or operability of the Facilities; or
- (vi) the Turnkey Contractor fails to make payments to Subcontractors when due in accordance with the terms of all Subcontracts; or
- (vii) the Turnkey Contractor, without cause, abandons the Facilities (i.e. permanently ceases or suspends performance of all or a material portion of the Work); or
- (viii) any of the Turnkey Contractor's representations and warranties set forth in Section 24.1 is untrue in any material respect; or
- (ix) either the Work Schedule in the updated Monthly Progress Report submitted by the Turnkey Contractor for the twenty fourth (24<sup>th</sup>) month after the commencement of the third (3<sup>rd</sup>) Phase of the Work indicates, or the report of the Independent Engineer in accordance with Section 10.2 (vi) indicates, that Provisional Acceptance will occur at least two hundred forty (240) days after the Guaranteed Completion Date for the Land Acquisition and Construction Phase; or
- (x) the Turnkey Contractor fails to complete any of the Basic Engineering Phase or the Detailed Engineering Phase (including the cure periods provided in Section 8.2) by the Guaranteed Completion Date for each such Phase; or
- (xi) Provisional Acceptance has not been achieved within one hundred eighty (180) days following the Guaranteed Completion Date for the Land Acquisition and Construction Phase, or
- (xii) the Turnkey Contractor commits any other material breach of any of the terms of this Agreement;
- (xiii) once the Security specified under Section 10.4.1 is delivered, the Turnkey Contractor fails to maintain such Security as required under this Agreement; or the Security specified under Section 10.4.3(b) or Section 10.4.8 (if any such additional Security is required under the terms of this Agreement) are not delivered, or if delivered, are thereafter not maintained by the Turnkey Contractor as required under this Agreement; or
- (xiv) the Government Guaranty fails to be in full force and effect at any time before Provisional Acceptance.

then, in respect of each of the foregoing other than Subsection (xi), (xiii) and (xiv) above, if the material breach remains unremedied after written notice thereof from the MEP Participants to the Turnkey Contractor for thirty (30) days (or for such longer period, not to exceed ninety (90) days (and, in respect of Subsection (v) above, taking into account any required delivery period for necessary parts), during which the Turnkey Contractor is diligently pursuing the cure of such

material breach, if such material breach is susceptible to cure) any such uncured material breach shall be an “Event of Default” and the MEP Participants may at their option, without prejudice to any other right or remedy the MEP Participants may have under this Agreement or at law or in equity, at any time terminate this Agreement immediately upon written notice to the Turnkey Contractor. Solely with respect to the occurrence of the event described in Subsection (xi) above, no cure period shall be applicable. Notwithstanding the foregoing, the MEP Participants may terminate this Agreement upon thirty (30) days’ prior notice to the Turnkey Contractor if the Turnkey Contractor disregards any provision of any Applicable Law, provided any such failure is not remedied within such thirty-day period.

16.4 Step-in Rights. Notwithstanding and in addition to the other rights and remedies available to the MEP Participants, including those under the Government Guaranty, those available at law and those expressly provided under this Agreement, after an Event of Default by the Turnkey Contractor, the MEP Participants shall have the right, but not the obligation, to step in and assume full control over the Facilities and the Work.

16.5 Consequences of Step-in. The exercise of any step-in rights under Section 16.4 shall not discharge any of the Turnkey Contractor’s obligations or preclude or prejudice the ability of the MEP Participants from exercising any other remedy, including the warranties and guaranties hereunder and recourse to the Government Guaranty. The Turnkey Contractor shall provide all data and project materials to the new project manager designated by the MEP Participants. At the MEP Participants’ request, all Subcontracts shall be promptly assigned or legally and effectively transferred to the MEP Participants.

16.6 Consequences of Termination. Upon any termination pursuant to this Article 16, the MEP Participants may at their option elect to (i) assume responsibility for and take title to and possession of the Facilities and any or all Work, materials or equipment remaining at the Facility Sites, and (ii) succeed promptly, without the necessity of any further action by the Turnkey Contractor other than its execution of the form of assignment, novation or other legally enforceable transfer to the MEP Participants, to the interests of the Turnkey Contractor in any or all Subcontracts entered into by the Turnkey Contractor with respect to the Facilities and the Work, and shall be required to make payments to such Subcontractors only for compensation becoming due and payable to such parties under the terms of their Subcontracts with the Turnkey Contractor from and after the date the MEP Participants elects to succeed to the interests of the Turnkey Contractor in such Subcontracts. All sums claimed by such Subcontractors to be due and owing for Work performed prior to such date shall constitute debts between the Turnkey Contractor and the affected Subcontractors, and the MEP Participants shall in no way be liable for such sums; provided, however, that the MEP Participants may, at their election, pay any sums owed to such Subcontractors, in which event the Turnkey Contractor shall reimburse the MEP Participants for such sums on demand. The Turnkey Contractor shall include in all agreements and contracts entered into with Subcontractors a provision requiring the Subcontractors to approve any such assignment or transfer (including entry into a novation with the MEP Participants) permitting the MEP Participants to succeed promptly to the interests of the Turnkey Contractor thereunder on the terms herein provided. In the event of any termination of this Agreement, the MEP Participants may, without prejudice to any other right or remedy they may have, at their option, finish the Work and complete the Facilities using reasonable methods to complete the Work (including accelerated and/or expedited construction methods) in an attempt to achieve Provisional Acceptance by the Guaranteed Completion Date for the Land Acquisition and Construction Phase, or if such Guaranteed Completion Date is passed, as expeditiously as

practicable (“Reasonable Methods”), including by means of the Government Guaranty. To the extent the costs of completing the Work using Reasonable Methods after a termination pursuant to Section 16.3, including compensation for additional professional services, exceed those amounts that would have been payable to the Turnkey Contractor under this Agreement to complete the Work and the Facilities if this Agreement had been fully performed, the Turnkey Contractor shall pay the difference to the MEP Participants upon demand. In addition, the MEP Participants shall be entitled to exercise any rights or remedies available to the MEP Participants under this Agreement or at law or in equity. Termination hereunder shall not relieve the Turnkey Contractor of its obligations as to portions of the Work already performed or of obligations assumed by the Turnkey Contractor prior to the date of termination, except as otherwise agreed by the MEP Participants in writing. For the avoidance of doubt, in the case of a termination pursuant to Section 16.3, the Turnkey Contractor shall not be entitled to the Termination Payment or any other payment in respect of the Work or this Agreement.

#### 16.7 Termination Upon The MEP Participants’ Default.

In the event:

- (i) the MEP Participants shall have failed to make any payment to the Turnkey Contractor when due pursuant to the terms of this Agreement, except for failure to make such payments on the grounds of good faith disputes until such disputes are resolved by negotiation or dispute resolution as provided in Article 21, in each case within thirty (30) days following delivery to the MEP Participants by a notice by the Turnkey Contractor to cure such failure; or
- (ii) the MEP Participants commit any other material breach of any of the terms of this Agreement;

then, in respect of each of the foregoing, if the material breach remains unremedied after written notice thereof from the Turnkey Contractor to the MEP Participants for thirty (30) days (or in the case of Subsection (ii) above, for such longer period, not to exceed ninety (90) days, during which the MEP Participants are diligently pursuing the cure of such material breach, if such material breach is susceptible to cure) any such uncured material breach shall be an “Event of Default” and the Turnkey Contractor may at its option, without prejudice to any other right or remedy the Turnkey Contractor may have under this Agreement or at law or in equity, at any time terminate this Agreement immediately upon written notice to the MEP Participants.

16.8 Surviving Obligations . Termination of this Agreement (i) shall not relieve the Turnkey Contractor or the MEP Participants of their obligations with respect to confidentiality as set forth in Article 19, (ii) shall not relieve the Turnkey Contractor or the MEP Participants of any obligation under this Agreement which expressly or by implication survives termination of this Agreement, and (iii) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for Loss or Damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

## ARTICLE 17

### Assignments

17.1 Turnkey Contractor Assignment. The Turnkey Contractor shall not be entitled to directly or indirectly transfer, assign, share or otherwise deal with all or any of its rights and/or obligations under this Agreement without the prior written consent of the MEP Participants.

17.2 MEP Participant Assignment. Each MEP Participant shall be entitled to transfer, assign, share or otherwise deal with all or any of its rights and/or obligations under this Agreement with binding effect on the Turnkey Contractor subject only to the prior notification by the MEP Participant transferor to the Turnkey Contractor of details of such transferred rights and/or obligations and the recipient thereof; provided, however that the Turnkey Contractor shall have the right within fifteen (15) days receipt of notification to disapprove such transfer, assignment, sharing or dealing if the proposed transferee, assignee or other party poses a threat to national security, defence, and/or public safety in violation of Turkish Law. In the case of a transfer or assignment of obligations, the MEP Participant transferor shall deliver to the Turnkey Contractor an agreement duly executed by the MEP Participant transferor and the recipient of such obligations in form and substance satisfactory to the MEP Participant transferor which (1) provides that the transferor shall cease to be a Party to this Agreement and is released from any obligations hereunder, (2) provides that the recipient shall become a Party to this Agreement in succession to the transferor and shall observe all obligations and assume any liabilities as if it had at all times been a Party to this Agreement, (3) provides that the recipient shall indemnify the transferor and all other Parties from and against obligations and liabilities that otherwise would have been the responsibility of the transferor and (4) specifies the effective date of the transfer and such other matters that the transferor shall reasonably require. Upon delivery of this form of agreement as contemplated by this Section 17.2, the Turnkey Contractor shall promptly execute this agreement and return same to the MEP Participant transferor.

17.3 Performance on Behalf of the MEP Participants. Without releasing the MEP Participants from their obligations under this Agreement, each MEP Participant shall be entitled to undertake the construction of the Facilities 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, including an Operating Company.

17.4 Financing Assignments. The MEP Participants may assign or create liens, charges or security interests ("Financing Assignments") in relation to its rights and obligations under this Agreement in favour of Lenders and/or Insurers; provided, however that the Turnkey Contractor shall have the right within fifteen (15) days receipt of notification to disapprove such assignment, lien creation, charge or security interest if the proposed assignee, lien holder, charge beneficiary or secured party or other party poses a threat to national security, defence, and/or public safety in violation of Turkish Law. Such Financing Assignments shall be subject to the further provisions of Section 3.1.23.

## ARTICLE 18

### Design Documents

18.1 MEP Participants' Review. The Turnkey Contractor shall submit to the MEP Participants for their review and comment each Design Document designated for the MEP Participants' review as set forth in Appendices A, C and D. The MEP Participants shall have the right to

review each such Design Document and to provide written comments to the Turnkey Contractor, if any, within fifteen (15) calendar days after receipt thereof. A failure of the MEP Participants to respond within the aforesaid fifteen (15) calendar days shall be deemed a declination to offer comments. All other nonproprietary information and results of any supporting design calculations which are prepared in connection with the Work shall also be made available to the MEP Participants for review.

18.2 Review Not Release of Obligations. Review and comment by the MEP Participants or their designees with respect to any Design Documents or other information pursuant to Section 18.1 shall not relieve or release the Turnkey Contractor from any of its duties, obligations or liabilities under this Agreement.

18.3 Final Documents. Within ninety (90) days after Provisional Acceptance occurs, the Turnkey Contractor shall furnish the MEP Participants with “as built” Design Documents reflecting the Facilities as actually constructed.

18.4 Ownership.

18.4.1 Turnkey Contractor agrees that all Design Documents and other documents required to be delivered by the Turnkey Contractor or other documents which are transmitted to the MEP Participants shall be the sole and exclusive property of the MEP Participants. The Turnkey Contractor shall retain title to any equipment drawings and specifications and manufacturing drawings which are not Design Documents that may be provided under this Agreement, although the MEP Participants may use such equipment drawings and specifications and manufacturing drawings as required in connection with the ownership, operation, maintenance, repair or modification of the Facilities. Turnkey Contractor shall have the right to retain and use copies of Design Documents, other documents related to the Work and other information, subject to the foregoing rights of the MEP Participants for national security and emergency circumstances and governmental and legal requirements.

18.4.2 The Turnkey Contractor agrees that all documents (as well as any drawings, tracings, specifications, calculations, memoranda, data, notes and other materials) which are supplied by the MEP Participants to the Turnkey Contractor under this Agreement shall remain the sole and exclusive property of the MEP Participants and shall be returned to the MEP Participants at the earlier of Provisional Acceptance or termination of this Agreement.

## ARTICLE 19 Confidential Information

19.1 Confidentiality. Each Party agrees to hold in confidence for a period commencing with the Effective Date and ending five (5) years following the date of Work Completion, except as may be necessary to perform the Work, any information supplied to it by the other Party and designated in writing as confidential or which by its nature can reasonably be inferred to be confidential. The Turnkey Contractor further agrees to require its Subcontractors and employees to enter into appropriate nondisclosure agreements relative to such confidential information as may be communicated to them by the Turnkey Contractor and/or the MEP Participants. The provisions of this Article 19 shall not apply to information within any one of the following categories: (a) information which was in the public domain prior to a Party’s receipt thereof or

which subsequently becomes part of the public domain by publication or otherwise except by the receiving Party's wrongful act; (b) information which the receiving Party can show was in the receiving Party's possession prior to its receipt thereof through no breach of any confidentiality obligation; or (c) information received by a Party from any other Person which did not have a confidentiality obligation with respect thereto. Other than as may be required by a Governmental Authority, and then only to the extent required, neither Party shall publish the terms and conditions of this Agreement or technical information relative to the Work, unless the other Party provides its express prior written consent thereto; provided, however, that the MEP Participants shall be permitted to disclose such terms and provisions to their Lenders, Insurers or other parties in connection with efforts to obtain financing for the Work. No Person shall be permitted access to the Facilities or the Facility Sites, except as provided in this Agreement or as otherwise agreed by the Parties.

19.2 Publicity Releases. The Turnkey Contractor shall not, nor shall it permit any Subcontractor or other Person, to issue any press or publicity release or any advertisement, or publish or otherwise disclose any photograph or other information, concerning this Agreement or the Work without the express prior written consent of the MEP Participants. The Turnkey Contractor shall give prior notice to the MEP Participants of any information contained in documents filed with public authorities or any other public disclosure which would result in the dissemination of confidential information.

## ARTICLE 20 Inspection

The Turnkey Contractor acknowledges that prior to the execution of this Agreement, the Turnkey Contractor (a) has made a general review of the pipeline route and the surrounding areas, requirements and specifications and other information set forth in Appendix A, (b) has made an initial examination to determine the difficulties and hazards incident to the performance of the Work, including (i) the location of the Facilities and likely Facility Sites and staging areas, (ii) the proximity of the proposed Facilities to adjacent facilities and structures, (iii) the existence and conditions of the roads, waterways and railroads in the vicinity of the route, including the conditions affecting shipping and transportation, access, disposal, handling and storage of materials, (iv) the nature and character of the soil, terrain and surface and subsurface conditions of the route, (v) the labor conditions in the region, (vi) Applicable Laws, Applicable Permits and the rights of the MEP Participants regarding the Rights to Land (in accordance with the Host Government Agreement) and the potential Facility Sites, (vii) the terms and conditions of the Host Government Agreement and related Project Agreements, (viii) the local terrain and weather conditions based upon inspection and available data, (ix) the qualifications of potential Subcontractors, and (x) all other matters that might affect the Turnkey Contractor's costs and performance under this Agreement and/or the design, engineering, procurement, construction, start-up, demonstration and testing of the Facilities, and (c) has determined to the Turnkey Contractor's satisfaction the nature and extent of such difficulties and hazards.

## ARTICLE 21 Dispute Resolution and Jurisdiction

21.1 The provisions of this Article 21 shall be valid and enforceable notwithstanding the illegality, invalidity, or unenforceability under the law specified in Section 21.12 of any other provisions of this Agreement. Arbitration pursuant to this Article 21 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 21, 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 Section 25.17 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, modify or redefine those disputes which it seeks to resolve in such arbitration. Any dispute arising under this Agreement, or in any way connected with this Agreement (including its formation and any questions regarding arbitrability or the existence, validity or termination of this Agreement) (“Dispute”), between (i) the Turnkey Contractor, on the one hand, and (ii) one or more of the MEP Participants, on the other hand, may be submitted to arbitration pursuant to this Article 21. The MEP Participants may submit any such dispute to arbitration jointly and may assign rights granted under this Agreement among themselves for purposes of arbitration, or may enforce rights under this Agreement for the benefit of the Lenders and other Indemnified Parties, it being further understood and agreed that the foregoing shall not require that, in an arbitration to which more than one the MEP Participant is a party, the MEP Participants must take a joint position on any or all disputed issues. In addition, any of the MEP Participants shall have the right by written notice to 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.

21.2 Except as otherwise expressly provided in the Republic of Turkey’s reservation to the ICSID Convention, the Turnkey Contractor and all other Parties hereby consent to arbitrate any Dispute pursuant to the ICSID Convention and the ICSID Arbitration Rules. The Turnkey Contractor recognises that it has been designated by the Government of the Republic of Turkey as a constituent subdivision or agency of the Republic of Turkey for purposes of Article 25(1) of the ICSID Convention and that the Government of the Republic of Turkey has approved the consent of the Turnkey Contractor to arbitrate Disputes in accordance with the terms of this Agreement. In the event of any conflict between the ICSID Arbitration Rules and the arbitration provisions of this Agreement, this Agreement shall govern. For purposes of Article 25(1) of the ICSID Convention and for any other purposes related to this Agreement, any Dispute among the Parties shall be considered a legal dispute arising directly out of an investment. For purposes of the Republic of Turkey’s reservation to the ICSID Convention, as of the Effective Date any Dispute among the Parties shall be considered a legal dispute arising directly out of investment activities which have “effectively started” and which have obtained all necessary permissions and authorisations in accordance with the relevant legislation of that State on foreign capital. If and to the extent the Republic of Turkey’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 Turnkey Contractor and all other Parties

consent to arbitrate all such eligible Disputes pursuant to the ICSID Convention and the ICSID Arbitration Rules.

21.3 If, for any reason, and notwithstanding the consent granted in Section 21.2, ICSID arbitration is not available for the resolution of any Dispute (including by reason of the Republic of Turkey's reservation to the ICSID Convention), then the Dispute shall be finally resolved under the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"); provided, however, that ICC arbitration shall apply to all Disputes involving rights to property in the Territory of the Republic of Turkey, other than claims to ownership of land; and provided, further, if the reservation of the Republic of Turkey to the ICSID Convention is at any time modified or rescinded, then such Disputes involving rights to property within the Territory of the Republic of Turkey may also be arbitrated hereunder pursuant to the ICSID Convention and the ICSID Arbitration Rules. In the event of any conflict between the ICC Rules and the arbitration provisions of this Agreement, this Agreement shall govern.

21.4 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.

21.5 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.

21.6 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.

21.7 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.

21.8 An arbitral tribunal's award issued pursuant to this Article 21 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.

21.9 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.

21.10 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.

21.11 The Turnkey Contractor 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.

21.12 This Article 21 (and any dispute, controversy, proceeding or claim of whatsoever nature arising out of or in any way relating to this Article 21 or its formation) shall be governed in accordance with the substantive law of England, but excluding any rules or principles of English law that would (a) prevent adjudication upon, or accord presumptive validity to, the transactions of sovereign states or (b) require the application of the laws of any other jurisdiction to govern this Article 21.

## ARTICLE 22 Cost Records

22.1 GAAP. The Turnkey Contractor shall maintain complete records of all activities undertaken in connection with this Agreement, including fiscal records and books of account pertaining to the Work in accordance with United Kingdom generally accepted accounting principles consistently applied, and complete sets of designs, drawings and costs incurred or

estimated to be incurred in connection with the Work.

22.2 Examination of Books, Records, Designs and Drawings. The Turnkey Contractor hereby authorises the MEP Participants' Representative to examine the Turnkey Contractor's books, records, designs and drawings related to the Work; provided, however, that in the case of confidential pricing information, the MEP Participants' Representative shall not be entitled to examine or copy such information unless it relates to Section 3.1.4.1, Section 3.1.23, Section 5.1.6, Section 13.7 (iii), and any other similar provision of this Agreement where such confidential pricing information is directly relevant to the implementation of this Agreement. In the event the MEP Participants' Representative chooses to examine in accordance with this Section, it shall give reasonable advance notice to the Turnkey Contractor, and the examination shall occur during the normal business hours of the Turnkey Contractor. The Turnkey Contractor shall co-operate with the MEP Participants' Representative with respect to any such examination and shall allow the MEP Participants' Representative to make copies of such books, records, designs and drawings. Except for Design Documents and other documents delivered to the MEP Participants pursuant to Article 18, Turnkey Contractor shall preserve such records, books, designs and drawings for a period of three (3) years after the Work Completion.

22.3 Inspection Rights. The Turnkey Contractor authorises the MEP Participants' Representative to inspect from time to time the Work, the materials, equipment, the Facility Sites, the Facilities, any area in which Work relating to the Facilities, Work or materials is or will be undertaken or locations where goods and equipment may be manufactured, modified or stored. No inspection or audit by the MEP Participants' Representative shall relieve the Turnkey Contractor of any liability or obligation under or in respect of this Agreement.

## ARTICLE 23

### Taxes

23.1 Payments to Turnkey Contractor. Any and all payments by the MEP Participants to the Turnkey Contractor as specified in this Agreement shall be inclusive of Taxes (including value added taxes), if any.

23.2 Payments to MEP Participants. Any and all payments by the Turnkey Contractor to the MEP Participants pursuant to this Agreement shall be made free and clear of, and without deduction or withholding for, any Taxes, except to the extent required by applicable law or the Host Government Agreement. If the Turnkey Contractor shall be required by applicable law or the Host Government Agreement to deduct or withhold any Taxes from or with respect to any payments to the MEP Participants pursuant to this Agreement, then (a) the amount payable by the Turnkey Contractor shall be increased as necessary so that, after making all required deductions and withholdings of Taxes (including deductions or withholdings of Taxes applicable to additional amounts payable under this Section 23.2), each of the MEP Participant receives an amount equal to the sum it would have received had no such deductions or withholdings of Taxes been made; (b) the Turnkey Contractor shall make such deductions or withholdings of Taxes; and (c) the Turnkey Contractor shall pay the full amount of Taxes deducted or withheld to the appropriate governmental authority in accordance with applicable law. Within thirty (30) days after the date of any payment by the Turnkey Contractor of any such deducted or withheld Taxes with respect to any MEP Participant, the Turnkey Contractor shall furnish to the MEP Participant

the original or a certified copy of an official receipt evidencing such payment (or other evidence of such payment satisfactory to the MEP Participant).

23.3 Filing of Returns; Payment of Taxes. The Turnkey Contractor will, and will use its Best Endeavours to ensure that each of its Subcontractors will, cause to be properly filed on a timely basis with the appropriate governmental authorities all returns, statements, reports and other filings with respect to Taxes which it is required to file, and cause to be properly paid to or deposited with the appropriate governmental authorities all Taxes which it is required to pay or deposit, in connection with the Work and any assets or activities related to the Work, the Facilities or this Agreement.

23.4 Other Tax Undertakings. For the avoidance of doubt, the MEP Participants shall not bear the costs, of any Taxes which may be imposed on or incurred by the Turnkey Contractor or any of its Subcontractors, agents or employees in connection with the Work in any amount not already fully included in the Lump Sum Fixed Price or disbursed as part of a Cost Overrun Amount pursuant to Article 10. In order to avoid potential Cost Overrun, the Turnkey Contractor will use Best Endeavours to structure its transactions and relationships with its Subcontractors and other Persons in connection with the Work in a manner that will avoid the creation of additional or unnecessary levels of Subcontractors, taking into account standard commercial practices.

## ARTICLE 24

### Representations and Warranties

24.1 Turnkey Contractor Representations and Warranties. The Turnkey Contractor represents and warrants to the MEP Participants that:

24.1.1 Organisation and Qualification. It is a duly organised corporation, or other legally recognised business organisation validly existing and in good standing under the laws of the Republic of Turkey, has the lawful power to engage in the business it presently conducts and contemplates conducting, and is or will be duly licensed or qualified and in good standing as a foreign corporation in any other jurisdiction wherein the nature of the business transacted by it, including performance of the Work, makes such licensing or qualification necessary.

24.1.2 Power and Authority. It has the power to make and carry out this Agreement, it has the financial capability, power and standing to perform its obligations under this Agreement, and all such actions have been duly authorised by all necessary corporate proceedings on its part.

24.1.3 No Conflict. The execution, delivery and performance of this Agreement is not in conflict with, and does not result in the breach of, constitute a default under or accelerate performance required by any of the terms of its organisational documents or any Applicable Laws or any agreement, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

24.1.4 Validity and Binding Effect. This Agreement has been duly and validly executed and delivered by the Turnkey Contractor and constitutes a legal, valid and binding obligation of the Turnkey Contractor, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganisation or other similar legal

process affecting the rights of creditors generally or by general principles of equity. No material authorisation, approval, exemption or consent by the Government or any Governmental Authority (other than the Applicable Permits which are the Turnkey Contractor's responsibility) is required to be obtained by the Turnkey Contractor in connection with the authorisation, execution, delivery and carrying out of the terms of this Agreement.

24.1.5 Litigation. There are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any governmental department, commission, board, agency or instrumentality or any arbitration panel whether or not covered by insurance which individually or in the aggregate may result in any materially adverse effect on its business, properties 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, writ, injunction or any decree of any court or any governmental department, commission, board, agency or instrumentality or any arbitration panel which may result in any such materially adverse effect or such impairment.

24.1.6 Tradenames and Licences. It owns or possesses all the trade names, licenses, permits and rights with respect to the foregoing necessary to perform the Work and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others.

24.1.7 Compliance with Laws. It has complied with all Applicable Laws 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 the Work.

24.1.8 Disclosure. No representation or warranty by it contained in this Agreement or in any other document furnished by it to the MEP Participants 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.

24.1.9 Facilities Compliance. All Work, and, upon final completion and acceptance, the Facilities, is in compliance with Applicable Law.

24.2 MEP Participant Representations and Warranties. Each MEP Participant represents and warrants to the Turnkey Contractor that:

24.2.1 Organisation and Qualification. It is a duly organised corporation or other legally recognised business organisation validly existing and in good standing under the laws of the jurisdiction of its incorporation or organisation, has the lawful power to engage in the business it presently conducts and contemplates conducting, and is or will be duly licensed or qualified and in good standing as a foreign corporation or organisation in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary;

24.2.2 Power and Authority. It has the power to make and carry out this Agreement, it has the financial capability, power and standing to perform its obligations under this Agreement and all such actions have been duly authorised by all necessary procedures on its part;

24.2.3 No Conflict. The execution, delivery and performance of this Agreement is not in conflict with and does not 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;

24.2.4 Validity and Binding Effect. 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 to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganisation or other similar legal process affecting the rights of creditors generally or by general principles of equity;

24.2.5 Litigation. 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 properties 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;

24.2.6 Compliance with Applicable Law. It has complied with all laws applicable to it such that it has not been subject to any fines, penalties, injunctive relief or criminal liabilities which in the aggregate have materially affected or may materially affect its business operations or financial condition or its ability to perform its obligations under the Agreement; and

24.2.7 Disclosures. No representation or warranty by it contained in this Agreement or in any other documents furnished by it to the Turnkey Contractor 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 25 Miscellaneous

25.1 Relationship to Project Agreements. This Agreement is a Project Agreement and is subject to the full range of rights, exemptions, protections and Government guaranties as are provided in and appended to the Host Government Agreement.

25.2 Past Due Amounts. Interest shall accrue at the Agreed Interest Rate on any amount 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.

25.3 Complete Agreement; Amendments and Waivers. 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, or interest 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, or interest. 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.

25.4 Headings. 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.

25.5 Interpretation. 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. All references in this Agreement to “rights,” “entitlements,” “exemptions,” and other similar references are to be construed, as the context may require, to include rights, 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.

25.6 Limitation of Liability. The liability of the Turnkey Contractor with respect to any Loss or Damage suffered by the MEP Participants under this Agreement shall not exceed thirty percent (30%) of the Lump Sum Fixed Price, as such price is established on the Effective Date (the “Original Price”); provided, however, if and solely during any period(s) during the term hereof when the Lump Sum Fixed Price then in effect is less than the Original Price, then the liability of the Turnkey Contractor during such period(s) with respect to any Loss or Damage suffered by the MEP Participants under this Agreement shall not exceed thirty percent (30%) of such lesser Lump Sum Fixed Price.

25.7 Cumulative Rights and Remedies. The rights and remedies of a Party, 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 Party may have under any other provision of this Agreement.

25.8 Risk of Liability. Notwithstanding anything to the contrary in this Agreement, no Party shall be required to act or refrain from acting if to do so would render that Party 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.

25.9 Choice of Law. This Agreement (and any dispute, controversy, proceeding or claim of whatsoever nature arising out of or in any way relating to this Agreement or its formation and any provisions concerning arbitration set forth in Article 21) shall be governed in accordance with the substantive law of England, but excluding any rules or principles of English law that would (a) prevent adjudication upon, or accord presumptive validity to, the transactions of sovereign states or (b) require the application of the laws of any other jurisdiction to govern this Agreement.

25.10 Counterpart Execution. This Agreement is executed in multiple counterparts in the English language.

25.11 Reservation of Remedies. Each of the Parties to this Agreement reserves to itself all rights, set-offs, counterclaims and other remedies and defenses which such Party has under or arising out of this Agreement. All obligations to make payments under this Agreement may be offset against each other, set off or recouped by the obligor out of any amounts otherwise payable by it hereunder.

25.12 Severability. 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 25.8, 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.

25.13 Conflicting Provisions. In the event of any conflict, variation or inconsistency between any provision of this Agreement as it may be amended from time to time, and any provision of the Appendices, the provisions of this Agreement shall control.

25.14 No Third Party Rights. This Agreement and all rights under this Agreement are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Lenders and the other named Persons, and shall not imply or create any rights on the part of, or obligations to any other Person.

25.15 Survival of Provisions. Those provisions of this Agreement which come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

25.16 Title to the Facilities. Title to all materials, supplies, equipment and machinery supplied by the Turnkey Contractor in connection with this Agreement and which become a permanent part of the Facilities shall vest in the MEP Participants upon the earliest of (i) the occurrence of any event by which title passes to the MEP Participants, (ii) payment therefor by the MEP Participants or (iii) incorporation into the Facilities at the Facility Sites.

25.17 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 25). 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 third Business Day following the date of dispatch; provided however that any notice by telex or fax shall be followed by written notice given not later than the next Business Day in the form of a letter addressed as set forth below for such Party. A notice sent by letter (other than a letter which confirms earlier notice by telex, fax or e-mail) shall not be deemed to be delivered until the first Business Day following receipt.

**THE TURNKEY CONTRACTOR:**

**BOTAS Petroleum Pipeline Corporation**  
**BTC Project Directorate**  
Bilkent Plaza A”2” Blok Bilkent  
Ankara, 06530  
Turkey  
Attn: Mr. Gökhan Bildaci  
Tel: +90-312 297 222 62  
Fax: +90-312 266 07 23  
E-Mail: gokhan.bildaci@btc.com.tr

and copied to:

**BOTAS Petroleum Pipeline Corporation**  
**BTC Project Directorate**  
Document Data Control Center  
Bilkent Plaza A”2” Blok Bilkent  
Ankara, 06530  
Turkey  
Tel: +90-312 297 35 16  
Fax: +90-312 266 06 22  
E-Mail: dcc@btc.com.tr

**THE MEP PARTICIPANTS:**

**The State Oil Company of the Azerbaijan Republic**  
Foreign Investment Division  
73, Neftchilar Avenue  
Baku 370007  
Azerbaijan Republic  
Attn: Mr. V. Aleskerov, General Manager  
Tel: (99412) 923312  
Fax: (99412) 921015

**BP Exploration (Caspian Sea) Ltd.**  
Villa Petrolea  
2 Neftchilar Prospekti (Bailov)  
Baku 370003  
Azerbaijan  
Attn: Vice President, Export Development  
Tel: (994) 12 979211  
Fax: (994) 12 971359  
E-Mail: digingwt@bp.com



**Statoil BTC Caspian AS**  
c/o Den norske stats oljeselskap a.s  
N-4035 Stavanger  
Norway  
Attn: Odd-Erik Flaatin  
Tel: (47) 51995331  
Fax: (47) 51996930  
E-Mail: oefl@statoil.com

**Turkiye Petrolleri A.O.**  
Mustafa Kemal Mahallesi  
2 Cadde, No. 86, Esentepe  
06520, Ankara  
Turkey  
Attn: General Manager, International Projects  
Tel: (90312) 2868032  
Fax: (90312) 2854238  
E-Mail: intproj@petrol.tpao.gov.tr

**Ramco Hazar Energy Limited**  
The Old House  
142 South Street  
Dorking  
Surrey RH4 2EU  
UK  
Attn: Mike Burchell  
Tel: (44) 1306 888809  
Fax: (44) 1306 743504  
E-Mail: michael.burchell@ramco-plc.com

**Unocal BTC Pipeline, Ltd.**  
14141 Southwest Freeway  
Sugar Land, Texas 77478  
U.S.A.  
Attn: Michael L. Barnes  
Tel: (281) 287-7400  
Fax: (603) 917-6144  
E-Mail: mike.barnes@unocal.com

**ITOCHU Oil Exploration (Azerbaijan) Inc.**  
C/O ITOCHU Oil Exploration Co., Ltd.  
5-1, Kita-Aoyama 2-chome  
Minato-ku, Tokyo  
Japan  
Attn: Yoshio Matsukawa  
Tel: (81) 3 3497 8122  
Fax: (81) 3 3497 8128  
E-Mail: yoshio.matsukawa@itochuoil.co.jp

**Delta Hess (BTC) Limited**  
c/o Amerada Hess Corporation  
1185 Avenue of the Americas  
New York, New York 10036  
U.S.A.

copy to:

**Amerada Hess International Limited**  
33 Grosvenor Place  
London SW1X 7HY  
United Kingdom  
Attn: Richard Mew  
Tel: (44) 207 887 2733  
Fax: (44) 207 887 2089  
E-Mail: richard.mew@hess.com

25.18 Limited Recourse. Notwithstanding anything to the contrary contained in this Agreement no MEP Participant shall be liable for the obligations of any other MEP Participant and no shareholder, officer, director or agent of any MEP Participant shall have any liability for the obligations of its related MEP Participant under or in connection with this Agreement and the Project Agreements except the MEP Participants shall be jointly and severally liable for their failure to comply with their obligations under Article 5 of this Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorised officers as of the date indicated below and to be effective as of the day and year first above written.

THE TURNKEY CONTRACTOR :

**BOTAS PETROLEUM PIPELINE CORPORATION**

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

THE MEP PARTICIPANTS:

**STATE OIL COMPANY OF THE  
AZERBAIJAN REPUBLIC**

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

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

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

**STATOIL BTC CASPIAN AS**

**RAMCO HAZAR ENERGY LIMITED**

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

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

**TURKIYE PETROLLERI A.O.**

**UNOCAL BTC PIPELINE, LTD.**

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

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

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

**DELTA HESS (BTC) LIMITED**

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

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

APPENDIX F

FORM OF NOTICE TO PROCEED

THE TURNKEY CONTRACTOR:

\_\_\_\_\_

BOTAS Petroleum Pipeline Corporation  
Bilkent Plaza A”2” Blok Bilkent  
Ankara, 06530 Turkey

Re: Notice to Proceed

Dear Sirs:

This Notice to Proceed respecting [the Basic Engineering Phase] [the Detailed Engineering Phase] [the Land Acquisition and Construction Phase] is delivered to you pursuant to Section 3.2 of the Turnkey Agreement between the State Oil Company of the Azerbaijan Republic, BP Exploration (Caspian Sea) Ltd., Statoil BTC Caspian AS, Ramco Hazar Energy Limited, Turkiye Petrolleri A.O., Unocal BTC Pipeline, Ltd., ITOCHU Oil Exploration (Azerbaijan) Inc., and Delta Hess (BTC) Limited (the “MEP Participants”) and BOTAS Petroleum Pipeline Corporation (the “Turnkey Contractor”) dated as of 19 October, 2000 (the “Agreement”). The MEP Participants hereby instruct the Turnkey Contractor to commence performance of the Work under this Agreement on or before \_\_\_\_\_, \_\_\_\_ (the “Commencement Date”).

Sincerely,

THE MEP PARTICIPANTS:

**STATE OIL COMPANY OF THE  
AZERBAIJAN REPUBLIC**

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

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

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

**STATOIL BTC CASPIAN AS**

**RAMCO HAZAR ENERGY LIMITED**

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

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

**TURKIYE PETROLLERI A.O.**

**UNOCAL BTC PIPELINE, LTD.**

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

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

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

**DELTA HESS (BTC) LIMITED**

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

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

APPENDIX G

FORM OF COMPLETION CERTIFICATE

THE TURNKEY CONTRACTOR:

\_\_\_\_\_

BOTAS Petroleum Pipeline Corporation  
Bilkent Plaza A”2” Blok Bilkent  
Ankara, 06530 Turkey

Re: Completion Certificate

Dear Sirs:

This Completion Certificate respecting [specified milestones within and completion of the Basic Engineering Phase] [specified milestones within and completion of the Detailed Engineering Phase] [specified milestones within the Land Acquisition and Construction Phase] is delivered to you pursuant to Section 3.1 of the Turnkey Agreement between the State Oil Company of the Azerbaijan Republic, BP Exploration (Caspian Sea) Ltd., Statoil BTC Caspian AS, Ramco Hazar Energy Limited, Turkiye Petrolleri A.O., Unocal BTC Pipeline, Ltd., ITOCHU Oil Exploration (Azerbaijan) Inc., and Delta Hess (BTC) Limited (the “MEP Participants”) and BOTAS Petroleum Pipeline Corporation (the “Turnkey Contractor”) dated as of 19 October, 2000 (the “Agreement”). The MEP Participants hereby confirm that for purposes of Section 5.2 of the Agreement the Turnkey Contractor has completed the [named Phase or milestone] portion of the Work as of \_\_\_\_\_, \_\_\_\_ (the “Completion Date”).

Sincerely,

THE MEP PARTICIPANTS:

**STATE OIL COMPANY OF THE  
AZERBAIJAN REPUBLIC**

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

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

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

**STATOIL BTC CASPIAN AS**

**RAMCO HAZAR ENERGY LIMITED**

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

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

**TURKIYE PETROLLERI A.O.**

**UNOCAL BTC PIPELINE, LTD.**

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

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

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

**DELTA HESS (BTC) LIMITED**

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

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

APPENDIX H-1

TURNKEY CONTRACTOR'S FINAL LIEN WAIVER,  
RELEASE AND CERTIFICATION

TO WHOM IT MAY CONCERN:

BOTAS Petroleum Pipeline Corporation, a Turkish company (the "Turnkey Contractor"), has contracted to provide engineering, procurement, construction and related services to the MEP Participants, pursuant to the Turnkey Agreement, dated as of 19 October, 2000, between the MEP Participants and the Turnkey Contractor (the "Agreement"). All capitalised terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

The undersigned, on behalf of the Turnkey Contractor:

(a) DOES HEREBY WAIVE AND RELEASE any and all claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or otherwise, if any, with respect to the Work and on the Facilities or other property of the MEP Participants, the Facility Sites, and any and all interests and estates therein, and all improvements and materials placed on the Facility Sites or on account of labour, services, improvements, materials, fixtures, apparatus or machinery furnished by the undersigned; and

(b) DOES HEREBY CERTIFY that (1) there are no claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or claims or otherwise and no notice of intention to claim a lien has been filed and no proceeding to establish a mechanic's lien has been instituted arising out of or in connection with the performance by the Turnkey Contractor or any of the Subcontractors of services performed under the Agreement or any Subcontract outstanding or known to exist at the date of this certification; (2) all bills with respect to services performed under the Agreement or any Subcontract have been paid in full and final settlement and there is no known basis for filing any claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or claims or otherwise, or for filing notices of intention to claim a lien, or proceedings to establish a mechanic's lien arising out of or in connection with the performance by the Turnkey Contractor or any of the Subcontractors of services under the Agreement or of services under any Subcontract; and (3) the releases, assignments and waivers from all Subcontractors who may have had the right, if any, to place a lien or encumbrance with respect to the Work and on the Facilities or other property of the MEP Participants, the Facility Sites, and any and all interests and estates therein, and all improvements and materials placed on the Facility Sites for all services done and materials furnished have been obtained in such a form as to constitute an effective defense against the assertion of all such liens and claims under all applicable laws.



Executed copies of all such releases, assignments, and waivers obtained by the Turnkey Contractor and not previously delivered to the MEP Participants are attached hereto.

IN WITNESS WHEREOF, the Turnkey Contractor has executed this Final Lien Waiver, Release and Certification this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

THE TURNKEY CONTRACTOR:

**BOTAS Petroleum Pipeline Corporation**

By: \_\_\_\_\_

Name:

Title:

## APPENDIX H-2

### TURNKEY CONTRACTOR'S INTERIM LIEN WAIVER

#### RELEASE AND CERTIFICATION

TO WHOM IT MAY CONCERN:

BOTAS Petroleum Pipeline Corporation, a Turkish company (the "Turnkey Contractor"), has contracted to provide engineering, procurement, construction and related services to the MEP Participants, pursuant to the Turnkey Agreement, dated as of 19 October, 2000, between the MEP Participants and the Turnkey Contractor (the "Agreement"). All capitalised terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

The undersigned, on behalf of the Turnkey Contractor:

(a) DOES HEREBY WAIVE AND RELEASE any and all claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or otherwise, if any, with respect to the Work and on the Facilities or other property of the MEP Participants, the Facility Sites, and any and all interests and estates therein, and all improvements and materials placed on the Facility Sites or on account of labour, services, improvements, materials, fixtures, apparatus or machinery furnished by the undersigned; and

(b) DOES HEREBY CERTIFY that (1) there are no claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or claims or otherwise and no notice of intention to claim a lien has been filed and no proceeding to establish a mechanic's lien has been instituted arising out of or in connection with the performance by the Turnkey Contractor or any of the Subcontractors of services performed under the Agreement or any Subcontract outstanding or known to exist at the date of this certification; (2) all bills payable as of the date hereof with respect to services performed under the Agreement or any Subcontract have been paid in full and final settlement and there is no known basis for filing any claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or claims or otherwise, or for filing notices of intention to claim a lien, or proceedings to establish a mechanic's lien arising out of or in connection with the performance by the Turnkey Contractor or any of the Subcontractors of services under the Agreement or of services under any Subcontract; and (3) the releases, assignments and waivers from all Subcontractors who may have had the right, if any, to place a lien or encumbrance with respect to the Work and on the Facilities or other property of the MEP Participants, the Facility Sites, and any and all interests and estates therein, and all improvements and materials placed on the Facility Sites for all services done and materials furnished have been obtained in such a form as to constitute an effective defense against the assertion of all such liens and claims under all applicable laws.

The provisions of this Interim Lien Waiver, Release and Certification shall not apply to a portion of the Contract Price in the amount of \$\_\_\_\_\_ which has not yet been paid by the MEP Participants to the Turnkey Contractor.

IN WITNESS WHEREOF, the Turnkey Contractor has executed this Interim Lien Waiver, Release and Certification this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

THE TURNKEY CONTRACTOR:

**BOTAS Petroleum Pipeline Corporation**

By: \_\_\_\_\_

Name:

Title:

APPENDIX H-3

SUBCONTRACTOR'S FINAL LIEN WAIVER,  
RELEASE AND CERTIFICATION

TO WHOM IT MAY CONCERN:

\_\_\_\_\_, a \_\_\_\_\_ corporation ("the Subcontractor"), is a party to that certain \_\_\_\_\_, dated \_\_\_\_\_, with BOTAS Petroleum Pipeline Corporation (the "Contractor") to furnish (describe scope of work) for a pipeline system (the "Facilities") owned by the MEP Participants.

The undersigned, on behalf of the Subcontractor:

(a) DOES HEREBY WAIVE AND RELEASE any and all claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or otherwise, if any, with respect to the Work and on the Facilities or other property of the MEP Participants, the Facility Sites, and any an all interests and estates therein, and all improvements and materials placed on the Facility Sites or on account of labour, services, improvements, materials, fixtures, apparatus or machinery furnished by the undersigned; and

(b) DOES HEREBY CERTIFY that there are no claims, liens, security interests or encumbrances in the nature of mechanics', labour or materialmen's liens or claims or otherwise and no notice of intention to claim a lien has been filed and no proceeding to establish a mechanic's lien has been instituted arising out of or in connection with the Work or the Facilities or other property of the MEP Participants, the Facility Sites, and any and all interests and estates therein, and all improvements and materials placed on the Facility Sites or on account of labour, services, improvements, materials, fixtures, apparatus or machinery furnished by the undersigned.

IN WITNESS WHEREOF, the Subcontractor has executed this Final Lien Waiver, Release and Certification this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

[SUBCONTRACTOR]

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_