

INTERGOVERNMENTAL AGREEMENT

BETWEEN

**THE GOVERNMENT OF
THE REPUBLIC OF TURKEY**

AND

**THE GOVERNMENT OF
THE REPUBLIC OF AZERBAIJAN**

CONCERNING

THE TRANS ANATOLIAN NATURAL GAS PIPELINE SYSTEM

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN CONCERNING THE TRANSIT PASSAGE OF NATURAL GAS ORIGINATING AND TRANSITTING FROM THE REPUBLIC OF AZERBAIJAN TO AND THROUGH THE TERRITORY OF THE REPUBLIC OF TURKEY VIA THE TRANS ANATOLIAN NATURAL GAS PIPELINE SYSTEM

PREAMBLE

The Government of the Republic of Turkey and the Government of the Republic of Azerbaijan (hereinafter referred to individually as “State” and collectively as “States”):

Recognising the importance of gas export pipelines from the Republic of Azerbaijan to and through the Republic of Turkey and successful cooperation in the energy sphere between Azerbaijan and Turkey;

Underlining their successful cooperation in similar projects such as the Baku-Tbilisi-Ceyhan Main Export Crude Oil Pipeline and the Baku-Tbilisi-Erzurum Gas Pipeline as well as the sale of Natural Gas from Stage 1 of the Shah Deniz Field;

Acknowledging that development and cooperation in the energy sector between them will further strengthen their commercial and economic relations;

Wishing, in the case of the Republic of Azerbaijan, to further develop and exploit its Natural Gas resources both onshore Azerbaijan and in the Azerbaijani sector of the Caspian Sea and to export the produced Natural Gas originating and transiting from Azerbaijan to and through the Territory of the Republic of Turkey to exit points in Turkey and at the borders between Turkey and Greece and between Turkey and Bulgaria and other points to be agreed by the States, and in the case of the Republic of Turkey to diversify its sources of Natural Gas and promote Natural Gas transit across Turkey;

Underlining that Transit Passage is of a transnational nature requiring uniform and non-discriminatory standards, physically and operationally uninterrupted infrastructure and is in accordance with applicable international agreements including the Energy Charter Treaty;

In the light of their signature of an Intergovernmental Agreement on 25 October 2011 regarding the sale of Gas from stage 2 of the Shah Deniz Field and Transit Passage of Natural Gas originating and transiting from the Republic of Azerbaijan to and through the Territory of the Republic of Turkey and including their commitment to supporting and progressing the TANAP Project as a new, independent and standalone pipeline to provide secure and uninterrupted Transit Passage of Natural Gas through the Territory of the Republic of Turkey from the Georgia/Turkey border to exit points within Turkey and to exit points on the borders of Turkey with Greece and Bulgaria and other points to be agreed by the States;

Acknowledging the Memorandum of Understanding entered into on 24 December 2011 between the Republic of Turkey and the Republic of Azerbaijan, regarding the TANAP Project with the intention of establishing a project consortium Entity (hereinafter referred to as the TANAP Project Entity) in which the participating interest of the Turkish Participants as defined in such Memorandum of Understanding will be 20% (twenty per cent) and the participating interest of the Azerbaijani Participants as defined in such Memorandum of Understanding will be 80% (eighty per cent); and

Recognising that the realisation of the TANAP Project has strategic importance for the States and envisages private initiative and enterprise, that it is necessary for the development of stage 2 of the Shah Deniz field and wishing to safeguard the efficient and secure development, ownership and operation of the TANAP System;

HAVE AGREED AS FOLLOWS:

**PART I:
INTERPRETATION AND SCOPE OF THE AGREEMENT**

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1. Definitions

Unless otherwise defined herein, capitalised terms used in this Agreement (including the Preamble), shall have the same meaning as in the attached Host Government Agreement and not otherwise defined therein, shall have the following meaning:

“Agreement” shall mean this Intergovernmental Agreement, as amended, supplemented or otherwise modified from time to time.

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

“Host Government Agreement” shall mean the agreement entered into on the date hereof between the government of the Republic of Turkey, on the one hand, and TANAP Project Entity, on the other hand, relating to the TANAP System, as appended to this Agreement as such Agreement may be hereafter amended, modified or extended in accordance with the terms thereof.

"Impediment" shall mean any event that occurs or situation which arises that threatens to interrupt, curtail or otherwise impede the Project Activities in the territory of a State.

“SD2 Gas Sales Agreement” means the gas sales agreement entered into by SOCAR (as seller) and BOTAS (as buyer) dated 25 October 2011 for the sale and purchase of Gas from Azerbaijan.

"TANAP Committee" shall have the meaning set out in Article 4.3 of this Agreement.

1.2. Interpretation

- 1.2.1 The division of this Agreement into articles, sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- 1.2.2 Unless otherwise indicated, all references to an "Article" followed by a number or a letter refer to the specified Article of this Agreement.
- 1.2.3 The terms "this Agreement," "hereof," "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular Article or other portion hereof.

1.3. Construction

Unless otherwise specifically indicated or the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders, and "include," "includes" and "including" shall be deemed to be followed by the words "without limitation".

ARTICLE 2 RELATIONSHIP BETWEEN THIS AGREEMENT AND OTHER INTERNATIONAL AND DOMESTIC OBLIGATIONS

- 2.1. Each State confirms and warrants that the execution and performance of this Agreement is within the powers of its government.
- 2.2. Nothing in this Agreement shall derogate from the rights or obligations of any State under the Energy Charter Treaty or any other international treaty or rule of international law.
- 2.3. The Republic of Turkey shall conclude on or about the date of this Agreement a Host Government Agreement with the TANAP Project Entity attached to this Agreement which shall be an integral part of this Agreement and will become binding in accordance with the provisions of Article 13.1 hereunder.

PART II: GENERAL OBLIGATIONS

ARTICLE 3 PERFORMANCE AND OBSERVANCE OF THIS AND OTHER RELATED AGREEMENTS

- 3.1. This Agreement together with the Host Government Agreement establishes the procedures and principles applicable to the TANAP Project and the Transit Passage of Natural Gas within the TANAP System.
- 3.2. Each State undertakes to fulfil and perform each of its obligations under this Agreement.

- 3.3. The provisions of this Agreement shall not limit the scope of the obligations of the parties under the Host Government Agreement.

ARTICLE 4 SUPPORT AND CO-OPERATION

- 4.1. The States shall co-operate in order to establish and maintain necessary and favourable conditions for the implementation and execution of the Project Activities and for the construction, ownership and operation of the TANAP System by the TANAP Project Entity and each State shall ensure that its State Authorities and/or State Entities take all actions necessary for such implementation and execution. Each State, its State Authorities and/or its State Entities shall lend their full support for, and undertake to promote, support and facilitate the measures necessary for, the financing, implementation and operation of the TANAP Project by the TANAP Project Entity and the Project Participants in accordance with the provisions of this Agreement and the Host Government Agreement.
- 4.2. Without prejudice to the generality of the foregoing article, the Republic of Turkey shall:
- 4.2.1. ensure that its State Authorities facilitate the establishment of the TANAP Project Entity or a branch of the TANAP Project Entity within its jurisdiction, allowing it to obtain the licences necessary for the TANAP Project; and
- 4.2.2. ensure that its State Authorities entrusted with regulatory, administrative or other governmental authority shall exercise that authority in a manner consistent with that State's obligations under this Agreement.
- 4.3. The States hereby establish a committee consisting of two (2) representatives from each State to oversee compliance with and facilitate the application and implementation of this Agreement and the Host Government Agreement ("TANAP Committee"). Such representatives shall be authorised and empowered by the respective State to act on its behalf with regard to any matter brought before the TANAP Committee in respect of the TANAP Project. TANAP Consortium Members and the TANAP Project Entity may bring any matters falling within the scope of this Article 4.3 directly to the TANAP Committee. Within 30 days from the entry into force of the Agreement the first TANAP Committee meeting shall be convened. The TANAP Committee shall meet in good faith at all reasonable times and as often as reasonably required, including full consultation with the TANAP Project Entity, for the purposes of enabling and supporting the implementation of Project Activities.
- 4.4. The States agree and acknowledge that SOCAR (or its Affiliates) will establish an Entity in order to construct, install, possess, own, control and operate an electronic communication infrastructure (fibre-optic cable) along the Pipeline Corridor of the

TANAP System in accordance with the grants of rights and obligations made in Article 37.8 of the Host Government Agreement.

**ARTICLE 5
LAND RIGHTS**

The Republic of Turkey shall facilitate the grant or the acquisition of Land Rights necessary for the realisation of the TANAP Project under fair, transparent and legally enforceable terms and conditions.

**ARTICLE 6
CONNECTIONS TO OTHER SYSTEMS**

The Republic of Turkey shall support and facilitate interconnection with other gas pipeline systems on the Georgia-Turkey border, the Greece-Turkey border, the Bulgaria-Turkey border and national transmission system of the Republic of Turkey.

**ARTICLE 7
TRANSIT PASSAGE**

- 7.1. The Republic of Turkey shall ensure the freedom of Transit Passage and shall take all measures and actions, emergency or otherwise, to prevent the taking of any Transit Passage Gas by any State Authority or State Entity (except where the State Entity is entitled to take such Gas as a party to a commercial gas transportation agreement with the TANAP Project Entity).
- 7.2. The Republic of Turkey shall ensure that the Transit Passage Gas shall not be interrupted, delayed, restricted or curtailed except as permitted as the case may be under the Host Government Agreement.
- 7.3. Neither the Republic of Turkey nor any State Authority nor State Entity shall demand or require to be paid any fee, charge or requirement for payment of any kind for the right of Transit Passage save as expressly set out in the Host Government Agreement.
- 7.4. The TANAP Project Entity shall be entitled to use itself and/or to market to Shippers the total capacity of the TANAP System in its sole discretion and to negotiate, agree and charge the tariffs to be charged to Shippers under commercial gas transportation agreements with those Shippers provided that the Ministry of Energy and Natural Resources of the Republic of Turkey is notified about such capacity allocations, tariff calculation methodology, if any, and tariffs.
- 7.5. Each State shall use reasonable endeavours to remove or avoid Impediments on its territory.
- 7.6. With acknowledgement of the SD2 Gas Sales Agreement, the States agree that all Gas to be delivered under the SD2 Gas Sales Agreement will be transported via the TANAP System from the Entry Point to the Exit Point(s) in Eskişehir and the

Thrace Region within the Territory subject to: (i) the same tariff (adjusted for the actual transportation distance in the Territory) as applies to other Gas from stage 2 of the Shah Deniz field transiting through the TANAP System; and (ii) the achievement of a commercial gas transportation agreement between BOTAŞ and the TANAP Project Entity.

- 7.7. In the event of (i) curtailment of capacity in the TANAP System or (ii) a shortage of Gas produced from stage 2 of the Shah Deniz field development available for delivery into the TANAP System at the Entry Point, allocation of available capacity or volumes, as applicable, shall be made on a pro-rata basis among all eligible Shippers of Gas produced from stage 2 of the Shah Deniz field development.
- 7.8. The States expressly agree that all volumes of Gas belonging to the Republic of Azerbaijan and planned to be shipped via the TANAP System in excess of an initial volume of sixteen (16) billion cubic meters per Year will first be offered to buyers in the Republic of Turkey.
- 7.9. The expansion of the TANAP System above the initial capacity of thirty two (32) billion cubic meters per Year shall be subject to the mutual agreement of the States.
- 7.10. The States agree that the TANAP System must have capacity sufficient at least to include production from the stage 2 of the Shah Deniz field and shall be scalable to accommodate future Natural Gas volumes originating and transiting from the Republic of Azerbaijan.
- 7.11. The States agree that the participating interest of state entities owned by the Republic of Azerbaijan in the TANAP Project Entity shall not be less than 51% (fifty one per cent) of the total participating interest.

ARTICLE 8 TECHNICAL, SAFETY AND ENVIRONMENTAL STANDARDS

Each State shall cooperate and coordinate with the other and the TANAP Project Entity in the application of the relevant technical, safety and environmental standards in accordance with the standards and practices set forth in the domestic law of the Republic of Turkey and international industry practices.

ARTICLE 9 SECURITY

The States recognise the importance of providing security to the TANAP Project in accordance with the provisions of Host Government Agreement.

PART III TAXES

ARTICLE 10 TAXES

The Host Government Agreement shall set forth the legal framework for the imposition of Taxes and/or the granting of Tax exemptions or privileges, as well as for the imposition of and/or the granting of exemptions from Tax compliance and filing obligations, including specific terms and conditions of any such Taxes, exemptions, privileges and/or obligations.

PART IV FINAL PROVISIONS

ARTICLE 11 RESPONSIBILITY

Any failure of, or refusal by, a State to fulfil or perform its obligations, take all actions and grant all rights and benefits as provided in this Agreement shall constitute a breach of such State's obligations under this Agreement.

ARTICLE 12 DISPUTE SETTLEMENT

- 12.1. Should a dispute arise over the interpretation and application of the provisions of this Agreement, the States shall use their best endeavours first to resolve it through referral to the TANAP Committee or diplomatic channels.
- 12.2. If the dispute has not been settled within a period of six months from the date on which the matter was raised by either State, it may be submitted at the request of either State to an arbitration tribunal which shall be composed of three (3) arbitrators appointed in accordance with the provisions of this Article.
- 12.3. Each State shall select one arbitrator, who may be its national, and those two arbitrators shall designate by mutual agreement a national of a third country, who shall be the Chairman of the tribunal. All the arbitrators must be appointed within 30 days from the date of notification by one State to the other of its intention to submit the dispute to arbitration.
- 12.4. If the period specified in Article 12.3 has not been met, and in the absence of any other agreement, either State shall invite the President of the International Court of Justice ("ICJ") to make the necessary appointments. If the President of the ICJ is a national of either State or if he or she is otherwise prevented from discharging the said function, the member of the ICJ next in seniority, who is not a national of either State, and not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.
- 12.5. Such arbitration tribunal shall be constituted for each individual case in the following way. The arbitration tribunal shall reach its decision by a majority of

votes. Such decision shall be final and binding upon both States. Each State shall bear the expenses of its own member of tribunal and of its representation in the arbitral proceedings, the expenses connected with the activity of the Chairman of the arbitration tribunal and remaining expenses shall be borne by the two States in equal shares. The arbitration tribunal can, however, provide in its decision that one of the States shall bear a higher proportion of expenses and such decision shall be binding upon both States.

- 12.6. Unless the States agree otherwise, the dispute shall be settled under the Arbitration Rules of United Nations Commission on International Trade Law (UNCITRAL) by the arbitration tribunal.
- 12.7. Unless the States agree otherwise, the seat of arbitration shall be Geneva, Switzerland.
- 12.8. The arbitration tribunal shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law.
- 12.9. Each State acknowledges, consents and agrees that any dispute between a State and a Project Participant related to the TANAP Project under the Host Government Agreement or an applicable Project Agreement shall be subject to private international arbitration in accordance with the terms of such agreement.

ARTICLE 13 ENTRY INTO FORCE

- 13.1. The Government of each State hereby covenants to the other that, following execution of this Agreement, it shall promptly and properly take such measures in order to make it effective under its Constitution as the prevailing legal regime of such State in respect of the TANAP Project under its domestic law and a binding obligation under international law.
- 13.2. This Agreement shall enter into force on the date of receipt of the last written notification by which the States notify each other through diplomatic channels of the completion of their internal legal procedures required for the entry into force of this Agreement.
- 13.3. This Agreement may be amended and supplemented upon mutual agreement of both States. All amendments and supplements shall be settled in separate protocol(s) which shall form an integral part of this Agreement and which shall enter into force according to the provisions of this Article.

ARTICLE 14
COMPETENT AUTHORITIES

For the purpose of implementing this Agreement the States designate the following competent authorities: Ministry of Industry and Energy of the Republic of Azerbaijan and Ministry of Energy and Natural Resources of the Republic of Turkey.

ARTICLE 15
TERMINATION

This Agreement shall terminate upon the termination or expiration of the Host Government Agreement. The Republic of Turkey undertakes that the Host Government Agreement will only be terminated in accordance with its terms.

DONE on this 26 June 2012 in İstanbul in two originals each in the Turkish, Azerbaijani and English languages, all texts being equally authentic. In case of divergence of interpretations, the English text shall prevail.

**FOR THE GOVERNMENT OF THE
REPUBLIC OF TURKEY**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF AZERBAIJAN**

H.E. Taner YILDIZ
Minister of Energy and Natural Resources
of the Republic of Turkey

H.E. Natig ALIYEV
Minister of Industry and Energy
of the Republic of Azerbaijan

WITNESSED BY

WITNESSED BY

Recep Tayyip ERDOĞAN
Prime Minister
of the Republic of Turkey

Ilham ALIYEV
President
of the Republic of Azerbaijan