

## **AGREEMENT**

**among**

**the Republic of Austria,**

**the Republic of Bulgaria,**

**the Republic of Hungary,**

**Romania and**

**the Republic of Turkey**

**regarding**

**The Nabucco Project**

### **Preamble**

The Republic of Austria, the Republic of Bulgaria, the Republic of Hungary, Romania and the Republic of Turkey hereinafter referred to individually as “State Party” and collectively as “States Parties”:

*deeply concerned* about the energy security situation of their countries and wishing to undertake a project that will lead to diversification of supply sources, thus granting a higher level of security in the field of energy supplies for the benefit of the European Union, the Republic of Turkey and every citizen thereof;

*reaffirming* the Declaration adopted at the Nabucco Summit in Budapest on 27<sup>th</sup> of January 2009;

*recognizing* the need to co-operate in facilitating the promotion, development, construction and operation of the Nabucco Project for the secure and uninterrupted Transportation of Natural Gas in and across their respective Territories;

*desiring* to promote and protect the investments in the Nabucco Project and safeguard the efficient and secure development, ownership and operation of the Nabucco Pipeline System in and across their respective Territories;

*taking note* of the fact that the Shareholders have established an international company in order to co-operate in the promotion, development, financing, construction and operation of the Nabucco Project and that this international company in turn shall create national companies to carry out the implementation of the Project in each respective Territory;

*acknowledging* the need for uninterrupted, secure supplies of Natural Gas for the domestic markets of all States Parties at competitive prices and conditions;

**noting** that the desire of the Republic of Turkey to develop its natural gas market requires the provision of Natural Gas to it at competitive prices;

**striving** to open new gas supply routes to and from the Republic of Turkey and the Member States of the European Union via the Territories of the States Parties; and cognisant that reverse flow mode in the Nabucco Project assists in the security of the States Parties in emergency situations and assures the optimisation of gas networks through swaps and other commercial instruments;

**noting** the desire of the States Parties to create a corridor for the Transportation of Natural Gas amongst them, to be extended to third parties as appropriate; and considering the importance of creating and reinforcing an appropriate uniform and non-discriminatory general legal framework, commensurate with the transnational nature of projects such as the Nabucco Project, and the required private initiative and enterprise, to support such gas sector investment opportunities and to establish favourable conditions to justify the commitment of capital and resources to the Nabucco Project and/or across their respective Territories; and

**acknowledging and appreciating** the support of the Federal Republic of Germany for the Project.

**Have agreed as follows:****ARTICLE 1 - THE NABUCCO PROJECT**

1.1 The States Parties shall lend their full political support for, and undertake to promote, support and facilitate the measures necessary for the realisation of the Nabucco Project and the Transportation thereby of Natural Gas in and across their Territories. The States Parties shall endeavour to ensure the full co-operation of all other relevant authorities within their Territory and take all actions necessary to enable the aforesaid to be undertaken.

1.2 The States Parties acknowledge the importance to each State Party that companies have the means of procuring sufficient supplies of Natural Gas on commercial terms for the purposes of assuring security of supply, and recognise that this is necessary for the welfare and security of each citizen and that States Parties are therefore determined to act in a spirit of solidarity to achieve collective energy security; and note that such solidarity constitutes an answer to the challenges with regard to energy supply security and thus resolving to address in particular the Republic of Turkey's concerns in this area.

In the event of disruption of Natural Gas supply affecting a State Party and involving another State Party or a third country, the States Parties shall seek an expeditious resolution in accordance with the provisions of the Agreement.

1.3 The Nabucco Project, **hereinafter 'the Nabucco Project' or 'the Project'**, shall mean the "Nabucco Pipeline System", as the expressly constructed Natural Gas Pipeline system, including attendant Facilities, that shall connect the Initial Entry Points to Baumgarten in the Republic of Austria, including the development, evaluation, design, acquisition, construction, installation, financing, insuring, ownership, operation, commercial exploitation, repair, replacement, refurbishment, maintenance, expansion, extension, protection, decommissioning, and activities associated or incidental thereto, all in respect of the Nabucco Project. The Nabucco Project is situated in the Territories of the States Parties, and has a final maximum Transportation capacity of 31 billion cubic meters per year along its entire length.

The Nabucco Project will be constructed, owned and operated, in accordance with the Agreement, the Project Support Agreements, and contracts governed by private law concluded between the Nabucco International Company and the Nabucco National Companies or by any of these companies *inter se* or with third parties.

## ARTICLE 2

The terms used in the Agreement, including its Preamble, Article 1 and the Annex to the Agreement, and not otherwise defined herein, shall have the following meaning:

- (1) **“Agreement”** shall mean this Agreement, as the same may be amended or otherwise modified or replaced pursuant to Article 14.2.
- (2) **“Commercial Arrangement”** shall mean any contract governed by private law or other instrument with equivalent effect.
- (3) **“Contractual Congestion”** shall mean a situation where the level of firm capacity demand exceeds the technical capacity (all technical capacity is booked as firm).
- (4) **“Energy Charter Treaty”** shall mean the Energy Charter Treaty as opened for signature in Lisbon on 17<sup>th</sup> of December 1994.
- (5) **“Facilities”** shall mean the assets owned by the Nabucco Companies used for the purposes of the Nabucco Project, including but not limited to pipelines and laterals for the Transportation of Natural Gas within and/or across the Territories of the States Parties, and all installations below and above ground or on the seabed and ancillary equipment, together with any associated land, pumping, measuring, testing and metering facilities, communications, telemetry and similar equipment, all pig launching and receiving facilities, all pipelines, and other related equipment, including power lines, used to deliver any form of liquid or gaseous fuel and/or power necessary to operate compressor stations or for other system needs, cathodic protection devices and equipment, all monitoring posts, markers and sacrificial anodes, all port, terminalling, and all associated physical assets and appurtenances, including roads and other means of access and operational support, required for the proper functioning of any and all thereof.
- (6) **“Hazard”** shall mean any disproportionate, deleterious danger to or effect on public health, safety, property or the environment.
- (7) **“Impediment”** shall mean any event that occurs or any situation which arises that threatens to interrupt, curtail or otherwise impede the Project Activities in the Territory of a State Party.
- (8) **“Initial Entry Points”** shall mean the starting points of the Nabucco Project at any three points on the eastern or southern land borders of the Republic of Turkey as selected by Nabucco International Company, and, subject to agreement by the Nabucco Committee in consultation with Nabucco International Company, any other point at the eastern or southern Turkish border. The exact location of the Initial Entry Points at the respective borders is subject to the standard permitting and related authorisation procedures.
- (9) **“Land Rights”** shall mean all those rights and permits in accordance with the applicable legislation with respect to land in any Territory which grant such free and

unrestricted rights, access and title as are necessary for the Project Activities, which may include but not be limited to use, possession, ownership, occupancy, control, assignment and enjoyment of such land.

(10) “**Nabucco Committee**” shall have the meaning set out at Article 12.1 of the Agreement.

(11) “**Nabucco Companies**” shall mean both the Nabucco International Company and the Nabucco National Companies, and, for both, their affiliates, or the assignees of their rights under the Agreement.

(12) “**Nabucco International Company**” shall mean Nabucco Gas Pipeline International GmbH which was established on 24<sup>th</sup> of June 2004 and is seated, unless otherwise agreed by the Shareholders, in Vienna, Austria.

(13) “**Nabucco National Company**” shall mean any one of the five subsidiary companies of Nabucco International Company, owned and controlled by the Nabucco International Company, to be established in each State Party.

(14) “**Natural Gas**” shall mean any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane which at a temperature of 15° Celsius and at atmospheric pressure (1,01325 bar absolute) are or is predominantly in gaseous state.

(15) “**Nomination**” shall mean the prior reporting by the Shippers to Nabucco International Company of the actual capacity that they wish to use in the Nabucco Project.

(16) “**One-Stop-Shop Shipper Access**” shall mean a situation where Shippers have only one contractual relationship with Nabucco International Company for Natural Gas Transportation services between the relevant entry point and exit point.

(17) “**Open Season**” shall mean the process adopted by Nabucco International Company to allocate to the Shippers the capacity in the Nabucco Project and that is consistent with Article 3 of the Agreement.

(18) “**Person**” shall mean any natural or legal person whether of a public or private nature.

(19) “**Primary Market**” shall mean a market of the capacity traded directly by Nabucco International Company.

(20) “**Project Activities**” shall mean the activities conducted by the project participants in connection with the Project.

(21) “**Project Support Agreement**” shall mean a contract governed by private law, and as far as the specific circumstances of a State Party require also by public law, that is concluded in support of the Agreement between a State Party and the Nabucco International Company and the relevant Nabucco National Company on issues including but not limited to regulatory conditions, investment protection, and other issues, as defined in the Project Support Agreement.

(22) “**Reserved Capacity**” shall mean the maximum flow, expressed in normal cubic meters per time unit, to which the Shipper is entitled in accordance with the provisions of the Transportation Contract.

(23) “**Secondary Market**” shall mean a market of the capacity traded otherwise than on the primary market.

(24) “**Shareholders**” shall mean the Persons owning shares in Nabucco International Company.

(25) “**Shippers**” shall mean the Persons that contract with Nabucco International Company for Transportation of Natural Gas through all or any section of the Nabucco Pipeline System.

(26) “**State Party Authority**” shall mean the authority that has regulatory jurisdiction and competence to deal with Transportation.

(27) “**Substitution Proposal**” shall mean a proposal by Nabucco International Company to use uncontracted or free capacity in existing or planned new infrastructure to facilitate the Transportation of Natural Gas from the Initial Entry Points to Baumgarten as an integrated but separately owned component of the Nabucco Project as defined in Article 1.3 of the Agreement.

(28) “**Taxes**” shall mean all existing and future levies, imposts, payments, fees, assessments, taxes and charges payable to or imposed by the States Parties, any organ or any subdivision of the States Parties, whether central or local, or any other body having the effective legal power to levy any such charges within the Territories of the States Parties, and “**Tax**” shall mean any one of them.

(29) “**Technical Capacity**” shall mean the maximum firm capacity that Nabucco International Company can offer to the Shippers, taking account of system integrity and operational requirements.

(30) “**Territory**” shall mean, with respect to a State Party, the land territory of such State Party, including its territorial sea, and the air space above it, as well as the maritime areas over which the State Party has jurisdiction or exercises sovereign rights in accordance with public international law (and “**Territories**” shall mean such territory in respect of all of the States Parties).

(31) “**Transportation**” shall mean the carriage of Natural Gas into, out of, within or across the Territory of a State Party.

(32) “**Transportation Contract**” shall mean any commercial agreement between Nabucco International Company and Shippers for the Transportation of Natural Gas through the Nabucco Pipeline System.

Unless the context otherwise requires, reference to the singular includes a reference to the plural, and vice-versa. Reference to any Person under the Agreement shall include reference to any successors or permitted assignees of that Person.

A reference to any agreement, treaty, statute, statutory provision, subordinate legislation, regulation or other instrument is a reference to it as it is in force, taking account of any amendment, re-enactment or replacement.

### ARTICLE 3

3.1 The Agreement shall not affect any treaty rights and obligations of the States Parties, including those deriving from the Energy Charter Treaty to which the States Parties are all party, and from the Treaties establishing the European Union for the Republic of Austria, the Republic of Bulgaria, the Republic of Hungary, and Romania.

3.2 Each State Party shall provide the most favourable, non-discriminatory regulatory conditions for the implementation of the Nabucco Project, subject to any provisions set out in the Agreement. Consistent with national, European Community and international law each State Party shall use its best endeavours to take all legislative measures that are reasonably required to enable the implementation of the Project Activities. This provision shall not be construed as to apply to the tax treatment of the Nabucco Companies.

Nothing in the Agreement obliges the States Parties to finance the Nabucco Project or to accept financial liabilities in regard to the Nabucco Project.

3.3 For a period of 25 years from the date where the first construction stage of the Nabucco Project is put into initial operation, in respect of the Nabucco Project each State Party shall ensure that its relevant State Party Authority gives effect to the two following regulatory permissions on the basis of the requirements set out in Articles 3.3.1 to 3.3.3, which permissions and requirements are as detailed in the Annex, namely:

- fifty percent (50%) of the maximum available total technical annual Transportation capacity in the Nabucco Project, but not more than 15 billion cubic meters per year in the event of a final expansion of capacity to 31 billion cubic meters per year, shall initially be offered to, and if accepted, reserved by the Shareholders, or their affiliates or transferees provided that the remaining capacity will be offered in a transparent, objective and non-discriminatory procedure for Shipper access; and

- pursuant to the tariff methodology defined in the Annex, Nabucco International Company may determine a stable tariff to attract financing and Shippers' commitments; the determination of the applicable tariffs derived from such methodology shall be in the sole discretion of Nabucco International Company.

Having regard to the fact that exemptions from Articles 18 and 25 (2), (3) and (4) of the Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC have been requested from the State Party Authorities of the Republic of Austria, the Republic of Bulgaria, the Republic of Hungary and of Romania before the entry into force of the Agreement, and noting that these States

Parties have, in accordance with that Directive, granted the respective exemptions and notified them to the European Commission, these States Parties will have entirely satisfied their obligations under this Article 3.3.

Having regard to the fact that the obligations under this Article 3.3 are directly effective in the Republic of Turkey, the Republic of Turkey will upon entry into force of the Agreement have entirely satisfied its obligations under this Article 3.3.

3.3.1 The capacity in the Nabucco Project shall be allocated by way of an Open Season or other transparent, objective and non-discriminatory allocation procedures. Further to the allocation procedures, the State Party Authorities shall be informed of the results of these procedures;

3.3.2 A mechanism for the release of unutilised capacity shall be implemented in order to prevent the hoarding of such capacity by Shippers. The State Party Authorities shall be informed of the mechanism;

3.3.3 Long-term binding capacity requests for the Nabucco Project, necessitating the build-up of the Nabucco Project up to its final maximum Transportation capacity, are to be satisfied provided that this build-up is technically possible, economically feasible and that the binding capacity requests amount to at least 1.0 bcm/year. Each State Party shall facilitate the compliance of Nabucco International Company with possible regulatory obligations foreseen by State Party Authorities to build additional capacity.

States Parties shall ensure that the capacity of the Nabucco Project between the Initial Entry Points and Baumgarten in Austria including any capacity leased by Nabucco International Company or made available to it, is marketed on the basis of a One-Stop-Shop Shipper Access.

3.4 Each State Party shall endeavour to ensure the capability of Transportation of Natural Gas in reverse flow direction for the whole length of the Nabucco Project at a specific tariff agreed between Nabucco International Company or the relevant Nabucco National Company and Shippers as far as technically possible and economically feasible.

Where reverse flow capacity is offered on the Nabucco Project, the States Parties shall ensure that the Transportation Contracts and tariffs by Nabucco International Company to Shippers are offered on a transparent and non-discriminatory basis, and communicated to the respective State Party Authority as required in the Territory.

3.5 Each State Party shall conclude, under mutually agreed terms and conditions, a Project Support Agreement with the Nabucco International Company and the relevant Nabucco National Company as a means to facilitate the private sector financing and the realisation of the Nabucco Project.

#### **ARTICLE 4**

4.1 Each State Party agrees that no discriminatory requirements or obligations will be applied to pipeline owners or operators who obtain or seek to obtain connections for their Natural Gas pipelines to the Nabucco Pipeline System or to Shippers who obtain or seek to obtain transportation services via the Nabucco Pipeline System.

4.2 States Parties may establish a limit to the application of Article 4.1 in order to address duly substantiated national security concerns, which shall be presented to the Nabucco Committee.

#### **ARTICLE 5**

The States Parties shall use their best endeavours to extend the protections set out in Article 7 of the Agreement to any pipelines and attendant technical Facilities to be used by Shippers for the Transportation of Natural Gas within their Territories to the Nabucco Project. The Nabucco Committee may determine, where necessary, which pipelines are covered by this Article.

#### **ARTICLE 6**

The States Parties shall respect Commercial Arrangements between any Nabucco Companies (or their affiliates or Shareholders) inter se, between the Nabucco Companies (or their affiliates or Shareholders) and the States Parties, and/or the Nabucco Companies (or their affiliates or Shareholders) with third parties to address the security of supply concerns of the States Parties provided that such Commercial Arrangements are consistent with applicable national legislation, international law and, in the case of those States Parties that are Member States of the European Union, European Union law.

#### **ARTICLE 7**

7.1 States Parties shall refrain from imposing any additional Nabucco Project specific Taxes, or discriminatory tax or legal requirements, or ostensibly general measures that are of equivalent effect, on the Nabucco Companies or the Nabucco Project that affect the economics or financing conditions of the Nabucco Project. In

particular, this prohibition refers to any requirement with respect to title, including the cession or transfer thereof, including the geographical point of transfer of title, or ownership of Natural Gas in the Nabucco Project or any part thereof. This provision does not refer to any general measures of tax law or company law.

7.2 Without prejudice to Articles 7.3 and 7.4, States Parties shall not permit nor require the Interruption of or restriction on the freedom of Transportation of Natural Gas in the Nabucco Project and shall take all measures and actions which may be necessary or required to avoid and prevent the interruption or curtailment of such freedom of Transportation.

7.3 No State Party shall interrupt, curtail, or delay the realisation of the Nabucco Project or the Project Activities in its Territory, unless justified in advance to the other States Parties with reference to a legitimate purpose and agreed with them.

7.4 Notwithstanding Article 7.3, a State Party may interrupt the Project Activities in its Territory only to the extent and for the length of time necessary to remove a Hazard, or to require the Nabucco Companies to remove the Hazard if it directly arises from Project Activities. In the event of a Hazard, whether or not it interrupts Project Activities, the State Party shall provide without undue delay all necessary information to the other States Parties. The non-performance of any supply or Transportation Contract can neither constitute an Hazard nor cause an Hazard to occur.

7.5 States Parties shall use all lawful and reasonable endeavours to remove or avoid Impediments. The non-performance of any supply or Transportation Contract can neither constitute an Impediment nor cause an Impediment to occur.

7.6 If any other event occurs or any other situation arises which interrupts, curtails, or otherwise restricts Project Activities, an "Interruption" for the purpose of this Article, the State Party in, or in respect of whose Territory the relevant Interruption has arisen, shall give notice to the other States Parties and to Nabucco International Company without undue delay, and will use all lawful and reasonable endeavours to remove the reasons underlying such interruption and to promote restoration of such Project Activities at the earliest possible opportunity.

## ARTICLE 8

8.1 The States Parties shall ensure that the Nabucco National Companies benefit from a legal and regulatory regime that allows them to have ownership and operating rights over their respective sections of the Nabucco Project and all other assets intended to be used for the Project within the respective Territories within the limits of Article 3 above, subject to any sector specific legislation or other general legal requirements.

## 8.2 The States Parties shall:

- a. enable the creation and operation of the Nabucco Companies within their jurisdiction, allowing them to obtain the licences necessary for the Project Activities; and
- b. enable the Shareholders to own all of the shares of Nabucco International Company and Nabucco International Company to own all of the shares of the Nabucco National Companies.

8.3 The States Parties shall ensure that the Nabucco National Companies benefit from a legal and regulatory regime that allows them to transfer their marketing rights and Transportation capacity to Nabucco International Company under a general Transportation agreement.

8.4 To facilitate capacity management of the Nabucco Project, the States Parties shall endeavour that the Nabucco Companies benefit from a legal and regulatory regime that allows them to carry out harmonised capacity management on the whole length of the Nabucco Project.

8.5 Each State Party agrees to ensure that the Nabucco Companies shall have the legal entitlement conferred on them under the law applicable in its Territory to enter into and fulfil commitments to sell, allocate and reallocate capacity in and sell gas transportation services through the Nabucco Project in the manner described in Article 3 of the Agreement.

8.6. The States Parties shall ensure that where it is intended by the Shareholders and permitted under the law applicable in the relevant State, the local operation and maintenance sub-contractor will be the respective Shareholder in the relevant pipeline section.

## ARTICLE 9

9.1 The realisation of the Project defined in Article 1.3 may be facilitated by using any uncontracted or free capacity in existing or planned new infrastructure if the Nabucco Committee agrees upon a Substitution Proposal pursuant to the procedure set out in Article 12.3. Any Substitution Proposal shall be limited in time and geography and shall be restrictively interpreted.

Nabucco International Company may determine that there exists, or may exist, uncontracted or free capacity in existing or planned new infrastructure from the Initial Entry Points to Baumgarten.

Before the date on which the Nabucco Project is put into initial operation, Nabucco International Company may, in agreement with the transmission system operator concerned, notify and then implement a Substitution Proposal of defined duration to the Nabucco Committee referred to in Article 12. The Committee will examine

expeditiously all Substitution Proposals with the aim of facilitating the early start and implementation of the first stage of the Nabucco Project.

After the third anniversary of the date on which the Nabucco Project is put into initial operation, the Nabucco Committee shall examine expeditiously and decide on any Substitution Proposal.

9.2 The States Parties agree that any terms and conditions, including the Transportation tariff, applicable to uncontracted or free capacity in existing or planned new infrastructure covered by a Substitution Proposal shall be subject to the jurisdiction of the relevant State Party Authority and shall have a fixed term. The State Party Authority must give its assent to any specific regime imposed or specify the general Transportation regime to be applied before the Substitution Proposal in Article 9.1 sub-paragraph 1 is made.

## **ARTICLE 10**

10.1 Each State Party shall endeavour to facilitate either the concession, the grant, or the acquisition of Land Rights necessary for the realisation of the Project under fair, transparent, legally enforceable, commercial terms and conditions.

10.2 Each State Party shall cooperate and coordinate with the other States Parties and the Nabucco Companies in the application of relevant technical, safety and environmental standards.

## **ARTICLE 11**

11.1 Each State Party shall ensure that the tax treatment of the respective resident Nabucco Company with respect to any part of the Project Activities will be no less favourable than that applicable to other residents, to other domestic entrepreneurs or comparable cross-border Natural Gas pipeline projects in the same circumstances under its generally applicable tax legislation and that the tax treatment is otherwise in accordance with any terms specifically agreed in the applicable Project Support Agreement.

11.2 Notwithstanding the provisions of paragraph 1, with respect to any part of the Project Activities, the aggregate amount of net revenue generated by the Nabucco International Company (gross revenues less original costs of the Nabucco International Company) shall be attributed for the purpose of assessing the tax entitlements to the States Parties based on the proportional share of each State Party in the total length of the Nabucco Pipeline System.

11.3 Dividends distributed by the Nabucco National Company established in Turkey to Nabucco International Company shall be exempt from withholding tax. Dividends distributed by the Nabucco International Company to its Shareholder incorporated in Turkey shall be exempt from withholding tax.

11.4 Dividends received by the Nabucco International Company from the Nabucco National Companies shall be exempt from any profit tax, income tax, any personal and corporate tax or any tax which has similar effect of these taxes in Austria. Dividends distributed by the Nabucco International Company to its Shareholder incorporated in Turkey shall be exempt from any profit tax, income tax, any personal and corporate tax or any tax which has similar effect of these taxes in Turkey.

## ARTICLE 12

12.1 The States Parties shall without delay consult each other in order to provide prompt and effective assistance on the implementation of the Nabucco Project as well as to resolve in good faith any complications, issues, problems, disputes or disruptions within the sense of Article 1.2, that may arise in connection with the Agreement, or to discuss any matter relating to the interpretation and application of the Agreement.

To this end, the States Parties hereby establish a Nabucco Committee consisting of one (1) representative from each State Party to oversee compliance with and facilitate the application of the Agreement.

The representative shall be fully authorized and empowered by the respective State Party to act on its behalf with regard to any matter properly brought before the Nabucco Committee in respect of the Project.

The Federal Republic of Germany, the European Investment Bank, the European Bank for Reconstruction and Development, and the European Commission, as well as Nabucco International Company, may participate in the Nabucco Committee with observer status and may attend any regular meetings of the Nabucco Committee.

The Nabucco Committee shall without undue delay adopt its rules of procedure by consensus.

12.2 The States Parties shall co-operate to give effect to the Agreement through regular discussion and exchange of information. This obligation shall extend to the exchange of information necessary for the regulatory tasks in Article 3 to be implemented by each State Party.

States Parties shall inform and consult and shall regularly exchange information on the status and development of the Project using the Nabucco Committee.

12.3 The Nabucco Committee may decide by unanimity to implement a Substitution Proposal pursuant to Article 9 above. Variation of a Substitution Proposal once adopted must also be agreed unanimously.

12.4 The Nabucco Committee shall take any decision on a proposal to add a new Initial Entry Point by unanimity. The exact location of the Initial Entry Points at the respective borders is subject to the standard permitting and related authorisation procedures.

### ARTICLE 13

13.1 The Nabucco Committee shall adopt detailed rules relating to the settlement of disputes. The Nabucco Committee may establish time limits for the *ad hoc* tribunal procedure described below.

Disputes between States Parties relating to the Agreement may be brought before the Nabucco Committee. If an amicable solution to a dispute has not been achieved after a ninety (90) day period after the initial consideration in the Nabucco Committee, then, in the sole discretion of a State Party, and regardless of the status of any consultations pursuant to the Agreement, that State Party may, upon written notice to the other States Parties, submit the matter for final and binding resolution to an *ad hoc* tribunal under this Article.

13.2 Each State Party shall consult in good faith through the Nabucco Committee with the other States Parties in the event either of any change to the international or European Union legislative framework, or of a proposal to change the national legislative framework, that has an actual effect on the Agreement or the rights and obligations contained therein.

In the event that a State Party identifies an incompatibility between the Agreement and another agreement concluded by a State Party, or a legislative change that affects the rights and obligations contained in the Agreement, the States Parties shall use their best endeavours to conclude a satisfactory adjustment to the Agreement. If a satisfactory adjustment to the Agreement cannot be concluded, then for as long as any State Party does not comply with a requirement of the Agreement due to the identified incompatibility or relevant change to the international or European Union legislative framework, the other States Parties shall be free under the Agreement to decline to comply with the requirement directly affected by the identified incompatibility or relevant change to the same extent.

13.3 The last sentence of Article 13.2 shall not apply as between States Parties which are Member States of the European Union.

13.4 Notwithstanding the above, during a dispute the States Parties shall continue to co-operate and implement the Agreement until its final resolution.

13.5 An *ad hoc* tribunal shall be constituted and shall conduct proceedings in accordance with the dispute resolution provisions contained in Article 27(3) of the Energy Charter Treaty 1994, applying those dispute resolution provisions *mutatis mutandis* to the Agreement.

By derogation to the foregoing, no issue that relates to the implementation of the competition and state aid rules of the European Union, in respect of their application on the Territory of the States Parties that are Member States of the European Union, may be referred to the *ad hoc* tribunal by any State Party. This shall not prevent the Republic of Turkey to bring any alleged infringement of European Union law by a State Party which is also a Member State of the European Union to the attention of the European Commission.

Compliance with European Community law shall not constitute a violation of the Agreement. Any term or concept used in the Agreement that is derived from European Community law shall be interpreted in conformity with the case law of the Court of Justice or the Court of First Instance of the European Communities. Where no such case law exists it is understood that any interpretation of a term or concept derived from European Community law shall not prejudice any interpretation of the *acquis communautaire* by the Court of Justice or the Court of First Instance at a later stage.

#### ARTICLE 14

14.1 The Agreement shall enter into force on the first day of the second month following the date of reception by the depositary through diplomatic channels of the last written notification by States Parties of the completion of the relevant legal procedures necessary for the entry into force of the Agreement.

Within 30 days from the entry into force of the Agreement the depositary shall communicate this to the other States Parties and convene the first Nabucco Committee meeting.

14.2 The Agreement may be amended and supplemented upon mutual agreement of all States Parties. All amendments and supplements shall be settled in a separate Protocol which shall form an integral part of the Agreement and which shall enter into force according to the provisions of this Article.

14.3 The Agreement is governed by public international law.

#### ARTICLE 15

15.1 The Agreement shall terminate after fifty (50) years after its entry into force.

15.2 With reference to the application of the Agreement, States Parties shall use the English language.

15.3 The Annex to the Agreement forms an integral part hereto.

15.4 The Agreement shall be signed in five originals in the English Language. The Republic of Turkey shall act as depositary to the Agreement.

**In witness whereof, the undersigned, being duly authorized thereto, have signed the Agreement**

Signed on 13 July 2009 in Ankara, Turkey.

## **Annex to the Nabucco Agreement**

### **Expanded Principles of Article 3.3 of the Nabucco Agreement**

#### **1. 50% RESERVED CAPACITY FOR SHAREHOLDERS (EXPANDING THE PERMISSION SET OUT IN ARTICLE 3.3 OF THE NABUCCO AGREEMENT)**

Each State Party shall permit that in its Territory Nabucco International Company will release its capacity on a long-term basis, leaving, however, parts of the capacity also for short-term contracts. Each State Party shall permit that Nabucco International Company will enter into capacity contracts with both (i) Shareholders, their affiliated companies or their assignees; and/or (ii) third party entities.

#### **2. CAPACITY ALLOCATION PROCEDURES (EXPANDING THE PRINCIPLE SET OUT IN ARTICLE 3.3.1 OF THE NABUCCO AGREEMENT)**

##### **2.1. General Principles**

The States Parties shall permit Nabucco International Company to implement and publish mechanisms to allocate capacity both to Shareholders and third parties on a transparent and non discriminatory basis in order to give effect inter alia to the following objectives

- a) facilitating the development of competition and liquid trading of capacity,
- b) providing appropriate economic signals for efficient and maximum use of technical capacity and facilitating investment in new infrastructure, and
- c) avoiding undue barriers to entry and impediments to market participants, including new entrants and small players.

Without prejudice to the capacity expansion requirements of Article 3.3.3 of the Nabucco Agreement, the States Parties shall permit that transportation capacity will be offered through an Open Season under which qualifying Shippers will be able to bid to book capacity.

Shippers will have the right to book Reserved Capacity from entry points to defined exit points on the Nabucco Project. Nabucco International Company's determination of entry and/or exit points shall, among other things, take into account economic, financial and technical feasibility.

##### **2.2. Open Season**

The States Parties shall permit that the Open Season is performed pursuant to procedures published by Nabucco International Company on its website ahead of the start of the Open Season, and such Open Season shall ensure that objective, transparent and non-discriminatory conditions apply to all Shippers (including third

party entities and Shareholders, their affiliated companies and/or their assignees) that qualify to take part in the Open Season.

The invitation to tender would stipulate the available technical total capacity to be allocated, the number and size of lots, as well as the allocation procedure in case of an excess of demand over supply. Both firm and interruptible transportation capacity would be offered on an annual and monthly basis. The invitation to tender would be published, at the cost of Nabucco International Company, in the Official Gazette of each State Party and the Official Journal of the European Union and the allocation process would be fair and non-discriminatory.

The Open Season shall be carried out in two steps. In a first step, only the Shareholders, their affiliated companies and their assignees can apply. In the second step, all market participants, including the Shareholders, their affiliated companies and their assignees can apply. If after the second step not all capacity has been allocated, there will be a third Open Season to allocate the remaining capacity. After each step of the Open Season Nabucco International Company shall provide to all relevant State Party Authorities a list of the companies which have reserved capacities of the Nabucco Project.

### **3. RELEASE OF UNUTILISED CAPACITY (EXPANDING THE PRINCIPLE SET OUT IN ARTICLE 3.3.2 OF THE NABUCCO AGREEMENT)**

Each State Party shall permit that in its Territory Nabucco International Company re-utilises unused Reserved Capacity by allowing Shippers who wish to re-sell or sublet their unused Reserved Capacity on the secondary market to do so in accordance with their contracts.

Where Reserved Capacity remains unused and Contractual Congestion occurs, this unused Reserved Capacity shall be made available to the primary market in accordance with "Use-it-or-lose-it principles" ("UIOLI"). Detailed procedures to be applied for re-utilisation of unused Reserved Capacities shall be included in the Transportation Contracts that Nabucco International Company offers to Shippers. These shall be devised in co-operation with and submitted for prior approval to the relevant State Party Authority.

Starting from the completion of the first full calendar year of operation of the Nabucco Project onwards, each State Party shall permit that in its Territory Nabucco International Company sells a portion of the Technical Capacity as interruptible capacity, via a bulletin board on the internet, pursuant to the historical flow and nomination data, provided that:

There is Contractual Congestion of Reserved Capacity which has been sold on a firm basis but which is not being used; and

The probability of non-interruption of capacity sold on an interruptible basis for the upcoming calendar year is at least ninety (90) percent.

The sale of Reserved Capacity on the bulletin board shall not affect the original Reserved Capacity holder's obligation under the Transportation Contracts, to pay Nabucco International Company for that Reserved Capacity. The original Reserved Capacity holder shall not lose his Reserved Capacity rights and shall still be entitled to use his Reserved Capacity contracted for in full, via the Nomination process. The revenues generated by any marketing of the UIOLI-capacity on an interruptible basis shall be entirely for Nabucco International Company.

The States Parties shall permit that Nabucco International Company, which shall estimate expected flows based on the Nomination process, to make available the difference between the firm capacity committed and the nominated capacity to the market as interruptible capacity, on a short-term day-ahead basis.

If the original Reserved Capacity holder nominates capacity which Nabucco International Company has remarketed, Shippers who have purchased such UIOLI-interruptible capacity shall be interrupted.

Any Shipper, which has contracted for capacity on an interruptible basis, shall be informed in advance by Nabucco International Company if it is to be subject to interruption because the original Reserved Capacity holder has nominated some or all of its contractually committed capacity. An interruptible Shipper shall have no right to reject this interruption.

#### **4. TARIFF METHODOLOGY (EXPANDING THE PERMISSION SET OUT IN ARTICLE 3.3 OF THE NABUCCO AGREEMENT)**

##### **4.1. Principles for tariffs**

Each State Party shall permit that for the capacity sold Nabucco International Company will enter into Transportation Contracts with Shippers under which Shippers pay monthly Capacity Payments (in Euro) which are determined according to the following methodology. Each Transportation Contract will apply that methodology to the volume, distance, time, duration, seasonality involved and to the firm, interruptible and other characteristics of the services provided. The Transportation Contract will also specify other adjustments to the charges payable by Shippers in case of late payment, early termination, change in law etc.

The following tariff methodology shall be applied:

- 1) *Capacity Payments*: shall be calculated as the relevant tariff stipulated for the relevant year, multiplied by the volume of Reserved Capacity that such Shipper has contracted (expressed as  $\text{Nm}^3(0^\circ\text{C})/\text{h}$ ), multiplied by the distance of such capacity booking (distance is calculated as the distance (in km) between the entry point on the pipeline that the Shipper has committed to deliver gas to, and the exit point on the pipeline that the Shipper has requested Nabucco International Company to deliver the gas to). For clarification, the following formula defines the monthly Capacity Payment:

$$P_m = \frac{fr * T_n * d}{12}, \text{ where:}$$

fr = Shipper contracted capacity volume (expressed as hourly flow rate of gas)

d = distance expressed in km (between Shipper contracted entry and exit point)

P<sub>m</sub> = Payment for Transportation Services in Euro/Month

T<sub>n</sub> = the adjusted transportation tariff for year “n”, in EURO / ((Nm<sup>3</sup>/h)\*km) / y.

Further details of the current version of the tariff formula are set out below and Nabucco International Company and the National Nabucco Companies shall apply these for use in the Open Season, other capacity allocation procedures and in the definitive Transportation Contracts:

- 2) *Tariff*: The tariff shall be distance-related and (expressed in EUR / ((Nm<sup>3</sup>(0°C)/h)\*km) / y.), which means that the tariff shall be uniform and apply for all sections of the pipeline. Once the tariff is defined, it shall be escalated on 1st October of every year against a defined tariff escalation formula to be set out in the long-term Transportation Contracts between Nabucco International Company and Shippers.

The tariff shall exclude any Taxes, duties or levies of a similar nature. These shall be levied by Nabucco International Company on the Shipper if the same are levied on Nabucco International Company for the provision of the Transportation Services.

- 3) *Tariff calculation*: The final tariff paid by the individual Shippers shall be derived from a tariff methodology. In formulating the tariff methodology, and therefore the final tariff, the following factors and objectives shall be observed:
- a. recovery of efficiently incurred costs, including appropriate return on investment; facilitate efficient gas trade and competition while at the same time avoiding cross-subsidies between Shippers; promote efficient use of the network and provide for appropriate incentives on new investments;
  - b. taking into account the amount of capacity contracted for by Shippers which shall reflect the duration of Transportation Contracts, the load factor, the distance of transportation (expressed in EUR / ((Nm<sup>3</sup>(0°C)/h)\*km) / y.), the capital investment per capacity unit and volumes etc.;
  - c. that reverse flows shall be defined by reference to the direction of the predominant physical flows in the Nabucco Pipeline System. In case of

Contractual Congestion, specific tariffs shall be applied for reverse flows; Nabucco International Company may not adopt any charging principles and/or tariff structures that in any way restrict market liquidity or distort the market or trading across borders of different Transmission System Operator systems or hamper system enhancements and integrity of any system to which the Nabucco Pipeline System is connected.

#### **4.2. Tariff Methodology for Calculation of the Tariff**

The States Parties shall permit Nabucco International Company to receive Capacity Payments from Shippers for offering Transportation Services that will inter alia allow it to recover the following types of investment and operating costs that it will incur by constructing, operating and maintaining the Nabucco Pipeline System:

- Capital Expenditure (“CAPEX”) incurred by Nabucco International Company in constructing the pipeline: such as raw material costs (e.g. steel), equipment costs (e.g. compressor costs), appropriate depreciation and capital costs reflecting the investment cost (on the assumption that CAPEX is depreciated over 25 years);
- Operating Expenditure (“OPEX”) will include a mixture of fixed and variable costs reflecting Nabucco International Company’s on-going operation of the pipeline. Additionally, OPEX such as fuel gas costs, associated environmental costs (such as the purchase of any applicable carbon emission permit allowances, or equivalent cost, that may be levied on Nabucco International Company in any of the transit states), and any rental expenditures incurred by Nabucco International Company for the use of any other pipeline systems that could be connected to the Nabucco Project to enable earlier operation of the Nabucco Project;
- Economic costs incurred by Nabucco International Company in managing its business such as inflation, wage inflation, interest rates and other costs related to the financing of the Nabucco Project.

For calculation of tariffs the capacities sold on a long term (i.e. 25 years) shall be used as basis.

The States Parties shall permit that the tariff methodology takes in particular into consideration the fact that the investment costs for constructing the Nabucco Pipeline System will be funded from a mixture of equity contributions from Shareholders, and debt by means of receiving loans from lenders and other financial institutions providing debt finance.

#### **4.3. Further considerations concerning Capacity Payments, Tariff**

The tariff shall give effect to the following additional factors:

*Duration of Transportation Contract and incentives:* For tariff setting the duration of the Transportation Contract shall be taken into account. Given the importance to the economic feasibility of the project of ensuring that capacity is booked by Shippers

for as long a contractual period as possible, an incentive structure shall be included in the Capacity Payment calculation to incentivise Shippers to book capacity long-term (e.g. scaled reduction to Capacity Payment to reward contracts of longer duration). Time factors shall be calculated on a 25 years contracts term basis. The time factors (for off peak-period) shall be: 1 for the standard term of 25 years contract, then increase linearly up to a factor of 1.20 for the contract duration of 10 years, then increase linearly up to a factor of 4 for a one day contract.

*Impact of seasonal gas demand on short-term Transportation Contracts:* For short-term Transportation Contracts (i.e. duration of one day up to one year less one day), Capacity Payments shall also reflect seasonal demand for shorter-term Transportation and the resulting load factors for the pipeline such that there shall, for example, be transparent and pre-defined surcharges for daily Transportation Contracts concluded during winter months where demand can be expected to be higher (so that there will be a higher load factor on the pipeline), and lower surcharges for daily Transportation Contracts concluded during the summer months (where demand can be expected to be lower so that there will be a lower load factor on the pipeline). Seasonality factors shall be: 150% surcharge for daily contracts per day for the period November – March (peak season) and 75% surcharge for October and for April (shoulder season) and no surcharge for off peak period (May – September).

FOR THE REPUBLIC OF AUSTRIA

Werner FAYMANN  
Federal Chancellor

FOR THE REPUBLIC OF BULGARIA

Sergei STANISHEV  
Prime Minister

FOR THE REPUBLIC OF HUNGARY

Gordon BAJNAI  
Prime Minister

FOR ROMANIA

Emil BOC  
Prime Minister

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