

**TREATY**  
**ON THE WEST AFRICAN GAS PIPELINE PROJECT**

**BETWEEN**

**THE REPUBLIC OF BENIN**

**AND**

**THE REPUBLIC OF GHANA**

**AND**

**THE FEDERAL REPUBLIC OF NIGERIA**

**AND**

**THE REPUBLIC OF TOGO**

## WHEREAS

The State Parties to the present Treaty,

**CONSIDERING** the Heads of Agreement for the Supply and Transmission of Natural Gas signed by the State Parties on September 5, 1995 and the Memorandum of Understanding on the West African Gas Pipeline signed on August 11, 1999, by the State Parties on the one hand and Chevron Nigeria Limited, Ghana National Petroleum Corporation (replaced by the Volta River Authority), Nigerian National Petroleum Corporation, The Shell Petroleum Development Company of Nigeria Limited, Société Beninoise de Gas S.A. and Société Togolaise de Gas S.A, on the other hand.

**CONFIDENT** that the West African Gas Pipeline will provide a new market for Natural Gas and expanded sources of energy in the West African Region, will greatly improve the balance of energy requirements and resources in the region and will foster closer relations between the State Parties.

**DESIROUS** to contribute to the development of relations and exchanges between the Members State Parties of ECOWAS and to the development of their energy programmes in accordance with Article 28 of the Revised Treaty of ECOWAS.

**DESIROUS ALSO** to permit the construction, the ownership and operation of the West African Gas Pipeline by the private sector.

**RECOGNISING** that the West African Gas Pipeline should be governed by a harmonised legal and fiscal regime, regulated by a joint authority and made subject to the jurisdiction of a common judicial body.

**RECOGNISING THEREFORE** that the effective and harmonised implementation of the West African Gas Pipeline will require that each State Party adopts uniform legislation governing the West African Gas Pipeline and that a WAGP Authority and a WAGP Tribunal be hereby established.

## DO HEREBY AGREE AS FOLLOWS

### ARTICLE I Interpretation

#### Definition of words and expressions

1. The words and expressions that appear in this Treaty shall have the respective meanings given to them in this Article:

*Board of Governors* means the Board of Governors of the WAGP Authority;

***Committee of Ministers*** means the committee to be set up in accordance with Article IX(1);

***the Company*** means West African Gas Pipeline Company Limited;

***Depository*** means the Depository of this Treaty in accordance with Article XII;

***Director General*** means the director general of the WAGP Authority;

***Enabling Legislation*** means the domestic legislation passed by each State Party to govern the West African Gas Pipeline;

***Fiscal Review Board*** means the fiscal review board established under Article VI;

***International Project Agreement*** means the agreement to be signed by the State Parties and the Company in accordance with Article VII, a true copy of which is to be added as an Exhibit to this Treaty in accordance with Article VII;

***Report of the Authority*** has the meaning assigned to it under Article IV;

***Rules of Procedure*** means the rules of procedure to be established by the Committee of Ministers in accordance with Article VI;

***State Parties*** means the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria and the Republic of Togo, as well as all other such states that have acceded to this Treaty in accordance with Article XV;

***Treaty*** means this treaty between the State Parties;

***WAGP Authority*** means the West African Gas Pipeline Authority established under Article IV;

***WAGP Regulations*** means regulations governing the construction and operation of the Pipeline System, to be made or adopted by the Relevant Minister of each State Party under the Enabling Legislation;

***WAGP Tribunal*** means the tribunal established under Article VI;

***West African Gas Pipeline (or WAGP)*** has the meaning assigned to it under Article II(3).

### **Other terms and expressions**

2.(1) All other terms and expressions that appear in this Treaty shall have the meaning assigned to them in the International Project Agreement.

(2) Words in the singular include the plural unless the context otherwise requires.

(3) Unless otherwise indicated, references to "Articles", "Sections" and "Paragraphs" refer to articles, sections and paragraphs of this Treaty.

## **ARTICLE II General Principles**

### **Construction and operation of the WAGP**

- 1.(1) The State Parties undertake to permit the construction and operation of the West African Gas Pipeline and to take, jointly or severally, all measures that are necessary or expedient for its construction and operation.
- (2) The West African Gas Pipeline shall be developed and operated in accordance with the terms of the legal instruments specified in Article VII.
- (3) The West African Gas Pipeline, as more particularly described in the International Project Agreement, shall be a high pressure Natural Gas pipeline, with associated compression and metering stations, interconnection points and laterals to Cotonou, Lomé and Tema, (together with such extensions and expansions as the State Parties shall from time to time agree) which shall link the outlet point of the Escravos-Lagos Natural Gas pipeline at Alagbado (Nigeria) to Takoradi (Ghana) transiting through the territorial waters of Benin, Togo and Ghana.

### **Purpose and nature of WAGP**

- 2.(1) The West African Gas Pipeline is intended to transport Natural Gas to electricity-generating companies and other industrial buyers and users of Natural Gas in the West African region.
- (2) The West African Gas Pipeline shall be an open access transporter to the extent contemplated in the International Project Agreement.

## **ARTICLE III Legislative and Regulatory Measures**

### **Approval of the Treaty by State Parties' Legislature**

1. To the extent required under its Constitution, each State Party shall as soon as practicable after signature of this Treaty and the addition of the Exhibit as provided in Article VII:-
  - (a) take all steps necessary to present this Treaty to its Legislature for ratification and/or acceptance and use its best endeavours to secure any such ratification and/or acceptance; and

- (b) take all steps necessary to present a draft of the Enabling Legislation to its Legislature and use its best endeavours to secure its enactment.

### **Enabling Legislation and WAGP Regulations**

2.(1) In each State Party, the West African Gas Pipeline shall be specifically governed by the Enabling Legislation and the WAGP Regulations, to the exclusion of any other legislation or regulations on the same subject matter.

(2) Each State Party shall take such measures, including by way of provisions in the Enabling Legislation or the WAGP Regulations, as may be necessary to ensure that the WAGP Authority is fully and exclusively empowered to exercise in each such State Party the powers and functions conferred upon it under this Treaty (in particular the power to monitor compliance with, and enforce, the WAGP Regulations).

### **Agreed Regime**

3. Each State Party shall take all necessary or appropriate steps to make, give or implement within its respective jurisdiction all other legal instruments, decisions, approvals, exemptions or regimes as are necessary to give effect to and to implement the Agreed Regime.

## **ARTICLE IV West African Gas Pipeline Authority**

### **Establishment**

1.(1) The State Parties hereby establish the WAGP Authority which shall be an international institution having legal personality and financial autonomy.

(2) The WAGP Authority shall, in each of the State Parties, be recognised as a legal person capable under the laws of that State Party of assuming rights and obligations and of being a party to legal proceedings before the courts of that State Party.

### **Jurisdiction, Powers and Functions of the WAGP Authority**

2.(1) The WAGP Authority has the exclusive jurisdiction to exercise the powers and perform the functions specified in section 2(2) of this Article. It shall not have any powers or functions other than those that are specifically provided in section 2(2) of this Article, except those that may be necessary for the proper exercise of those powers or functions.

(2) The WAGP Authority shall have the following powers and functions:

(a) *Representation functions*

The WAGP Authority is empowered to take the following actions and decisions in the name and on behalf of the State Parties:

- (i) give its consent to changes to the legal corporate structure of the Company as provided in Clause 5.2 of the International Project Agreement or to a transfer by the Shareholders of shares in the Company as provided in Clause 5.5 and 5.6 of the International Project Agreement;
- (ii) monitor compliance by the Company of its obligations under the International Project Agreement;
- (iii) give interim and final approvals to the Company of the design of the Pipeline System and the plans for its fabrication or construction, in accordance with Clause 16 and Schedule 17 of the International Project Agreement;
- (iv) approve the Conceptual Design Package and the Front End Engineering Design Package in accordance with Schedule 17 of the International Project Agreement;
- (v) negotiate and agree the terms of and approve the Pipeline Development Plan with the Company, including amendments to the Approved Pipeline Development Plan;
- (vi) negotiate and agree with the Company the terms of amendments to the conditions on which Pipeline Licences are granted;
- (vii) negotiate and agree with the Company the terms of the Access Code and any amendments thereto, in accordance with Clause 26 of the International Project Agreement;
- (viii) negotiate and agree with the Company waivers of the requirements of the Access Code or of Clause 26 of the International Project Agreement, as contemplated in Clause 26 of the International Project Agreement;
- (ix) consult with the Company on the text of the WAGP Regulations and (following notification by it of the proposed changes) consult with the Company on the terms of any amendments thereto, in accordance with Clause 12.1 of the International Project Agreement;
- (x) negotiate and agree the appointment of a third party operator of the Pipeline System in accordance with Clause 23.2 of the International Project Agreement;
- (xi) consult with the Company on proposals for amendment to the Enabling Legislation, in accordance with Clause 8.4 of the International Project Agreement;

- (xii) negotiate and agree with the Company any matters arising in connection with any expansion of the Pipeline System as contemplated in Clause 24 and Schedule 19 of the International Project Agreement;
- (xiii) give to the Company notice of failure to comply with the Access Code, in accordance with Clause 26.7 of the International Project Agreement;
- (xiv) give to the Company notice to remedy a breach of the International Project Agreement, in accordance with Clause 37.2 of the International Project Agreement;
- (xv) give to the Company a Notice of Default, in accordance with Clause 37.4 of the International Project Agreement;
- (xvi) resolve the consequences of a default of the International Project Agreement by the Company, in accordance with Clause 37 of the International Project Agreement;
- (xvii) co-ordinate the administration of the Fiscal Laws in accordance with Schedule 8 of the International Project Agreement, including the giving of Notices of Assessment, negotiating and agreeing interest rate deductibility mechanisms or approving the terms of loan agreements for interest rate deductibility purposes;
- (xviii) act on behalf of the State Parties' respective Tax Authorities in respect of any proceedings brought by the Company against any or all of the State Parties before the WAGP Tribunal;
- (xix) report to the Committee of Ministers on the implementation by the State Parties of their obligations under this Treaty and, in particular, where it appears that a State Party or State Authority is failing to comply with the provisions of this Treaty or the Enabling Legislation to the detriment of a Company, a Project Contractor, a Buyer, a Seller or a Shipper;
- (xx) carry out audits of the Company under Clause 10 of the International Project Agreement;
- (xxi) prepare and notify to the Company its funding requirements for the operation of the WAGP Authority as specified in Clause 9.4(b) and 9.4(c) of the International Project Agreement and agree certain changes to the funding of the WAGP Authority as referred to in Clause 9.4(i) of the International Project Agreement;
- (xxii) discuss with and give the Company prior written permission to enter into Gas Transportation Agreements (other than Foundation Gas

Transportation Agreements) other than in accordance with the Access Code;

- (xxiii) provide the Company such approvals or consents as may be required pursuant to the International Project Agreement;
- (xxiv) negotiate and agree upon inclusion of items in the Exempt Goods List as well as future additions to the Exempt Goods List;
- (xxv) negotiate and agree maintenance standards with the Company in accordance with Schedule 9 to the International Project Agreement;
- (xxvi) negotiate and agree changes to the Approved Tariff Methodology with the Company in accordance with Schedule 7 of the International Project Agreement;
- (xxvii) establish and agree with the Company the Certification System;
- (xxviii) give notice of intention of acceptance of transfer of the Pipeline System following cessation of operation by the Company as specified in Clause 41.4 of the International Project Agreement;
- (xxix) make certain notifications as are specified in the International Project Agreement or in the WAGP Regulations;
- (xxx) agree with the Company on a replacement index as referred to in Clause 49 of the International Project Agreement; and
- (xxxi) in the event of any challenge to the Project Authorisations or Supplemental Authorisations, intervene as provided in Clause 32.2 of the International Project Agreement;

(b) *Facilitation functions*

- (i) facilitate the grant, renewal or extension of Project Authorisations and Supplemental Authorisations in accordance with Clauses 16 and 17 of the International Project Agreement;
- (ii) receive, review, consult with the Technical Authorities and comment on Conceptual Design Package and the Front End Engineering Design Package in accordance with Schedule 17 of the International Project Agreement;
- (iii) receive, review, and respond to the draft and final Pipeline Development Plan and proposed amendments to the Approved Pipeline Development Plan;

- (iv) receive, review, respond to the draft and final Environmental Impact Assessment and Environmental Management Plan, and co-ordinate and facilitate all necessary environmental approvals;
- (v) coordinate amendments to the Environmental Management Plan in accordance with Clause 19 and Schedule 2 of the International Project Agreement;
- (vi) provide administrative services for the Fiscal Review Board and the WAGP Tribunal in accordance with the Rules of Procedure;
- (vii) receive reports and notifications from the Company as specified in the International Project Agreement or in the WAGP Regulations;
- (viii) distribute the original and amended Emergency Response Plan; and
- (ix) notify relevant agencies of occurrence of an Emergency Condition; and

(c) *Regulatory functions*

- (i) review, and respond to the Company on, submissions associated with Approvals to Operate and grant Approvals to Operate, in accordance with Clause 16.5 of the International Project Agreement and the WAGP Regulations;
- (ii) enforce the WAGP Regulations and exercise the powers and responsibilities conferred on it under the WAGP Regulations, including inter alia its powers to inspect the design, construction and operation of the Pipeline System in accordance with Clauses 16.5 and 22.8 of the International Project Agreement and the WAGP Regulations;
- (iii) if at any time the Access Code is imposed by regulation in accordance with Clause 26.7 of the International Project Agreement, monitor compliance with and enforce the Access Code and exercise the powers and responsibilities conferred on it under the Access Code and those implementing regulations;
- (iv) intervene and use its best endeavours to ensure the compliance by a State Party or a State Authority with the International Project Agreement or the Enabling Legislation where such State Party or State Authority has failed to comply to the detriment of a WAGP Company, a Project Contractor, a Buyer, a Seller or a Shipper; and
- (v) act as a mediator between the Company and an aggrieved person who wishes to become a Shipper.

(3) The Committee of Ministers shall have the power to amend or supplement the functions and powers of the WAGP Authority, by written instrument.

## **Decisions and actions of the WAGP Authority**

3.(1) The decisions of the WAGP Authority provided in sub-paragraphs (v), (xiii), (xiv), (xv), (xxvi) and (xxviii) of section 2(2)(a) of this Article shall be subject to the prior consent of the Board of Governors.

(2) The decisions, actions and proceedings of the WAGP Authority shall be conducted in accordance with the Rules of Procedure, which shall contain detailed rules and requirements governing the proceedings of the WAGP Authority, including public hearings (where applicable). Any decision taken by the WAGP Authority in furtherance of its functions and powers as provided in section 2(2) of this Article shall be in writing.

(3) The WAGP Authority shall exercise its functions and powers specified in section 2(2) of this Article in accordance with the principles of natural justice and in a manner consistent with this Treaty, the Enabling Legislation, the WAGP Regulations and the International Project Agreement.

(4) The Director General and the members of the Board of Governors are barred from taking decisions in which they have any direct personal financial interest.

(5) The WAGP Authority shall not offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official in any of the State Parties, for that official or for a third party, in order that the official acts or refrains from acting in relation to the performance of official duties.

(6) The decisions of the WAGP Authority shall be fully effective in the legal systems of each State Party and shall have the same authority as the final decisions of the national authorities of the State Parties whose jurisdiction in respect of the West African Gas Pipeline has been transferred to the WAGP Authority.

## **Director General**

4.(1) There shall be a Director General of the WAGP Authority who shall be the chief executive officer of the WAGP Authority and shall make all the decisions and take such actions as described in section 2(2) of this Article, subject to the obligation for prior consent of the Board of Governors, as provided in section 3(1) of this Article.

(2) The Director General shall be appointed by the Committee of Ministers upon the recommendation of the Board of Governors for a period of five (5) years from candidates that are qualified for the position by virtue of their education, training and experience. The Director General of the WAGP Authority shall be a national of a State Party.

(3) The Committee of Ministers may remove the Director General for good cause upon the recommendation of the Board of Governors. The Director General shall be replaced at the end of his term of office unless expressly maintained in office for a further five (5) year term by a decision of the Committee of Ministers upon the recommendation of the Board of Governors. In the event of revocation, resignation, non renewal or death of the Director General or in the

event of any other cause of termination of his functions, the Director General shall be replaced by a new Director General to be appointed for a term of five (5) years and in accordance with this section.

(4) In the event of the sudden departure of the Director General, the Board of Governors shall nominate an officer of the WAGP Authority to act as Director General until such time that a new Director General appointed in accordance with this section effectively assumes his functions.

(5) The Director General shall be the legal representative of the WAGP Authority and his decisions and actions within the scope of his powers under this Treaty and the WAGP Regulations shall bind the WAGP Authority.

### **Board of Governors**

5.(1) The WAGP Authority shall have a Board of Governors composed of four (4) members. The Head of State of each State Party shall appoint one (1) member. The members of the Board of Governors shall be appointed for a term of four (4) years, except for the first members appointed by two of the State Parties (one from a French-speaking State Party and another from an English speaking State Party), who shall be appointed for a term of two (2) years. Each member shall have qualifications relevant to the activities of the WAGP Authority.

(2) The members of the Board of Governors may have alternates. The alternate of a member shall be chosen by such member among his or her immediate assistants.

(3) The Board of Governors shall be presided over by one of its members for a period of one year at a time on an alphabetical rotational order of State Party name.

(4) The Board of Governors shall meet from time to time to:

- (a) consider recommendations to the Committee of Ministers on appointment, revocation and replacement of the Director General;
- (b) give its prior consent to a decision or action of the Director General in respect of the matters specified in sub-paragraphs (v), (xiii), (xiv), (xv), (xxvi) and (xxviii) of section 2(2)(a) of this Article;
- (c) consider recommendation to the Committee of Ministers in respect of any change of the location of the headquarters of the WAGP Authority;
- (d) approve of the funding requirements of the WAGP Authority;
- (e) determine the organisational structure of the WAGP Authority; and
- (f) consider requests for review of the decisions and actions of the Director General under section 12(1) of this Article.

(5) The Board of Governors shall convene at the request of any of its members, of the Director General or of the Company to decide upon any of the matters specified in section 5(4) of this Article.

(6) The decisions of the Board of Governors shall be subject to a majority vote of its members, except for decisions in a matter contemplated in section 2(2)(a) of this Article which shall be subject to a unanimous vote. Each member of the Board of Governors shall have one (1) vote. The Board of Governors shall convene at the request of any of its members, of the Director General or of the Company. The required quorum shall be three (3) members or alternates present. A member of the Board of Governors may grant a proxy to another member to vote in its name. In the event that any urgent matter is referred to the Board of Governors, the Board of Governors shall be able to deliberate via any means of communications, subject to the provision of written minutes.

### **Staff**

6.(1) The WAGP Authority may employ permanent staff and retain or engage external experts, consultants and other specialist staff, as may be necessary or appropriate to enable it to discharge its functions under this Treaty and the WAGP Regulations. Any staff and consultants engaged by the WAGP Authority shall be qualified by virtue of their education, training or experience.

(2) The Director General and the staff of the WAGP Authority (including consultants engaged by it) shall have no financial interest in the Company or any Shipper, Buyer, Seller or Project Contractor. They shall be obliged to keep information to which they may have access by virtue of their functions or their employment by the WAGP Authority confidential during and after their term of office.

(3) The Director General and all staff of the WAGP Authority who report directly to the Director General shall, in the territory of each of the State Parties, have such privileges and immunities as are provided under the ECOWAS General Convention on Privileges and Immunities of 22 April 1978.

(4) The salary and benefits of the Director General and the staff of the WAGP Authority shall be determined on the basis of salary scales and benefit plans of ECOWAS staff.

### **Funding**

7.(1) The State Parties shall be responsible for providing or procuring funding for the WAGP Authority.

(2) The State Parties shall arrange the funding for the costs of the WAGP Authority primarily from the WAGP Authority Charge to be paid by the Shippers on the West African Gas Pipeline and from such other sources of funding as are identified in the funding provisions of Clause 9 of the International Project Agreement.

(3) The State Parties shall ensure at all times, and particularly in the event of any shortfall of funds paid to the WAGP Authority under the International Project Agreement (irrespective of the reason for such shortfall), that the costs of the WAGP Authority in excess of available resources are funded from the State Parties' budget so as to allow the WAGP Authority to continue to perform properly its functions.

(4) The State Parties shall further ensure that staffing levels and other costs incurred by the WAGP Authority are reasonable having regard to the functions of the WAGP Authority as provided in this Treaty and in the WAGP Regulations.

(5) The State Parties shall assist the WAGP Authority in seeking and obtaining from international agencies or other sources any further funding that may be required for its operations.

(6) The costs of the WAGP Authority not covered by the WAGP Authority Charge or other sources in any Tax Year shall be assumed by the State Parties in proportion to the respective Apportionment Percentage that applies to each State Party in that Tax Year in accordance with the Agreed Fiscal Regime.

(7) At the latest 3 months prior to the commencement of each calendar year, the Director General shall establish the funding requirements of the WAGP Authority as contemplated in Clause 9.4 of the International Project Agreement. Within fifteen (15) days of the establishment of the draft funding requirements, the Director General shall notify to the Board of Governors the draft funding requirements, with all appropriate details necessary for it to be discussed by the Board of Governors. The Board of Governors shall meet within 1 month of receipt of the draft funding requirements, to review the draft funding requirements and may approve, reject or request amendments to the same. The Board of Governors in taking a decision under this subsection shall base its decision on the WAGP Authority's reasonable funding requirements and their consistency with the functions and powers of the WAGP Authority, as set out in this Treaty and the WAGP Regulations.

(8) Where the Board of Governors requests changes to the draft funding requirements, the Director General shall establish revised funding requirements which shall be notified to the Board of Governors within fifteen (15) days from the decision of the Board of Governors. The Board of Governors shall subsequently meet, in the presence of the Director General, within fifteen (15) days of the notification by the Director General of the revised funding requirement, with a view to finally resolving any outstanding issues and to adopt the final funding requirements of the WAGP Authority. The decision of the Board of Governors shall be final.

(9) The final funding requirements shall be notified by the Director General to the Company and to the State Parties, in accordance with Clause 9.4 of the International Project Agreement.

#### **Site of the WAGP Authority**

8. The WAGP Authority shall be located in one of the four State Parties, as shall be 12 to

determined by the Committee of Ministers, upon the recommendation of the Board of Governors.

### **Official languages of the WAGP Authority**

9. The official languages of the WAGP Authority shall be English and French.

### **Reporting of the WAGP Authority**

10.(1) The WAGP Authority shall prepare an annual Report of the Authority on the implementation of the Project and on its activities during each preceding year. The Report of the Authority for each preceding year shall contain:

- (a) a description of the main stages of implementation of the Project;
- (b) a description of the activities undertaken by the WAGP Authority;
- (c) the sources and uses of funds of the WAGP Authority;
- (d) a description of the implementation of this Treaty and the International Project Agreement by the State Parties and the Company.

(2) The Report of the Authority shall be submitted by the Director General to the Committee of Ministers at the latest on 31 March of the year following the year to which the Report of the Authority relates.

(3) The Committee of Ministers may request at any time from the WAGP Authority any information or documents it considers appropriate in order to carry out its review of the WAGP Authority's activities.

### **Records**

11. The premises, archives and records of the WAGP Authority (and all documents belonging to or held in the WAGP Authority) shall be inviolable at all times and wherever they may be located.

### **Review of the WAGP Authority's Decisions by the Board of Governors**

12.(1) The Company or any of the State Parties may challenge any decisions (or take issue with any action or inaction) of the Director General (other than a decision in respect of which the Board of Governors has given its consent in accordance with section 3(1) of this Article) which affect their respective rights under this Treaty or the International Project Agreement by requesting a meeting of the Board of Governors.

(2) The Board of Governors, after examining the issue, may confirm the decision of the Director General or give to the Director General such directions as may be appropriate to

make the Director General's decision conform to the requirements of this Treaty, the International Project Agreement, the Enabling Legislation and the WAGP Regulations. In such an event the Director General shall comply with the directions given by the Board of Governors.

### **Review of the WAGP Authority's Decisions by the Committee of Ministers**

13.(1) If the Company or any of the State Parties is dissatisfied with any decisions of the Board of Governors made pursuant to section 12(2) of this Article or with any action or decision of the Director General authorised by the Board of Governors pursuant to section 3(1) of this Article, the Company or any of the State Parties may request a meeting of the Committee of Ministers to review such decision or action.

(2) The Committee of Ministers may confirm or overrule the decision or action, or take a new decision replacing the Board of Governors' or the Director General's decisions or directing the Director General to take any action as may be appropriate in the circumstances. In such an event the decision of the Committee of Ministers shall be deemed to be a decision of the WAGP Authority.

(3) The Committee of Ministers may decline to conduct a review, in which case the decision of the WAGP Authority shall be deemed confirmed.

### **Further Review**

14. The Company may invoke the Dispute Resolution Procedure under the International Project Agreement in order to challenge any decisions of the Committee of Ministers in respect of matters contemplated in sections 2(2)(a) or 2(2)(b) of this Article.

### **Review by the WAGP Tribunal**

15.(1) Where any State Party or the Company is dissatisfied with any decision of the Committee of Ministers pursuant to section 13(2) or 13 (3) of this Article, the relevant State Party or the Company may file an application with the WAGP Tribunal for a review of the decisions of the WAGP Authority (or, as the case may be, of the decision of the Committee of Ministers which is substituted therefor) on the grounds that:

- (a) the relevant decision or action of the WAGP Authority exceeds the scope of powers and functions of the WAGP Authority as defined in section 2(2) of this Article or in the WAGP Regulations; or
- (b) the WAGP Authority has improperly exercised its regulatory powers under section 2(2)(c) by engaging in:
  - (i) any malicious or fraudulent act, act in bad faith, or any act carried out for an illegal or an improper purpose;

- (ii) any act which would amount to an abuse of power or which is inconsistent with this Treaty, the Enabling Legislation or the WAGP Regulations;
- (iii) any act or decision which is arbitrary, capricious, made without adequate basis, or made without taking into account relevant considerations or taking into account irrelevant considerations; or
- (iv) any decision, order, sanction or other measures which is or are unreasonable, disproportionate or excessive with respect to the desired objective or the situation.

(2) Any application pursuant to section 15(1) shall have to be filed within thirty (30) days of such time that the decision of the relevant decision of the Committee of Ministers (or the decision to decline a review under section 13(3) of this Article) is brought to the attention of the party filing the application. Pending the determination of the WAGP Tribunal, enforcement of the decision under review shall be suspended.

(3) The review of the actions or decisions of the WAGP Authority by the WAGP Tribunal under this section shall be conducted in accordance with the provisions of the Rules of Procedure. Where the Rules of Procedure provide for specific hearings in respect of any matters contemplated by section 2(2)(c) of this Article, any review of such proceedings by the WAGP Tribunal shall be conducted in accordance with specific requirements set out in the Rules of Procedure.

(4) Any action or decision of the WAGP Authority (or of the Committee of Ministers deemed to be a decision of the WAGP Authority) held by the WAGP Tribunal to have exceeded the powers of the WAGP Authority under section 2(2) of this Article or the WAGP Regulations shall not be recognised by any of the State Parties and shall cease to have any legal effect under their respective legal systems.

### **State Party support**

16.(1) The State Parties shall ensure that the WAGP Authority carries out and performs its functions and obligations set out in, and complies in all respects with, this Treaty.

(2) In order to ensure proper coordination of the State Authorities' activities, the State Parties shall ensure that each of their respective State Authorities involved in the Project shall appoint a liaison officer who shall be in charge of relations with the WAGP Authority in connection with the matters within their scope of activity.

**ARTICLE V**  
**Agreed Fiscal Regime**

**General**

1. The State Parties hereby agree to and shall ensure that their respective Tax Authorities shall fully apply the Agreed Fiscal Regime to the Company and all Applicable Persons.

**Apportionment of fiscal revenue among the State Parties**

2.(1) For the purpose of determining the liability of the Company in each State Party to Income Tax, all Assessable Income, Allowable Expenses and Capital Allowances for a Tax Year (*Apportionable Items*) shall be apportioned between each State Party in accordance with section 2(2) of this Article, irrespective of where or how such Assessable Income might have been earned or accrued or Expenses incurred. The final share of all Apportionable Items that is attributed to each State Party in accordance with the calculation set out in section 2(2) of this Article shall constitute its Apportionment Percentage.

(2) The Apportionable Items shall be divided between the State Parties as follows: 45% of the Apportionable Items will be divided between the State Parties in proportion to the distance of the Pipeline System within each State Party, 45% of the Apportionable Items will be divided between the State Parties in proportion to the Reserved Capacity for delivery in each State Party, and 10% of the Apportionable Items will be divided between the State Parties equally. Accordingly, in each Tax Year the Apportionment Percentage of each State shall be determined according to the following formula:

$$AP_S = 45 \times ((L_S \div L_T) + (RC_S \div RC_T)) + 2.5$$

where:

$AP_S$  = the Apportionment Percentage of a State Party, expressed as a percentage;

$L_S$  = the length of pipeline comprised in the Pipeline System situated within the State Party concerned as at 1 January in that Tax Year, which has been commissioned (for which purpose the length of the pipeline within a State Party shall be determined by the as built survey carried out by the Company, and the length of lateral pipelines shall be included);

$L_T$  = the total length of pipeline comprised in the Pipeline System as at 1 January in that Tax Year, which has been commissioned (for which purpose the length of the pipeline shall be determined by the as built survey carried out by the Company, and the length of lateral pipelines shall be included);

RC<sub>S</sub> = the sum of the quantities of Reserved Capacity which are reserved at any time for transportation of Natural Gas as at 1 January in that Tax Year, for delivery out of the Pipeline System in the State Party concerned, and

RC<sub>T</sub> = the total sum of the quantities of Reserved Capacity which are reserved at any time for transportation of Natural Gas as at 1 January in that Tax Year.

(3) The Apportionment Percentages to apply in any Tax Year, or the method of determining the Apportionment Percentages, may be adjusted by the State Parties by written notice signed by each Relevant Minister and delivered to the Company prior to that Tax Year; provided however that:

- (a) the total of the Apportionment Percentages to apply in a Tax Year shall always equal one hundred percent (100%);
- (b) If a methodology is to be used to determine the division of the Apportionment Percentages between the State Parties, the Apportionment Percentages shall be readily ascertainable on or before 1 January in the Tax Year concerned; and
- (c) If on 1 January in a Tax Year adjusted Apportionment Percentages which the State Parties intend to apply in that Tax Year are not readily ascertainable in accordance with Paragraph (b) above, then the Apportionment Percentages which applied in the previous Tax Year shall continue to apply.

(4) The mechanism for certifying the Apportionment Percentages and the timing of that certification shall be set out in the International Project Agreement.

## **ARTICLE VI**

### **Fiscal Review Board and WAGP Tribunal**

#### **Establishment and Jurisdiction of the Fiscal Review Board**

1.(1) The Fiscal Review Board is hereby established.

(2) The Fiscal Review Board shall be an *ad hoc* body to be constituted only when required to hear an application for review within its jurisdiction.

(3) The Fiscal Review Board shall have exclusive jurisdiction to hear applications filed by any Applicable Person for review of a decision or action or inaction of a State Party, a Tax Authority, any other State Authority or the WAGP Authority in relation to the application of the Agreed Fiscal Regime (including Non-WAGP Regime matters which are modified by the implementation of the Agreed Fiscal Regime), including specifically:

- (a) applications filed by any Applicable Person for review of (a) any Assessment or any amended or altered Assessment issued by any State Party or (b) the failure of any State Party to issue an amended Assessment following the submission of amended Returns in accordance with paragraph B.40 of Schedule 8 of the International Project Agreement;
- (b) applications filed by any Applicable Person for review of any imposition of a withholding or deduction contrary to paragraphs B.50 or B.51 of Schedule 8 of the International Project Agreement or of the failure of any State Party to treat any withholding in accordance with paragraph B.52 of Schedule 8 of the International Project Agreement;
- (c) applications filed by any Applicable Person for review of any refund of VAT by any State Party or State Authority, or any refusal by any State Party or State Authority to make a repayment of VAT (in either case including as to the amount of any interest due), or any requirement of a State Party or State Authority that VAT be paid or charged, or any refusal in whole or in part by any State Party or State Authority to allow a credit for Tax in respect of VAT paid and not refunded;
- (d) applications filed by any Applicable Person for review of any imposition of any customs duties pursuant to Part D of Schedule 8 of the International Project Agreement by any State;
- (e) applications filed by any Applicable Person for review of any imposition of any Tax by any State Party or State Authority contrary to the provisions of the Fiscal Laws or the failure of a State Party or State Authority or the WAGP Authority to comply with the Fiscal Laws or to correctly apply the Non-WAGP Regime as modified by the implementation of the Agreed Fiscal Regime; and
- (f) applications filed by any Applicable Person for review of any imposition of any penalty under Part F of Schedule 8 of the International Project Agreement or any demand for interest by any Tax Authority under paragraph B. 49 of Schedule 8 of the International Project Agreement or any refusal of any Tax Authority or State Party to pay interest pursuant to paragraph B. 49 of Schedule 8 of the International Project Agreement.

### **Composition of the Fiscal Review Board**

2.(1) The Fiscal Review Board shall consist of the head of the Tax Authority in each State Party (or his or her authorised representative). The Fiscal Review Board shall be constituted on the receipt by the WAGP Authority of a notice for review. Each State Party shall ensure that its representative on that Fiscal Review Board is duly appointed and duly participates in the hearing and determination of the review by that Fiscal Review Board.

(2) Every member of the Fiscal Review Board shall in respect of the business of that Fiscal Review Board act solely as a member of the Fiscal Review Board as an independent

decision-maker and shall conduct the hearing and determination of the review in an independent and impartial manner in accordance with the general principles of international law. Each party to these proceedings shall be entitled to a fair and impartial hearing.

### **Procedure and decisions of the Fiscal Review Board**

3.(1) The requirements and procedure that apply to notices, time limits for appeals and filings, submission of evidence and pleadings, hearings, procedural requests, the form of the decision of the Fiscal Review Board and all other procedural matters in respect thereof shall be as set out in the Rules of Procedure.

(2) The decisions of the Fiscal Review Board shall be binding on the parties to its proceedings, shall be recognised as final, effective and immediately enforceable as of their notification within the domestic legal and fiscal systems of all the State Parties and as against any State Authorities of such State Parties (to the extent such State Parties were parties to or regularly joined into the proceedings), subject to the parties' right of appeal to the WAGP Tribunal under section 4 of this Article.

### **Establishment and Jurisdiction of the WAGP Tribunal**

4.(1) The WAGP Tribunal is hereby established.

(2) The WAGP Tribunal shall be an *ad hoc* body to be constituted only when required to hear an application for review within its jurisdiction.

(3) The WAGP Tribunal shall have exclusive jurisdiction to:

- (a) hear all appeals from any final decisions of the Fiscal Review Board filed by (i) any Applicable Person (ii) State Parties or State Authority, provided that if the matter being appealed is a matter arising under Part B of Schedule 8 of the International Project Agreement (other than an appeal in relation to the application of paragraphs B.2, B.51, B.52, B.54, B.55 or B.56 of Schedule 8 of the International Project Agreement) then an appeal lies only if all State Parties or the equivalent State Authority in all State Parties join or are joined in the appeal;
- (b) conduct the review contemplated in section 15 of Article IV; and
- (c) hear and determine applications provided under article 2(b) of Part B of Schedule 8 of the International Project Agreement.

### **Composition of the WAGP Tribunal**

5.(1) The WAGP Tribunal shall consist of five (5) judges. Four (4) judges shall be chosen and appointed by each State Party from judges of their respective highest court having jurisdiction to hear tax or administrative law disputes, depending on whether the dispute is in

relation to the Agreed Fiscal Regime or in relation to the legality of a WAGP Authority decision. The fifth (5<sup>th</sup>) judge, who shall be the presiding judge, shall be appointed by the President of the ECOWAS Court of Justice from the judges appointed to the ECOWAS Court of Justice that are not nationals of any of the State Parties.

(2) Each member of the WAGP Tribunal shall act as an independent decision-maker and not as a representative of any State Party or, as the case may be, of any ECOWAS state and shall conduct the hearing and determination of the appeal in an independent and impartial manner in accordance with this Treaty, the International Project Agreement, the WAGP Regulations, the Enabling Legislation and the general principles of international law. Each party to the proceedings shall be entitled to a fair and impartial hearing.

### **Procedure and decisions of the WAGP Tribunal**

6.(1) The requirements and procedure that apply to notices, time limits for appeals and filings, submission of evidence and pleadings, hearings, procedural requests, the form of the decision of the WAGP Tribunal and all other procedural matters in respect thereof shall be as set out in the Rules of Procedure.

(2) The decisions of the WAGP Tribunal shall be binding on the parties to its proceedings, shall be recognised as final, effective and immediately enforceable as of their notification within the domestic legal and fiscal systems of all the State Parties and as against any State Authorities of such State Parties (to the extent they were all parties to or regularly joined into the proceedings).

### **Role of WAGP Authority**

7. The WAGP Authority shall provide for the administration of the Fiscal Review Board and the WAGP Tribunal. Documents to be notified to the Fiscal Review Board or the WAGP Tribunal shall be notified to the WAGP Authority, and documents to be notified by the Fiscal Review Board or the WAGP Tribunal shall be notified by the WAGP Authority on their behalf.

### **State Parties and WAGP Authority to facilitate**

8. The State Parties and the WAGP Authority shall use their best endeavours to facilitate any proceedings under this Article. Each State Party shall ensure that a representative from that State Party is duly appointed to the Fiscal Review Board or the WAGP Tribunal, as the case may be, and that such person duly participates in the business of the Fiscal Review Board or WAGP Tribunal in accordance with this Treaty.

### **Rules of Procedure**

10. The Committee of Ministers shall as soon as practicable after the signature of this Treaty draw up and issue Rules of Procedure which shall apply to the conduct of proceedings

before the WAGP Authority, the WAGP Tribunal and the Fiscal Review Board. The Committee of Ministers may by instrument amend the Rules of Procedure.

## **ARTICLE VII**

### **Project Documentation**

#### **International Project Agreement**

1.(1) The State Parties shall, following signature of this Treaty, enter into an International Project Agreement with the Company. The International Project Agreement shall be executed on behalf of the State Parties by the Committee of Ministers. Following its execution, the Committee of Ministers shall sign an instrument which:

- (a) reconfirms the undertakings of the State Parties hereunder in respect of the executed International Project Agreement; and
- (b) identifies a true copy of the International Project Agreement.

(2) The instrument and the copy of the International Project Agreement shall be lodged with the Depository, and the same shall be the Exhibit to this Treaty.

#### **Agreed Regime and Stability**

2.(1) The State Parties recognise and agree that the West African Gas Pipeline, and the rights and obligations of the State Parties, the Company and the WAGP Authority in respect thereof, shall be exclusively governed by the following set of instruments, rules and principles:

- (a) this Treaty;
- (b) the International Project Agreement;
- (c) the Enabling Legislation (in respect of such rights and obligations as are recognised by the domestic law of each State Party);
- (d) the Rules of Procedure;
- (e) all other instruments forming part of and/or implementing the Agreed Regime;
- (f) all such general principles of international law, international treaties and domestic legislation as may be applicable to the Project, to the extent not inconsistent with any of the instruments contemplated in paragraphs (a), (b), (c), (d) or (e) above.

(2) The State Parties further recognise and agree with one another that the harmonised and stable application of this Treaty, the International Project Agreement, the Enabling Legislation and all other elements of the Agreed Regime by all the State Parties, throughout the duration of the International Project Agreement and across all four (4) jurisdictions, is essential to protect the rights and interests of each of the State Parties in maintaining the West African Gas Pipeline as a common source of gas supply and/or as a common means of transport of indigenous gas.

(3) Each State Party therefore hereby agrees and undertakes that:

- (a) it shall comply with this Treaty, the International Project Agreement, the Enabling Legislation and the other instruments forming part of and/or implementing the Agreed Regime;
- (b) it shall not, whether by way of direct executive action, order, regulation or decision or by the entering into international agreements or otherwise, discontinue performance of, revoke, amend, suspend, terminate, or repudiate, or disable the legal effectiveness of this Treaty;
- (c) it shall not promote, shall oppose and shall use its best efforts to ensure that its Legislature does not bring about, any legislative change materially affecting the validity or continuing application of the provisions of this Treaty, the International Project Agreement, the Enabling Legislation or of any other instruments forming or contemplated under the Agreed Regime.

### **Action in event of breach of the Treaty**

3.(1) In the event that any one or more State Parties should breach this Treaty or the International Project Agreement, or take any action inconsistent with section 2(3) of this Article:

- (a) the State Parties affected by the breach or by the actions of another State Party shall serve a notice concerning the breach on the offending State Party with a request to cease and cure the breach;
- (b) the State Party in breach shall cease any such actions and cure any such breach promptly upon receipt of the notice of breach contemplated in paragraph (a) above;
- (c) any refusal or failure to cease such actions and/or adequately cure such breach shall entitle the State Party affected by the breach to take action against the offending State Party and to require and/or enforce any available remedy under this Treaty, under the ECOWAS Revised Treaty and under the general rules of international law;
- (d) the State Parties (or any of them) that have sustained a loss as a result of any breach by one or more State Parties shall be entitled to claim monetary

compensation, which shall be limited to the actual and direct loss sustained by that other State Party as a result of the breach and shall exclude any indirect loss or damage, except that no compensation shall be payable in respect of an interruption or termination of the construction or operation of the West African Gas Pipeline on grounds of national defence where it serves the defence interests of all the State Parties; and

- (e) the provisions of the International Project Agreement shall apply to determine any consultative, corrective or compensatory measures to be taken in respect of the Company and any other party entitled to a remedy thereunder;

## **ARTICLE VIII Transit of Natural Gas**

### **Consent of State Parties to transit of Natural Gas**

1.(1) The State Parties producing Natural Gas transported through the West African Gas Pipeline and the State Parties crossed by the West African Gas Pipeline shall, for the duration of the International Project Agreement, allow the export and transit of such Natural Gas on its territory:

- (a) without discrimination as to the origin, destination or ownership of that Natural Gas;
- (b) in no less favourable a manner than such Natural Gas originating in or destined for its own market;
- (c) without imposing any unreasonable delays, limitations, quotas or charges; and
- (d) without imposing any licence, permit or restrictions other than as may be required under the International Project Agreement or the Enabling Legislation.

(2) Each State Party shall take the necessary measures to facilitate the transit of Natural Gas through the West African Gas Pipeline consistently with the principle of freedom of transit in Article 45.2 of the ECOWAS Treaty and Article 7 of the ECOWAS Energy Protocol and will observe the general principles of public international law in relation to the transit of Natural Gas across its territory.

(3) Subject to section 2 of this Article, the State Parties shall not interrupt or reduce, permit any entity subject to its jurisdiction or control to interrupt or reduce, or require any entity subject to its jurisdiction or control to interrupt or reduce, the existing flow of Natural Gas except as specifically provided for in the International Project Agreement.

(4) Each State Party acknowledges and agrees with the others that if a State Party takes any action, fails to take any action or suffers or permits the taking of any action or the

occurrence of an event which interrupts or otherwise impedes, or threatens to interrupt or impede, the Project, such State Party shall use all lawful and reasonable endeavours to eliminate the threat and rectify any interruption or impediment and promote restoration of all Project activities at the earliest opportunity.

(5) Each State Party where the Natural Gas is produced shall use all lawful endeavours to ensure that Natural Gas producers within their jurisdiction shall be allowed to operate (and shall benefit and continue to benefit from all such permits, licences and regimes as may be necessary to allow them to operate) all such proven reserves of gas as are available for the performance of the gas sales and purchase agreements for which transportation is arranged through the West African Gas Pipeline.

### **National emergency**

2. Each State Party reserves the right, acting in good faith, to restrict by lawful regulation the transit of Natural Gas within its territory or across its territorial boundaries in the event of a national emergency declared in accordance with its Constitution. Any such restriction shall be strictly proportionate to the exigencies of the situation. Each State Party acknowledges, consents and agrees that any such restriction shall be in force only for as long as the national emergency requires it to be in force, and thereafter the State Party in question shall take all necessary or appropriate steps to lift any restrictions imposed and assist the Company to restore its operations.

## **ARTICLE IX Ownership of the West African Gas Pipeline**

### **Principle**

1. The West African Gas Pipeline shall be built and operated by the Company at the request of the State Parties as a Build-Operate-Own project. The Company shall at all time have exclusive ownership and operating rights over the West African Gas Pipeline and all other assets intended to be used for the construction or operation of the West African Gas Pipeline (including without limitation the pipeline, the pipeline structures and equipment, whether on land or offshore, and all such real property rights and easements required for the construction, operation, maintenance or ownership of the pipeline and pipeline structures and equipment).

### **Prohibition of expropriation**

2.(1) Each State Party undertakes that the assets or shares of the Company or any Affiliate of the Company within its territory or jurisdiction shall not be the subject of an Expropriation Event.

(2) If an Expropriation Event occurs, the State Party or State Parties that has or have

caused the Expropriation Event shall make to the affected person prompt, adequate and effective payment of compensation for such Expropriation Event, as determined under public international law, in accordance with Clause 44 of the International Project Agreement.

### **Rights upon termination**

3. Upon the termination of the International Project Agreement, whether at the term of the International Project Agreement or prematurely for whatever reason, the rights enjoyed by the Company over the West African Gas Pipeline and all other assets belonging to the Company and intended to be used for the construction or operation of the West African Gas Pipeline (including without limitation the pipeline, the pipeline structures and equipment, whether on land or offshore, and all such real property rights and easements required for the construction, operation, maintenance or ownership of the pipeline and pipeline structures and equipment) shall remain vested in or otherwise with the Company, and the State Parties relinquish all rights to take possession or otherwise claim ownership rights over such assets (except to the extent permitted under the provisions of the International Project Agreement).

## **ARTICLE X Consultation between State Parties**

### **Committee of Ministers**

1. There is hereby established a Committee of Ministers composed of the Relevant Minister of each State Party. The Executive Secretary of ECOWAS shall be invited to attend all meetings of the Committee of Ministers but shall have no voting right and his presence shall not be counted for purposes of determining the quorum required under this section.

### **Functions of the Committee of Ministers**

2. The Committee of Ministers has the following functions:
- (a) to consider the Report for the Authority on the operation and implementation of this Treaty and the International Project Agreement;
  - (b) to agree on any further measures which may be necessary or expedient to achieve the objectives of this Treaty;
  - (c) to discuss any matters arising from the implementation of this Treaty and the International Project Agreement;
  - (d) to endeavour to settle any dispute that arises under this Treaty or the International Project Agreement;

- (e) to review decisions of the Authority in accordance with section 13 of Article IV of this Treaty;
- (f) to amend or supplement by written instrument the powers and functions of the WAGP Authority; and
- (g) upon request of any State Party, to deliberate on:
  - (i) any matter that relates to the interpretation or implementation of this Treaty, the Enabling Legislation or the International Project Agreement;
  - (ii) the consequences of any measures announced or taken which do or could substantially affect the construction or the operation of the West African Gas Pipeline;
  - (iii) any action proposed in relation to any rights or obligations of the State Parties under this Treaty, the Enabling Legislation or the International Project Agreement; and
  - (iv) the future of the West African Gas Pipeline and its continued development and operations, in the event of termination of the International Project Agreement for any reason.

3. Each Relevant Minister shall be the representative of its State Party in dealing with the other State Parties in respect of this Treaty, the International Project Agreement and the West African Gas Pipeline.

### **Meetings of the Committee of Ministers**

4.(1) The Committee of Ministers shall meet at such times and places as it may determine but shall convene at the request of any of its members, the Authority or the Company.

(2) The Executive Secretary of ECOWAS shall be invited to attend meetings of the Committee of Ministers as an observer.

(3) The quorum of the Committee of Ministers shall be three (3) members or their alternates present; and a member may grant a proxy to another member to vote in its name.

(4) Decisions of the Committee of Ministers in the case of a review of a decision of the Authority in a matter provided for under section 2.(2)(a) of Article IV (*representation functions*) shall be subject to a unanimous vote of all the members, and in all other cases the decision of the Committee of Ministers shall be that of the majority.

(5) Each member of the Committee of Ministers has one (1) vote.

(6) Where any matter of an urgent nature is referred to the Committee of Ministers, it may deliberate on the matter via electronic means, subject to the establishment of written minutes.

## **ARTICLE XI**

### **Dispute Resolution**

#### **Settlement of Disputes between State Parties**

1. Where a dispute arises between two or more State Parties from the interpretation or application of this Treaty, the State Parties concerned shall endeavour to settle such dispute through consultations in accordance with section 3 of Article X.

#### **Reference to ECOWAS Court of Justice**

2. If the relevant State Parties are not able to reach an agreement within a period of six (6) months from the date the dispute arose, the dispute may be referred by any of the parties to the dispute to the ECOWAS Court of Justice, which shall finally resolve the dispute in accordance with the Rules of Procedure of the ECOWAS Court of Justice.

## **ARTICLE XII**

### **Depositary**

#### **Depositary**

1. This Treaty, of which the English and French texts are equally authentic, and its Exhibit, shall be deposited with the Executive Secretary of ECOWAS. Duly certified copies will be transmitted by the Executive Secretary of ECOWAS to the State Parties.

#### **Functions of the Depositary**

2. The functions of the Depositary are to:
- (a) keep custody of the original text of the Treaty and its Exhibit;
  - (b) prepare certified copies of the original text and transmitting them to the State Parties;
  - (c) receive any signatures to the Treaty and receive and keep custody of any instruments, notifications and communications relating to it;
  - (d) examine whether the signature or any instrument, notification or communication relating to the Treaty is in due and proper form;

- (e) inform the State Parties to the Treaty when the number of signatures or of instruments of ratification or acceptance required for the entry into force of the Treaty has been received or deposited;
- (f) inform the State Parties to the Treaty when any other state qualified to accede to the Treaty under Article XV has deposited its instruments of accession;
- (h) register the Treaty with the Secretariat of the United Nations; and
- (i) perform other functions specified in the provisions of the Vienna Convention on the Law of Treaties.

**ARTICLE XIII**  
**Ratification and/or Acceptance**

This Treaty shall be subject to ratification and/or acceptance by the State Parties. Instruments of ratification and/or acceptance shall be deposited with the Depository.

**ARTICLE XIV**  
**Entry into Force**

**Entry into force of Treaty for State Parties**

1. This Treaty shall enter into force and be binding on the State Parties as of the day that each of the State Parties have all deposited their instruments of ratification and/or acceptance.

**Entry into force of Treaty for acceding states**

2. For each State which accedes hereto, this Treaty shall enter into force on the day after the date of deposit by such state of its instrument of accession.

**ARTICLE XV**  
**Accession**

This Treaty shall be open for accession by states other than the State Parties on terms to be approved by the State Parties, from the date of the deposit of the last instrument of ratification and/or acceptance by the State Parties. The instruments of accession shall be deposited with the Depository.

**ARTICLE XVI**  
**Amendment**

- (1) Subject to the restrictions provided in section 2(3) of Article VII, any State Party may propose to the Depository an amendment to this Treaty, which shall be considered by the Committee of Ministers on behalf of the State Parties at a meeting arranged in accordance with Article X. Any recommendations arising from that meeting shall be made to the Head of State of each State Party.
- (2) Any amendments shall be adopted by unanimous decision of the State Parties.
- (3) Any amendment to this Treaty which is adopted by the State Parties shall enter into force upon the receipt by the Depository of the instruments of ratification, acceptance or approval by at least two thirds of the State Parties, or on such later date as may be specified in the amendment.
- (4) The Depository shall notify all of the State Parties of the entry into force of an amendment.
- (5) Any amendment or addition to the functions and powers of the WAGP Authority made by the Committee of Ministers under section 2.(3) of Article IV, and the establishment or amendment to the Rules of Procedure under section 10 of Article VI, shall not constitute an amendment to this Treaty under this Article XVI.

**ARTICLE XVII**  
**Termination and Withdrawal**

**Termination of Treaty and International Project Agreement**

- 1.(1) The State Parties shall be entitled to terminate or withdraw from this Treaty only upon or after the termination of the International Project Agreement.
- (2) In the event the International Project Agreement is terminated prior to its term in accordance with Clause 39 of the International Project Agreement, this Treaty shall remain in force for the time, and to the extent, required by any State Party or by the Company to assert any rights arising from, protect any interests endangered by or bring any proceedings resulting from termination of the International Project Agreement.
- (3) The termination of this Treaty in accordance with section 1(1) and 1(2) of this Article shall be subject to the prior consent of all State Parties (such consent not to be unreasonably withheld).
- (4) The withdrawal from the Treaty by any individual State Party in accordance with section 1(1) and 1(2) of this Article shall be subject to the prior consent of all other State Parties (such consent not to be unreasonably withheld).

## **Denunciation, withdrawal, suspension or other circumstances of termination of Treaty**

2. The State Parties shall not be able to require the denunciation, withdrawal, suspension or termination of this Treaty in any circumstances other than those contemplated in section 1(1) and 1(2) of this Article, including in the event of material breach, supervening impossibility of performance, fundamental change of circumstances, severance of diplomatic or consular relations, or any other causes recognised under international law.

### **ARTICLE XVIII**

#### **Reservations**

The State Parties have not expressed any reservations to any provision of this Treaty.

### **ARTICLE XIX**

#### **Transitional Arrangements**

#### **Termination of Heads of Agreement**

1. This Treaty supersedes the Heads of Agreement between the State Parties dated 5 September 1995 which is referred to in the recitals to this Treaty. Upon this Treaty coming in to effect, the Heads of Agreement (and any other agreement solely between the State Parties in relation to the West African Gas Pipeline) shall terminate.

#### **Transition of functions of Steering Committee**

2. All such functions and powers conferred on the WAGP Authority under this Treaty, the Enabling Legislation, the WAGP Regulations and the International Project Agreement which were previously exercised in each State Party by the Steering Committee established by the State Parties under article 4.1 of the Heads of Agreement shall cease to be exercised by the Steering Committee in each State Party and shall vest in the WAGP Authority as of the date that the WAGP Authority is empowered to exercise its authority within the State Parties in accordance with the provisions of this Treaty.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

Done in quadruplicate at Dakar, this 31 January 2003, each being drawn up in six (6) authentic texts in the English and French languages.

For the Government of the Republic of Benin:

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H.E. Mathieu KEREKOU  
President of the Republic

For the Government of the Republic of Ghana:

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H.E. John AGYEKUM KUFOR  
President of the Republic

For the Government of the Federal Republic of Nigeria:

---

H.E. OLUSEGUN OBASANJO  
President, Commander in Chief of the Armed Forces

For the Government of the Republic of Togo:

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H.E. GNASINGBE EYADEMA  
President of the Republic

**IN THE PRESENCE OF**

The Executive Secretary of ECOWAS

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Dr. Mohamed Ibn CHAMBAS

**EXHIBIT 1**  
**INTERNATIONAL PROJECT AGREEMENT**