

## **AGREEMENT**

### **Pursuant to Article 4(6) of the Joint Procurement Agreement to Procure an Auction Monitor**

This Agreement (the "Agreement") is made and entered into on [day] [month] 2018 by and between:

- the European Commission (the "Commission") on its own account and on behalf of the Member States who are parties to Joint Procurement Agreement to Procure an Auction Monitor (accordingly, the "Member States" and the "Joint Procurement Agreement"), represented for the purposes of this Agreement by Raffaele Mauro Petriccione, Director-General of the Directorate-General for Climate Action;

and

- the following members of the European Free Trade Association ("EFTA") ("EFTA States"):

- Iceland, represented for the purposes of this Agreement by ..., [person and entity appointed by the State (Ambassador to the EU/Minister of... etc)];

- the Principality of Liechtenstein, represented for the purposes of this Agreement by ..., [person and entity appointed by the State (Ambassador to the EU/Minister of... etc)]; and

- the Kingdom of Norway, represented for the purposes of this Agreement by ..., [person and entity appointed by the State (Ambassador to the EU/Minister of... etc)]... on the other hand.

**This Agreement is concluded pursuant to Article 4(6) of the Joint Procurement Agreement.**

## PREAMBLE

### WHEREAS:

- (1) The Joint Procurement Agreement entered into by and between the Commission and the Member States, as provided for in Article 26(1) and (2) of Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>1</sup> (the "Auctioning Regulation"), is in force as of 23 November 2011 and sets out in particular the practical modalities for the evaluation of the requests for participation or the tenders, the award of the contract, the law applicable to the contract and the competent court for hearing disputes.
- (2) Article 104a(2) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>2</sup> provides for the possibility for the European Union to conduct joint procurement procedures with the EFTA States or the Union candidate countries, if this possibility has been specifically provided for in a bilateral or multilateral treaty.
- (3) Consequently, Decision of the EEA Joint Committee NO [xx/xx of xxxx] amending Annex XX to the Agreement on the European Economic Area ("EEA Agreement")<sup>3</sup> provides for the possibility for the EFTA States to take part in the joint procurement.
- (4) Participation of Iceland, Liechtenstein and Norway in the joint action pursued through a joint procurement procedure and in the resulting appointment of a single auction monitor shall thus be underpinned by them becoming parties to the Joint Procurement Agreement.
- (5) Pursuant to Article 4(6) of the Joint Procurement Agreement each Member State authorises the Commission to sign on its behalf an agreement with a State acceding to the Union and allowing such a State to join the Joint Procurement Agreement, subject to the approval of the Joint Procurement Steering Committee of a Commission proposal to this effect. Solely for the purposes of this Agreement and in view of Article 104a(2) of Regulation No 966/2012 which refers to the participation in joint action under the same terms for EFTA states and Union candidate countries, the reference to the "State acceding to the Union" in Article 4(6) of the Joint Procurement Agreement shall be understood to refer to the EFTA states.
- (6) The Joint Procurement Steering Committee approved, pursuant to Article 41, the Commission proposal for allowing the EFTA States to join the Joint Procurement Agreement.
- (7) Nothing in this Agreement affects the rights and obligations of the Member States or the Commission under the Treaties.

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<sup>1</sup> OJ L 302, 18.11.2010, p. 1.

<sup>2</sup> OJ L 298, 26.10.2012, p. 1.

<sup>3</sup> OJ No L 1, 3.1.1994, p. 3; and EFTA States' official gazettes

PARTIES TO THIS AGREEMENT HAVE AGREED

on the terms below including the following Annex:

**Annex I** – Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures in accordance with Article 4(4)

## Article 1

### **Subject Matter**

This Agreement amends the Joint Procurement Agreement pursuant to Articles 4(6) and 41 of the latter agreement. Upon the entry into force of this Agreement, Iceland, Liechtenstein and Norway shall become parties to the Joint Procurement Agreement.

## Article 2

### **Terms of Coverage**

1. Iceland, Liechtenstein and Norway shall be bound, as of the entry into force of this Agreement, by the Joint Procurement Agreement in its entirety, including any Annexes thereto, save where this Agreement amends the Joint Procurement Agreement.
2. Iceland, Liechtenstein and Norway shall be bound, as of the entry into force of this Agreement, by all acts already adopted in connection with the Joint Procurement Agreement as of the date of entry into force of the Joint Procurement Agreement.
3. Terms "Member State(s)" and "Contracting Party (-ies)" used in the Joint Procurement Agreement shall be understood, as of the entry into force of this Agreement, to include Iceland, Liechtenstein and Norway.
4. Iceland, Liechtenstein and Norway shall not participate in the voting of the Joint Procurement Steering Committee, and shall not be taken into account for the purposes of reaching a common accord, qualified majority or simple majority in that Committee.

## Article 3

### **Amendments, Term and Termination**

1. Upon its entry into force in accordance with Article 4(4) this Agreement shall become an integral part of the Joint Procurement Agreement. The general terms of the Joint Procurement Agreement shall apply also to this Agreement save where this Agreement amends the Joint Procurement Agreement.
2. Any amendments to this Agreement shall only be made in accordance with Article 41 of the Joint Procurement Agreement and shall constitute changes to the latter agreement.

## Article 4

### **Signature and Entry into Force**

1. This Agreement shall be established and executed in the equally authentic linguistic versions set out in Annex IV of the Joint Procurement Agreement, each linguistic version being in an official language of the Union.
2. The Commission, on one hand, and Iceland, Liechtenstein and Norway, on the other hand, shall sign one original of this Agreement.
3. The Commission shall act as depository of this Agreement. It shall supply duly certified copies of this Agreement to each of the Member States as soon as practicable.
4. This Agreement shall enter into force 14 days following either the day on which the Commission, on one hand, and Iceland, Liechtenstein and Norway, on the other hand, signed this Agreement or the day on which Iceland, Liechtenstein and Norway submitted to the Commission the Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures, attached as Annex I, whichever is later.

Iceland, Liechtenstein and Norway may waive the 14-days waiting period for the entry into force of this Agreement by an according declaration made in its submission of Confirmation referred to in the first subparagraph.

## Article 5

### **Publication**

This Agreement and any amendments thereto shall be published in all official languages of the Union in the "C" Series of the *Official Journal of the European Union*.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Agreement.

Signed in \_\_\_\_\_, on \_\_\_\_\_

1) For the European Commission: \_\_\_\_\_

Raffaele Mauro Petriccione, Director-General of the Directorate-General for Climate Action

Signed in \_\_\_\_\_, on \_\_\_\_\_

2) For Iceland: \_\_\_\_\_

\_\_\_\_\_

Signed in \_\_\_\_\_, on \_\_\_\_\_

3) For Liechtenstein: \_\_\_\_\_

\_\_\_\_\_

Signed in \_\_\_\_\_, on \_\_\_\_\_

4) For Norway: \_\_\_\_\_

\_\_\_\_\_

Signed in \_\_\_\_\_, on \_\_\_\_\_

## Annex I

### **Confirmation of completion of national procedures for the approval of this Agreement or the absence of a need for such procedures in accordance with Article 4(4)**

**[Letter-head of authority representing [Iceland, Liechtenstein or Norway] for the  
purposes of this Agreement]**

European Commission  
Director-General  
Directorate-General for Climate Action  
[Address]  
Fax: [xxx]

**Re: Confirmation of completion of national procedures for the approval of the  
Agreement pursuant to Article 4(6) of the Joint Procurement Agreement to procure an  
auction monitor or the absence of a need for such procedures in accordance with Article  
4(4) of this Agreement**

Dear Sir/Madam,

We refer to Article 4(4) of the above-mentioned Agreement entered into between the  
Commission and [the] [Iceland] [Principality of Liechtenstein] [Kingdom of Norway].

#### **EITHER**

We hereby notify you that our national procedures for the approval of the above-mentioned  
Agreement were completed on [date].

#### **OR**

We hereby notify you that no national procedures are required for the approval of the above-  
mentioned Agreement by [the] [Iceland] [Principality of Liechtenstein] [Kingdom of  
Norway].

#### **[OPTIONAL]**

We hereby notify you that we waive the 14 day-delay provided for in Article 4(4) and we  
confirm that we are bound by the above-mentioned Joint Procurement Agreement as from the  
date of submission of this Confirmation.

Yours faithfully,

[Iceland] [Principality of Liechtenstein] [Kingdom of Norway]  
[National Authority]  
[Name, Function]  
[Address]  
Fax: [xxx]