

## **PARTICIPANT AGREEMENT**

### **TO THE ENVIRONMENTAL AGREEMENT ON NO<sub>x</sub> 2018–2025**

#### **Part I: Participation**

##### **1 Participation in the Environmental Agreement on NO<sub>x</sub> 2018–2025**

On 24 May 2017, the Construction Products Association, the Norwegian Fishing Vessel Owners Association, the Norwegian Seafood Federation, the Coastal Shipowners' Association, the Norwegian High-speed Craft Association, KS Enterprises, the Federation of Norwegian Aviation Industries, the Norwegian Hospitality Association, the Norwegian Fishermen's Association, the Norwegian Shipowners' Association, the Norwegian District Heating Association, the Federation of Norwegian Industries, the Confederation of Norwegian Enterprise, the Norwegian Oil and Gas Association and the Federation of Norwegian Coastal Shipping (hereinafter referred to as the "the Business Organisations") and the Ministry of Climate and Environment, on behalf of the Norwegian State, entered into the *Environmental Agreement Concerning Reduction of NO<sub>x</sub> Emissions for the Period 2018–2025*, hereinafter referred to as the "NO<sub>x</sub> Agreement 2018–2025".

The NO<sub>x</sub> Agreement 2018–2025 is a continuation of the 2008–2010 and 2011–2017 NO<sub>x</sub> Agreements which were signed on 14 May 2008 and 14 December 2010, respectively.

The Business Organisations have established the Business Sector's NO<sub>x</sub> Fund (hereinafter referred to as the "NO<sub>x</sub> Fund"), which supports the Business Organisations with fulfilling their obligations under the NO<sub>x</sub> Agreement.

By signing this Participant Agreement ("the Participant Agreement"), the enterprise joins the NO<sub>x</sub> Agreement 2018–2025. If the enterprise is subject to the Petroleum Activities Act, the operator will enter into the Participant Agreement on behalf of the right holders of each individual production licence, which for the purpose of this Agreement are thereby to be regarded as an enterprise.

Participation is confirmed through the NO<sub>x</sub> Fund issuing a Participant Certificate to the enterprise. The enterprise will then be committed to fulfilling the obligations and be granted the entitlements stipulated in the NO<sub>x</sub> Agreement 2018–2025 and the Participant Agreement as well as the decisions made by the NO<sub>x</sub> Fund in accordance with the Participant Agreement. At the same time, the enterprise will be granted an exemption from the payment of NO<sub>x</sub> tax in accordance with article 5.2 of the NO<sub>x</sub> Agreement 2018–2025.

Foreign enterprises can only become affiliated through a Norwegian representative, cf. section 3-19-13 of the Regulations of 11 December 2001 no. 1451 Concerning Special Taxes (hereinafter the Regulations on Special Taxes). When the Norwegian representative of a foreign enterprise enters into the NO<sub>x</sub> Agreement 2018–2025, the NO<sub>x</sub> Fund can also require the enterprises represented by the person in question to join the fund. The representative and

the foreign enterprise(s) he or she is representing shall be jointly and severally liable to the NO<sub>x</sub> Fund.

In the event of inspection, the Participant Certificate shall be presented to the tax authorities.

NO<sub>x</sub>-emitting units (e.g. ships, rigs, installations encompassed by a production licence on the Norwegian continental shelf, locomotives, airplanes, helicopters and industrial facilities) that belong to the enterprise must be registered with the NO<sub>x</sub> Fund with the unit's name and relevant registration number in order for the enterprise to be entitled to tax exemption for these units.

Any changes to the enterprise's portfolio of units must be registered with the NO<sub>x</sub> Fund on an ongoing basis.

## **Part II: The Enterprise's Relationship to the NO<sub>x</sub> Fund**

### **2 The enterprise's obligations vis-à-vis the NO<sub>x</sub> Fund**

By joining the NO<sub>x</sub> Agreement 2018–2025, the enterprise commits itself to fulfilling the following obligations vis-à-vis the Business Organisations and the NO<sub>x</sub> Fund:

- a) Pay the NO<sub>x</sub> Fund per kilo of NO<sub>x</sub> emissions, cf. article 3.
- b) Write an action plan/application regarding NO<sub>x</sub>-reducing measures for their own emission units, cf. article 4.
- c) Implement NO<sub>x</sub>-reducing measures for their own emission units, cf. article 4.
- d) Ensure that implemented measures that have been granted support from the NO<sub>x</sub> Fund during the period 2008–2025 are kept in operation during the period 2018–2025, cf. article 8.
- e) Report NO<sub>x</sub> emissions to the NO<sub>x</sub> Fund, cf. article 7.
- f) Be loyal to the NO<sub>x</sub> Fund, its statutes and the decisions the Fund makes pursuant to the Participant Agreement that affect the enterprise.

The enterprise's payment obligation to the NO<sub>x</sub> Fund shall enter into force at the same time as the tax exemption, cf. article 3 below. The Participant Certificate shall serve as grounds for enforcement of distraint.

Once the Participant Certificate has been issued, the enterprise may not unilaterally withdraw from the NO<sub>x</sub> Agreement 2018–2025.

### **3 Payment obligation to the NO<sub>x</sub> Fund**

The enterprise's payment obligation shall apply from the time at which a tax exemption has been granted to the enterprise. For enterprises that join the NO<sub>x</sub> Agreement 2018–2025 prior to its approval by the EFTA Surveillance Authority (ESA), the special provisions stipulated under article 5.2 of the NO<sub>x</sub> Agreement 2018–2025 shall apply. The Business Organisations are committed to ensuring that the NO<sub>x</sub> Fund grants credit on all claims for payment to the NO<sub>x</sub> Fund until such time as ESA decides that the tax exemption shall enter into force.

The enterprise's payment obligation to the NO<sub>x</sub> Fund shall cease to apply at the same time as the NO<sub>x</sub> Agreement 2018–2025, or upon the Participant Certificate being revoked, cf. article 9, or upon the cessation of this Participant Agreement, cf. article 12.

The payment obligation shall apply to the number of kilos of NO<sub>x</sub> emissions that have been reported in accordance with article 7.

When making payments to the NO<sub>x</sub> Fund, the Tax Payment Act will similarly apply to the extent it is applicable. The Board of the NO<sub>x</sub> Fund may formulate guidelines relating to payment.

Amounts paid are irrevocable and shall belong to the NO<sub>x</sub> Fund from the moment of payment. Neither the enterprise nor its legal pursuers have a claim as far as these amounts are concerned.

The rate per kilo of NO<sub>x</sub> emissions shall be determined by the Board of the NO<sub>x</sub> Fund, and the Fund is free to stipulate higher rates for certain types of industry upon consultation and agreement with the Business Organisation that represents the industry in question. The Fund will aim to keep the long-term development of the rate predictable. The NO<sub>x</sub> Fund will reduce the disparity between the rates that are used to determine the enterprises' payments to the fund according to the rates used during previous agreement periods. The NO<sub>x</sub> Fund shall consult the Business Organisations concerned prior to any rate changes. The Fund may at most increase the rate so that it corresponds to the rate stipulated in accordance with the Regulations on Special Taxes, if this is deemed necessary in order to fulfil the obligations laid down in the NO<sub>x</sub> Agreement 2018–2025.

Any rate changes shall enter into force from the date determined by the Board. The NO<sub>x</sub> Fund shall always notify the participant enterprise before the rate is changed. If a decision is made to increase the rate, notification shall at the latest be given three months before the new rate enters into force.

#### **4 Action plan, applications for NO<sub>x</sub>-reducing measures and the enterprise's emission reduction obligation**

The enterprise shall formulate an action plan for reducing NO<sub>x</sub> emissions from its own emission units. The action plan shall contain feasible and cost-effective measures for the relevant enterprise. The enterprise shall give priority to solutions that yield permanent and long-term NO<sub>x</sub> reductions.

A measure is feasible if it can be implemented in the relevant enterprise during the period lasting until 31 December 2025 without being contrary to the requirements laid down by the authorities which apply to the enterprise in question, including requirements to health, safety and environment (HSE). In order to be regarded as feasible, the measure must have been adopted by the enterprise in accordance with the general investment criteria that apply to the industry in question, including HSE requirements, regularity, future operating costs, and on the pre-condition that the applied-for support from the NO<sub>x</sub> Fund is granted.

A measure is cost-effective if the NO<sub>x</sub> reduction resulting from the relevant measure, and the value this has in the form of reduced NO<sub>x</sub> tax calculated over a three-year period, is large enough to cover the corporate costs in relation to implementing the measure. Such corporate

costs include the enterprise's fee after it has received support from the NO<sub>x</sub> Fund, as well as losses from reduced or temporarily ceased operations or changes in regularity, future operating costs that are not covered by the support from the NO<sub>x</sub> Fund, and other costs the enterprise incurs from the measure. Assessments of cost-effectiveness shall be based on the general investment criteria that apply to the industry in question.

When calculating the value of the measure in the form of a reduced NO<sub>x</sub> tax, cf. above, the currently valid tax rate imposed for NO<sub>x</sub> emissions, as stated in section 1 of the Storting's resolution, shall be used.

Applications for funding for measures triggered by the action plan must include the following information:

- Investment needs and the desired investment support required from the Fund
- Operating costs
- Other costs (e.g. costs related to production shutdowns or production delays)
- Description of the measure's duration and feasibility, including HSE considerations
- Description of the measure and the stipulated milestone plan for the implementation
- Estimated effect as measured in kilos of NO<sub>x</sub> per year
- Reporting obligations – sharing of experiences
- Pre-conditions and requirements (if any) for implementing the relevant measure

The NO<sub>x</sub> Fund can stipulate, either through guidelines or as determined on a case-specific basis, which information the enterprise is required to submit.

The action plan containing the permanent, feasible and cost-effective measures shall be drafted within a period of two years following the signing of this Participant Agreement. The enterprises are obligated to update their action plan every second year. If operating conditions so demand, the enterprise may stipulate a limited period of time for the implementation of the relevant measure. The action plan shall be retained by the enterprise and shall be submitted to the NO<sub>x</sub> Fund upon request.

The enterprise can apply for funding from the NO<sub>x</sub> Fund to implement measures to reduce NO<sub>x</sub> in their own emission units. In cases where the NO<sub>x</sub> Fund allocates support to one or more measures (cf. article 5) in line with the application, the enterprise has an obligation to implement the relevant measure.

If a decision to grant support from the NO<sub>x</sub> Fund contains requirements which deviate from the enterprise's application, the enterprise has no obligation to implement the measure in question.

## **5 The NO<sub>x</sub> Fund's processing of applications for financial support for measures**

The NO<sub>x</sub> Fund determines which measures are to be granted support on the basis of submitted applications. Permanent and cost-effective measures yielding the largest NO<sub>x</sub> reduction in volume shall be granted priority. The NO<sub>x</sub> Fund may seek assistance and advice from external experts when processing and prioritising applications.

The Board's decision to allocate funds will be incorporated into a standardised letter of approval along with any appendices that are deemed necessary.

As a rule, the funding will be paid out when the measure has been implemented and its effect on the annual emissions has been documented in accordance with the NO<sub>x</sub> Fund's rules for such documentation.

Measures must be implemented and reduce NO<sub>x</sub> during the period 2018–2025 in order to qualify for investment support.

The NO<sub>x</sub> Fund can provide support for necessary operating costs for the period until 31 December 2025, for example in order to purchase urea to operate SCR plants.

Support rates and the guidelines governing the allocation of support will be stipulated by the NO<sub>x</sub> Fund's Board and published on the Fund's homepage. Applications will be processed on an ongoing basis.

In special cases, the Fund's Board may grant an exception from the obligation to implement measures that are a consequence of the Fund's granting of support.

## **6 Requirement for a new application in the event of clearly incorrect action plans**

The NO<sub>x</sub> Fund may order an enterprise to submit a new action plan and application if the Fund finds that an application has been formulated on a clearly incorrect basis.

## **7 The enterprise's reporting of NO<sub>x</sub> emissions**

The enterprise shall report its emissions to the NO<sub>x</sub> Fund in accordance with the same rules that apply to filing a tax report for the NO<sub>x</sub> tax, cf. section 8-4-2-3 of the Regulations on Tax Administration.

If the affiliated enterprise has non-taxable emissions, the NO<sub>x</sub> Fund can require it to report non-taxable NO<sub>x</sub> emissions in accordance with the same rules as the taxable emissions.

The calculation and reporting of NO<sub>x</sub> emissions shall use the methods stated in article 2.2 of the NO<sub>x</sub> Agreement 2018–2025.

The NO<sub>x</sub> Fund can instruct the enterprise to provide the data that the calculations of their emissions are based on. The aim is to obtain the most reliable figures for emission projections and as a basis for calculating factors.

The enterprise shall report the same figures to the NO<sub>x</sub> Fund as it does to the Norwegian Tax Administration and the Norwegian Environment Agency, respectively.

The NO<sub>x</sub> Fund can order an enterprise to measure and verify its emissions as part of the efforts to document emission factors and the effect of the measures. Such measurements will have to comply with certain quality requirements laid down by the Fund. The enterprise may apply for financial support to cover the costs once the documentation has been presented.

The NO<sub>x</sub> Fund can order an enterprise to report its annual fuel consumption as part of the efforts to document activity level. The Fund shall determine the sectors to which this reporting obligation shall apply.

If the documentation provided contains confidential information, the enterprise in question shall take special care to notify the Fund and the Norwegian Environment Agency thereof.

## **8 Decisions on coercive fines and the revocation of a Participant Certificate**

In special cases, the NO<sub>x</sub> Fund can impose a coercive fine before a violation has been ascertained, in order to ensure sufficient pressure to fulfil the Agreement for an enterprise that is to implement and maintain the effect of measures during the Agreement Period. The coercive fine shall run from the date the possible violation commenced. The provisions relating to pre-determined coercive fines stipulated in section 73 of the Pollution Control Act shall apply correspondingly.

The NO<sub>x</sub> Fund can revoke an enterprise's Participant Certificate if the participant enterprise significantly violates its obligations laid down in this Agreement or the NO<sub>x</sub> Agreement 2018–2025.

The NO<sub>x</sub> Fund can first revoke the Participant Certificate on the basis of breach of contract if the enterprise fails to correct its non-compliance with the obligations stipulated under article 2 within 30 days after the NO<sub>x</sub> Fund has given written notification of this violation. If the NO<sub>x</sub> Fund has issued repeated notifications to the enterprise, a shorter deadline for compliance may be stipulated.

## **9 The effect of the revocation of a Participant Certificate in regard to the NO<sub>x</sub> Fund**

If the NO<sub>x</sub> Fund revokes the enterprise's Participant Certificate in accordance with article 8, the enterprise will as of that same day lose its entitlements that follow from the NO<sub>x</sub> Agreement 2018–2025 and this Participant Agreement. The enterprise will also have to repay all the support received from the NO<sub>x</sub> Fund if the support has not been spent on NO<sub>x</sub>-reducing measures.

## **Part III: The Relationship to the State**

### **10 Documentation**

The enterprise consents that the tax authorities and the environmental authorities, without being impeded by the non-disclosure obligation, are able to exchange information and documentation that is demanded as a part of the follow-up to the Agreement.

### **11 Obligation to pay NO<sub>x</sub> tax if the Business Organisations' obligation is not completely met**

The Norwegian Environment Agency shall control whether the environmental obligations in the NO<sub>x</sub> Agreement 2018-2025, formulated as emission ceilings for each of the periods stated in article 2.2 in the Agreement, have been complied with.

In the event the environmental obligation stated in article 2.2 is not fulfilled, a tax shall be paid according to the stipulations laid down in section 3-19-12 of the Regulations on Special Taxes.

If the total emissions encompassed by the Agreement are more than 3 per cent above the emission ceiling stated in article 2.2, a tax obligation will come into effect for the relevant period. For the period 2024–2025 (the final agreement period), a tax obligation will come into effect if the total emissions encompassed by the Agreement are higher than the emission ceiling stated in article 2.2.

If the Norwegian Environment Agency does not approve that the emission ceiling for a two-year period has been complied with, tax for which exemption has been granted shall be reported and paid within 18 July the year following the period in question. For tax that has not been paid within the payment deadline, interest rates shall be added pursuant to section 11-1 of the Tax Payment Act.

The NO<sub>x</sub> tax shall be paid for NO<sub>x</sub> emissions for the period when the obligation to pay NO<sub>x</sub> tax has been incurred. The rate shall be calculated according to the following formula:

$$\text{tax rate} = 15 \cdot X \cdot Y$$

X = the percentage-wise exceedance of the emission ceiling

Y = the tax rate stated in the Storting's resolution on a tax on NO<sub>x</sub> emissions

This calculation entails e.g. that if the total emissions encompassed by the Agreement are 4 per cent above the emission ceiling for a two-year period, the taxable enterprise in question must pay 60 per cent of the ordinary tax for its emissions for each of the two years.

The Norwegian Environment Agency shall calculate the percentage-wise exceedance of the emission ceiling (X), cf. article 4. The Norwegian Tax Administration shall decide the rate and announce its decision. The rate decided upon pursuant to this stipulation cannot exceed the tax rate stated in the Storting's resolution on a tax on NO<sub>x</sub> emissions.

## **Part IV: Concluding Provisions**

### **12 Duration**

The tax exemption shall cease to apply on 31 December 2025.

The enterprise shall participate in the NO<sub>x</sub> Agreement 2018–2025 until it ceases to apply on 31 December 2025, or until such time as the NO<sub>x</sub> Agreement 2018–2025 ceases to apply, if this should occur at an earlier date, cf. article 7.2 and 7.3 of the NO<sub>x</sub> Agreement 2018–2025. The effects of the Participant Agreement will cease to apply at the same time, albeit with the enterprise being obligated to contribute to the realisation of the NO<sub>x</sub> Fund's objective until the Fund's entire capital has been depleted. The enterprise's obligations pursuant to article 2b–f shall therefore continue to apply in these situations until the Fund's entire capital has been depleted.

The expiry of the NO<sub>x</sub> Agreement 2018–2025 does not affect the validity of the agreements between the NO<sub>x</sub> Fund and the enterprise or the validity of orders imposed on the enterprise in accordance with article 6 of this Agreement.

If the State and the Business Organisations enter into a new NO<sub>x</sub> agreement, the enterprise must – if it wishes to join – explicitly accept this by signing a new written participant agreement. This shall also apply if the NO<sub>x</sub> Agreement 2018–2025 is otherwise amended or altered in ways that affect the enterprise.

### **13 Conflicting provisions**

In the event of conflicting provisions between the Participant Agreement and the NO<sub>x</sub> Agreement 2018–2025, the provisions of the NO<sub>x</sub> Agreement 2018–2025 shall apply.

### **14 Disputes**

All attempts shall be made to resolve disputes between the Fund and the enterprise in an amicable manner, cf. also the loyalty obligation stipulated in article 2f of the Participant Agreement. The parties are obligated to conduct negotiations before the dispute is brought before the ordinary courts. If negotiations between the Fund and the enterprise do not succeed, the dispute shall be brought before the ordinary courts.

### **15 Completion of form and signature**

By sending in a signed Participant Agreement, the enterprise requests to become affiliated with the NO<sub>x</sub> Agreement 2018–2025 and to receive a Participant Certificate. Company confirmation and authorisation must be provided in order to document that the person signing is authorised to do so on behalf of the company.

The enterprise must join the NO<sub>x</sub> Fund through the fund's electronic portal ([www.nox-fondet.no](http://www.nox-fondet.no)), or alternatively submit a completed Participant Agreement to the e-mail address [post@nox-fondet.no](mailto:post@nox-fondet.no) or to the following address:

The Business Sector's NO<sub>x</sub> Fund  
P. O. Box 5250 Majorstuen  
N-0303 OSLO  
Norway

Name of enterprise: \_\_\_\_\_

Organisation number: \_\_\_\_\_

Postal address: \_\_\_\_\_  
\_\_\_\_\_

Invoice address (only for Norwegian enterprises): \_\_\_\_\_

E-mail address for invoices on e-mail (if the enterprise prefers invoices sent as PDF-attachments): \_\_\_\_\_

Do you prefer e-invoicing? (If yes, the NO<sub>x</sub> Fund will contact you):      Yes       No

Point of contact for the affiliation:

Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Phone: \_\_\_\_\_

Point of contact for reporting NO<sub>x</sub> emissions

Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Phone: \_\_\_\_\_

If you are a foreign enterprise, provide information about the Norwegian representative

The enterprise's name: \_\_\_\_\_

The point of contact's name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name in block letters