

## AGREEMENT

Between

Vestmannaeyjabær

Bàrustig 15

900 Vestmannaeyjum

(hereinafter referred to as the "**CLIENT**")

and

Studio Reykjavik ehf

Sudurlandsbraut 4

108 Reykjavik

(hereinafter referred to as the "**STUDIO**"),

and jointly hereinafter referred to as the "**Parties**".

WHEREAS:

CLIENT intends to commission STUDIO to realize a work of art (the "**ARTWORK**") by artist Olafur Eliasson (the "**ARTIST**") on the basis of the concept proposal that STUDIO presented to CLIENT on August 21<sup>st</sup> 2022 (the "**PROPOSAL**"). The PROPOSAL is attached to this **AGREEMENT** as **Exhibit A**.

The ARTWORK is a unique and site specific work of art for Heimaey (the "SITE"). The ARTWORK carries the working title "Wonderer's perspective".

NOW, THEREFORE, the Parties agree as follows:

**§ 1**  
**Subject**

STUDIO hereby offers to CLIENT to design and fabricate, the pavilion element and to design the path element of THE ARTWORK on the basis of the PROPOSAL and under the stipulations of this AGREEMENT. CLIENT accepts this offer.

**§ 2**  
**Obligations of STUDIO**

- 2.1 STUDIO shall design, fabricate, the pavilion element and design the path element of the ARTWORK created by ARTIST on the basis of the PROPOSAL. The PROPOSAL is an artistic concept which undergoes a process of review by engineering, fabricator, landscaping teams of STUDIO and by the ARTIST himself during realization; any relevant changes and/or adjustments to the PROPOSAL in this process will be presented to the CLIENT and mutually agreed upon.
- 2.2 STUDIO shall provide to CLIENT a Schedule for the production (the "PROJECT PLAN") (**Exhibit B**).
- 2.3 STUDIO shall provide to CLIENT any information which is necessary for the CLIENT to obtain approvals or permissions required to install and operate the ARTWORK at the SITE.
- 2.4 STUDIO shall provide to CLIENT a detailed Maintenance Manual for the ARTWORK which CLIENT shall apply in order to fulfil its obligation under section § 8 to this AGREEMENT. The Maintenance Manual shall not contain unreasonable or onerous or particularly burdensome obligations or provisions.
- 2.5 Studio shall artistically supervise installation of the pavilion element, design of the path element of the ARTWORK, advice and approve the design of infrastructural interventions supporting the access to the ARTWORK.

**§ 3**  
**Obligations of CLIENT**

- 3.1 CLIENT shall pay to STUDIO the Purchase Price under the conditions stipulated in section § 4 to this AGREEMENT

- 3.2 CLIENT shall, at its sole expense, obtain all necessary approvals, permissions and stamped engineering planning which are required to install and operate the ARTWORK at the SITE, including all travel permits and appropriate VISA for STUDIO. CLIENT shall provide to STUDIO copies of the certificates of the obtained approvals, invitations and permits before installation.
- 3.3 CLIENT shall, at its sole expense, prepare the SITE and shall take over the planning, structural calculation and preparation of the SITE in accordance with the PROPOSAL and the PROJECT PLAN.
- 3.4 CLIENT shall provide to STUDIO access to the SITE for the ARTWORK.
- 3.5 CLIENT shall install the pavilion element of the ARTWORK and be responsible for the planning and installation of the path element of the ARTWORK.
- 3.6 CLIENT shall participate in the TAKEOVER as stipulated in section § 5 to this AGREEMENT.
- 3.7 CLIENT shall provide a professional photographer and/or film crew to document the ARTWORK once installed. CLIENT shall ensure that the terms agreed on with the photographer grants STUDIO and third parties allowed by STUDIO the unlimited rights to use the images including for commercial use within the context of STUDIO and for publications without a fee and without limitation in time. CLIENT shall consult STUDIO in the instructions for photographing and/or filming the ARTWORK.

#### **§ 4**

##### **Payment of Purchase Price**

- 4.1 CLIENT shall pay to STUDIO a Purchase Price in the total amount of [REDACTED] (the "**PURCHASE PRICE**"). Payments shall be made by instalments and in accordance with the Milestones of the following Payment Schedule:
- a) Milestone 1: 30% [REDACTED] upon signing of this AGREEMENT.
  - b) Milestone 2: 30% [REDACTED] upon completion of technical drawings and before fabrication of the pavilion element of the ARTWORK.
  - c) Milestone 3: 30% [REDACTED] upon completion of fabrication of pavilion element of the ARTWORK and before shipping of the pavilion element of the ARTWORK to the CLIENT.
  - d) Milestone 4: 10% [REDACTED] upon TAKEOVER as defined in section § 5 to this AGREEMENT.
- 4.2 The PURCHASE PRICE shall include the costs for:
- design of ARTWORK, including necessary travel costs and insurance until TAKEOVER
  - production of pavilion element of the ARTWORK
  - artistic supervision for installation

- packing for shipment
- organization of shipment of the pavilion element of the ARTWORK
- shipment costs of ARTWORK,

The PURCHASE PRICE shall NOT include costs for:

- all costs according to clause 3.2
- customs clearance or customs duty and import tax
- storage costs longer than 7 days, which might appear after arrival of artwork on site.
- SITE preparation work according to PROPOSAL
- installation of pavilion element of the ARTWORK
- planning and installation of the path element of the ARTWORK.

The latter costs shall be borne by CLIENT.

- 4.3 STUDIO shall issue and submit to CLIENT an invoice upon completion of each Milestone as set forth in section 4.1 above.
- 4.4 The payment amounts are due and payable seven (7) business days after receipt of the corresponding invoice issued by STUDIO.
- 4.5 All amounts mentioned in this AGREEMENT are net amounts and do not include VAT or any further tax such as withholding tax. If VAT or any further tax are applicable, it shall be borne by the CLIENT.
- 4.6 Until receipt of a Milestone payment in full pursuant to section 4.1 above, STUDIO shall not be obligated to begin with the performance of the subsequent project phase and STUDIO shall be entitled to exercise a right of retention of its performance in the agreed schedule until STUDIO has received such payment.

## § 5

### TAKEOVER and transfer of ownership and risk

- 5.1 Upon arrival of the artwork crates on SITE and on dates agreed upon by the PARTIES, STUDIO together with the team organized by CLIENT starts installation of the Artwork. In case of any transportation defects, STUDIO decides together with the CLIENT and in coordination with the transport insurance whether the defects can be repaired on site or the ARTWORK has to be reproduced, all additional costs for repair and/or reproduction will be borne by the CLIENT and eventually settled with the transportation insurance. Upon completion of the installation of the ARTWORK at the SITE, STUDIO shall notify CLIENT that the installation of the ARTWORK is complete and ask CLIENT to take over the installation of the ARTWORK ("TAKEOVER"). STUDIO shall propose time and date for such

takeover meeting three days in advance before completion of installation of the ARTWORK.

- 5.2 On the meeting for TAKEOVER, STUDIO presents the installed ARTWORK free of defects and in compliance with the PROPOSAL including any agreed changes and amendments according to clause 2.1). CLIENT accepts and takes over the installation of the ARTWORK (TAKEOVER), unless the installation of the ARTWORK is not free of defects. The Parties shall issue a takeover protocol which shall be signed by both Parties. If CLIENT despite its obligation refuses to participate in the TAKEOVER or sign the takeover protocol, the installation of the ARTWORK shall be deemed as taken over by CLIENT at the takeover meeting if in compliance with the PROPOSAL and free of defects and TAKEOVER as taken place.
- 5.3 In case of defects of the installation of the ARTWORK the Parties will jointly determine and protocol the defects. If the defects are not caused by services on the part of CLIENT, STUDIO is obliged to rectify the defects within an adequate period of time and the Parties agree on another takeover meeting; clause 5.2 applies.
- 5.4 If the presence of STUDIO is needed to carry out repairs of defects caused by CLIENT, including insufficient preparation on site, the CLIENT shall bare all corresponding expenses of STUDIO.
- 5.5 Ownership of and title to the ARTWORK shall transfer to CLIENT when:
- 5.5.1 CLIENT has taken over the ARTWORK pursuant to section 5; and
- 5.5.2 STUDIO has received full payment of the Purchase Price.
- 5.6 The risk of damage or loss of and in connection with the ARTWORK lies with STUDIO and shall transfer upon TAKEOVER onto the CLIENT.
- 5.7 After execution of TAKEOVER STUDIO will hand over a certificate of Authenticity to CLIENT, which proves the CLIENT'S ownership (see §10.1).

## **§ 6**

### **Intellectual Property Rights**

- 6.1 To the extent that the ARTWORK and/or any deliverables associated with the services to be provided hereunder include any work of authorship entitled to protection under copyright laws, all copyrights and any right to commercially exploit the same shall remain with STUDIO.
- 6.2 STUDIO hereby grants CLIENT and its affiliates and successors upon TAKEOVER a perpetual, worldwide, non-transferable, non-sublicensable, non-exclusive license to use the ARTWORK in order to achieve the intended benefits of this AGREEMENT, subject to the CLIENT'S payment of all amounts under this AGREEMENT, notably,

- 6.2.1 to exhibit the ARTWORK in public;
- 6.2.2 to copy, reproduce, make, print, show to the public, issue to the public and/or publish photographic, filmed or videotaped reproductions, and other two-dimensional likenesses, of the ARTWORK, including any substantial part thereof, for any non-commercial public promotional purpose, subject to the STUDIO'S prior written approval of any printing, publication, issuing to the public and/or showing to the public of photographic, filmed or videotaped reproductions or other two-dimensional likenesses of the ARTWORK or any substantial part thereof. The Parties in advance will agree on a set of photographic, filmed or videotaped reproduction or other two-dimensional likenesses of the ARTWORK so that any of this pre-approved reproduction or likenesses can be used under this section. Any such use of the ARTWORK or any substantial part thereof for commercial purposes, including copying, reproducing, making, printing, showing to the public, issuing to the public and/or publishing of the ARTWORK or any substantial part thereof or reproductions thereof for merchandising purposes, requires the prior written approval of STUDIO and shall be subject to further AGREEMENT between the Parties.
- 6.2.3 to communicate the ARTWORK, including any substantial part thereof, in any form to the public for any non-commercial public promotional purpose, including the making available to the public of the ARTWORK by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them, notably on CLIENT'S website, subject to STUDIO'S prior written approval of such communication to the public of reproductions of the ARTWORK or any substantial part thereof. Any such use of the ARTWORK for commercial purposes, including communicating to the public of the ARTWORK or reproductions thereof for merchandising purposes, requires the prior written approval of STUDIO and shall be subject to further AGREEMENT between the Parties.
- 6.3 Notwithstanding the rights granted in this Section, the ARTIST reserves and shall retain the benefits of any provision of law known as morals rights or "droit moral" or any similar rights whether now existing or hereafter conferred under the laws of any jurisdiction and CLIENT shall respect the ARTIST'S moral rights. Particularly, but not limited to, CLIENT will respect the right to identify the ARTIST as the creator of the ARTWORK and all other works of authorship as included in the ARTWORK. CLIENT will name and identify the ARTIST as the creator of the ARTWORK and such works of authorship at all times with any exploitation of the ARTWORK and works of authorship with the following wording: "Copyright © *final title*, *year*, Olafur Eliasson for [...] (or other credit) – Photo: (Name of photographer)".
- 6.4 STUDIO and ARTIST shall be entitled to represent the ARTWORK in any media.

- 6.5 The ARTWORK is unique. The ARTIST or the STUDIO may however use the material, the technique and the concept of the ARTWORK to create other works of art, provided such future works of art are not identical to the ARTWORK.

## **§ 7**

### **Warranties**

- 7.1 STUDIO warrants, represents and covenants to CLIENT that:
- 7.1.1 The STUDIO holds all rights to the ARTWORK, free and clear of any liens, encumbrances, licences, or claims of any nature of third parties.
  - 7.1.2 The ARTWORK is unique. The ARTWORK shall be designed and fabricated under the artistic lead of the ARTIST in collaboration with any assistants of ARTIST.
  - 7.1.3 To the best of the STUDIO'S knowledge as of the date of execution of this AGREEMENT, the ARTWORK shall not infringe on any third party's intellectual property rights.
- 7.2 CLIENT warrants, represents and covenants to STUDIO that:
- 7.2.1 The ARTWORK can be installed on the SITE in accordance with the applicable local laws and regulations and that CLIENT has obtained all the necessary approval and permits.
  - 7.2.2 CLIENT shall refrain from any alteration of the ARTWORK.
  - 7.2.3 CLIENT shall refrain from any alterations of the Site that would affect the intended character and appearance of the ARTWORK without prior written approval by the STUDIO. If any such alteration is made without the express written approval of the STUDIO, STUDIO may take any action as STUDIO may choose in order to disavow the ARTWORK as well as claim appropriate damages.
  - 7.2.4 CLIENT acknowledges and agrees that it is the CLIENT'S responsibility to ensure the integrity of the ARTWORK by conducting regular condition inspections pursuant to section 8 to this AGREEMENT.
  - 7.2.5 CLIENT shall comply with the applicable safety laws and regulations and shall take any measures in order to fulfill its legal duty to maintain safety with regard to the ARTWORK.

## **§ 8**

### **Defects; Maintenance and Repairs; Relocation; Access**

- 8.1 If the ARTWORK becomes defective after TAKEOVER and the defect is proved to be existent already on the date of TAKEOVER 2, STUDIO is obliged to rectify the defect within a reasonable period of time. Any other right (reduction, rescission, compensation etc.) is excluded. The warranty period is two (2) years after the event of the TAKEOVER pursuant to section 5 to this AGREEMENT. This does only affect defects of the ARTWORK but not services on the part of CLIENT (see § 9.3).
- 8.2 CLIENT shall only grant public access to the ARTWORK if and as long as the ARTWORK is fully maintained and cleaned, free of any alteration, modification, distortion, defacement, deterioration, vandalism and visible damages, subject to normal wear and tear. CLIENT shall make all reasonable efforts to maintain the integrity of the ARTWORK. CLIENT is free to completely de-install the ARTWORK at any time.
- 8.3 After the TAKEOVER pursuant to section 5 to this AGREEMENT, CLIENT shall maintain and clean the ARTWORK in accordance with the Maintenance Manual provided by STUDIO pursuant to section 2.4 to this AGREEMENT. In case the Parties have agreed on the deliverance of replacement materials for the ARTWORK, the Maintenance Manual may stipulate specific storage obligations and CLIENT is obliged to use this material for maintenance.
- 8.4 CLIENT defines a person or institution ("OPERATOR"), who or which is responsible for the operation of the ARTWORK, and hand over its contact details to STUDIO. The OPERATOR has to be present at TAKEOVER and will receive an introduction into the periodical inspection of the work. One (1) year after TAKEOVER, pursuant to section 5 to this AGREEMENT, the ARTWORK has to be fully inspected and documented by OPERATOR according to guidelines of STUDIO. The documentation has to be provided to STUDIO 13 month after TAKEOVER the latest.
- 8.5 If the condition of the ARTWORK changes in a substantial way, becomes damaged at any point or requires repair or restoration, CLIENT shall notify STUDIO of such event, describe the extent of the damage, and give STUDIO the opportunity to carry out appropriate repairs. STUDIO then shall notify the CLIENT as to whether STUDIO desires to participate in the repair. If STUDIO wishes to carry out the repairs, STUDIO and CLIENT shall agree in good faith on a mutually acceptable plan for the repairs. All repairs shall be carried out in order to preserve the original appearance of the ARTWORK at the time of installation at the Site. CLIENT shall reimburse STUDIO for the reasonable costs incurred in connection with the repairs, unless the required repair or restoration is due to a fault of STUDIO. If CLIENT does not fulfill the above obligation and exposes the ARTWORK to substantial deterioration, STUDIO shall be entitled to request CLIENT to remove the ARTWORK from the Site.
- 8.6 The Work is site-specific. Any relocation of the Work from its original location at the Site requires STUDIO'S prior written approval. STUDIO shall not unreasonably withhold

such approval. If STUDIO raises concerns regarding the new location of the ARTWORK, the Parties shall agree in good faith on a solution which addresses the interests and concerns of both Parties. CLIENT shall give STUDIO the opportunity to perform or supervise the relocation of the ARTWORK. CLIENT shall reimburse STUDIO for the reasonable costs incurred in connection with the relocation.

- 8.7 Upon written request by STUDIO, CLIENT shall grant STUDIO reasonable access to the installed ARTWORK for the purpose of photographing and/or filming the ARTWORK.
- 8.8 Any sale or transfer of the ARTWORK requires the prior written notice to STUDIO and shall name the CLIENT'S potential successor or assign. CLIENT shall require any transferee to be bound by all of the terms of this AGREEMENT for the express benefit of STUDIO, the ARTIST and their successors and assigns.

## **§ 9**

### **Liability; Indemnification**

- 9.1 After the TAKEOVER pursuant to section 5 to this AGREEMENT, except in case of intent or gross negligence, any liability of the STUDIO shall be disclaimed. The same applies in case of slight negligence by agents or assistants in performance. However, the foregoing does not apply in case of a breach of fundamental contract obligations. To the extent the breach of contract is unintentional the liability for damages shall be limited to the typical predictable damage. Liability for culpable damage to life, body or health as well as liability under the German Act on Product Liability (Produkthaftungsgesetz) shall remain unaffected.
- 9.2 Subject to sections 9.1 and 9.2 above, CLIENT shall, at its sole cost and expense, to the fullest extent permitted by law, upon TAKEOVER of the ARTWORK pursuant to section 5 to this AGREEMENT, indemnify, defend, protect, and hold harmless STUDIO and its respective subsidiaries, members, managers, affiliates, employees, agents, successors and assigns ("Indemnified Parties") from and against any and all claims, demands, damages and liabilities incurred by the Indemnified Parties arising out of or in any way caused by (or alleged to be caused by), in whole or in part, in connection with the ARTWORK.
- 9.3 Provided that (i) the construction or preparation of the Site is delayed, (ii) such delay is not due to a fault of STUDIO, and (iii) STUDIO is therefore unable to install the ARTWORK at the Site within the agreed timetable of the PROJECT PLAN, CLIENT shall compensate STUDIO for any consequential costs and expenses, including but not limited to costs for storage.
- 9.4 The indemnity and defense obligations set forth in this section § 9 shall survive the termination of this AGREEMENT and shall not be limited by insurance requirements or by any other provision of this AGREEMENT.

**§ 10**  
**Authorization of the Work**

- 10.1 STUDIO shall provide to CLIENT a Certificate of Authenticity for the ARTWORK which shall be signed by the ARTIST and will certify the authenticity and uniqueness of the ARTWORK.

**§ 11**  
**Termination**

- 11.1 Unless otherwise provided by this AGREEMENT, each Party may only terminate this AGREEMENT for cause. CLIENT is not entitled to terminate this AGREEMENT for convenience nor is STUDIO.
- 11.2 If a termination for cause by either Party is justified, CLIENT shall pay STUDIO for all services rendered through the date of the termination on a pro rata basis according to the Payment Plan in section 4.1 to this AGREEMENT. All materials prepared so far will be handed over to the CLIENT upon payment. CLIENT is not entitled to use materials for completion of the ARTWORK.
- 11.3 The Parties' statutory right to claim further damages for a substantial breach of contract shall remain unaffected.

**§ 12**  
**Sustainability**

- 12.1 PARTIES acknowledge that the STUDIO aspires towards the highest possible sustainability standards and agree to prioritise sustainable solutions in all decisions concerning the realisation of the ARTWORK.
- 12.2 STUDIO aims to prioritise the most sustainable transport method for transporting materials needed to produce the ARTWORK and for transporting the ARTWORK to the SITE. The STUDIO will plan the realisation of the ARTWORK so as to avoid air freight. Delays not caused by the STUDIO shall not be compensated by the use of air freight transportation.
- 12.3 STUDIO will minimize travel as much as possible, opting for meetings via telephone or video conference when possible and prioritizing sustainable transportation methods when planning travels.
- 12.4 STUDIO will compensate CO2-emissions generated by the realisation of the ARTWORK.



**§ 13**  
**Miscellaneous**

- 13.1 All disputes arising out of or in connection with this AGREEMENT shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. Place of arbitration shall be Berlin, Germany. The language of the arbitration shall be English.
- 13.2 Any amendment or supplement to this AGREEMENT and any waiver of a right hereunder must be made by written instrument executed by the Parties and explicitly referring to this AGREEMENT, unless a stricter form is required by law. The foregoing provisions shall also apply with respect to a waiver of the requirement of the written form pursuant to this subsection.
- 13.3 Whenever possible, each provision of this AGREEMENT shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this AGREEMENT. The descriptive headings in this AGREEMENT are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this AGREEMENT. The use of the word "including" in this AGREEMENT shall be by way of example rather than by limitation.
- 13.4 The Parties expressly exclude the application of the United Nations Convention on the International Sale of Goods (CISG).

IN WITNESS WHEREOF, the Parties hereto have duly executed this AGREEMENT.

For and on behalf of Client:

Name:

Place:

Date:

Signature:



Jms Rökur

For and on behalf of Studio:

Name: Ólafur Eliasson

Place: Berlin

Date: 10.07. 2024

Signature:

[Signature]