

## Appendix 2

### Brevik CCS Project – Specific procurement instructions

#### Introduction

This appendix form an integrated part of the contract for Procurement Packages to CCS project Brevik between the Client and the Contractor (“**Contract**”), and sets forth certain contractual conditions that are to be incorporated in the contract due to mandatory requirements in the governmental support agreement for the CCS project (“**GSA**”) between the Client and the state of Norway (“**Government**”).

It is acknowledged that the Contract may not always be formulated in a manner resulting in a perfect alignment between the Contract and the requirements imposed on the Client pursuant to the GSA (and that the latter contains extensive mandatory administrative and practical requirements which the Client may be obligated to transfer to its subcontracts on a corresponding basis). In case an interpretation of the Contract should result in a discrepancy or ambiguity between the Contract and the GSA in a manner leaving some parts of the Client’s responsibility under the GSA excluded from the works or the Contract, the Contractor shall following the Client’s written instructions from time to time be obligated to comply with such instructions in good faith. In case such instructions lead to cost incurred or a delay in the achievement of completion under the Contract, VO procedures shall apply accordingly.

#### Clause 1 Obsolete

#### Clause 2: Free market technology

*The Contractor shall, to the extent relevant following the Client’s instructions from time to time, render such technology that is directly or indirectly developed pursuant to the Contract available for sub-licensing on the EEA market on commercial terms during an indefinite period of time. All potential interested parties within the EEA area shall be allowed the same opportunity to sub-license such technology on objectively reasonable and non-discriminatory commercial terms and conditions.*

#### Clause 3: Benefits realisation and knowledge-sharing

*3.1 The Government (including government agencies or state-owned enterprises) may take initiative to establish a network for knowledge sharing or similar for carbon capture and storage projects. The Contractor shall if so instructed by Client participate to a reasonable extent in and contribute to such networks, including by sharing knowledge and experiences from the project and the works undertaken pursuant to the Contract.*

*3.2 The Contractor shall in good faith cooperate with the Client for the purpose of complying with the GSA, including to at all times and as per Client’s instructions provide its reasonable assistance to Client in the preparation of (i) profit-taking and knowledge-sharing reports, as well as experience reports, and (ii) final reports.*

**Clause 4: IPR infringement**

*The Contractor must:*

- i. notify Client in writing as soon as Contractor becomes aware of any suspected, threatened or actual infringement of any intellectual property rights arising by reason of this Contract, the performance of the works or use of the works by the Client; and*
- ii. if so instructed by Client (in its own discretion):*
  - (a) either:*
    - a. modify the works or its performance or any other deliverable by Contractor under the Contract, or the affected part thereof, so that it no longer infringes the intellectual property right concerned;*
    - b. replace the affected part of the works so that it no longer infringes the intellectual property right concerned;*
    - c. remove the affected part of the works and compensate Client for any cost, loss, expense or damage incurred by Client as a result, including any cost, loss, expense or damage incurred by Client as a result of any cost, loss, expense or damage incurred by a third party (including the Government); or*
    - d. obtain, at no cost to Client, the right for Client to continue to use the affected works in the manner contemplated by this Contract, and any such modification, replacement, removal or acquisition will not constitute a variation, nor will it entitle Contractor to any extension of time;*
  - (b) indemnify, defend, protect and hold harmless, at Contractor's cost, Client and its affiliates (as the case may be) from and against any claim for infringement of any intellectual property rights arising by reason of the performance of the work or the ownership or use of the works or any other Contractor's deliverable by Client or its affiliates;*
  - (c) provide all reasonable assistance Client may request to protect any intellectual property rights created as a result of the works undertaken pursuant to the contract and Client's or Contractor's pre-existing intellectual property rights; and/or*
  - (d) if the infringement arises after handing-over of the works, if so instructed by Client, re-perform any tests previously performed following any such modification, replacement or removal under this Clause and the guarantees according to the Contract shall recommence in relation to the modified, replaced or removed parts of the works.*

**Clause 5: Termination and loss mitigation****5.1 The Client's right to terminate the Contract due to GSA expiry and similar events**

*Client shall be entitled to terminate the Contract with immediate effect by written notice to Contractor in the event that (i) the GSA is terminated or expires, for any reason, or (ii) the completion of the CCS Facility is cancelled in accordance with the terms of the GSA.*

*In the event of a termination or cancellation according to the above, Contractor shall be entitled to compensation for such portion of the contract price that correspond to the value of work performed up until the date of termination, and in addition compensation for direct, reasonable and verified costs incurred due to the termination.*

*The Contractor shall include a corresponding right to termination/cancellation in all contracts with suppliers or sub-suppliers throughout the Support Period.*

## *5.2 The Client's right to terminate the Contract due to breach of contract and similar events*

*Client is further entitled to terminate the Contract with immediate effect by notifying Contractor when:*

- a) Client has become entitled to be paid maximum liquidated damages, but at the earliest after 67 Days of delay, or*
- b) Contractor is in substantial breach of the Contract, or*
- c) Contractor becomes insolvent or stops his payments, or*
- d) there are substantial deviations from the HSE requirements according to the Contract. The same applies in case of repeated deviations from the HSE requirements, if Contractor has failed to implement necessary correcting measures immediately after having received a notification from Client.*

*With the exception of minor and excusable deviations, the following circumstances shall always be deemed as a substantial breach of the Contract.*

- a) Failure to comply with the requirements for HSE, ethics and social responsibility;*
- b) failure to comply with provisions on auditing;*
- c) failure to implement a change order pursuant to Clause 31 of NS8405;*
- d) failure to keep project accounts;*
- e) failure in relation to the insurance terms;*
- f) failure to comply with the provisions on intellectual property rights or know-how sharing; or*
- g) assignment, pledging or mortgaging of the Contract unless expressly permitted pursuant to the terms therein.*

*Upon termination of the Contract, Client is entitled (but not obligated) to take over from Contractor whole or part of the works, materials, subcontracts, documents and*

*other rights necessary to enable Client to complete the works, either by itself or with the assistance of others.*

*Contractor is entitled to be paid for the part of the work performed and for plant and equipment taken over by Client corresponding to the value for Client of such Work and taken over plant and equipment, less any amounts due from Contractor to Client.*

*When the Contract is terminated due to Contractor's breach of the Contract, Client shall also be entitled to present the following claims:*

- a) damages for delay in the form of liquidated damages, calculated on the basis of the number of days by which the agreed completion date would have been exceeded if Contractor had completed the works.*
- b) damages for defects, other breaches of contract and breach of guarantees.*
- c) any cost, loss or damage incurred as a result of the breach of contract and the termination (including for the avoidance of doubt any cost, loss or damage incurred by Client in relation to the Government pursuant to the GSA), subject to the limitations of liability and exclusion of liability.*

### **5.3 Mitigation of losses**

*The Contractor is obligated to mitigate any loss and all costs that the Contractor will claim covered by the Client, to the extent possible. In assessing whether a loss could have been mitigated, the starting point shall be what in the Contractor's reasonable assessment appeared as possible at the time.*

*The Contractor is obligated to include corresponding obligations to mitigate losses in all contracts with suppliers and sub-suppliers.*

## **Clause 6: Compliance**

*6.1 Contractor shall at all times comply with Norwegian laws and regulations and such basic requirements for human rights, labour rights, ethics, social and environmental responsibilities that are set forth in key UN and ILO conventions.*

*6.2 All work shall be pursued in compliance with internationally recognized fundamental environmental, labour and social standards referred to in HeidelbergCement's Supplier Code of Conduct, including as the case may be amendments implemented from time to time with respect to compliance related terms without any material effect on Contractor's ability to perform the works, available inter alia at [www.heidelbergcement.com](http://www.heidelbergcement.com). Contractor shall comply with HeidelbergCement's Supplier Code of Conduct in every respect.*

*6.3 Contractor represents and warrants that:*

- (a) it will at all times comply with all regulations prohibiting bribery, corruption, money laundering, extortion and tax evasion, to the extent such*

*regulations could reasonably be presumed to be applicable to Contractor and/or Client, including at all times all such regulations enacted, administered, imposed or enforced by the European Union or the U.S. Government;*

- (b) neither itself nor any of its employees, assignees or other representatives, directly or indirectly has or will (i) promise, offer, pay, solicit or accept a promise of or request for bribes or kickbacks of any kind; (ii) utilize other techniques, such as subcontracts, purchase orders or consulting agreements to channel payments or other benefits to government officials, to employees of Client or to their relatives or business associates, with the intention to influence or induce the referred owner or employee to use his or her influence to assist in obtaining or retaining business or securing any improper advantage;*
- (c) it shall strictly comply with and adhere to all regulations pertaining to (i) import and export controls of strategic or sensitive items such as for example dual-use items and items on the U.S. Commerce Control List, and (ii) international trade and/or economic sanctions, that could reasonably be presumed to be applicable to Contractor and/or Client, including at all times all such regulations enacted, administered, imposed or enforced by the United Nations Security Council, the European Union or the U.S. Government (jointly “**Trade Restrictions**”);*
- (d) it has not and shall not, whether directly or indirectly through an affiliate, third party or otherwise, (i) sell, provide, export, re-export, transfer, purchase, lease, lend, consign or otherwise acquire, release or dispose of any products or services under this Contract in violation of any Trade Restrictions, (ii) provide financial assistance to, enter into agreement or arrangement with or otherwise deal with any person or entity that is, or is owned or controlled by persons that are, the targets of any blocking or asset freezing measures under Trade Restrictions (“**Sanctioned Persons**”); and (iii) in a diligent and appropriate manner, prior to entering into any agreement or dealing, verify that any person with whom Contractor intends to do business in respect of any products or services under this Contract (including without limitations sub-suppliers, Subcontractors, distributors, agents and dealers), is not a Sanctioned Person; and*
- (e) it is not (i) a Sanction Person nor (ii) directly or indirectly managed, owned or controlled by a Sanction Person.*

*6.4 Contractor undertakes to promptly disclose to Client together with all relevant facts any directly or indirectly concluded, reasonably suspected or alleged violation of Article 6.3 (a)-(e) above.*

*6.5 The Parties agree that any breach of this Article 6 that has or can reasonably be assumed to cause a materially adverse effect for Client shall be considered as a material breach of the Contract.*

**Clause 7: Book keeping and audit rights**

*7.1 Throughout the time for completion, Contractor shall keep separate project accounts for all costs related to the work and the Contract. Client and its representatives or agents and the Government shall at any time be allowed full and unrestricted access to Contractor's project accounts at a detail level enabling Client or Government, as the case may be, to determine whether Contractor is entitled to payment in accordance with the Contract (i.e. (i) milestone achievement verification documentation for lump-sum parts of the contract price, and (ii) relevant terms of subcontracts, cost verifications, site diaries and support documentation with respect to variable portions of the contract price and for changes/variations.*

*7.2 Financial information that, in Contractor's opinion, constitutes trade secrets shall be explicitly designated as such. Client shall be responsible to ensure that such information is handled in a satisfactory manner and keep secret in accordance with section 19 first paragraph b) of the Public Administration Act (Nw: Forvaltningsloven).*

*7.3 The project accounts, including all underlying documentation, shall be safely stored during a period of thirteen (13) years after the completion of the CCS Facility pursuant to the GSA.*

*7.4 Payment shall not affect Client's audit rights. If charges are proven incorrect, then an adjustment shall be made, whether or not this is in the favour of Contractor.*

*7.5 The Client and the Government (including their respective agents and representatives) shall at all times be given unlimited audit rights into any documentation or information relating to the Contract or the work.*

**Clause 8: Dispute Resolution and Governing Law**

*8.1 The Contract shall be governed by and interpreted in accordance with Norwegian law, without recourse to its conflict of laws principles.*

*8.2 Disputes that may rise in connection with or as a result of the Contract shall first be sought resolved amicably by negotiations between the Parties.*

*8.3 Disputes arising from the Contract, where the Parties fail to come to an amicable agreement, shall be decided by the ordinary courts.*

**Clause 9: Public access of information**

*Client or the Government is entitled to disclose and make public any documentation or information included in or related to the work, with the exception of Contractor's pre-existing intellectual property rights and trade secrets, or as otherwise explicitly agreed in the Contract or agreed in writing between the Parties provided that such exemption from public disclosure is warranted pursuant to mandatory law. Information that, in Contractor's opinion, constitutes trade secrets must be designated as such when provided to Client.*



**Clause 10: Information-sharing**

*Unless explicitly set forth in the Contract, Client is unrestricted to share any documentation or information included in or related to the work with the Government (including its agencies or state owned enterprises and third parties engaged by the Government within the CCS project).*

**Clause 11: Confidentiality**

*With the exceptions stated in Clause 9 and 10 above, information exchanged between the Parties in relation to the Contract shall remain confidential and not be transferred to third parties without the other Party's prior written consent, unless such information:*

- i. was already known to the Party in question at the time the information was received;*
- ii. is or becomes publicly available without this being due to a Party's breach of contract, including information that is public pursuant to the Freedom of Information Act (Nw: Offentlighetsloven);*
- iii. is received by a third party in a lawful manner without any duty of secrecy towards the other Party;*
- iv. is required to be shared with a public body according to law or regulation (including stock exchange regulation);*
- v. is ordered to be shared with a third party by a court or other public authority; or*
- vi. is on a strict need-to-know basis provided by Client to a third party for the purpose of tendering, planning, preparing for or performing services on the works, provided that Client ensures that such third party is bound by a duty of confidentiality that is no less stringent than the terms of this Clause.*

*The duty of confidentiality under this Clause lapses fifteen (15) years after the completion of the CCS facility pursuant to the GSA.*

**Clause 12: Media relations**

*Unless to the extent explicitly allowed pursuant to the Contract, Contractor shall not publish information concerning the work or the Contract without Client's written approval, which shall not be unreasonably withheld.*

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