

DRAFT 19 August 2020

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**ENGINEERING, PROCUREMENT AND CONSTRUCTION  
CONTRACT**

dated [date]

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NORCEM AS  
and  
[CONTRACTOR]

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regarding  
Flue gas system adaptations for a carbon capture facility at the Brevik cement plant, Norway

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This **CONTRACT** (“**Contract**”) is on the date set forth below made by and between:

- (1) **Norcem AS**, Reg. No. 934 949 145, a limited liability company incorporated under the laws of Norway (“**Company**”); and
- (2) [**Contractor**], Reg. No. [XX], a limited liability company incorporated under the laws of Norway (“**Contractor**”):  
  
(each a “**Party**” and jointly the “**Parties**”).

#### **BACKGROUND**

- A. Company is active in the cement production and supply market in Norway and is indirectly a wholly-owned subsidiary of HeidelbergCement AG, one of the largest construction material suppliers in the world.
- B. Contractor is a market-leading supplier of engineering, equipment and service solutions in the cement industry.
- C. Driven by the global necessity to reduce CO2 emissions from industrial facilities, the government of Norway has identified Company’s cement production plant in Brevik, Norway as a suitable location to construct and implement a full-scale carbon capture demonstration facility in a normal production environment.
- D. Subsequently, the Government has through Gassnova AS granted Company subsidies for the performing of (i) initial concept and feasibility studies concluded in September 2017 by means of a DG2 report with document no. NC02-NOCE-A-RA-0011, and (ii) an in-depth front-end engineering and feasibility study which was concluded on 31 October 2019 by means of Company’s FEED Study (DG3) with document no. NC03-NOCE-A-RA-0001.
- E. The abovementioned studies have been conducted by *inter alia* Contractor on behalf of Company. According to the studies in question, it has been concluded that the Brevik Facility is suitable for the construction of a full scale demonstration carbon capture and storage facility.
- F. Following negotiations, Company and the Government have entered into a financial support agreement for the Project, according to which Company is (i) liable for the timely and correct carrying-out and completion of the CCS Facility in a fit for purpose status and furthermore within the agreed budget, and (ii) obligated to implement certain terms and conditions in relation to its sub-suppliers.
- G. In order for the CCS Facility to function properly, certain adaptations of the pre-existing cement plant flue gas system need to be implemented. Following negotiations, Company has selected Contractor as the supplier for these adaptations.
- H. In light of the above, the Parties have agreed the following terms and conditions.

## GENERAL PURPOSE

The CCS Facility is a landmark and first-of-its-kind project aiming to contribute to the national and international knowledge of industrial carbon capture and storage solutions. A fundamental purpose of the Project is thus to facilitate technology development and learning effects on a global level, as well as experience and knowledge sharing, nationally and internationally, with respect to carbon capture technology, and to contribute to cost reduction and maturing of the national and international market for carbon capture and storage management.

The Parties shall at all times cooperate loyally with each other and with all Project Contractors as well as with the Government to the extent required to fulfil the overall purpose of the Project as stated in or inferred from the Contract or the GSA, and shall keep each other fully informed of all circumstances, events and deliberations relevant for the Project taken as a whole.

Any unforeseen challenges that may arise pursuant to the Contract shall be resolved jointly in good faith, with due haste and on basis of sound and reasonable commercial considerations, and always in consideration of the overall purpose of the Project as stated in or inferred from the Contract or the GSA.

The Contract is based on the Norwegian Total Contract 15 (NTK 2015). Due to the unique challenges and complexities inherent with the Project, NTK 15 has been developed and amended in project specific respects as well as due to obligations pursuant to the GSA. It is agreed that any such amendments and additions in these Conditions of Contract shall be valid and binding, even if not designated as amendments or additions.

## 1. DEFINITIONS

The following definitions shall apply for the Contract (whereas any singular form shall be given the correlative meaning as the plural, and vice versa, and the same shall apply for any other grammatical form of a defined term);

“**Acceptance Certificate**” means a document to be issued by Company in accordance with Article 23.5, when the Work has been completed;

“**Acceptance Test**” has the meaning defined in Appendix A;

“**Affiliated Company**” means the parent company of one of the Parties or any company which, according to the Norwegian Public Limited Companies Act (Allmennaksjeloven) Section 1-3, shall be regarded as a subsidiary company of the parent company or of a party to the Contract;

“**Background Rights**” means all Intellectual Property Rights held (whether owned or licensed) by each Party prior to entering into the Contract or developed by or on behalf of a Party independently of this Contract (whether developed during, before or after the Contract Period), including what has been developed as part of the Concept Studies and the FEED;

“**CCS Facility**” means the full-scale carbon capture and storage demonstration facility which is to be constructed at the Site;

“**Commencement Date**” shall mean the date when the GSA becomes valid and binding between Company and the Government;

“**Company**” has the meaning set forth in the preamble;

“**Company’s Deliverables**” shall mean such items and services that are to be provided by or on behalf of Company according to Appendix F;

“**Company Group**” means Company, its Affiliated Companies, Company’s other contractors and their contractors and subcontractors, to the extent they are involved in the Project and the employees of the aforementioned entities;

“**Company’s Representative**” means the person who at any time is appointed in accordance with Article 3.1 to act on behalf of Company;

“**Completion Certificate**” means a document to be issued by Company in accordance with Article 19.3 when the Work, with the exception of guarantee work, is completed;

“**Contract Documents**” has the meaning stated in Article 2.1;

“**Contract**” means these Conditions of Contract and Appendices as stated in Article 2 and, as the case may be, a separate form of agreement;

“**Contract Object**” means the flue gas system modification works described in Appendix A, which Contractor shall design, procure, construct, erect, install, commission, test and complete in a fully functional and ready-to-use status according to the Contract, together with all parts thereof;

“**Contract Period**” shall mean the period of time between the Commencement Date and the date for Company’s execution of the Completion Certificate;

“**Contract Price**” means the total sum payable to Contractor in accordance with Appendix B, as that sum is increased or decreased in accordance with the provisions of the Contract;

“**Contractor**” has the meaning set forth in the preamble;

“**Contractor Group**” means Contractor, Affiliated Companies participating in the Work, Subcontractors and their contractors and subcontractors, and the employees of the aforementioned entities;

“**Control**” means (i) the direct or indirect holding of more than 50 per cent of the shares, or voting rights, in an entity, or (ii) the ability, directly or indirectly, to direct the direction of the management or policies of a person, whether through ownership, agreement or otherwise (the term “Controlling” shall have the correlative meaning);

“**Day**” means a consecutive calendar day;

“**Deliverables**” means the Contract Object and all documentation which Contractor is obliged to deliver under the Contract;

“**Delivery Date**” means the date for delivery of the Contract Object as set out in the Contract Schedule, or as varied in accordance with the provisions of Article 12 to 16;

“**Delivery Protocol**” means a document to be concluded by both Parties in accordance with Article 19.2 upon delivery of the Contract Object;

“**Disputed Variation Order**” means a document issued in accordance with Article 16.2;

“**Force Majeure**” means an occurrence beyond the control of the Party affected, provided that such Party could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome it or its consequences;

“**Government**” means the government of Norway;

“**GSA**” means a grant support agreement which is to be entered into between Company and the Government for the implementation of the Project (including its schedules and sub-schedules);

“**Guarantee Period**” means such period as stated in Article 23.2;

“**Intellectual Property Rights**” means all intellectual property rights, whether registered or unregistered, including but not limited to copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent and patentable rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields, including also rights in all applications to register, and renewals and extensions of, such rights to any of the foregoing;

“**Materials**” means all equipment and materials required for the Work, other than working equipment;

“**Mechanical Completion**” is defined in Appendix A;

“**Operating Period**” shall mean a period commencing upon Company’s execution of the Completion Certificate and expiring on the earlier of (i) a period of 25 (twentyfive) years thereafter, (ii) when Company permanently decommissions the CCS Facility, or (iii) the GSA expires, for any reason;

“**Project**” means any and all work and activities to be undertaken by Company and the Government pursuant to the terms and conditions of the GSA (including without limitation works and activities by Project Contractors and Contractor);

“**Project Contractor**” shall mean such Third Party that has entered into a contract with Company, the Government or their respective subcontractors for the performance of works or activities within the Project other than the Contract Object (for clarity excluding Contractor and Subcontractors);

“**Project Rights**” means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of the Contract by or on behalf of Contractor (including all Intellectual Property Rights attributable to the Contractor’s or any Subcontractor’s design of the Contract Object), however excluding Background Rights;

"**Site**" means such areas in Company's cement plant in Brevik, Norway, where the Work is to be performed.

"**Subcontract**" means an agreement entered into between Contractor and a Subcontractor, for the supply of goods and/or services in connection with the Work;

"**Subcontractor**" means a Third Party who has entered into an agreement with Contractor, for the supply of goods or services in connection with the Work;

"**Third Party**" means any party or person, whether physical or legal, other than Company Group and Contractor Group;

"**Trade Secrets**" means information on technical facilities and procedures, as well as operating or business conditions that will be of competitive importance to keep confidential for the sake of the Party concerned, however excluding any Project Rights;

"**Variation Order**" means instruction of Variation issued in accordance with Article 14;

"**Variation Order Request**" means a request submitted by Contractor in accordance with Article 16.1;

"**Variation to the Work**" means a variation to the Work, Scope of Work, Contract Schedule, Company's Documents, Company's Deliverables and Contractor's Specification made in accordance with the provisions of Article 12 to 16;

"**Work**" means all work which Contractor shall perform or cause to be performed in accordance with the Contract, and any and all responsibilities or obligations of Contractor pursuant to the terms and conditions of the Contract.

## 2. CONTRACT DOCUMENTS

2.1 The contract documents listed below, and any document referred to or incorporated therein, form part of the Contract ("**Contract Documents**"). In case of conflict or contradiction between the Contract Documents, they shall take priority between each other in accordance with the following sequence:

1. These Conditions of Contract
2. Appendix A: Scope of Work
3. Appendix B: Compensation
4. Appendix C: Contract Schedule
5. Appendix E: Company's Documents
6. Appendix F: Company's Deliverables
7. Appendix G: Insurances
8. Appendix H: Subcontractors



9. Standard Forms of Guarantees

- (i) Appendix J: Standard Form of Bank Guarantee
- (ii) Appendix K: Standard Form of Parent Company Guarantee

10. Appendix D: Administration Requirements

11. Appendix I: Contractor's Specification

2.2 References made in the Contract to the appendices listed in Article 2.1 are references to the content of the specific Appendix referred to, including any variations made in accordance with the provisions of Article 12 to 16.

2.3 Subject to the order of priority set forth above, the Contract Documents are intended to be mutually correlative and mutually explanatory and any act or item required to be performed or provided by Contractor in one Contract Document and not mentioned in another shall be the responsibility of Contractor at no additional cost or expense for Company, or any right to an extension of time, and without regard to the order of precedence of the respective Contract Documents.

2.4 In the event of a conflict, discrepancy, inconsistency or ambiguity between the Contract Documents that is not resolved by means of the order of priority set forth in Article 2.1 above, such conflict, discrepancy, inconsistency or ambiguity shall be resolved by means of the following interpretation principles:

- (i) In the event of a conflict, discrepancy, inconsistency or ambiguity between or among technical requirements, the most stringent requirement shall apply.
- (ii) Subject to the foregoing; in case of conflict or contradiction between Contract Documents within the same level of priority, functional and general requirements shall take priority over technical and specific requirements.

2.5 It is acknowledged that the Contract Documents may not always be formulated in a manner resulting in a perfect alignment between the Contract and the GSA. In case an interpretation of the Contract in accordance with this Article 2 above should result in a discrepancy or ambiguity between the Contract and the GSA in a manner leaving some parts of Company's responsibility under the GSA excluded from the Work or from Contractor's obligations pursuant to the Contract, Contractor shall be obligated to perform and/or implement a corresponding Variation of the Contract following a Variation Order from Company.

**3. REPRESENTATIVES AND PERSONNEL OF THE PARTIES**

3.1 Prior to commencement of the Work each Party shall appoint a representative with authority to act on its behalf in all matters concerning the Contract, and appoint a deputy to act in his stead. Subject to Article 3.4 first paragraph, each Party may, by giving 14 Days' notice to the other Party, substitute a representative or deputy.

A representative or his deputy may delegate specific tasks to one or more persons appointed by him. In such case the other Party's representative shall be notified of the authority given to such appointed person or persons.

- 3.2 Contractor shall afford Company's Representative access to the Site(s) and the Work during working hours. The same access shall be afforded persons authorized by Company's Representative, provided that notification of such authorization has been given in reasonable time.
- 3.3 If, in the opinion of Contractor, the progress of the Work is impeded by the presence of Company's Representatives or persons authorized by him, Contractor shall within 21 Days after he became aware of the circumstances, submit a request in accordance with Article 16.1.
- 3.4 Appointment, transfer or replacement of personnel categorized as key personnel in Appendix D, shall be approved by Company. Approval shall not be unreasonably withheld.
- 3.5 Contractor and Company shall at their own cost replace their respective personnel who conduct themselves in an improper manner or are unsuitable to perform their tasks.

## **PART II PERFORMANCE OF THE WORK**

### **4. OBLIGATIONS OF CONTRACTOR AND COMPANY – MAIN RULES**

- 4.1 Contractor shall perform the Work in a professional and careful manner, in accordance with the Contract and in a manner fit for the purpose set forth in or inferred from the Contract. As part of such performance Contractor shall give high priority to safety in order to protect life, health, property and environment, and cooperate with Company's Representative and persons appointed by him in accordance with Article 3.1.
- 4.2 Contractor shall take good care of the Contract Object and Materials and shall ensure that these are kept in good order and condition. Unless specifically agreed to by Company, Contractor shall not be entitled to make temporary use of Materials to be incorporated into the Contract Object, other than for fulfilling the Contract.
- 4.3 Contractor shall within the framework established by Appendices A and C, cooperate with Company and other contractors and to organise his operations to ensure that all activities on Site are carried out efficiently and without delay.
- 4.4 To the extent stated in Appendices A or C, Company is entitled to perform work or let other contractors perform work on the Contract Object. If Company requires such work to be performed which is not contained in Appendices A or C, the provisions of Article 12–16 apply accordingly.
- 4.5 Company shall provide such deliverables and make such decisions as it is obliged to under the Contract within the time-limits set out in the Contract and otherwise within reasonable time if no such time-limits have been provided.

- 4.6 Company's approvals, comments, reviews, tests, inspections etc. shall not release Contractor from any obligations under the Contract, unless otherwise clearly set out in the Contract.
- 4.7 The Parties shall perform such coordination activities that are set forth in, and be responsible for coordination in accordance with, the Contract. Unless otherwise provided for elsewhere in the Contract, Company is responsible for the overall coordination of Project Contractors with the Work and Contractor is responsible to comply with such routines, coordination guidelines and site regulations that are reasonably determined by Company in this respect and shall coordinate the Work with Project Contractors to the extent determined in such routines, guidelines or regulations.

## **5. AUTHORITY REQUIREMENTS, PERMITS**

### **5.1 Compliance with laws, regulations and permits**

5.1.1 Contractor shall keep himself informed of and comply with any and all applicable:

- a) laws and regulations, and
- b) requirements, governmental permits or orders of classification societies and public authorities, and
- c) current trade union and wage agreements.

Where laws and regulations as stated in the first paragraph item a) have been adopted and requirements, permits or orders as stated in the first paragraph item b) are issued, after the signature of the Contract and necessitate Variations to the Work or its execution, and this affects Contractor's costs or progress, either Party may demand a change in the Contract Price or Contract Schedule reflecting the effect of such decisions, requirements or orders. Changes in the way in which public authorities apply laws and regulations mentioned in the first paragraph item a) above shall be dealt with in the same way. The provisions in Article 12 to 16 apply accordingly, provided that the time-limit for presenting a Variation Order Request is 21 Days from the time the circumstances on which the request is based became or ought to have become known to Contractor. Notwithstanding the aforesaid, Contractor shall not be entitled to any adjustment of the Contract Price or the Contract Schedule due to such adoptions of laws or regulations, or issuances of requirements, permits or orders, that it could be reasonably expected to have foreseen at the time of signature of the Contract.

- 5.1.2 Contractor shall, in due time, obtain and maintain such approvals and permits as are necessary for the performance of the Work and which must or can be obtained in the name of Contractor. Company shall provide its reasonable assistance in this respect.
- 5.1.3 Company shall, in due time, obtain and maintain all other approvals and permits required for the permanent operation of the Contract Object (e.g. an environmental permit). Contractor shall upon Company's request assist in obtaining approvals and permits concerning the Work which can only be obtained in the name of Company.

5.1.4 Company may require that Contractor submits to Company such information about the performance of the Work and Contractor Group as Company is obliged to submit to public authorities.

5.1.5 Claims for taxes and fees shall be paid in a timely manner by Contractor in accordance with the at all times applicable laws and regulations.

## **6. COMPANY'S DOCUMENTS**

6.1 Contractor shall search for defects, discrepancies and inconsistencies in Company's Documents (however excluding for the avoidance of doubt such parts of Company's Documents that are irrelevant for the Work). Contractor shall without undue delay notify Company of any defects, discrepancies and inconsistencies so discovered within such date that is set forth in Appendix C (including its attachments) and, if no date is set forth in Appendix C (including its attachments), without undue delay or within such date that is otherwise agreed between the Parties, and shall reperform its review of the relevant Company's Documents if corrected by Company. Contractor shall not be entitled to an adjustment of the Contract Price or the Contract Schedule due to such defects, discrepancies or inconsistencies so discovered, unless a Variation to the Work is instructed by Company in accordance with Article 6.2 below.

6.2 Upon receipt of notice from Contractor in accordance with Article **Feil! Fant ikke referansekinden.**, Company shall, without undue delay, either have the necessary corrections made, or give Contractor instructions on how to proceed. The provisions of Article 12 to 16 shall apply accordingly. Notwithstanding the aforesaid, Article 12 to 16 shall not apply and the Contractor shall not be entitled to a Variation to the Work to the extent that the defects, discrepancies or inconsistencies so notified originates in technical solutions or design developed by the Contractor.

## **7. CONTRACTOR'S SPECIFICATION**

7.1 Contractor shall comply with all requirements following from Appendix I.

7.2 Contractor shall notify Company without undue delay of defects, discrepancies and inconsistencies discovered in Appendix I. Contractor shall immediately correct these unless otherwise instructed by Company in accordance with Article 12 to 16 or by the use of the procedure given in Appendix D. Contractor's correction of defects, discrepancies and inconsistencies in Appendix I shall not be deemed to constitute a Variation to the Work.

## **8. SUBCONTRACTORS**

8.1 Contractor shall not enter into any Subcontract concerning parts of the Work without the prior consent of Company. Company shall notify Contractor of its decision within seven Days after having been asked by Contractor. However, such consent is not required for any of the Subcontractors listed in Appendix H or for bulk materials, minor purchases or limited use of hired labour.

8.2 Contractor is responsible according to the Contract for the fulfilment of Subcontracts as if the Work was performed by Contractor.

- 8.3 Contractor shall include, and acknowledges that it is of critical importance for Company pursuant to the GSA that it so includes, certain terms and conditions in each Subcontract. Subcontracts shall always state that:
- a) the Subcontract may be assigned to Company;
  - b) Subcontractor is included in Contractor Group with regard to the provisions of Article 30;
  - c) Article 22 concerning title, etc. shall apply correspondingly in the relationship between Contractor and the Subcontractor;
  - d) Company and the Government shall have the rights to information, technology and inventions as stated in Article 33; and
  - e) Company shall be entitled to enforce guarantees according to Article 23.4.

Subcontracts shall also contain those provisions of the Contract which are necessary to enable Contractor to fulfil his obligations in accordance with the Contract.

- 8.4 When requested by Company, Contractor shall provide full access to all supplier contracts regardless of the contractual value, including all supplementary or amendment agreements, change orders, change order requests, disputed change orders, minutes of meetings and other correspondence, provided (i) that the contract concerns a material part of the Deliverables, and (ii) that Contractor shall not be obligated to disclose contract documents that are subject to a contractual duty of confidentiality (in which case Contractor shall use its reasonable efforts to disclose the relevant contract documents to the extent possible, e.g. by means of redactions). Company shall keep such contract documents confidential and not disclose the contents thereof to any other Party unless so required by mandatory law or the GSA.

## **9. SITE CONDITIONS, COMPANY BUSINESS ACTIVITIES**

- 9.1 Contractor has investigated and satisfied himself as to the nature and location of the Site, and its suitability for the performance of the Work, including those conditions affecting access to the Site, transportation, handling and storage of Materials and working equipment, pre-existing facilities and structures, weather and climate conditions, ground surface conditions, working equipment needed for performance of the Work and all other matters that may affect the performance of the Work. For clarity, the foregoing does not imply any liability of Contractor for geotechnical, soil or subsurface conditions.

Contractor shall be entitled to an adjustment of the Contract Price or the Contract Schedule due to geotechnical, soil or subsurface conditions that are materially different from those stated in the Contract Documents, unless a prudent contractor acting in accordance with good engineering practice could reasonably have been expected to be aware of such conditions following a visual inspection of the Site. The provisions of Article 12 to 16 shall apply accordingly. Contractor shall provide a Variation Order Request to Company within 14 Days from when Contractor became or reasonably could be expected to become aware of the deviating condition.

- 9.2 Contractor is responsible for the interpretation of information concerning the Site that Company has submitted to Contractor.
- 9.3 Company shall give access to the Site at the time set out in Appendix F. If such time is not set out therein, Contractor shall be given access to the Site in accordance with the requirements set out in Appendix C.
- 9.4 Company shall provide the services and utilities at the Site as listed in Appendix F, if any. Contractor shall be responsible for establishing all other services and utilities necessary at the Site for proper execution of the Work.
- 9.5 Contractor shall keep the Site and adjacent areas tidy and in proper order. The Site and all adjacent areas shall be finally cleared and left in a clean and tidy condition prior to issuance of the Completion Certificate.
- 9.6 Contractor shall immediately notify Company in writing if Contractor has reason to believe that the rights of neighbours to the Site or other Third Parties are prejudiced in such a way that there may be need for measures not provided for in the Contract.

## **10. ETHICS AND COMPLIANCE**

### **10.1 Ethics and compliance**

- 10.1.1 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.
- 10.1.2 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 in Appendix D, 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.
- 10.1.3 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 Company, 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 Company 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 Company, 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.

- 10.1.4 Contractor undertakes to promptly disclose to Company together with all relevant facts any directly or indirectly concluded, reasonably suspected or alleged violation of Article 10.1.3 (a)-(e) above.
- 10.1.5 The Parties agree that any breach of this Article 10.1 that has or can reasonably be assumed to cause a materially adverse effect for Company shall be considered as a material breach of the Contract.

### **PART III      PROGRESS OF THE WORK**

#### **11.      CONTRACT SCHEDULE**

- 11.1 During the Contract Period, Contractor shall perform the Work in accordance with the Contract Schedule.

If Contractor should have cause to believe that the Work cannot be carried out in accordance with the milestones set out in the Contract Schedule, it shall promptly notify Company accordingly.

- 11.2 If in Contractor's opinion the Work cannot be performed according to Appendix C owing to circumstances for which Company carries the risk, the provisions in Article 16 apply accordingly. In case a time-limit is set forth in relation to Contractor's right to present a Variation Order Request, Contractor's right to request an adjustment to the Contract Price and/or the Contract Schedule is conditioned upon presenting a Variation Order Request within such time-limit.

- 11.3 If in Contractor's opinion the Work cannot be performed according to the Contract Schedule, for reasons for which Contractor is responsible, it shall within 14 Days after notification according to Article 11.1 communicate:
- (a) the cause of the delay, and
  - (b) its estimated effect on the Contract Schedule and other parts of the Work, and
  - (c) the measures which Contractor considers appropriate to avoid, recover or limit the delay.

Company shall without undue delay notify Contractor of its view of the information provided by Contractor in accordance with Article 11.3 a), b) and c). Such notification shall not release Contractor from any of his obligations under Article 11.1.

- 11.4 If the measures proposed or implemented by Contractor are insufficient to avoid or recover the delay, then Company may require Contractor to take such measures as Company considers necessary. If Contractor maintains that he has no obligation to implement the measures required by Company, the provisions in Article 12 to 16 apply accordingly.

#### **PART IV VARIATIONS, CANCELLATION AND SUSPENSION**

### **12. RIGHT TO VARY THE WORK**

- 12.1 Company has the right to order such Variations to the Work as in Company's opinion are desirable. Variations to the Work may apply to any aspects of the CCS Facility, and may include an increase or decrease in the quantity or scope, or a change in character, quality, kind or execution of the Work or any part thereof, as well as changes to the Contract Schedule.

Variations to the Work may however not go beyond the technical scope or be of a different nature than the Work, or as a whole exceed what the Parties could reasonably expect upon the conclusion of the Contract.

- 12.2 When Company issues a Variation Order, Contractor shall without undue delay submit an estimate to Company. Company may require the submission of such estimate prior to issuing a Variation Order. The estimate shall contain:
- a) a description of the Variation to the Work in question, and
  - b) a detailed schedule for the execution of the Variation to the Work showing the required resources and significant milestones, and
  - c) the effect on the Contract Price with an explanation of how it is calculated in accordance with Article 13.2, and
  - d) the effect on the Contract Schedule as far as it is possible in the specific case, and
  - e) the costs of the preparation of the estimate.



Company shall pay Contractor's costs stated under item e) even if a Variation to the Work is not ordered.

12.3 Contractor may propose a Variation.

12.4 Contractor shall be entitled to request a variation in the Contract Price and/or the Contract Schedule to the extent explicitly set forth in the Contract.

### **13. EFFECTS OF A VARIATION TO THE WORK**

13.1 All of Contractor's obligations under the Contract also apply to Variations, unless otherwise explicitly agreed.

13.2 Unless otherwise agreed between the Parties, the price for Variations shall be determined according to the provisions set forth in Appendix B.

13.3 Not used.

13.4 The effects of Variation to the Work on the Contract Schedule shall be agreed upon on the basis of the accumulated net effect of the individual Variation. The effect on the Contractor Schedule shall be agreed in the individual Variation Order to the extent possible in the specific case.

Subject to the limitations which follow from Article 12.1, Company may, regardless of whether Contractor has submitted a Variation Order Request or not, require Contractor to undertake special measures to avoid variation work having an effect on the Contract Schedule or to limit the consequences of Company's variations. The provisions of Article 12 to 16 shall apply accordingly.

13.5 A Variation to the Work caused by circumstances for which Contractor is responsible shall not entail any variations to the Contract Price or the Contract Schedule in favour of Contractor.

### **14. ISSUE OF VARIATION ORDERS**

14.1 All Variations to the Work shall be made by means of a Variation Order issued by Company in accordance with the provisions of this Article.

14.2 A Variation Order shall be expressly identified as such and be submitted on a prescribed form. The original version of the Variation Order shall at least contain a description of what the variation work consists of. The effects on time and price and weight, if any, which are not set out in the original version, shall be stated in the final version of the Variation Order.

**15. CONSEQUENCES OF VARIATION ORDERS – DISPUTES ABOUT CONSEQUENCES**

15.1 On receipt of a Variation Order or an instruction as set out in Article 16.1, Contractor shall implement it without undue delay, even if the effects of the Variation Order or the instruction have not yet been set out.

15.2 If the Parties agree that there is a Variation to the Work, but disagree as to the effects on the Contract Price, then Company shall pay Contractor provisional compensation calculated in accordance with Article 13.2.

Unless the payment for the variation work has been submitted to court within six months of the issue by Company of the Variation Order containing price consequences, the compensation set out therein shall be considered final.

Payment in accordance with this Article 15.2 shall be made in accordance with the provisions of Article 20. The amount falls due for payment 30 Days after Company has received the invoice.

If another price for the Variation to the Work is finally decided which differs from the compensation paid in accordance with the first paragraph, a correct settlement shall be made and interest shall be calculated in accordance with the Norwegian Act – “Interest on overdue payment” (Nw: *Forsinkelsesrenteloven*) for the amounts wrongfully withheld or received.

If a Variation Order Request is submitted, interest on amounts wrongfully withheld shall be calculated from the date that would have been the due date according to Article 20 if the variation work was part of the Work. If Company has submitted a Variation Order without a prior request being made, interest on amounts wrongfully withheld shall be calculated from the due date according to Article 15.2 third paragraph.

15.3 If the Parties disagree as to the effect on the Contract Schedule, then the views of both Parties shall be recorded on the Variation Order.

If the effect of the variation work on the Contract Schedule has not been submitted to court within three months of Company giving notification in writing of its decision as stated in Article 13.4, last paragraph, Company's position concerning the schedule effect in the Variation Order shall be considered as final.

If, before the effects on the Contract Schedule have been finally decided by agreement, court award or in accordance with Article 15.3, second paragraph, Company requires implementation of measures stated in Article 13.4, last paragraph, in order to avoid or limit the delay to the Contract Schedule which, in Contractor's opinion, will be the result of the Variation to the Work in question, then the provisions of Article 12 to 16 shall apply accordingly.

**16. DISPUTE AS TO WHETHER A VARIATION TO THE WORK EXISTS. DISPUTED VARIATION ORDER**

16.1 Company Representative may, by written instruction or by minutes of meetings signed by or confirmed in writing by him, require the performance of a specific piece of work. If the

work so required in the opinion of Contractor is not part of his obligations under the Contract, then Contractor shall submit a Variation Order Request to Company and as soon as possible thereafter prepare an estimate in accordance with Article 12.2.

If Contractor has not presented a Variation Order Request within 21 Days after Company has required such work to be performed in the manner prescribed in the first paragraph, then he loses the right to claim that the work is a Variation to the Work.

A Variation Order Request shall be expressly identified as such and be presented on a prescribed form. It shall contain a specified description of the work the request concerns and a reference to the instruction upon which Contractor considers the request to be based.

If Contractor presents a request which, in substance, is a Variation Order Request without using the prescribed form as mentioned, Company is entitled to treat the request as a Variation Order Request. In that case, Contractor shall be informed in writing without undue delay.

- 16.2 If Contractor within the time limit has made a request as stated in Article 16.1, Company shall, within 21 Days after receiving the request, either issue a Variation Order in accordance with the provisions of Article 14 or a Disputed Variation Order. If Company is of the opinion that this work is a part of the Work, a Disputed Variation Order shall be issued. A Disputed Variation Order shall be expressly identified as such and shall be presented on a prescribed form, which shall identify the work in dispute between the Parties and state Company's reason for regarding this as a part of the Work. If Company will claim that Contractor's request is submitted too late, this must be notified within 21 Days after receipt of the Variation Order Request. If Company has not issued a Variation Order or Disputed Variation Order within 21 Days after receipt of a Variation Order Request, a Disputed Variation Order shall be deemed to have been issued.

Upon receiving a Disputed Variation Order, Contractor shall implement it without undue delay.

Payment in accordance with this Article 16.2 shall be made in accordance with the provisions of Article 20. The amount falls due for payment 30 Days after Company has received the invoice.

If it is finally decided that the disputed work is a part of Work, Contractor shall immediately pay back the received amount and interest shall be calculated in accordance with Norwegian Act – “Interest on overdue payment” (Nw: *Forsinkelsesrenteloven*) from Company's payment until repayment.

If it is finally decided that the disputed work is a part of Work, Article 15.2, fourth and fifth paragraph apply accordingly.

- 16.3 If the matter has not been submitted to court within eight months after the issue of the Disputed Variation Order, it shall be recorded on the Disputed Variation Order that it is deemed to be a part of the Work.

**17. NOT USED**

**18. COMPANY'S RIGHT TO TEMPORARY SUSPENSION OF THE WORK**

18.1 Company may at any time temporarily suspend the performance of the Work, or parts thereof, by giving notice to Contractor.

The notice shall specify which part of the Work shall be suspended, the effective date of the suspension and the expected date for resumption of the Work. Furthermore, it shall state the mobilization plan and any support functions which shall be maintained while the Work is suspended.

Contractor shall resume the Work after notification by Company. The date of resumption of the Work shall be determined with due consideration to the mobilization plan and the support functions maintained during suspension.

18.2 Company shall compensate Contractor for all necessary expenses arising from:

- a) demobilization of personnel, equipment and Site(s), and
- b) safeguarding the Contract Object and Materials, and
- c) personnel, Subcontractors and equipment which must be kept available in accordance with the mobilization plan, and
- d) other expenses incurred by Contractor as a result of the suspension of the Work.

Contractor's claim for work performed shall be calculated as far as possible in accordance with the principles of Article 13.2, and the Contract Price shall be adjusted accordingly. Payment shall be made in accordance with the provisions in Article 20.

18.3 Appendix C shall be adjusted for the consequences of the suspension of the Work. Article 12 to 16 shall apply accordingly. A Variation Order Request must be submitted within 21 Days after Company has requested that the Work be resumed.

**PART V DELIVERY AND PAYMENT**

**19. DELIVERY AND COMPLETION OF THE WORK**

19.1 Contractor shall for each relevant part of the Work (i.e. different work packages according to Appendix A) achieve Mechanical Completion as set forth in [Appendix A and C].

19.2 Delivery of each relevant part of the Contract Object as set forth in Appendix A (i.e. different work packages) occurs when the Parties jointly, upon Contractor's request, conclude a Delivery Protocol when the Delivery Date has been reached, the relevant part of the Contract Object has been completed, has passed such tests that according to the Contract are to be carried out before Delivery of the relevant part.

The Delivery Protocol shall be concluded even if minor parts of the Work remain incomplete, provided that they do not have practical significance for the commissioning of the CCS Facility or use of the Contract Object, or for later work to be performed by Project Contractors (to be determined in Company's reasonable discretion). The Delivery Protocol shall be concluded when the conditions set forth in this Article have been met, provided that Contractor has so requested with at least 14 days' notice. Such request shall not be submitted earlier than 28 days before the Delivery Date.

The Delivery Protocol shall state such outstanding minor items of the Work, and contain a reasonable deadline and details on their completion by Contractor. When the Parties disagree, both views shall be recorded in the Delivery Protocol.

The Delivery Protocol shall be dated and signed by both Parties.

Upon the conclusion of the Delivery Protocol, the risk for unforeseen damage to the relevant part of the Contract Object shall be transferred to Company.

19.3 Company shall issue the Completion Certificate on its own initiative when the Work – with exception of guarantee work – has been completed in accordance with the Contract, including that the Acceptance Test has been successfully completed and that all minor items of remaining work have been completed.

19.4 Not used.

## **20. PAYMENT, INVOICING, AUDIT AND SUBMISSION OF SECURITY**

### **20.1 Payment, invoicing**

20.1.1 Company shall pay the Contract Price to Contractor within the time limits and in accordance with the provisions stated in this Article and elsewhere in the Contract.

Company is not obliged to pay until Contractor has provided a parent company guarantee as set forth in Article 20.1.2.

20.1.2 Contractor shall provide a bank guarantee in the form set out in Appendix J. The bank guarantee shall be valid until [milestone]. If [milestone] has not been achieved within the time limit stated in the bank guarantee (if any), then Contractor shall ensure the extension of its validity accordingly.

Contractor shall also provide a parent company guarantee in the form set out in Appendix K. The parent company guarantee shall be valid until issue of the Acceptance Certificate. If the Acceptance Certificate has not been issued within the time limit stated in the parent company guarantee, then Contractor shall ensure the extension of its validity accordingly.

20.1.3 Unless otherwise prescribed in Appendix B, the following provisions apply to invoicing:

- a) The Contract Price shall be payable to Contractor upon Contractor's achievement of the payment milestones in accordance with the payment milestone schedule in Appendix B.
- b) In respect of Variation Orders containing specific provisions covering invoicing, Contractor shall invoice in accordance with such provisions. In respect of other Variation Orders, Contractor may invoice monthly in arrears reflecting such parts of the Work covered by the Variation Order being performed during the month in question. With respect to Variation Orders covered by Article 15.2, the above principles shall apply to the undisputed amounts.
- c) The invoice shall be prepared in accordance with the provisions of Appendix B, and Article 12 to 16. Documentation necessary for control of the invoiced amount shall be appended.

20.1.4 Company shall, within 45 Days after receipt of an invoice which satisfies the requirements of Article 20.1.3, pay the amount due to Contractor according to the invoice. Notwithstanding the aforesaid, and no invoice shall become due until the reporting requirements set forth in Appendix B have been complied with in Company's reasonable satisfaction.

Unless otherwise provided for in the Contract, the following deductions may be made from payment of the Contract Price:

- a) any previous payments on account to Contractor which relate to, or directly concern, the work covered by the invoice. However, this does not apply to payments to Contractor according to Article 15.2, third paragraph and Article 16.2, third paragraph
- b) such parts of the invoiced amount as are insufficiently documented or otherwise disputed, provided Company, as soon as possible and no later than at payment, specifies what documentation is considered insufficient or what the dispute concerns,
- c) all amounts relating to the Contract due to Company from Contractor, provided that Company is entitled to make such deductions according to the applicable law.

If it is later established that Company had an obligation to pay the deducted amount, then Company shall pay interest in accordance with Norwegian Act – "Interest on overdue payment" (Nw: *Forsinkelsesrenteloven*) calculated from the due date for payment of the invoice.

20.1.5 Within 45 Days after issue of the Completion Certificate, Contractor shall submit his proposal for the final account. The proposal shall contain a breakdown of the total compensation for the Work, including all claims to be made by Contractor, less any liquidated damages and other amounts due to Company. The proposal shall contain documentation relating to each item included in the breakdown.

Amounts stated by Contractor in the proposal for the final account as due to Company shall be paid forthwith.

Claims not included in the proposed final account cannot be submitted later by Contractor with the sole exception for such payment milestones that are due and payable after the final account according to Appendix B.

Within 45 Days of receiving the proposed final account, Company must notify Contractor of any objections to the proposal. Company must explain the grounds for its objections and state the amount that Company consider to be the correct final account. If Company does not object within the time limit, Contractor's proposal shall be regarded as accepted.

- 20.1.6 Contractor must submit a summon to court concerning the final account within twelve (12) months of having received Company's reply under Article 20.1.5, fourth paragraph, however not later than fifteen (15) months after the issue of the Completion Certificate if Contractor fails to submit proposal for final account.

If the twelve (12) months deadline is exceeded, Contractor shall lose the right to submit the dispute to court. In such case, Contractor shall pay the disputed amount within 14 Days after the date of the deadline, cf Article 20.1.5, with addition of interest in accordance with Norwegian Act – “Interest on overdue payment” (Nw: *Forsinkelsesrenteloven*).

If a court award has not been given within two years of Contractor having received Company's reply under Article 20.1.5, fourth paragraph, then Contractor shall immediately pay the disputed amount, cf Article 20.1.5, with addition of interest in accordance with Norwegian Act – “Interest on overdue payment” (Nw: *Forsinkelsesrenteloven*). Final settlement shall be made after the court decision.

## 20.2 Book keeping and cost auditing

- 20.2.1 Throughout the Contract Period and 13 years thereafter, Contractor shall keep separate project accounts for all costs related to the Work. Company 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 Company or Government, as the case may be, to determine whether Contractor is entitled to payment in accordance with the Contract (including without limitation milestone achievement verification documentation, relevant terms of Subcontracts, cost verifications, site diaries and other support documentation).
- 20.2.2 Financial information that, in Contractor's opinion, constitutes Trade Secrets shall be explicitly designated as such. Company 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*).
- 20.2.3 The project accounts, including all underlying documentation, shall be safely stored throughout the Contract Period and for a period of thirteen (13) years thereafter.
- 20.2.4 Payment shall not affect Company's audit rights. If charges are proven incorrect, then an adjustment shall be made, whether or not this is in the favour of Contractor.

## 21. NOT USED

## 22. TITLE TO THE DELIVERABLES. RIGHT TO DEMAND DELIVERY

- 22.1 Title to the Deliverables shall pass to Company progressively as the Work is being performed. Title to Materials passes to Company on arrival at Site, or when paid for by Company, if payment has been made earlier.

As soon as Materials arrive at Site, Contractor shall mark them with an identification number and Contractor's Company's name, and as far as possible keep them separate from other items. Company shall mark Company's Materials in a manner identifying it as such.

- 22.2 The Deliverables and Materials owned by Company shall be free of liens other than those for which Company is responsible.
- 22.3 If Contractor claims that he is entitled to refuse to deliver the Contract Object, Materials, or other items to which Company is entitled under the Contract, then Company may in all cases demand delivery in return for:
- a) payment of the outstanding amount due to Contractor under the Contract, insofar as the amount is not in dispute, and
  - b) a guarantee, with contents as described in Appendix J, for any further amounts which Contractor maintains are due under the Contract, but which Company considers it has no obligation to pay.

**23. CONTRACTOR GUARANTEE. ACCEPTANCE CERTIFICATE**

- 23.1 Contractor guarantees:
- a) that the Contract Object will conform to the Contract (including all requirements set forth in or inferred from it), and
  - b) that the Contract Object will conform to the final result of Contractor's engineering and is without defects in design, materials, manufacturing, installation and function, and
  - c) that the Contract Object as finally designed and completed is suitable for the purpose and use for which, according to the Contract, it is intended, and
  - d) that Materials delivered by Contractor for incorporation into the Contract Object are new and unused, and
  - e) the performance of the Contract Object as further set out in Article 23.5.

This guarantee does not apply to any Company Materials.

Contractor's liability for breach of the above-mentioned guarantees is in other respects regulated by the provisions on liability for defects under Article 25.

- 23.2 The Guarantee Period commences for each relevant part of the Work at the conclusion of the corresponding Delivery Protocol and expires 24 months after the issuance of the Completion Certificate.
- 23.3 In case Contractor performs guarantee work during the Guarantee Period, he guarantees according to Article 23.1 those parts of the Work affected by the guarantee work. This guarantee applies for one year after the date of completion of the guarantee work, unless the remaining part of the Guarantee Period is longer. .



23.4 Company shall, without limitation to Contractor's liability for defects or guarantees pursuant to the Contract, be entitled to enforce the guarantees given by Subcontractors to Contractor.

23.5 Contractor guarantees that the Contract Object will attain the guaranteed performance set out in Appendix A, [reference].

In case of any defects by means of deviations from the guaranteed performance set out in Appendix A, [reference], Contractor shall at its own cost carry out any repair, modification or replacement required and any performance test shall be reperformed until the relevant performance guarantee figures are met, unless Company otherwise instructs.

23.6 Company shall issue an Acceptance Certificate when the Work, including guarantee work, has been completed. The Acceptance Certificate shall be deemed to have been issued 30 Days after the latest of the expiry of the Guarantee Period or of the period set out in Article 23.3.

## **PART VI BREACH OF CONTRACT**

### **24. CONTRACTOR'S DELAY**

24.1 Save what is stated in Article 11.2 concerning delayed progress due to Company, delay occurs when the Work prescribed in Appendix C has not been completed in accordance with the Contract by a penalty milestone.

In relation to the Delivery Date, delivery shall be deemed to have taken place at the conclusion of the Delivery Protocol, or at the time it should have been concluded in accordance with Article 19.2.

24.2 If the Work is delayed in relation to the penalty milestones set forth in Appendix C, then Contractor shall pay liquidated damages to Company as set out in Appendix B. If, however, Completion is met within the date agreed for such, then Company's right to liquidated damages for earlier delay ceases, unless (and to the extent) Company has suffered losses or costs by such earlier delays.

Contractor's cumulative liability for liquidated damages for delay under the Contract is limited to 20 % of the Contract Price.

24.3 Company may terminate the Contract in accordance with Article 26.1 due to delay.

### **25. CONTRACTOR'S DEFECTS AND GUARANTEE LIABILITY**

25.1 If the Contract Object has a defect when delivered to Company, or if a defect arises for which Contractor is liable under his guarantees in accordance with Article 23.1 or 23.5, then Contractor is responsible for the defect in accordance with the provision of this Article.

Contractor is, however, liable for a defect only if Company has given notice of the defect, without undue delay after having discovered the defect. Such notice must have been given at the latest before the expiry of the Guarantee Period.

If the notice concerns defects in guarantee work, then it must have been given before the expiry of the period set forth in Article 23.2.

The notice to Contractor shall contain a specific description of the defect or how it appears.

- 25.2 If Contractor is responsible for a defect, he shall rectify it as soon as possible, but at a time convenient to Company (to be determined in its reasonable discretion). All rectification work shall be performed at Contractor's own cost and the rectification shall include any physical damages to other parts of the Contract Object, CCS Facility or the pre-existing cement plant caused by the defect.

Contractor shall notify Company of which measures he intends to apply and the time for rectification. Company shall notify Contractor of its views on the rectification plans without undue delay.

- 25.3 If Contractor cannot rectify a defect within a reasonable time after being notified of it, then Company shall in its discretion be entitled to either (i) rectify the defect, and any physical damages to other parts of the Contract Object, CCS Facility or the pre-existing cement plant caused by the defect, itself or to engage a Third Party to do so in which case Contractor shall pay the necessary costs of rectification, provided that Company acts in a reasonable manner, or (ii) a reduction of the Contract Price in an amount corresponding to the rectification costs or to the economic effects of the permanent defect.

If Company explicitly refuses to allow Contractor to perform the rectification work, then Contractor shall pay to Company an amount calculated according to the provisions of Article 13.2 for the rectification work.

In addition Company may claim damages for expenses incurred in providing access to the defect, expenses incurred in ascertaining the defect, and related expenses directly connected to the defect or the rectification of the defect, unless the contrary follows from Article 26.4 or 32.

If the rectification work is performed by parties other than Contractor or if the rectification work is left undone, all in accordance with Article 25.3 first and/or second paragraph, Contractor is not responsible for the rectification work, or for rectification not performed, and the consequences thereof.

- 25.4 Company is entitled to terminate the Contract in accordance with the provisions of Article 26.1 due to defects. The remedies set forth in Article 25 and 26 are the sole remedies open to Company against Contractor for defects.

## **26. COMMENCEMENT DATE AND TERMINATION**

### **26.1 Commencement Date**

- 26.1.1 The Commencement Date shall under no circumstances occur before 30 September 2020.

26.1.2 In case the GSA does not enter into effect and ceases to be binding for Company with conclusive effect, the Contract shall automatically become null and void and neither of the Parties shall have any liability in relation to or right to compensation from each other due to the Contract or the Project.

## **26.2 Termination due to Contractor's breach of Contract**

26.2.1 Company is entitled to terminate the Contract with immediate effect by notifying Contractor when:

- a) Company has become entitled to be paid maximum liquidated damages in accordance with Article 24.2, but at the earliest after 67 Days of delay, or
- b) delivery of the Contract Object is or it is evident that delivery of the Contract Object will be delayed by more than 15% of the time from start of the Work on Site until the Delivery Date, or by 120 Days - whichever is the shorter period, or
- c) Contractor is in substantial breach of the Contract, or
- d) Contractor becomes insolvent or stops his payments, or
- e) 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 Company.

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

- a) Failure to comply with the requirements for HSE, ethics and social responsibility as set out in Article 10.1;
- b) failure to comply with the provisions on auditing in Article 20.2.1;
- c) failure to implement a Variation Order in accordance with Article 12.1;
- d) failure to keep project accounts in accordance with Article 20.2;
- e) failure in relation to the insurance terms in Article **Feil! Fant ikke referansekinden.**;
- f) failure to comply with the provisions on intellectual property rights or know-how sharing in Article 33; or
- g) assignment, pledging or mortgaging of the Contract in breach of Article 35.2.

26.2.2 Upon termination of the Contract, Company is entitled (but not obligated) to take over from Contractor whole or part of the Contract Object, Materials, Subcontracts, documents and other rights necessary to enable Company to complete the Deliverables, either by itself or with the assistance of others. The Delivery Protocol shall be concluded and the Completion Certificate shall be issued in accordance with Article 19.3.

Company is entitled either by itself or with the assistance of any Third Party, at Company's cost, to use Contractor's Site(s) (if reasonably required), equipment, tools, drawings, etc. as necessary to complete the Deliverables. This only applies when such use is of a limited duration, and provided further that Trade Secrets, know-how and other information which Company or such Third Party acquire shall be used only for completion of the Deliverables (however without limitation to the terms of Article 33 below).

Contractor is entitled to be paid for the part of the Work performed and for plant and equipment taken over by Company in accordance with Article 26.2.2 first paragraph corresponding to the value for Company of such Work and taken over plant and equipment, less any amounts due from Contractor to Company.

- 26.2.3 When the Contract is terminated, Company 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 Delivery Date would have been exceeded if Contractor had completed the Contract Object. The limitation in Article 24.2 second paragraph shall apply accordingly.
  - b) damages for defects, other breaches of contract and breach of guarantees, subject to the limitations of Article 25.
  - 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 Company in relation to the Government pursuant to the GSA), subject to the limitations of Article 32.1 and 32.2.

### **26.3 Termination due to expiry of the GSA**

- 26.3.1 Company shall be entitled to terminate the Contract with one (1) month 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.
- 26.3.2 In the event of a termination or cancellation according to Article 26.3.1 above, Contractor shall be entitled to compensation for such portion of the Contract Price that corresponds 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.

### **26.4 Termination due to Company's breach of Contract**

Contractor is entitled to terminate the Contract with immediate effect after providing Company with a reasonable notice to his effect in case Company is in substantial breach of the Contract (including non-payment of sums payable and due to Contractor provided that such non-payment is of material detriment to Contractor), or in case Company becomes insolvent or enters into liquidation or is declared bankrupt.

### **26.5 Exclusive remedy and survival of terms**

- 26.5.1 This Article 26 stipulates the exclusive remedy available to either Party in the event of a termination for the reasons stated therein. The aforesaid does not limit Contractor's obligations according to Article 26.5.2 below.

- 26.5.2 In addition to other terms of the Contract applicable in relation to the survival of Articles upon termination, the following Articles shall continue to apply after the termination (for any reason) or expiry of the Contract: Articles 26.2.2–26.2.3, 26.3.2, 26.5, 33, 34 and 36–38.

## **27. BREACH OF CONTRACT**

- 27.1 If Company (including for clarity in this context Company Group or any Project Contractor) is late in providing deliverables, in making decisions or in performing other of his obligations under the Contract, then Contractor shall be entitled to an adjustment of the Contract Schedule and/or Contract Price in accordance with the provisions of Article 12 to 16. Such adjustment shall reflect the consequences of the delay caused to Contractor by Company's breach of Contract.

Contractor has a corresponding right to adjustment of the Contract Schedule and an increase in the Contract Price with respect to delays and increased costs caused by defective fulfilment of Company's obligations under the Contract.

- 27.2 Company shall issue a Variation Order in accordance with the provisions in Article 12 to 16 in respect of adjustments of the Contract Schedule and/or increase in the Contract Price resulting from Company's breach of Contract. Contractor loses his right to make a Variation Order Request if he has not done so within 21 Days after discovery of the breach of Contract.
- 27.3 If Company is late in making payments in accordance with Article 20, then Company shall pay interest according to Norwegian Act – "Interest on overdue payment" (Nw: *Forsinkelsesrenteloven*), unless the delay is caused by insufficient invoice documentation from Contractor and Company has notified Contractor of this no later than the due date.
- 27.4 Contractor shall compensate Company for any and all cost, loss liability or damage incurred as a result of any breach of the Contract on Contractor's side, however subject to the limitations of liability set forth in Article 32.1 and 32.2 below.

## **PART VII FORCE MAJEURE**

### **28. EFFECTS OF FORCE MAJEURE**

- 28.1 Neither of the Parties shall be considered in breach of an obligation under the Contract to the extent the Party can establish that fulfilment of the obligation has been prevented by Force Majeure.
- 28.2 The Party invoking Force Majeure shall, as soon as possible, notify the other Party of the Force Majeure situation.
- 28.3 Except as set out below, each Party shall cover its costs caused by a Force Majeure situation.

If Company invokes Force Majeure, Article 18.1 and 18.2 shall apply accordingly.

Within 21 Days after the Force Majeure situation has ceased, Contractor shall present his claim, if any, for adjustment of Appendix C in accordance with the provisions of Article 12 to 16. Any adjustments to Appendix C shall be made with due regard to the delay caused to Contractor by the Force Majeure situation.

- 28.4 In case of a lengthy Force Majeure situation that entails a material imbalance of the Parties' rights and obligations under the Agreement, or results in that it becomes unreasonably burdensome for a Party to perform its obligations under the Agreement, each of the Parties may require that the Agreement be renegotiated. If the renegotiations do not result in an agreement between the Parties within six months, each of the Parties may require an out-of-court mediation pursuant to chapter 7 of the Dispute Act.

## **PART VIII LIABILITY AND INSURANCES**

### **29. LOSS OF OR DAMAGE TO THE DELIVERABLES OR COMPANY'S MATERIALS**

- 29.1 If loss of or damage to the Contract Object occurs between the start of the Work until the time when the Delivery Protocol has been concluded or should have been concluded in accordance with Article 19.2, Contractor shall carry out necessary measures to ensure that the Work is completed in accordance with the Contract. The same applies if any loss of or damage to Materials occurs while they are under Contractor Group's safekeeping and control.

If any loss or damage to other parts of the Deliverables than the Contract Object occurs from the start of the Work until such documentation has been physically delivered to Company, then Contractor shall carry out the necessary measures to ensure that the Work is completed in accordance with the Contract.

Contractor's obligation to carry out measures stated herein applies regardless of whether negligence in any form has been shown by Company Group.

- 29.2 The costs of carrying out such measures as are stated in Article 29.1 shall be borne by Contractor unless the damage is caused by Company Group or the damage is due to war, nuclear damage or terror.

### **30. EXCLUSION OF LIABILITY. INDEMNIFICATION**

- 30.1 Each Party shall indemnify the other Party from and against any costs, loss or damage to the property of the other Party or any of its Affiliates, which might arise in connection with the Work or be caused by the Deliverables and which is due to breach of contract or negligence of the indemnifying Party or any of its Affiliates.
- 30.2 Company shall indemnify Contractor Group from and against any claim concerning personal injury to or loss of life of any employee of Company Group, which might arise in connection with the Work or be caused by the Deliverables. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Contractor Group.

Contractor shall indemnify Company Group from and against any claim concerning personal injury to or loss of life of any employee of Contractor Group, which might arise in connection with the Work or be caused by the Deliverables. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Company Group.

30.3 During the Contract Period and the Guarantee Period, Contractor shall indemnify Company from claims arising out of loss or damage suffered by anyone other than Contractor Group and Company Group in connection with the Work or caused by the Deliverables, and which is due to breach of contract or the negligence of Contractor Group.

30.4 A Party shall promptly notify the other Party if it receives a claim that the other Party is obliged to indemnify. Whenever possible, the other Party shall take over treatment of the claim, provided always that Company shall handle all claims which may result in liability under Article 30.3, fourth paragraph.

The Parties shall give each other information and other assistance needed for handling the claim. Neither Party shall, without the consent of the other Party, approve of a claim which shall be indemnified, in whole or in part, by the other Party.

30.5 As between the Parties, Contractor shall indemnify Company from and against any costs, loss or damage incurred as a result of pollution and environmental damages, which is due to breach of contract or the negligence of Contractor Group. Notwithstanding the preceding sentence and Article 30.3, Company shall indemnify Contractor Group from and against any costs, loss or damage incurred as a result of pollution and environmental damages other than as mentioned in the preceding sentence.

## 31. INSURANCES

31.1 Company shall during the Contract Period provide and maintain the insurances described below and in Appendix G:

- a) Liability insurance covering Company's liability for damage to property and personal injury under Article 30.1 for a minimum amount of NOK [insurance limit] million for claims arising from each accident.
- b) Personnel insurance which shall cover losses connected with illness, personal injury or accidental death in Company Group, to the extent required by applicable laws.

Such insurance cover shall be effective at the time when the Work starts and expires in accordance with the insurance conditions.

31.2 Contractor shall during the Contract Period provide and maintain, in accordance with reasonable and market conditions, the insurances described below and in Appendix G:

- a) Construction all risk insurance, or equivalent insurance, covering the Contract Object, Materials and Company Materials against physical loss or damage.
- b) Transport insurance covering the Deliverables, Materials and Company Materials against physical loss or damage during transportation.

Kommentert [MSA1]: Contractor insurance to fill in existing insurance limit.

- c) **General** and third party liability insurance covering (i) Contractor's liability for damage to property under Article 30.1 for a minimum amount of NOK [insurance limit] million for claims arising from each accident, and (ii) Contractor's liability under Article 30.3, for a minimum amount of NOK [insurance limit] million for claims arising from each accident.
- d) Personnel insurance which shall cover losses connected with illness, personal injury or accidental death in Contractor Group, to the extent required by applicable laws.
- e) **Environmental** liability insurance covering Contractor's liability under Article 30.5 for a minimum amount of NOK [insurance limit] million for claims arising from each accident.

Kommentert [MSA2]: Contractor insurance to fill in existing insurance limit.

Kommentert [MSA3]: Contractor insurance to fill in existing insurance limit.

Such insurance coverage shall be effective from the start of the Work and shall not expire until issue of the Completion Certificate.

Contractor shall ensure that the insurances listed above entitle Company to make a direct claim against the insurers in respect of claims which Contractor Group is obliged to indemnify under Article 30.

Contractor shall notify Company in appropriate time before the insurance is cancelled, or lapses for any other reason.

The policies listed in a) and b) above, shall include Company Group and the state of Norway as co-insured.

During the Guarantee Period, Contractor shall provide and maintain [customary Guarantee Period GL/PL insurance].

- 31.3 Contractor shall, at the request of Company, produce certified copies of the policies (project specific policies only) or insurance certificates with the necessary information, including the expiry date, relating to all insurances provided by Contractor Group in accordance with Article **Feil! Fant ikke referansekinden.** The same obligation applies to Company for the insurances Company shall provide in accordance with the Contract.

The insurance certificates or copies thereof shall confirm that the Party's obligations to insure in accordance with the Contract have been fulfilled.

If one of the Parties fails to provide insurance according to its obligations of this Article, then the other Party is entitled to take out such insurance and claim a refund of the costs incurred from the Party in default.

- 31.4 When any incident occurs for which cover is granted under one of the Parties' insurance policies, the other Party shall notify that Party without undue delay, enclosing a description of the incident that gives rise to the insurance claim. When the Party whose insurance policy covers the claim, handles the claim, the other Party shall provide reasonable assistance, without claiming compensation.



**PART IX      LIMITATION AND EXCLUSION OF LIABILITY, MITIGATION****32.      LIMITATION AND EXCLUSION OF LIABILITY, MITIGATION**

32.1 Notwithstanding anything to the contrary in the Contract, Company shall indemnify Contractor Group from Company Group's own indirect losses, and Contractor shall indemnify Company Group from Contractor Group's own indirect losses. This applies regardless of any liability, whether strict or by negligence, in whatever form, on the part of either group and – except as stated in Article 32.5 (qualified misbehaviour) and Article 33.3 (Infringement of Intellectual Property Rights).

Indirect losses according to this provision include but are not limited to loss of earnings, loss of profit, economic fines or charges incurred due to pollution (but for clarity excluding sanitization costs and other direct losses due to pollution) and loss of production (including for clarity also interruption of or similar disturbances to Company's cement production operations).

For the avoidance of doubt, if the Government reduces, withholds or recovers payment of financial support to Company pursuant to the terms of the GSA as a result of Contractor's negligence or breach of this Contract, such reduction, withholding or recovering shall not be considered as indirect loss.

32.2 Contractor's total liability pursuant to the Contract, including, but not limited to liability in accordance with Articles 24, 25, 26, 27 and 30, and regardless of whether the Contract is terminated or not, shall be limited to 50 per cent of the Contract Price. Notwithstanding the aforesaid, no limit shall apply in relation to Contractor's liability under Article 33.

32.3 In case a Party is entitled to any compensation for costs, loss or damages according to the Contract (including, without limitation, if Company terminates the Contract in accordance with Article 26.1 above or if a Party is in breach of the Contract), the other Party shall at all times mitigate any loss, cost or damage incurred to the extent possible. Contractor shall follow any reasonable instructions from Company in this respect.

32.4 In assessing whether a loss, cost or damage could have been mitigated, the starting point shall be what in the exposed Party's reasonable assessment appeared as possible at the time.

32.5 The limitations of liability in this Article 32 shall not apply in cases of Contractor's fraudulent behaviour, gross negligence or wilful misconduct.

**PART X      PROPRIETARY RIGHTS, ETC.****33.      RIGHTS TO INFORMATION, TECHNOLOGY AND INVENTIONS****33.1      Intellectual Property Rights**

33.1.1 Company is pursuant to the GSA obligated to ensure that (i) only technology that is offered openly in the market shall be used and applied within the Project (limited, as the case may be, only by law), and (ii) the implemented technology shall enable and contribute to the

transfer of experience and knowledge to other similar projects and to national and international research and development activities. Contractor shall in good faith cooperate with Company for the purpose of achieving these obligations in light of the overall purpose of the Project.

- 33.1.2 Subject to the terms and conditions of this Article 33, Contractor's Background Rights shall remain vested in Contractor. Company's Background Rights shall for the avoidance of doubt remain vested in Company.
- 33.1.3 Contractor hereby grants to Company a non-exclusive, perpetual (however at least 50 years long), royalty-free, irrevocable, transferable and sublicensable licence to use (including the right to adapt, modify and amend) the Contractor's Background Rights for the operation, use, modification, or expansion of the Contract Object or any similar purpose. Such license shall for the avoidance of doubt under no circumstances include any Contractor's Trade Secrets.
- 33.1.4 Subject to the terms and conditions of this Article 33, the Project Rights shall as between the Parties be vested in Contractor, with the exception for such Project Rights that are (i) located in, or derived from technical solutions for, the interface between the Contract Object and Company's cement production operations, or (ii) Intellectual Property Rights developed or created on behalf of Company by a Project Contractor; which automatically upon its creation shall be vested in and/or transferred to Company (with the right to transfer, sublicense, adapt, modify, amend and otherwise freely dispose of such Project Rights). The Parties shall upon request promptly execute and undersign any and all documentation reasonably necessary to give full legal effect to the other Party's ownership of such Project Rights.
- 33.1.5 Contractor hereby grants to Company a non-exclusive, perpetual (however at least fifty (50) years long), royalty-free, irrevocable and transferable license to use such Project Rights that are vested in Contractor according to Article 33.1.4 above for the operation, use, modification, or expansion of, or any similar purpose in connection with, the Contract Object, or for research and development purposes within Company Group. Such license shall for the avoidance of doubt under no circumstances include any Contractor's Trade Secrets.
- 33.1.6 For such Project Rights that are vested in and/or transferred to Company according to Article 33.1.4 above, Company shall if so requested by Contractor for a specific purpose which is in consistence with the overall purpose of the Project grant Contractor a non-exclusive, perpetual (however at least fifty (50) years long), royalty-free and non-transferable license to use such Project Rights for the purpose related to carbon capture and storage projects nationally or internationally. Such license shall exclude the right to sublicense and shall be revocable in case of reasonable grounds. Such license shall for the avoidance of doubt under no circumstances include any Company's Background Rights or Trade Secrets. If so requested by Company, the Parties shall enter into a license agreement which reasonably safeguards Company's interests and formalizes and expands the principles of this Article 33.1.6.
- 33.1.7 Contractor shall render the Project Rights vested in it available for sub-licensing on the EEA market on commercial terms during the term of the GSA. All potential interested parties within the EEA area shall be allowed the same opportunity to sub-license such Project Rights on objectively reasonable and non-discriminatory commercial terms and conditions.

### **33.2 Warranty**

33.2.1 Contractor warrants that:

- a) Contractor is able and authorized to license Contractor's Background Rights and the Project Rights as described in Article 33.1.5 above;
- b) use of Contractor's Background Rights or Project Rights in accordance with this Contract will not infringe the Intellectual Property Rights of any Third Party or breach any law;
- c) neither Company, the Government, nor any other person acting at the direction or with the permission of Company, is liable to pay any Third Party any license fee, or other fee, in respect of the use of Contractor's Background Rights or Project Rights; and
- d) Contractor has obtained from any Third Party involved in the creation of, or whose Intellectual Property Rights form part of, the Project Rights or the Contractor's Background Rights, all necessary consents to ensure Company and any person claiming an interest in the Project Rights through Company do not infringe any Intellectual Property Rights.

### **33.3 Infringement of Intellectual Property Rights**

33.3.1 Contractor must:

- a) notify Company 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 Work or use of the Contract Object by Company; and
- b) if so instructed by Company (in its own discretion):
  - (i) either:
    - (A) modify the Materials, the Contract Object, the performance of the Work 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 Materials, the Contract Object or any other deliverable by Contractor under the Contract, so that it no longer infringes the Intellectual Property Right concerned;
    - (C) remove the affected part of the Materials, the Contract Object or any other deliverable by Contractor under the Contract and compensate Company for any cost, loss, expense or damage incurred by Company as a result, including any cost, loss, expense or damage incurred by Company 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 Company, the right for Company to continue to use the affected Materials, Contract Object or any other deliverable by

Contractor under the Contract 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;

- (ii) indemnify, defend, protect and hold harmless, at Contractor's cost, Company from and against any claim for infringement of any Intellectual Property Rights arising by reason of the performance of the Work or the use of the Contract Object
- (iii) provide all reasonable assistance Company may request to protect the Project Rights and Company's or Contractor's Background Rights; and/or
- (iv) if the infringement arises during the term of the GSA, if so instructed by Company, re-perform any tests previously performed following any such modification, replacement or removal under Article 33.3.1 (b) (i) (A)–(C) and the guarantees according to Article 23.1 shall recommence in relation to the modified, replaced or removed parts of the Contract Object.

33.3.2 Contractor's obligations pursuant to this Article 33.3 shall not be applicable in relation to infringements of Intellectual Property Rights by Company's Documents or other documents or information provided by Company or if the infringement is the result of compliance with an instruction from Company.

#### **33.4 Continuing Obligations**

The above rights and obligations under this Article 33 shall continue during the Operating Period and shall further survive the termination of this Contract.

#### **33.5 Know-how**

33.5.1 Company is pursuant to the GSA obligated to facilitate the profit-taking and knowledge-sharing from the CCS Facility. Contractor shall in good faith cooperate with Company for the purpose of complying with the GSA. Contractor shall thus at all times and as per Company's instructions provide its reasonable assistance to Company in the preparation of (i) profit-taking and knowledge-sharing reports, as well as experience reports, and (ii) final reports. Unless explicitly included in the Works, Article 12 to 16 shall apply accordingly.

33.5.2 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. Contractor shall if so instructed by Company participate to a reasonable extent in and contribute to such networks, including by sharing knowledge and experiences from the Project and the Work.

33.5.3 Contractor's obligations under this Article 33.5 do not apply to know-how and information that qualify as Background Rights or Trade Secrets. Company shall however be entitled to appoint a neutral and independent Third Party without competing interests who shall be given full access by Contractor to matters that are invoked as Trade Secrets or Background Rights pursuant to this Article, provided that such Third Party undertakes such confidentiality restrictions that are at least as reassuring as the terms of Article 34.2 below.

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**34. CONFIDENTIAL INFORMATION AND COMMUNICATION**

**34.1 Freedom of information**

34.1.1 Company 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 Background 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 Company.

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

34.1.3 Unless explicitly set forth in the Contract, Company 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 Project) provided that Company has an obligation to do so pursuant to the GSA or mandatory law or regulation.

**34.2 Confidentiality**

34.2.1 With the exceptions stated 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:

- a) was already known to the Party in question at the time the information was received;
- b) 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*);
- c) is received by a Third Party in a lawful manner without any duty of secrecy towards the other Party;
- d) is required to be shared with a public body according to law or regulation (including stock exchange regulation);
- e) is ordered to be shared with a Third Party by a court or other public authority; or
- f) is on a strict need-to-know basis provided by Company to a Third Party for the purpose of tendering, planning, preparing for or performing services on the Contract Object, provided that Company ensures that such Third Party is bound by a duty of confidentiality that is no less stringent than the terms of this Article 34.2, and whereas such provision of information shall be subject to Contractor's prior written approval (not to be unreasonably withheld, conditioned or delayed) in case such Third Party is a direct competitor of Contractor.

- 34.2.2 The duty of confidentiality under this Article 34.2 lapses five (5) years after the expiry of the Operating Period.

## **PART XI OTHER PROVISIONS**

### **35. MISCELLANEOUS**

- 35.1 Company may assign its rights and obligations under the Contract to a Third Party, provided that Company can demonstrate that the assignee has the financial strength required to fulfil Company's obligations under the Contract. Notwithstanding the aforesaid, a Third Party shall be deemed to have the financial strength required to fulfil Company's obligations under the Contract in case Company provides a guarantee reasonably satisfactory for Contractor for the Third Party's performance.
- 35.2 Contractor may not assign or mortgage the Contract, a part of or interest in it, to a Third Party without Company's approval. The Contractor shall not under any circumstances pledge or subject to factoring the Contract, any part of the Contract Price or other compensation or claims based on the Contract.
- 35.3 Any amendment or addition to this Contract must be made in writing and signed by the Parties to be valid.
- 35.4 In case the GSA would be subject to amendment or variation during the Contract Period in a manner resulting in a material imbalance between the Contract and the GSA (i.e. that Company is unable to fulfil the GSA due to the terms of the Contract or that such fulfilment becomes unreasonably burdensome or commercially unviable), the Parties agree to renegotiate the Contract in good faith following a written request from Company. For clarity, such renegotiated terms and conditions shall not be less favourable for Contractor than the original terms and conditions of the Contract (but Contractor shall not be entitled to refuse renegotiation unless due to material cause).

### **36. NOTICES, CLAIMS AND NOTIFICATIONS**

All notices, claims and other notification to be given in accordance with the provisions of the Contract shall be submitted in writing to the relevant Party's representative under Article 3, with such address as given in Appendix D or as changed by notice.

### **37. NOT USED**

### **38. NORWEGIAN LAW AND DISPUTES**

- 38.1 This Contract shall be governed by and interpreted in accordance with Norwegian law.
- 38.2 The Parties shall in good faith aim to resolve any dispute, controversy or claim arising out of or in connection with this Contract on the lowest possible level in the project organisation. Any dispute, controversy or claim that is not possible to resolve may by means of a written notice by either Party be escalated to executive management for

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negotiations. Such negotiations shall be conducted in good faith at a minimum period of six (6) weeks. In case such dispute, controversy or claim is still not settled after such six (6) weeks' period, either Party shall be entitled to apply Article 38.3 below.

38.3 Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach, termination or invalidity thereof, shall, to the exclusion of other courts, be finally settled by a court in Norway and the first instance shall be the District Court of Oslo.

For the avoidance of doubt, the Government is entitled to a third party intervention according to 15-7 of the Norwegian Disputes Act (Nw: *Tvisteloven*).

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This Contract has been signed in two (2) originals, of which the Parties have received one each.

Place:  
Date:

Place:  
Date:

NORCEM AS

[CONTRACTOR]

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[Clarification of signature:]

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[Clarification of signature:]